

Robert Feenstra (1920-2013)

An era has closed with the passing away of the doyen of legal history, Robert Feenstra. His contribution to legal science is reflected in the eleven universities outside the Netherlands that each bestowed an LLD *honoris causa* on him. The fact that the University of Pretoria is amongst these institutions reflects not only the international stature of Feenstra's work, but also his personality. A Dutch Francophile, and in addition a cosmopolitan, Feenstra travelled the world and inspired young and old researchers. His original approach to legal history established many Feenstra schools and in South Africa six of his disciples have excelled in bar, bench and cathedra. Apart from his body of work, his endeavours to build bridges between different countries, continents, universities and academics and to encourage and stimulate research and its diffusion are among Feenstra's most impressive legacies. This is exemplified by his kind words at the inception of our Society's mouthpiece, *Fundamina*. I quote:

Word from the honorary editor in 1992 *Fundamina*:

Since the editors of *Fundamina* have bestowed on me the privilege to serve as honorary editor of their journal, I would like to add a few thoughts to the preface.

I speak on behalf of the European legal historians and especially those from the country which was the cradle of the Roman-Dutch law, when I express our happiness that the

Southern African Society of Legal Historians has accomplished one of their main objectives, namely the publication of a legal journal.

I wholeheartedly endorse the objectives and aims of the editorial staff as stated in the preface. I say without fear of contradiction that many legal historians – in Europe and in other parts of the world – will support the new journal, not only through subscription but also through scientific contributions for publication.

May *Fundamina* have a bright future!

Leiden, March 1993

ROBERT FEENSTRA

I am proud to say that his good wishes have been fulfilled but sad that his going will leave an irreplaceable gap in the sphere of legal history.

Philip Thomas
President of the Southern African Society of Legal Historians

Robert Feenstra, one of our great legal historians, and also the Honorary Editor of *Fundamina. A Journal of Legal History*, passed away on 2 March 2013. On his death the scholarly world of Roman law and legal history lost an esteemed colleague with great expertise and experience. Feenstra, born in Batavia (nowadays Jakarta, Indonesia), studied law at the University of Amsterdam but due to the forced departure of many Professors of the Faculty of Law during the last years of the German occupation, he was obliged to take unlicensed examinations with Professors of the VU University Amsterdam and graduated, *cum laude*, at that University on 27 September 1945. At the University of Amsterdam again, in 1949 he defended his doctoral thesis, entitled “Reclame en revindicatie” *cum laude*. The supervisor of the thesis was Professor HFWD Fischer (1909-1964). After one year’s employment at the Nederlandsche Bank, Feenstra was, from 1949 until 1952, Professor of Dutch legal history and introduction to law at the University of Utrecht, and from 1952 until his retirement in 1985 Professor of Roman law and its history at the University of Leiden.

Feenstra’s scholarly work was primarily characterised by research into medieval civil law and its reception in the early modern period. In the footsteps of Professor EM Meijers (1880-1954) he considered, for example, the significance of the School of Orleans in the development of continental legal doctrine. Besides fulfilling his role in the field of academic teaching and scholarly research, Feenstra was very active in the wider world of legal history. From 1950 until 2013 he was involved in editing the *Legal History Review* (*Tijdschrift voor rechtsgeschiedenis*), founded in 1918 by Meijers. For many years he was the Dutch chairman of the editorial committee and, in fact, its executive editor. He founded the so-called “receptieclub”, officially termed the Belgian-Dutch Circle for the Study of the History of the Reception of Roman Law in the Netherlands. From 1973 onwards he was a member of the Royal Dutch Academy of Arts and Sciences. For his

great scholarly achievements Feenstra received numerous awards from both Dutch and foreign civil authorities as well as from universities all over the world. Among these are his eleven honorary doctorates.

It is appropriate here to refer to the special bond that for so many years linked Robert Feenstra to South Africa, its legal system, its universities and its legal historians. The earliest contact was as early as 1948 when on the death of University of Cape Town Professor John Kerr Wylie (1884-1948), Feenstra unsuccessfully applied for the vacant chair of Roman law and jurisprudence at that university. He and Max Kaser (1906-1997) were turned down in favour of Ben-Zion Beinart (1914-1979), a local product of the University of Cape Town and already a noted Romanist and legal authority. A few years later (1953), in his inaugural lecture at the University of Leiden, *Interpretatio multiplex*, Feenstra, explicitly referring to Beinart, declared his own intention of furthering his research into the modern approach to Roman-Dutch law in twentieth-century South Africa. This, he hoped, would contribute to a firm bond between him and South African scholars.

In his lecture, he referred not only to Ben Beinart, but also to the South Africans visiting Leiden University at that time. At the request of Fischer, Feenstra was involved in co-supervision of the doctoral theses written by three South African scholars at Leiden. Later, in the seventies and eighties, he was sole supervisor of the dissertations of six South Africans at Leiden University and co-supervisor of a dissertation defended at the University of Potchefstroom. One of the first South Africans to write a doctoral thesis supervised by Robert Feenstra was Deon van Zyl (1943-), at present Honorary Professor of Law at the North-West University and Extraordinary Professor of Law at the University of the Free State. This thesis dealt with the management of another's affairs (*negotiorum gestio*) as an enrichment action, and at Feenstra's suggestion it explored the developments in legal doctrine between the time of Justinian and contemporary law. This approach, avoiding the so-called "salto mortale" (which connected Roman law directly with Roman-Dutch law without regard to the medieval interpretation of the Roman sources), became the common pattern to be followed by other South African doctoral students. They too dealt with all stages of development after Justinian. This uniform approach led to a so-called "Feenstra school" in South Africa. The visits of South Africans to Leiden University, either to study or to write theses, resulted in long-lasting bonds of friendship.

