



A British Barrister Abroad

Observing the Legal Profession . . .

by David Pojur

The Republic of South Africa: number one holiday destination in the world; one of the top 10 wine producing countries; a glorious array of flora, fauna, mountains and deserted white beaches; and no jet lag to get there! So, feeling fresh after 12 hours on the new A380 Airbus I made my way to Huguenot Chambers in Cape Town. It's next to the famous Long Street with its bars and boutique hotels and the National Gallery. I was set to be here for a whole month. My purpose was to observe the legal profession and the rule of law in action.

I was greeted at Chambers by the Chairman of the Bar, Alastair Sholto-Douglas SC, who was already robed. This is the norm in this part of South Africa as no one has used the robing room of the Western Cape High Court for many years. During the apartheid era, the Judge President came in to his Court to see the Department of Works erecting a plywood partition. The High Court in its exclusive jurisdiction admits the advocates to the Bar, and the Works Department knew of the first black admission. Whilst the Judge President would not allow a partition in his Courtroom, the robing room was another matter for the Works Department. In an act of solidarity the Bar refused to use it and it remains abandoned to this day.

The District Magistrates Court is the equivalent of our Crown Court. Just like our Crown Court they deal with every type of criminal matter up to and including murders. The difference is

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that they sit without a jury. The thought of a judge-alone criminal trial is unusual and a little unsettling for us, but South Africa has no history of a jury system and it seems to work. I observed the trial of four police officers accused of an aggravated dwelling house burglary and found nothing that impeded the fairness of the proceedings.

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The High Court of South Africa has a wider function than its opposite number in England and Wales. In addition to acting as a direct court of appeal from the Regional Magistrates' Court, it occasionally hears a first instance criminal matter. This is very infrequent and only includes cases that are particularly serious or sensitive, such as the ongoing high profile Dewani matter where an Englishman has been accused of murdering his wife whilst on honeymoon. The High Court also automatically reviews cases of all unrepresented and imprisoned defendants.

On the civil side, the High Court judges undertake a lot of case management. Whilst sitting with Mr Justice Cleaver, several counsel came to see him and left messages regarding the management of the Rolls and Urgent Applications List. It's a more informal approach than we experience, but it is very effective. Rather more formally, the South African Civil

Procedure Rules do not allow examination in chief by way of written statement. I sat with Mr Justice Binns-Ward as he heard a commercial dispute. It felt like a long trial!

In this time of human rights awareness, the South African written constitution is closely guarded by lawyers here. It pervades all areas of society. The Bill of Rights as part of the constitution has a prominence in people's minds wholly different to how most of us encounter the Human Rights Act. The Rule of Law and the Bill of Rights also go hand in hand. Most of the conferences I attended had constitutional points to be considered. South Africa has a very large number of protected rights (33 sections), the USA has less, and the UK fewer still. A significant entitlement, absent from the two first world countries above, is the right to human dignity. Nelson Mandela signed the Constitution in 1996 and also urged the world to see AIDS not exclusively as a health issue but also as a human rights issue. Set against the history of Africa and South Africa, protected rights are argued often and feature in the very high number of judicial review proceedings here. Each member of the Bar, Silk and junior alike, is required to undertake a minimum of 20 hours *pro bono* work. The effect is invaluable especially for those who really cannot afford legal advice and advocacy services. A single *pro bono* judicial review or defamation case, as I saw as one example, can make a great difference.

The Nuremberg Trials made famous the phrase "crimes against humanity"; however, it was a lawyer in 1895 called George William who is known to have used it first. In 1890 King Leopold II of the Belgians claimed himself

proprietor of a “small country with small people” – the Congo Free State, later the Belgian Congo. The rubber boom from cars and bikes brought prosperity as half the Congo was covered in rubber vines, however, Leopold's 'forced labour' policy to collect the rubber tree sap often resulted in Africans being whipped to death and rivers filled with corpses and severed limbs. There was outrage and the lawyer William wrote to the US Secretary of State declaring Leopold guilty of “crimes against humanity”.

South Africa is an example of a beautiful country still leading change. Lord Hoffman's recent lecture entitled, “Are South African Human Rights an Indigenous Species?” at the University of Cape Town was standing room only. 116 years after the first complaint of crimes against humanity, it is still an ageless topic for all lawyers.

Cape Town is also steeped in history that speaks of human rights and changes in the law for all. Whilst the first European to climb and name Table Mountain was a Portuguese in 1503, the famous Dutch East India Company took hold in 1652. Under the surgeon, Jan van Riebeeck, The Cape of Good Hope was used to establish a refreshment station for the Company. The British took over in 1795 as the Cape was a significant port. Importantly, both domestically and for the British colonies, Parliament passed the Slave Trade Act 1807 and the Slavery Abolition Act 1833.

Important local elections are happening here, too, and everyone is obliged to vote. Recent history is at the forefront of the majority's mind when moving forward. There is no talk of ethnic minorities but “black”, “white” and “coloured” are the politically



Table Mountain from the Victoria and Alfred Waterfront. Photo courtesy of See Thru Media.

correct terms. The Black Economic Enterprise policy (B.E.E.) ensures diversity is considered and applied across all industries including legal representation. It is something that candidates for the High Court and senior courts can often be asked about at their televised public interviews.

South Africa is one of the most rapidly changing countries in the world. It has a very wide diversity at the Bar, side Bar – as attorneys (solicitors) are known – and on the bench. Human rights are a thread running through all aspects of society. There is much to gain by seeing another insight through the different legal eyes of our colleagues in Cape Town and beyond. It is very apparent how important the work of the Inn is on the international legal stage.

There is much for the lawyer to do in this city of incomparable beauty. The reward of a hard day at court or in chambers (without clerks – imagine!), lies in a ten-minute journey to the

nearest beach, the marina or, quicker still, to the Cape Town Club. An alternative as I sit overlooking the Indian Ocean (the Atlantic is over the Mountain) is to visit the endangered colony of braying knee-high Jackass penguins. Oddly, much further up on the Natal coast, cows roam the beach to cool down on the wet sands.

Middle Temple's strong links with the Cape Bar and South African Judiciary are evident at every turn through the Capetonian legal community. Lords Steyn and Hoffman were educated here. One of the Inn's most recent Benchers is Master Jeremy Gauntlett, former Chairman of the South African Bar. Last year's MT South African Law Conference on the Rule of Law led by Master Burnton is still being discussed and remembered. Master Deputy Treasurer, Lord Clarke, is planning to continue the legacy of last year's trip and is organising a legal conference in Stellenbosch in September 2012.