

The application of ubuntu in law, mediation and social change

On 21 September 2022, the Dullah Omar Institute (DOI) in collaboration with Let's Collaborate and Street Law hosted a hybrid lecture at the University of the Western Cape (UWC), Kader Asmal Moot Court, and on zoom. The lecture which was supported by the Hanns Seidel Foundation, was introduced by Professor Jaap de Visser, the Director of DOI. Mr. Eric Sirotkin, a United States of America (USA) based human rights lawyer, mediator, and educator, then delivered a keynote address entitled '*Moving from the Age of Separation to the Era of Ubuntu.*' This was followed by a panel discussion composed of Professor Karin van Marle – law lecturer at the University of the Western Cape (Department of Public Law and Jurisprudence), Dr. Soraya Beukes – human rights lawyer and social justice activist, Mr. Philip J. Daunt – US based attorney, mediator and life coach, and Mr. Eric Sirotkin. The panel discussion was facilitated by Ms. Asithandile Mayila – the Deputy-Secretary General of Street Law, who is also a final-year law student at UWC. Ms. Laura Carelse, chairperson of Street Law, closed the lecture with a vote of thanks. This report summaries what emerged during the lecture.

In 1991, Mr. Sirotkin was part of a constitution making conference in South Africa, with the African National Congress (ANC), at UWC. According to Mr. Sirotkin, this was an exciting and uncertain time for him, South Africa, and the world at large. Amidst all this, Mr. Sirotkin learnt a profound lesson from the late Archbishop Desmond Tutu that “we must not allow ourselves to become like the system we oppose.” He found this to be an important lesson because people easily hold on to old practices and forget their vision of what the world could be. To this day, Mr. Sirotkin applies this lesson to his life and legal practice.

The Age of Separation:

In his address, Mr. Sirotkin contended that separation is not a new concept. He pointed out that separation can be found in colonisation, the divisions by race in the USA in the 1950s, in slavery, and apartheid in South Africa. These were all stories of separation. He also pointed out that separation has been entrenched in all our institutions and it is present in science and the law of mechanics. It is also present in psychology, the law, education, and workplaces. As a result, we view the world like a machine and not through relationships, we view the world through the lens of separation, and not through the lens of *ubuntu*. He explained that in the USA, people

can be fired from work for a good reason, a bad reason, or no reason at all. In the education sector, competition instead of cooperation is encouraged or enforced. He cited Maria Montessori who spoke eloquently of this when she said, children in school are taught not to help one another, but that they are “like separate grains of sand in the desert; each one is isolated from his neighbour.”

Mr. Sirotkin put to his audience and co-panelists some aching questions: *Have we wondered why ubuntu is not integrated into our world? And why do we have such a world of division, and divisiveness? Will we evolve beyond war? Is there a way to do this? What becomes our answer to that?*

He referred to the war in the Ukraine where civilians are being bombed and killed. He argued that crimes against humanity are being committed there. War crimes are as prevalent as they have ever been. This is also what Mr. Sirotkin had to witness and experience in Korea, when he continued his work after South Africa. For him, Korea too was a story of separation.

Mr. Sirotkin stated that the United Nations has always told us that “peace is in our hands.” We often forget that. We need new ways of thinking. To this, Albert Einstein said “our task must be to **free ourselves from our prison by widening our circle of compassion to embrace all humanity** and the whole of nature in its beauty.” He also said “any intelligent fool can make things bigger, more complex, and more violent. **It takes a touch of a genius – and a lot of courage – to move in the opposite direction.**” Moreover, he said “a new type of thinking is essential if mankind is to survive and move to higher levels.” Today it is essential to find that change more than ever before. In 1990, President Vaclav Haval, in an address to the USA Congress said that “**if we are to survive as a civilization, we have no alternative but to shift the ray of our attention from that which separates us to that which unites us.**” For Mr. Sirotkin, shifting our attention from what separates us to that which unites us carries the secret of *ubuntu*. He expressed the view that if we can do that, the world can change dramatically from the age of separation to the age of *ubuntu*. Mr. Sirotkin pointed out that one of the reasons we have not shifted our attention is because we are hard wired for empathy and compassion. He believes that we need a new language, a language of the heart, that which is based on being united to all.

