

A note on the history of the Faculty of Law of the  
University of the Free State —

*NUNC PRO TUNC*

Hay and green grass

The year 2004 is the centenary of the University of the Free State. For any university to have survived for a century is nothing new in Europe or in North Africa, but in Sub-Saharan Africa it is a very impressive feat.

We subscribe to what the poet Vergil said: “*Diu, res siqua diu mortalibus ulla est, viximus*” (Vergil, *Aeneid* X, 861) — “We have lived for a long time, if anything can at all be long for us mortals.” In another passage he describes Charon, the dreaded ferryman of the dead, in the following terms: “*Iam senior, sed cruda deo viridisque senectus*” — “*He is very old but it is the tough and green old age of a god.*” (Vergil, *Aeneid* VI.)

The same may be said of the University of the Free State. This institution is nearly as old as the hills but it is vibrant, eager and youthful.

Old age and youth in one and the same object can only co-exist where there is growth to supplement that part which has been consumed. The sage King Solomon wrote: “You cut the hay and then cut the grass on the hillsides while the next crop of hay is growing.” (Proverbs 27.25).

The prophet Isaiah said that “new branches sprout from a stump” (Isaiah 11.1). The whole matter is clinched by a terse statement from the famous Dutch statesman and scholar, Abraham Kuyper. Towards the end of a long and exceedingly productive life, he remarked: “*terar dum prosim*” (Scholten, 1937, 267) — “Let me be worn away provided that I am useful.”

*HA Wessels, Professor Emeritus of Roman Law, former head of the Department of Roman Law, Legal History and Comparative Law, UFS; JJ Henning, Distinguished Professor, Dean of the Faculty of Law, University of the Free State and head of the Department of Roman Law, Legal History and Comparative Law; JH de Bruin, Senior Lecturer in the Department of Roman Law, Legal History and Comparative Law, UFS.*

*The authors would like to express their heartfelt thanks to all those who contributed to this note either in writing or by word of mouth.*

Certainly there could have been no University with an eminent Faculty of Law had there not been men who were willing to expend themselves for something they could only see as a distant *fata morgana*.

Not so long ago the Hon Mr Justice FS Smuts, a former Judge President of the Free State provincial division of the High Court, was asked what he was paid for lectures he gave while practising at the Free State Bar. He could no longer remember.

This is not surprising because he was faithful to the time-hallowed tradition where a practising advocate also shouldered lecturing responsibilities. It was part and parcel of his very being and he thought of his reward only secondarily or better still, not at all. This tradition dates back to the Roman Jurists of the first century B.C whose work was described as *cavere, agere, scribere* and *docere* (to teach).

By and large this faculty remained faithful to this tradition for the next few decades. Law continued to be an academic discipline taught by practitioners, ex-practitioners, and teachers who maintained close ties with practice. We pay homage to those early pioneers in whose footsteps we are privileged to follow.

## In the beginning

Writing about the *veteres* is no easy matter. It has been said that “*memoria beneficiorum fragilis est*” — “The memory of past kindnesses is tenuous.” Shakespeare wrote: “The evil that men do lives after them, the good is often interred with their bones” (Shakespeare *Julius Caesar* 588)

No doubt this is true, but a lack of appreciation is not a weakness of the University nor for that matter of the Faculty of Law. The honorary doctorates and medals bestowed at graduation ceremonies bear eloquent testimony to this.

However, famous men are remembered for spectacular conduct and not so much for a devotion to duty over an extended period of time. In the case of the *veteres* there is a dearth of material about their role as lecturers in the days of yore while they were far more famous in other walks of life.

The Honourable Mr. Justice CP Brink, of the Free State division of the Supreme Court and later of the Appellate division, left his mark on the legal history of this country, but scant reference is made to Mr Advocate Brink KC LL.D h.c. (Unisa) who was dean of the faculty of law at the University of the Orange Free State, as it was then known,

from 1945 to 1948. He started lecturing in 1924 and became head of the Department of Law in 1929.

No student of South African political history could ever overlook the contribution made by Dr Colin Steyn, Cabinet Minister, M.P. for Vrededorst and national chairman of the United Party. Very few people are aware of the fact that he lectured part-time at this university, counting Mr CR Swart (later State President) as one of his students. He obtained a B.A. degree from the then Grey University College in 1909 and graduated as Doctor of Laws at Leiden. He was admitted to the Bar at the Middle Temple in London.

Much the same can be said of his Lordship Mr Justice Hoexter, economist, classicist and lawyer. His brilliance as a judge of the Court of Appeal is legendary, but in 1918 when he started to practise at the Bloemfontein Bar, he was also responsible for lecturing to the more advanced students. He enjoyed the assistance of Mr Advocate RC Streeten who later resigned to take up arms for his country in the First World War.