Robert Feenstra subsequently visited South Africa on many occasions. One of the first visits took place in 1972 within the scope of the then existing cultural agreement. On that occasion he visited no less than fifteen South African Universities. In recognition of his scholarly merits, the University of Pretoria in 1992 awarded him an honorary doctorate. In 1994 the University of Cape Town did the same and in 2001, to celebrate his eightieth birthday, presented him with a *Festschrift*. With the death of Robert Feenstra, not only has legal history lost an eminent scholar, my University has also lost a prominent alumnus and South Africa a dear and staunch friend.

Jan Hallebeek
Member of the Editorial Board
Professor of Legal History, VU University Amsterdam

It was with great sadness that I learned of the death, on Saturday 2 March 2013, of that great mentor, teacher, researcher, author and friend, Professor Robert Feenstra of the University of Leiden in the Netherlands. Born on 5 October 1920 in Batavia he reached the ripe old age of ninety-two, having lived a full, constructive and extremely productive life.

As the first South African student to complete a doctorate in law under his supervision in 1970 it was a unique privilege for me to be approached by the editors of *Fundamina* to write an obituary in honour of this remarkable man, at whose feet I learned not only all I know of Roman and Roman-Dutch legal history, but also of the refinement and graces which he so pre-eminently characterised.

As Professor in Roman law and its history (*Romeins recht en zijn geschiedenis*) he was highly regarded and respected throughout the legal academic world. In an *Ijlbode* newflash published in the *Rechtshistorische Courant* soon after his passing he was most appropriately described as “zonder meer dé grote figuur van de rechtsgeschiedenis in Nederland en ver daarbuiten”.

Professor Feenstra was the recipient of wide-ranging honours and eminent awards in recognition of his incredibly productive literary accomplishments appearing in four bibliographical overviews of his work, most recently in the *Tijdschrift voor rechtsgeschiedenis* (2011, 297ff). Honorary doctorates were conferred on him by no fewer than eleven universities in Europe, the United Kingdom and South Africa, including the universities of Pretoria and Cape Town, with which he had a special relationship.

Among the many further prestigious honours and awards bestowed on him were: Commandeur in de Orde van de Nederlandse Leeuw, Commandeur in de Orde van Verdienste van de Italiaanse Republiek, Commandeur in de Orde van Leopold II and Commandeur in de Orde van de Palmes Académiques. He was also a member of the highly regarded Koninklijke Nederlandse Akademie van Wetenschappen and an external member of the Koninklijke Vlaamse Academie van België voor Wetenschappen en Kunsten, the Akademie der Wissenschaften of Göttingen, the Accademia Nazionale dei Lincei and the British Academy.

Professor Feenstra's life extended over several generations of legal historians. The primary stimulus for his career might have been his submission of a contribution for the award of a Roman law prize, which later substantially formed the basis of his highly acclaimed doctoral thesis submitted at the University of Amsterdam and leading to his appointment at a youthful age as a professor at the University of Utrecht. After a relatively brief sojourn there he moved, in 1952, to the University of Leiden where he remained for thirty-three years until his retirement in 1985 as Emeritus Professor.

Central to his teaching and further research was the development of Roman law from the time of Emperor Justinian's *Corpus iuris civilis* in the sixth century AD to the time of the reception of Roman law in Europe through its acceptance as the foundation of the various codifications of civil law commencing with the French Code civil of 1804 to the German Bürgerliches Gesetzbuch of 1900. His juridical analyses were razor-sharp and characterised by inimitable erudition.

Of particular interest to South African readers is that no fewer than six South Africans completed their doctorates in law under Professor Feenstra's supervision. I refer in this

regard to Bhadra Ranchod, Danie Visser, Johan Scott, Pieter Pauw, André van der Walt and myself. Together with fourteen of his *promovendi* from the Netherlands and Belgium we expressed our heart-felt condolences on his passing in an obituary published in the *NRC Handelsblad* of 7 and 8 March 2013. I quote:

In grote dankbaarheid gedenken wij Robert Feenstra voor wat hij door zijn uitzonderlijke geleerdheid en kennis heeft betekend voor de wetenschappelijke bestudering van de geschiedenis van het recht. Hij was een groot leermeester die ons wist te inspireren en met vaste hand de weg wist te wijzen. Bovenal was hij een goede vriend die wij, zijn promovendi uit Nederland, België en Zuid-Afrika, zeer zullen missen.

Adjacent to this, in the same publication, were the farewell thoughts of the Rector Magnificus and the Dean of the Law Faculty of the University of Leiden, in which he was described as follows:

Prof. Feenstra was een scherpzinnig en buitengewoon erudite wetenschapper, een amabel geleerde die geliefd was bij zijn studenten, promovendi en collega's. Tot op het laatst was hij actief als wetenschapper en als redakteur van "zijn" Tijdschrift voor Rechtsgeschiedenis. Wij gedenken hem met gevoelens van eerbied en met ontzag voor de grote bijdrage die hij gedurende vele decennia aan de rechtswetenschap heeft geleverd.

Let me conclude by expressing our deepest sympathy to Professor Feenstra's dear wife, Wetka, who stood by him faithfully throughout their long and happy life together, and likewise to their children, grandchildren and great-grandchildren. The family's death notice to friends and family commenced by strikingly describing him in the final stage of his life as *[m]oedig tot het laatste moment, door ziekte verzwakt, maar nog krachtig en helder van geest ...* Their deep loss is also ours – he was the *Doktorvater* of us all. May his soul rest in eternal peace.

Deon van Zyl
Retired Judge of the High Court of South Africa