As chair of the International Monitoring Project of the South Africa Truth and Reconciliation Commission, Mr. Sirotkin had the privilege of interviewing the late Archbishop Desmond Tutu, then chair of the Truth and Reconciliation Commission

(TRC), about *ubuntu*. In that interview, the Archbishop explained to Mr. Sirotkin that *ubuntu* has no single definition. The best way to describe it, in the words of the Archbishop is that “[w]e are humans only through our relations with other humans. We are interconnected. The solitary individual is a contradiction in terms. We are corporate. It’s how people come before the Commission [TRC] after suffering such horrendous things and say, ‘I want to forgive’...” This changed Mr. Sirotkin’s view of the world and his traditional, adversarial, approach as a trial lawyer. He first explored whether *ubuntu* is a new concept or a South African concept. He discovered that *ubuntu* knows no borders. It is universal. This, he says can be seen, for example, in the statement from Atticus Finch in the movie *To Kill a Mockingbird*: “you never understand a person until you consider something from his point of view...until you climb inside his skin and walk around in it.” It can also be seen from Dr. Martin Luther King’s words, when he said “[a]ll life is interrelated. We are all caught in an inescapable network of mutuality, tied into a single garment of destiny. Whatever affects one directly, affects all indirectly...No peace on earth until we recognize this basic fact of the interrelated structure of all reality.” The question that arises then is how do we put ubuntu based principles in our institutions?

The Era of Ubuntu:

Mr. Sirotkin argued that there are many ubuntu based skillsets that we can utilise and incorporate in our institutions. He mentioned active listening, mediation techniques, collaborative law, integrative law, transitional justice, restorative justice, legal wellness, corporate social responsibility, indigenous conflict resolution, new skillsets and language, mindfulness, ecological thinking, and relational activism. For Mr. Sirotkin, these skillsets are ubuntu based since in times of conflict or crises, they encourage listening to understand others, moving from emphasising the past to looking at the future (how can we collectively take control of our destiny?), doing away with blame shifting and acknowledging a problem as a shared problem (as our problem), using systems like the TRC to ensure accountability for crimes and atrocities, establish the truth and foster reconciliation. In addition, these skillsets allow us to understand the language of feelings and communicate our feelings clearly to others. Mr. Sirotkin believes that lawyers, mediators and social justice activists need to expand their toolboxes with these skills in order to move the world from the age of separation to the *ubuntu* era. Furthermore, he believes that human beings need to change their relationship to the earth. On this, he concluded by reminding the audience that we are currently facing a climate disaster and pointed to a 1992 caution by 1600

world scientists which stated, “without a change in our relationship to the earth, the natural world would be irretrievably mutilated, resulting in vast human misery.”

Panel Discussion:

Ms. Mayila invited the panel to respond to Mr. Sirotkin’s presentation. Professor van Marle began her response with a quote from Professor John Murungi which states “[e]ach path of jurisprudence represents an attempt by human beings to tell a story about being human. Unless one discounts the humanity of others, one must admit that one has something in common with all other human beings. **What is essential to law is what secures human beings their being.**” For Prof van Marle, the last part of the quote is most important as it denotes how we should do, practice and teach law. She found this to be central to Mr. Sirotkin’s address. She proceeded to raise a troubling question of how it could be possible that with this beautiful idea of the law, the Constitutional Court in the fairly recent case of [Grobler v Philips and Others \[2022\] ZACC](#) ordered an 85-year-old woman, with her physically disabled son, to vacate a property she had occupied since she was 11 years old (in 1947)? Where in that judgment and order is the essence of the law being what secures human beings in their being?

Professor van Marle also shared some ideas on *ubuntu*, in particular, the extent to which it responds to the social bond. For her, *ubuntu* is different from communitarianism. Why or how is it different? She argued that *ubuntu* provides for individuality. It provides for the becoming of personhood. However, she stated that the possibility of individuality is because of our relations with others.