Most lawyers of the older generation will remember the colourful and versatile Mr Advocate HJ Edeling KC, a former chairman of the Central Bar Council. He is described by his lordship Mr Justice JPG Eksteen as “a lovable chap” and “a man for the jury”. “Their type of fellow”. He was better known as Tempe Edeling on account of his love for everything military — a predilection shared by the present dean of the faculty. He lectured at the University in 1925, and like Dr Colin Steyn, counted a future State President as one of his students. This time it was Mr PW Botha who always remembered his lecturer on Constitutional Law with great fondness.

The labours of these *veteres* were far from fruitless. The first graduates became men of substance in their subsequent careers. They were Mr CR Swart, Mr SP le Roux, Minister of Agriculture in the 1948 cabinet led by Dr DF Malan, and Mr W Leinberger, a well-known attorney. No doubt their success could be ascribed to the sound training they received at their *alma mater*. However, his *de rebus hactenus*, may the pioneers of yesteryear rest in peace.

## The grass flourishes in the morning

The era of the *veteres* drew to a close with the appointment of Dr JP Verloren van Themaat as the first full-time professor of Law at the University in 1949. He was the perfect example of a gifted scholar who tried to fit academic pursuits and practice into one life, rendered more difficult in his case by the fact that his days were limited unlike

those of his father, who died at the age of ninety-four. His academic credentials were impeccable.

The son of a revered professor of law at Stellenbosch University, he was the brother of another professor of law. He held the degree of Doctor of Law from the University of Pretoria. He was a prolific writer and an inspired lecturer who specialised in Criminal Law, the Law of Delict and Constitutional Law.

After first cutting his teeth in the criminal courts, he moved on to become a legal adviser. In 1949 he was ushered into the chair of Law and the deanship with acclamation, but that did not prevent him from rejoining the civil service in 1953. This led him to the World Court in The Hague where he played a leading role in the South West Africa trial. His efforts became part of international history. Towards the end of his life, characterised by a restless energy and unstinting labour, he became a professor at Unisa.

The names of those men who sought to emulate the example set by Prof Verloren van Themaat will do justice to the pages of a South African legal Who's Who. Regrettably very few of these highly gifted young academics found their way back into the academic fold after their sojourn into practice. Obviously it would be an inestimable privilege for students to sit at the feet of a man who is an academic and yet has made his mark in the hurly-burly of the courts.

The Honourable Mr Justice JJF Hefer provides a welcome exception. He completed his BA and LL.B. degrees in 1953 and 1955, respectively. From 1957 to 1964 he was a senior lecturer in Procedural Law at the University of the Free State. His career, which started as an attorney and advocate in Bloemfontein, culminated in the acting presidency of the Supreme Court of Appeal from January 2001 to December 2002. However, he remained an academic lawyer at heart. The fact that he obtained the LLM degree from Unisa in 1995 is proof of this. He returned to the Faculty in 2003 as the first honorary professor in Private Law.

The pinnacle of an outstanding career was reached when he delivered his inaugural lecture on the 17th of March 2004 in the stately auditorium of the CR Swart Building.

If one is to describe Mr Justice Hefer as the perennial academic *cum* practitioner then much the same applies to other illustrious colleagues of his on the Bench. Mr Justice SPB Hancke, the current Chairman of UFS council and the equally famous predecessor Mr Justice DJ Kotze, both lectured at the faculty on a part-time basis.

Mr Kotze lectured on the Law of Procedure from 1964 to 1975. He was elected member of the University Council on 18th March 1995 and

became the chairman of that body on the 23rd September 1996, a position which he held until his death on 14th September 2001.

Mr Justice Hancke lectured on a part-time basis in the department of Mercantile Law from 1973 to 1977. He became chairman of the University Council in 2000. He is an extraordinary professor and a sought after lecturer. The faculty is justifiably proud of its two ex-lecturers and of their outstanding loyalty and willingness to serve the University.

The first senior lecturer to be appointed was an astute young man who joined the faculty in 1952. Dr CP Joubert was born in Matatiela and this is somewhat reminiscent of Nathaniel's scepticism in John 1.46. He graduated as Doctor Iuris, *summa cum laude* from the University of Leiden. A Latinist, conversant in both German and French, he lectured on Legal History, a task for which he was admirably equipped.

After spending two years at this faculty, he took up a similar position at the University of Pretoria. He succumbed to the siren's song of the Bar and finally ended his career on the Appeal Bench.

