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My first meeting with Willemien occurred in 1993 when, as a fresh-faced first-year student newly enrolled on the B Juris degree, I encountered her as the Professor of Roman law at the Law Faculty in Potchefstroom. As someone who had always been interested in history, the subject immediately appealed to me. I later discovered that many of my classmates less interested in history found it somewhat bewildering at first, only to concede eventually, albeit grudgingly, that they had learnt a great deal from this course. As a law student during this period, when South Africa was transitioning back to a functioning democracy, many aspects of the law were in flux, not only in public law but also at the very core of the "common law" of South Africa. Although I had a peripheral awareness of these controversies, it was only when I read the transcript of her Professorial Inaugural lecture, delivered in 1991, that I began to grasp the enormity and complexity of the issues at stake.<sup>1</sup> In this lecture, which should be read more widely, Willemien posed a rather elegant question, namely, how to integrate the "common law" of South Africa, at that point largely based on European ideals imported from Roman and Roman-Dutch law, with African customary law. In many respects, her attempts to answer this question in different ways and from different angles became a golden thread weaving through much of her vast scholarly output.

Rereading this piece after so many years, I am struck by the extent to which the questions raised in it have influenced my research and teaching agenda. It now seems evident that she had an enormous formative intellectual influence on my development as a scholar. I owe her many debts of gratitude. This, in turn, led me to reflect on Willemien's teaching methods and the content of her courses. Being interested in legal history, I took every

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<sup>1</sup> Du Plessis W *Afrika en Rome: Regsgeskiedenis by die Kruispad* (Potchefstroom Sentrale Publikasies PU vir CHO 1991).

course she offered in the BJuris and LLB. From the large-group lectures to the smaller LLB seminars, the message was consistent – legal history is essential. It is the living foundation of a legal system to be ignored at its peril.

But there was more to Willemien's teaching than merely this mantra. In every one of the classes I took with her, she emphasised context. While legal dogmatics are essential, they are only part of the picture. The law exists in context. It needs context to develop and to thrive. Treating legal dogmatics as "jurisprudence of the air", to quote the famous German scholar Rudolph von Jhering, is dangerous and ultimately pointless.<sup>2</sup> It was not only in the legal history courses that she reinforced this point. The same principle was applied to her courses on legal pluralism and development law.

Appreciating the larger context in which her approach to legal history was formed is essential. As she mentions in her inaugural, the preceding two decades, in which the Apartheid government of PW Botha had done much to erode the rule of law in South Africa, had led to multiple punitive limitations imposed by statute law upon the "common law". This had, in turn, led to a veritable legal battle in academia concerning the state of the common law and its ability, grounded in concepts of fairness and equity, to act as a counterweight to these encroachments. The debate broadly fell into two camps: the "purists", who wanted to adopt a severe Legally Positivist approach to the "common law" reminiscent of the German Pandectism of the late nineteenth century, and the "realists" who wanted the "common law" to evolve as a living entity.<sup>3</sup> Willemien's approach to teaching and research fell squarely into the latter camp, and as her Inaugural lecture shows, she was deeply aware of the challenges ahead.

Reflecting on the fate of legal history as a subject area in South African Law Schools since then, it is clear that challenging times lie ahead for the subject. The teaching of the subject has dwindled, and there is hardly a Law School left with a compulsory course in South African legal history in 2023. At the same time, chairs have gone unfilled and even where they have been filled, such as the WP Schreiner chair at UCT, they have not been filled by a legal historian. Various reasons for this decline may be offered, and more research is needed to provide a fuller picture. At the same time, however, it is clear that the teaching of law in South Africa is changing. The restoration

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<sup>2</sup> Von Jhering *F. Scherz und Ernst in der Jurisprudenz* 4<sup>th</sup> ed (Breitkopf und Härtel Leipzig 1891), generally.

<sup>3</sup> For a survey of this debate, see Visser D "The Legal Historian as Subversive: Killing the Capitoline Geese" in Visser D (ed) *Essays on the History of Law* (Juta Cape Town 1989) 1ff.

of democracy in 1994 and the adoption of the Constitution as the foundational document of the South African democratic state have changed the nature of the South African legal system at a cellular level. Law has become more socially responsive, especially given the socio-economic challenges that take up so much government time. To that end, legal history as a discipline must also change. It can no longer be a mainly dogmatic discipline in which the origins of current rules of law are taught to law students. Instead, it must become about the context and the interactions of the Roman and Roman-Dutch traditions with the customary and religious legal orders of South Africa. In this respect, Willemien's teaching and research were ahead of the curve.

The true measure of the success of an academic is not the number of prizes they have won or the books they have published. Instead, it is the number of scholars they have helped. As the Greek proverb goes: "Old people plant trees in the shade of which they know they will never sit." Willemien has supervised several PhD students in several of her research fields. Always with unfailing good humour, she had a way of uncovering the flaws in your argument with a wink and a smile. She offered constructive criticism and could recommend a relevant book or article. I will always cherish the afternoon coffees in her office filled with books and stacks of paper. On behalf of your students, Willemien, thank you for everything you have done for us. We owe you an intellectual debt which we can never repay.

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