On 17 and 18 January 2011 in Stellenbosch in the Cape the Southern African Society of Legal Historians held a conference in conjunction with the conference of the Society of Law Teachers of Southern Africa. The theme of the conference was “Fraud and corruption in the public and private spheres”, but presentations on other topics were also welcomed. Attendance by participants from Italy, England and the Netherlands reflected the international character of Roman law and legal history and the existence of a transnational network within these disciplines.

The conference was opened by the President of the Society, Professor Philip Thomas, who welcomed the participants and expressed his belief in the present renewed importance of Roman law and legal history when globalisation and resulting globalism require increasing harmonisation of the law. He deplored the fact that the culture of instant gratification had gained a firm footing in academia so that essential disciplines had been marginalised.

Given the Society’s view that history only ended yesterday, the presentations may be divided into various categories. Thus pure Roman law stood shoulder to shoulder with contemporary South African history, while the development of Roman-Dutch law in South Africa during the seventeenth, eighteenth and nineteenth centuries was also on the programme.

In her paper “Corruption and politics in Republican Rome: A case of murder” Carla Masi Doria of the Università di Napoli Federico II highlighted an example of political corruption in the late Roman republic. She described how Iugurtha, king of Numidia, attempted to influence Roman magistrates through corruption and other means, including murder ordered by Bomilcar, a close confidant of the king. Masi elaborated on the contrast between the perspectives of international law (ius gentium) that would suggest Bomilcar’s possible immunity, and those of domestic law and the principle of aequitas (based on fides), which made trial and conviction possible.

In his presentation “Police corruption in Republican Rome” Cosimo Cascione of the Università di Napoli Federico II explored another aspect of corruption within republican Rome. Cascione, who is without doubt the world’s leading expert on the tresviri capitales, discussed the case of the triumvir, Manlius, accused of corruption during the 80s and 70s of the first century BC with reference to Cicero’s Pro Cluentio oratio 13 39.

Francesco Lucrezi of the University of Salerno considered electoral corruption in the late Roman republic. His presentation, “The electoral corruption in the works of the...
Cicero brothers”, relied on two literary sources, the Commentariolum petitionis, ascribed to Quintus Tullius Cicero, and Pro Murena, by Marcus. Corruption in elections was criminalised by the lex Cornelia (81 BC) and the lex Calpurnia (67 BC), but the content and application of these laws remain uncertain and contradictory. Lucrezi argued that the fight against corruption had no ethical or legal purpose, but was simply a weapon in the political arena. The Cicero brothers had an interest in supporting the anti-corruption legislation and after his election Marcus proposed the lex Tullia de ambitu, which would add to the prohibitions of the lex Calpurnia by forbidding ludi gladiatores, public banquets and payments to adsectatores and divisores. Lucrezi argued that Pro Murena shows that Cicero’s interests quickly changed with the result that the fight against electoral corruption would no longer further his political career.

Barbara Biscotti of the University of Milan Bicocca discussed fraud within Roman private law in the context of bankruptcy in her paper entitled “Quae in fraudem creditorum facta sunt”. She explored the nature and juridical requirements of the fraudulent conveyance of goods belonging to an insolvent during bankruptcy proceedings and delved into the rich record of cases in Roman jurisprudence relating to fraus creditorum. An analysis of several crucial texts (cf D 26 1 8, D 42 8 19-20, D 38 5 10 and D 41 4 25 7) convinced Biscotti that Roman jurisprudence on the topic dealt exhaustively with subjects that today continue to baffle experts in bankruptcy law. She suggested that these experts might find research into the juridical logic of the solutions of ancient times rewarding.

Jan-Louis Serfontein of the University of the Witwatersrand, Johannesburg, focused his investigation into fraud and corruption on the person of the Emperor Constantine. In a paper entitled “Fraud and corruption in the state of the Emperor Constantine the Great and how he used the principle of separation of powers through his relations with his bishops to put a stop to this in the public sphere”, he spoke of Constantine’s personal life and of fraud and corruption within his court and empire. He referred to Constantine’s nepotism, self-idolisation, cruelty, torture and even the killing of his own children and analysed his character. The speaker attributed the Emperor’s successful reform of the empire and the reduction of fraud and corruption to the separation of powers to which the bishops agreed at the Council of Nicaea in AD 325 and to the separation of the civil and military spheres.

David Pugsley of Exeter University presented a paper on Digest 1 3. In an ingenious manner he explained how the inscriptions differ from each other (out of forty-one inscriptions, thirty-two contain a Roman numeral and nine a Latin word) and why they do so. His examination of the differences in the inscriptions and his explanation is ingenious. The title of his paper, “Justinian’s Digest: Lost in the translations?”, demonstrates that those who rely on translations will be unaware of the problem concerning this title (or of most other such problems), as translations are used today without reference to the original text. He demonstrated that the words codex, volumen, liber, opus and corpus are treated almost interchangeably in our translations. Taking a fresh look at Deo Auctore 3, Pugsley proposed an alternative translation or interpretation of ingenii tui documentis ex nostri codicis ordinatione acceptis assuming a link with Digest 1 3, where in thirty-
two fragments out of forty-one, the inscription contains an abbreviated form of the book number, which was forbidden by *Deo Auctore* and condemned by *Omnem* and *Tanta*.

