

Editorial:

This edition, one of the most voluminous to date, opens with an oratio by IT Cohen Professor of International Law and Human Rights, Emory University School of Law, Johan van der Vyver. The paper was delivered in the HL Swanepoel series of lectures on 26 May in Potchefstroom. In a well documented paper covering historical perspectives on the right to self-determination, the definition thereof and limitations thereupon, Van der Vyver concludes that the "[d]rafters of the South African Constitution rejected segregation of rival ethnic, religious and linguistic communities, as well as the promotion of cultural, religious or linguistic homogeneity within our nation, as a means of counteracting group-related tensions in the country's social construct. . . . The new constitutional dispensation accordingly seeks to promote pride in one's group identities." He also points out that "[p]luralism, tolerance and broadmindedness have been singled out by the European Court of Human Rights as indispensable components of a democratic society." A link to video material of the lecture is also included.

Two papers delivered at a Humboldt-Kolleg on "Ubuntu, Humanity and Good Faith" held from 1-3 September 2010 in Potchefstroom are published here. Tom Bennett of the University of Cape Town delivered a seminal paper on the enigmatic South African notion of ubuntu. In the paper he canvasses the uses of ubuntu in the various disciplines of public and private law, he surveys the theoretical objections to the use of ubuntu and concludes that it provides the South African courts with a metanorm, similar to the English law notion of equity, but as yet not developed into rigidity as in the case of equity.

In the second paper of the Kolleg Julia Sloth-Nielsen and Jacqui Gallinetti of the University of the Western Cape investigated the place of restorative justice and ubuntu in the South African Child Justice Act, reflected in the mirror of the Constitutional Court's interpretation of the concepts. They find ubuntu to be relevant to the development of indigenous constructions for a newly developed criminal justice system for children.

At another conference held in Potchefstroom on local government, the lower courts and socio-economic rights on 29 October 2010, Lourens du Plessis of the University of Stellenbosch spoke on the stature of legislation in the South African constitutional democracy. The paper is published here as a note, in which it is shown how statutes are used as "allies to the Constitution."

The paper of Raymond Koen of the University of the Western Cape then shifts the focus to the Bolshevik jurist, Evgeny Pashukanis. He argues the case for the recognition of Pashukanis' general theory of law as the Marxist theory of law by refuting six major objections raised against it.

Sarika de Wet, Hennie Oosthuizen and Jo-Mari Visser of the University of the Free State delve into the scientific basis and presentation of DNA evidence in order to assist lawyers to deal with the complex, but highly useful evidence provided by DNA profiling. They also discuss the future of this field, including legislative reform and the creation of a DNA database.

The thorny issue of the vague but crucial requirement that lawyers should be "fit and proper" persons in order to be admitted to practice is tackled by Magda Slabbert of Unisa. She argues that the pre-admission character screening of lawyers has lost its effectiveness in South Africa and that post-admission moral development has become essential.

Efficient legal service delivery by law firms is shown by Tanya du Plessis of the University of Johannesburg to be dependent upon proper management of information and knowledge assets such as intranets, portals, workflow management systems, document and content management systems, case and project management systems and online dispute resolution systems.

With reference to recent South African case law Loma Steynberg of Unisa and Daleen Millard of the University of Johannesburg point out the dangers of applying private law principles to social-security law in deciding whether or not social grants should be deducted from awards for damages since the objectives pursued in terms of social-security law differ from those of the law of damages.

In a piece based on his doctoral thesis Amos Saurombe of Unisa examines the extent to which the SADC Protocol on Trade and the regional free trade area comply with WTO rules against the background of the GATT requirements set for regional trade agreements.

The contribution of Fanie van Zyl of Unisa closes this edition with an investigation of the unusual but apposite question whether illegal transactions are subject to VAT and if a trader in illegal goods and services should register as a VAT vendor in South Africa, referring inter alia to the approach to the matter of the European Court of Justice.

Francois Venter

