



National Bar Conference

The Conference that the South African Bar organised in Cape Town last April appeared to me to be a very successful one in all respects. For a guest like me, representing the Bâtonnier of Paris, the Conference kept all its promises right from the beginning. The quality of the organisation and the friendly welcome was only disturbed by the bad weather on Wednesday, which led me, for the first time in my life, to play a tennis match under torrential rain.

Coming to serious issues, the themes tackled during the Conference were not unknown to me.

The fusion of the professions is a topical subject in Europe and more particularly in Great Britain, as Lord Benson reminded you. In France it was implemented as early as 1971 and the question today is whether to widen the fused profession to the juridical councils or not. I understood well that the Bar was not in favour of this idea of fusion and that you believed the solicitors wanted in fact to obtain the right to plead in front of the superior courts without modifying in other respects their professional practice. Everything I heard for or against the fusion, sounded strangely like the debates I have known in France towards the 1970's, even though your legal system is much different. But I more particularly recognised throughout your debates the same themes as those discussed in Europe in the prospect of 1992 and the establishment of the common market, implying the free practise of professionals; therefore English solicitors will practise on the continent whereas they do not have the same practice, and above all they do not have the same deontology as our lawyers.

On the second theme concerning legal aid, I was particularly interested by Mr Cilliers' outstanding contribution which I could not help thinking was introducing the third debate on human rights. In France, indeed, we have an idea of legal aid as the elementary right of every citizen to obtain the free assistance, or at a lower cost, of a lawyer before the courts. In criminal cases any person, and whatever offence has been committed, can and in practice is assisted by a lawyer. From what I

heard, this did not seem to be the case in South Africa where the very notion of access to justice seems very archaic in the eye of a European observer, even making allowances for the specific situation in your country.

I was impatiently waiting for Professor Ackermann's speech on human rights, which seemed to me outstanding in all respects. But I was very much disappointed to realize that his contribution did not incite anybody to a real debate. Yet so many perspectives were offered by Professor Ackermann and so many fundamental questions were touched on. I understand perfectly that, due to the political context of your country, you are not in a position to wave your arms about in the court, but it seemed to me that a congress of lawyers should through debate make a richer contribution to this field of reflection.

The final discussion, which was based on judges' recruitment and on the call which was made that the best of you, according to tradition, accept appointments as judges, interested me all the more in that, as I was telling a few of you, our system is very different. Judges in France come from a special school to which they go after a three year degree in law at university and they carry on their whole career as judges.

But after all, as so often happens at congresses, what I will remember most after these four days spent in Cape Town are the individual conversations I had with my South African colleagues.

I want to thank all those who were prepared to speak freely with me about the situation in your country and who were prepared to listen to the opinion of a foreigner who wanted to inform himself about the reality of a society which he only knew through the media in Europe.

Thank you to all of you.

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The Latin Debate

While the role of Latin in the education of Black lawyers is so much in the news of late, it is perhaps salutary to take note of the view of the Classics by a prominent nineteenth-century American Black, who played a role in establishing Liberia as the USA-style "Lone Star State" of West Africa, for the repatriation of the descendants of West African slaves. The following excerpt is from the inaugural address of Edward W Blyden as President of Liberia College, delivered at Monrovia, Liberia, on 5 January 1881.

After a long disquisition on the negative influence of the "normal" Eurocentric educational system on the self-perception of Blacks, and an explanation that the newly-founded college with "Negro faculty and Negro students" will be moved to the interior of the country, away from the "contaminating" influence of a busy

harbour city, and closer to the indigenous population, Professor Blyden expounded the curriculum of his college:

"The instruments of culture which we shall employ in the college will be chiefly the Classics and Mathematics. By Classics I mean the Greek and Latin languages and their literature. In those languages there is not, as far as I know, a sentence, a word, or a syllable disparaging the Negro. He may take nourishment from them without taking in any race-poison. They will perform no sinister work upon his consciousness, and give no unholy bias to his inclinations." (Taken from Cartey and Kilson ed., *The Africa reader: Independent Africa*, Random House, 1970, p 53).

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News from Bophuthatswana

For many years Bophuthatswana has been justly proud of its legal aid system. In the well-known case of *Chabalala* (reported in 1986 (3) SA 623) Stewart CJ pointed out that in Bophuthatswana the *pro Deo* system had been supplanted by the more satisfactory system of legal aid. There are many advantages to the latter, not least being the fact that an attorney is instructed who selects counsel of his choice and who is available to assist counsel throughout the trial. There is also a more satisfactory fee structure. Where considered appropriate, senior counsel may be appointed.

Bophuthatswana's **Bill of Rights**, in fact, guarantees the right of legal representation in criminal trials and if necessary at the expense of the State where the accused does not have the means to procure such representation. The **Bill of Rights** provides further that a fundamental right shall not be totally abolished "or in its essence be encroached upon".

There was consternation in legal circles when the new Legal Aid Act, 8 of 1988, was promulgated. It provided that financial assistance was not to be provided by the Board to anyone charged with treason, sedition or like offence. This was no doubt prompted by the short-lived coup which had taken place. But the Act went further and provided that legal aid was not to be provided for a variety of offences involving intoxicating liquor and drugs. There was also an end to legal aid in all civil cases.

A proviso was added which enabled the Minister of Justice to authorise assistance if he considered that there were sufficient reasons for doing so.

Practitioners were fully aware that the legal aid system in Bophuthatswana was being abused and that the young state could ill afford to bear the financial burden of such abuse. Yet the extent of "over-kill" which the Act represented could scarcely be justified particularly when it was apparent that what was needed was thorough investigation and proper supervision.

Representatives of the Bar, Side Bar and the School of Law of the University of Bophuthatswana (**Unibo**) pre-

pared a fairly lengthy memorandum which was sent to the Minister of Justice. A delegation consisting of representatives of the three bodies later met the Minister and senior officials of his department. The discussions took place in a friendly spirit and at times it appeared that the Minister was impressed with the view that certain civil cases, especially those involving the welfare of children and urgent applications in which threats to life and limb were involved, should qualify for legal aid as of right. Unfortunately, in the final reckoning, the representations came to nought. Information has been received to the effect that the Lawyers for Human Rights intend to test the constitutionality of the Legal Aid Act in the courts. They will have the support of the Bar and Side Bar as well as the School of Law of Unibo.

Bophuthatswana has an institute which is rather unique in the Southern African context. It is the *International Centre for Medicine and Law* which is situated on the campus of the national university. The Institute offers considerable potential to those who are working at the interface of medicine and the law. The Institute holds annual conferences which are attended by prominent persons from a number of countries. It is also responsible for the journal *Medicine and Law* which is produced by the prestigious publishing house of *Springer-Verlag* in Germany. One issue which appears to be germinating in the Institute is the issue of medical malpractice suits. In Bophuthatswana it is difficult to find a medical practitioner who is willing to testify on the skill or lack of skill of another practitioner in the country. Such behaviour is regarded as "unethical". The duties of medical practitioners and other vexed issues need to be debated openly and it is hoped that the Institute and its publications will provide a suitable forum for doing so.

HENRY LEVER Bophuthatswana Bar.