Philip Thomas of the University of Pretoria provided the bridge to the next field of research with his paper “Different responses to judicial corruption: The South African common law”. He first explained how Roman law addressed judicial corruption and that not only the corrupt judge, but also the corrupter of a judge was penalised. The second part of the paper concerned English common law on the topic and the search for precedent led to the person of Francis Bacon, the father of the new natural sciences. Bacon’s legal career culminated in the chancellorship of England and ended in impeachment. Thomas put forward the hypothesis that the discrepancies between Bacon’s behaviour in the two branches of science might have stemmed from fundamental differences in these two domains.

Marita Carnelley of the University of KwaZulu-Natal opened her presentation by showing a slide of Caravaggio’s *The Card Sharps*, depicting a group of men cheating whilst playing cards. Her presentation, “Card sharps and other gambling cheats”, explained how Roman-Dutch law dealt with cheating in gambling. Although as a general rule gambling debts were unenforceable in the courts of law, an exception was made when there had been cheating and presumably any money wagered by the innocent player would be returned. In South African law, the exception fell into disuse, and the person cheated had no recourse to the courts. This situation changed when gambling was legalised in the 1990s. Cheats in lawful gambling games are now dealt with in terms of the relevant statute and can be both criminally prosecuted and sued at civil law for any losses incurred.

Judge HJ Erasmus drew attention to fraud and corruption during the nineteenth-century colonial period in his paper “Land ‘jobbing’ by British officials in the Orange River sovereignty 1848-1854”. Land “jobbing” is speculation in land for personal profit. Before independent statehood was achieved in 1854 the Orange River Sovereignty was administered by British officials. The presentation focused on the approach and attitudes of some of the people involved and highlighted what they at the time considered appropriate or inappropriate and acceptable or unacceptable. In 1848 the British set up a land commission to register farms, record their size and fix the quitrent. Land Certificates were issued and a brisk trade and speculation in land followed as these certificates enabled the holder to transfer a farm to a purchaser. Among the speculators were British officials: the British Resident and the Magistrate and Civil Commissioner of the Caledon River District were two of the largest landowners. The Governor of the Cape and the Special Commissioner to oversee the British withdrawal from the Sovereignty denounced this conduct.

Liezl Wildenboer of the University of South Africa addressed the audience on “For a few dollars more: Overcharging and misconduct in the legal profession of the Zuid-Afrikaansche Republiek”. She recounted that legal professionals of the *Zuid-Afrikaansche Republiek* were accused of being unscrupulous and underqualified, and of overcharging their clients. This paper investigated some of these accusations, focusing on the regulation of the requirements for qualification as a legal professional and for admission to the profession, the regulation of legal costs as well as related matters
such as dual practice and the impact of the Board of Examiners on the quality of legal training. In addition, a few cases of misconduct amongst legal professionals in the Zuid-Afrikaansche Republiek were discussed.

Andrew Domanski of the University of the Witwatersrand considered legal education and parallels from the past. In particular, he spoke of Ulric Huber, a seventeenth-century Frisian Romanist of renown, who published a treatise on legal education, entitled De ratione iuris docendi et discendi diatribe per modum. Dialogi. In his presentation “Ulric Huber’s programme of legal education – what lessons for today?” Domanski supported Huber’s proposals for a curriculum of law studies and argued that they still have merit today.

The remaining papers dealt with contemporary South African law. The first one, by Professor Shannon Hecot of the University of KwaZulu-Natal, focused on twentieth-century South African legal history. In a presentation entitled “Tracing the origins of the defence of non-pathological incapacity in South African criminal law”, Hecot referred to the assassination of Verwoerd and showed that the ruling that Tsafendas was not fit to stand trial because of mental illness led to the establishment of a commission of inquiry to investigate the ambit of the defence of mental illness. He also discussed the impact of a finding of mental illness on the process of ascertaining criminal liability. The findings of the report were encapsulated in section 78 of the Criminal Procedure Act 51 of 1977 and extended by the Appellate Division in cases of non-pathological incapacity involving intoxication (S v Chretien 1981 (1) SA 1097 (A)) and provocation (S v Laubscher 1988 (1) SA 163 (A)). Hecot traced the genesis of the defence of non-pathological incapacity in South African law to conceptions of responsibility that were current in the work of Dutch (and German) authors of the first half of the twentieth century.

Warren Freedman of the University of KwaZulu-Natal spoke about the legal status (ownership) of the sea and the seashore in light of the provisions of the National Environmental Management: Integrated Coastal Management Act. This Act strips the President of ownership of the sea and the seashore and vests in the citizens of the Republic. Freedman concluded that the change in the legal status of the sea and the seashore from something owned by the state on behalf of the citizens to something owned by the citizens themselves, goes back to the Roman legal principles governing public things and brings an end to state control of the sea and the sea-shore.

Joan Church of the University of South Africa was the last modern historian and in her paper “Access to information: Hallmark of democracy with reference to the Protection of Information Bill and other historical incidents” she analysed the information scandal of the Apartheid era and drew historical parallels with the nineteenth century.

The presentations clearly demonstrate the many aspects of legal history covered by the conference. The Society of Law Teachers of Southern Africa and the University of Stellenbosch were responsible for the excellent organisation and it is to be hoped that this successful arrangement will continue in future.