In those early days part-time lecturers were in copious supply but pride of place should be accorded to the inimitable Mr Advocate FWA Grey, who lectured on Roman Law. Always immaculately dressed, he was courteous to the point of perfection. Tough, imperturbable and indestructible as dry seaweed, he reminded Dr Chris Joubert of those immortal words in Shelley's *The Brook*: "For men may come and men may go, but I go on forever." He is well remembered by his colleagues at the Bar as the reporter for the S.A. Law Reports and credited with a sound knowledge of the law.

Of the other legal luminaries who lent prestige to this faculty we have already mentioned Mr Justice Smuts as the lecturer on what is today known as Indigenous Law. In addition, there were his Lordship Mr. Justice PJ van Blerk, a judge of appeal who, during his days at the Free State Bar, lectured on Private Law, and his successor in this field, his lordship Mr GP van Rhyne who became Judge President of the Northern Cape local Division of the Supreme Court. His lordship Mr Justice HJ de Wet with his excellent qualifications in political science was a competent lecturer in Constitutional Law. In the words of the best man at his wedding, the later Mr Justice JPG. Eksteen, he was "a man with a heart of gold". Mr Cyril Jarvis KC found a worthy successor in Mr BG van der Walt.

Both were civil servants and state advocates who eventually rose to the rank of attorney-general. Contrary to what one might expect, Mr Van der Walt lectured on Jurisprudence, a subject in which he was

deeply interested. Other judges who in their days at the Bar took their turn in the lecture hall were Mr Justice PJ Potgieter, JWC de Villiers, Dr W de Villiers and NJ Grobler, D van Zyl, PJJ Olivier, HCJ Fleming, and HJO van Heerden.

From the mid-fifties onwards the input from the Bar was on the wane as more and more full-time staff were appointed. Towards the end of Prof Van Rhyn's protracted term of office no less than five full-time professors were appointed.

*S.P.Q.R.*

*Senatus Populusque Romanus*

The Praetor

This discussion can never be complete without a word about the praetor (Latin *prae + ire* that is the one who walks in front, the leader) *in casu* the dean. It stands to reason that a faculty that has passed through the Red Sea dry-shod, traversed the desert and escaped untold perils, requires a leader with qualities to match those of Charlemagne and the Ghengis Kahn. These will include the cool, detached intelligence of Maggie Thatcher and the scholarship of Frances Bosman; the eloquence of Sir Winston Churchill and the erudition of Deon van Zyl; the compassion of Madiba and the determination of Chaka; the dialectical abilities of Bill Clinton and the dedication of Louise Tager; the vision of Bill Gates and the gentle wisdom of Eric Suy.

Extravagance aside, it is a herculean task demanding almost superhuman qualities from the head of a key faculty in the university.

This faculty has been well served by its deans. All of them were in one way or another larger than life. They not only scaled the heights to the pinnacle of the deanship, but they also made good in other spheres of life. His lordship Mr Justice CP Brink (45-48) was promoted to the Appeal Bench. Prof. JP Verloren van Themaat (49-52) represented South Africa in the International Tribunal at The Hague in the S.W.A. dispute. Prof. WA Joubert (52-59) became the father of the law faculty at Unisa. Prof. SJH Steven (60-62) was dean of the faculty of arts, a position which he held when the LL.B. degree was conferred on him. Prof. JNR van Rhyn (63-81) served his community as the mayor of Bloemfontein for several terms of office. Prof. DW Morkel (81-86 and 90-97) served as cultural attaché in Bonn for a period of four years. Prof. JV du Plessis (86-90), the only dean who after his period of office had expired returned to full-time lecturing, followed in Prof. Van Rhyn's footsteps to become the mayor of Bloemfontein. Obviously this is a list of able, versatile men who would have succeeded in any profession they might have chosen.

The present incumbent of the office is a man of some strange contrasts. A distinguished corporate lawyer with a penchant for everything martial and specialising in the inner workings of the German Tiger tank. A legal and war historian, he is a futurist who could launch this faculty into the murky waters of the twenty-first century with aplomb. He is a world traveller, with stop-overs as far afield as Shanghai, and Lexington in Kentucky. He is one of five distinguished professors at the University of the Free State and was also awarded honorary fellowships by both the American Order of the Coif and the British Society of Advanced Legal Studies. He is the director of the Centre for Corporate Law and Practice of the Institute of Advanced Legal Studies of the University of London. Prof Henning has managed to secure a foothold for his faculty on the distant shores of England where courses leading to the LL.M (UFS) can now be followed.

*Ex Africa semper aliquid novi.*