

Middle Temple visit

a memorable success

By Jean Meiring, Johannesburg Bar, and Frank Pelsler, Cape Bar
Photo credits: Jean Meiring

On Heritage Day, Middle Temple's annual conference abroad commenced at the UCT Law School, this year hosted together with the General Council of the Bar of South Africa. The weekend of intense legal discussion proved to exceed all expectations.

Appropriately, proceedings had in fact already kicked off informally that Wednesday at the wine estate Buitenverwachting with a wine-tasting hosted by the GCB to welcome the members of Middle Temple. The scene was thus set for a conference convened to explore the commonalities and differences among the jurisdictions of England and Wales, Ireland and South Africa. The overarching theme was the rule of law, and senior judges and practitioners from the three jurisdictions delivered papers on a variety of related topics.

The conference was opened by Lord Justice Stanley Burnton, Master Treasurer of Middle Temple, whilst Professor Hugh Corder of the UCT Law School welcomed everyone on behalf of the dean. Ms Nicola Brewer, the British High Commissioner, also extended a welcome.

The first panel comprised Keir Starmer QC, the DPP of England and Wales, and Billy Downer SC, Deputy DPP in the Western Cape and no stranger to controversy. Mr Starmer gave a candid insight into the difficult exercise of discretion which daily besets a director of public prosecution. Some of the questions posed were: What does a prosecutor do in the case of assisted suicide? How is the rule of law affected by a prosecutor giving guidelines regarding the types of cases that would be pursued? Should a decision not to prosecute be subject to judicial review?

Adv Downer reflected that in South Africa, when prosecutions do proceed and a case is placed properly before the court, justice does appear to be done, and the judiciary is able to fulfil its role freely and without political interference. However, there is no reason for complacency because the threat of extra-judicial interference is always present.

The second session had a more academic flavour, yet of the witty, urbane kind. UCT alumnus Prof Jeffrey Jowell QC, former dean of law at University College London, compared the common-law approach to administrative

law (as previously followed in South Africa and still applied in England and Wales) to a codified system like that under PAJA. Prof Corder spoke in response: his lucid paper provided the visitors with a deft introduction to the principles and mechanics of PAJA.

After lunch, Deputy Chief Justice Dikgang Moseneke spoke on the role that comparative and public international law play in the jurisprudence of the South African Constitutional Court. He noted the irony that while the SA Constitution plainly emerged from our own historical experience, it is also falls squarely within an international tradition upon which it draws quite liberally. Prof William Binchy, emeritus Regius Professor at Trinity College, Dublin, in turn excited the audience with what he warned would be a provocative paper. One of the most challenging propositions was that lawyers should know their philosophy (even admitting that we'd be well-served to do a philosophy degree) since many fundamental legal questions are in fact moral or philosophical ones.

The final session of the first day saw Lord Justice Jackson take the lectern. He is the authority on costs-of-litigation in England and has authored the latest report on how the many ills relating to costs might be addressed. A topic some consider dry became almost poetic as he spoke eloquently about the challenges facing England and Wales in

What is Middle Temple?

The Honourable Society of the Middle Temple is one of the four Inns of Court, all situated in London, which enjoy the exclusive right to call men and women to the Bar. Therefore, if you wish to practise as a barrister in England and Wales, you are obliged to belong to one of the Inns.

Although the history of their foundation is mostly shrouded in obscurity, the Inns were probably founded in the thirteenth century as institutions in which student lawyers were housed and educated. The two ancient universities of Oxford and Cambridge did not then yet teach the Common Law, which was still no more than the arcane and technical science of pleading, plainly beyond the ken of scholars, who busied themselves with a study of Roman and Canon Law.

Middle Temple is situated near the Royal Courts of Justice, in what might be termed London's legal square mile. Although like the other Inns, Middle Temple finally stopped being involved in legal education in the early Victorian era, it remains a forum in which pupils and newly-qualified barristers receive advocacy training, moot and dine. Before qualifying as barristers, student members have to attend a minimum number of twelve meals in Middle Temple's Hall, situated at its heart, surrounded by clusters of chambers.

While Middle Temple boasts some of the great luminaries of the Common Law as members past and present (Glanville Williams and Blackstone to name but two), probably its most famous member is Prince William, who was called to the Bar in 2009, and became an Honorary Bencher (senior member).

Reading list

JH Baker, "The Inns of Court in 1388" in *The Legal Profession and the Common Law* (1986) 4.

W Prest, "Legal Education of the Gentry at the Inns of Court, 1560-1640" in *Past and Present* (1967) 38(1) 20-39.