She shared three ways in which we can incorporate *ubuntu* in the law, mediation and social change. First, she opined that it is important to view *ubuntu* as a critical response. To view it as something that unsettles and opens, rather than something that unites and confines. In her view, this would help the world get to the radical potential of *ubuntu*. Secondly, *ubuntu* can work as a withdrawal from fixed positions, and specifically the notion of the western classical liberal law. In her view, this was the essence of the TRC. In this way, she argued, *ubuntu* can help us to confront what is usually seen as sensible and common. Thirdly, legal practitioners and legal educators in South Africa are faced with the challenge of a legal culture. She highlighted that as per Karl Klare, the South African legal culture is still very much conservative. The question that arose, therefore, is how can we shift our legal culture to be more transformative? What role can *ubuntu* play in that regard?

Dr. Beukes focused her response on the role or place of *ubuntu* in our democratic project. For her, *ubuntu* permeates every aspect of our lives. It seats at the preamble of the Constitution of the Republic of South Africa, 1996. The preamble, she paraphrased, declares that we will heal the divisions of the past and prosper our people. She argued that in interpreting the law, be it the Constitution or statutes, one needs to use *ubuntu* as an interpretive tool. She expressed disappointment in our private law jurisprudence, specifically in contract and business law. In these areas, she observed, reliance is hardly made to *ubuntu* and the Constitution, in the exercise of interpretation. According to Dr. Beukes, lawyers involved in litigation hold the key to use *ubuntu* to effect social change. She stressed that the Constitution gives lawyers the power to urge courts to take cognisance of *ubuntu* when deciding cases.

According to Mr. Daunt, lawyers have a sense of obligation towards their clients. An obligation to infuse a sense of who they are as they practice law. He expressed the view that lawyers and mediators, as trained professionals, have an obligation to help conflicting parties to engage in conflict peacefully. For Mr. Daunt, as much as mediation is premised on *ubuntu* based principles, it alone will not lead us to where we want to be as a collective. It is who we choose to be in the process that matters most. It is thus important for lawyers and mediators, when resolving conflict, to bring their clients to terms with the concept of *ubuntu*. Mr. Daunt shared his approach to the law, which he believes is congruent with *ubuntu*. He calls himself a “conscious conflict engagement coach” and believes that his job as a lawyer and mediator is to coach his clients how to engage in conflict consciously. He explained that engaging in conflict consciously means viewing conflict through a prism, through the lens made out of love, compassion, empathy, kindness, and gratitude for the benefit of all. This shifts his clients from seeing those they are engaged in conflict with as enemies, to seeing them as fellow human beings. He argued that this infuses the sense of “I am because we are” to conflict resolution.

Mr. Daunt believes that conflict is an inevitable part of being human. How we choose to respond and resolve conflict, however, is a choice for each of us to make. He believes that *ubuntu* is a necessary foundation for us to resolve conflict with love, compassion, empathy, kindness, and gratitude. Mr. Daunt also described himself a transformational lawyer because, he believes that his purpose in the practice of law is to help his clients to transform their legal problems into opportunities for personal growth and positive change. In his view and experience, that is not what is taught in law school. To adopt this different approach to law, it cost him the death of a child,

which occurred whilst he engaged in a lengthy lawsuit. He associated his sorrow with that lengthy lawsuit and started to question who he was becoming in the practice of law. He closed off by inviting his audience, particularly law students, to question who they are becoming or being in the practice of law. For Mr. Daunt, who you choose to be in conflict generates the outcome of the conflict.

In conclusion, the hybrid lecture brought together lawyers, students, academics, the civil society, and many other stakeholders to discuss how we can use ubuntu in law to effect social change. It is clear from the deliberations that we all have a role to play in effecting positive change in the society. Ubuntu is a key tool, capable of universal application, that we can use to ensure that we live in a just, equitable, and inclusive society. It is thus important to institutionalise ubuntu based principles.

Report by **Lundi Mqina**, *Final year LLB student at UWC, co-founder of Let's Collaborate*