Editorial: Celebrating the Legacy of Professor Willemien du Plessis in Legal History

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South African law as a hybrid legal system is grounded in Roman-Dutch law yet continues to develop to reflect the ever-changing *boni mores* of society. Add hereto the doctrine of judicial precedent, and it is no surprise that legal history, ancient or recent, remains a vital part of the legal system and thus of legal training. Prof Willemien du Plessis has taught Legal History, Roman Law, and Foundations of South African Law for 30 years to first-year law students at the North-West University, Potchefstroom campus. She is a much-loved teacher and has made it her academic mission to nurture young minds. This nurturing is not limited to undergraduate students but includes the mentoring of postgraduate students and young academics. Many of her protégés have contributed to the *PER* editions in her honour. This collection is no exception.

As far as legal history is concerned, Willemien's journey into assisting students outside her lectures commenced with her 1998 *Workbook for Legal History*. Her commitment to legal history as a fundamental building block for each generation has been unwavering. She has been fundamental in the re-designing of the curriculum of Legal History to ensure that it remains relevant and appropriate for all LLB students. One of the earliest milestones was her 1991 inaugural lecture entitled *Afrika en Rome: Regsgeskiedenis by die Kruispad* [*Africa and Rome: legal history at the crossroads*]. This was followed in 1994 with a report for the HSRC/RGN *Afrikaregsgeskiedenis* [*Legal History of Africa*].

However, she remained a serious academic and has always been generous in sharing her knowledge and experience in the area through conference presentations, academic publications, the successful supervision of LLM and LLD students and NRF evaluations.

This special issue is a collection of papers by colleagues, students and friends to celebrate a doyen of legal history and an academic who has moulded student thinking for three decades. It is no surprise that the contributors are from many South African universities, and from academics both young and old. The contributions span her various fields of interest in the area: from

teaching and publishing to various historical eras and, of course, Potchefstroom.

This edition can be divided into three main areas: one, the first four contributions deal with legal history as a tool in the development of the law. The next two contributions deal with teaching and research. The last five contributions are general legal-historical research contributions.

Emile Zitzke, in his article "Transformative Legal History and the (Re)classification of the South African Law of Delict", argues that the traditional classification of the law of delict within the sphere of private law is ineffective. As the law of delict fulfils a hybrid role, it straddles both public and private law. Relaxing the claim that the law of delict falls exclusively within the domain of private law would free it to play a more transformative role in society in line with constitutional aspirations.

Shannon Hoctor's contribution "The Genesis of the Common Purpose Doctrine in South Africa" seeks to assess the correctness of the accepted narrative of the emergence of the doctrine of common purpose in South African law as set out by Rabie. He examines the English roots of the common purpose doctrine and its possible entry into South African law through the Native Territories Penal Code and the 1917 Appellate Division decision in *McKenzie v Van der Merwe*.

Warren Freedman's "Rising Tides: The Acquisition of Ownership by Alluvio in the Context of Sea Level Rise" explores the legal consequences of the global climate crisis and rising sea levels on the rights and interests of the owners and occupiers of coastal properties. He traces the law relating to the loss or acquisition of coastal property as a result of changes in the high-water mark back to the common law principles governing the acquisition of ownership by alluvion (*alluvio*) and the loss of ownership by erosion. He concludes by showing how section 14(5) of the National Environmental: Integrated Coastal Management Act 24 of 2008 has amended some of these common law principles.

Andrè Mukheibir, in her contribution "Constitutional Damages – a Stagnant or a Changing Landscape?" discusses the recent historical developments in the determination of appropriate legal relief for delictual infringements. She concludes that the rules relating to constitutional damages are casuistic and submits that the principle of subsidiarity could form a foundational principle to solve the problem of casuistry in this regard.

Andrea Bauling's contribution deals with legal history as a teaching tool: "Legal History as the Perfect Vessel: Teaching with Infographics for the Development of Digital Visual Literacy Skills in Law Students." She shows how digital visual literacy in a legal history course can prepare students for our visually driven world and provides examples of instructor-generated summary infographics based on legal historical course content.

Anthony Diala and *Nejat Hussein*, in their provocatively entitled contribution “The Tsetse Fly Perched on the Scrotum: Publishing Problems in Academic Journals”, seek a dialogue about the problems created by South Africa's research incentive system that rewards publications in the Department of Higher Education and Training "accredited" journals. They submit that the system does not serve the national research objectives as it does not encourage academic excellence. It merely promotes publications in predatory journals.

Marita Carnelley, in her “1874 Trial of Langalibalele of the Amahlubi”, shows how British political power and expediency trumped justice and fairness in the legal system in the colony of Natal. The contribution discusses the sham trial of Langalibalele to justify the slaughter of his tribe by the colonists. The trial made a mockery of the applicable legal system and although this was recognised in the British Parliament at the time, this did not ameliorate the devastating consequences for those affected.

Susandra van Wyk’s “Innovative Approaches to the Division of an Inheritance in a Deceased Estate: Lessons from the Babylonians 2000-1600 BCE” provides insights into the legal and social contexts surrounding inheritance divisions in both Old Babylonian and South African cultures. By highlighting the commonalities between the two systems, she argues that incorporating the adaptable legal practices of the Old Babylonian tradition could innovate and adapt the South African inheritance division process.

Paul Swanepoel’s contribution is titled “Prison Personnel in the Colony of Natal from c 1850 to the Prison Reform Commission of 1905-1906.” It highlights the fact that White colonial ideology produced fractured social, political and economic relations between the races in the colony of Natal. These racial tensions were also visible in the prison system: between warders and prisoners as well as between police officers and prison officials.

Robbie Robinson considers the character of Chief Justice Coke and his contribution to the development of English law in his contribution "Chief Justice Coke: Common Law v Royal Absolutism." He shows how Coke’s knowledge of the common law and his emphasis on human freedom caused conflict between himself and the royal court and its advocates, including Sir Francis Bacon.

The last contribution is that of *Liezl Wildenboer*: "The First Magistrates of Potchefstroom". This is particularly appropriate for Willemien, as she has spent her whole academic career in Potchefstroom. The contribution fills the gap in the research about the early judicial officials appointed as magistrates for Potchefstroom in chronological order from 1839 to 1862. The focus is on their terms in office, and includes personal information and anecdotes about each individual magistrate in the context of broader judicial and political events that occurred during their terms.

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