

## SOUTHERN AFRICAN SOCIETY OF LEGAL HISTORIANS

Conference: 5–9 October 2015

The biannual conference of the Southern African Society of Legal Historians (SASLH) took place at Sun City from 5 to 9 October 2015. The theme of the conference was “Legislation in the Western legal tradition”.

Prof Caroline Nicholson, President of the Society, presented the welcoming address, and the opening address was presented by Prof Andrew Domanski, former president of the Society. Thereafter Mr Justice Deon van Zyl, our keynote speaker, delivered his paper on “Justice and equity in the Western legal tradition: From early Greek thought to the new constitutional dispensation in South Africa”.

Twenty papers were presented by participants from seven countries. The papers dealt with a large variety of topics, for example Greek, Roman and South African legal history, canon law, “lawgivers” and “lawmakers” and the problems presented by the translation of texts; and Roman law, human rights and codification.



Good evening ladies, gentlemen, colleagues, friends and Romanists. It is wonderful to be able to welcome you to the 2015 conference of the Southern African Society of Legal Historians. This is a small and select group of legal academics who recognise the importance of legal history to the development of modern law and who remain dedicated to promoting legal history through scholarship. It is thus a very great pleasure to welcome so many of you back and to welcome some new faces in our midst.

This conference differs from most other academic conferences insofar as it is a gathering of friends and acquaintances and I sincerely hope that the newcomers in our midst will quickly make new friends and become regular participants in the Society's affairs. I would like to thank those of you who have travelled from abroad and from across the length and breadth of South Africa for joining us, and I am confident that your participation will be rewarded by scholarly engagement and thought-provoking conversation. This small and intimate group here this evening will be joined over the next few days by other colleagues who will attend only portions of the conference.

I would also like to extend a warm welcome to the partners and families of our delegates who have accompanied them. We hope that you will enjoy the facilities that Sun City have to offer and that you will leave South Africa with a desire to return soon.

In preparing this speech I searched the internet for some humorous, but insightful comments on Legal history and Roman law. These two disciplines are both the subject matter of this conference and also two disciplines within law that are gradually losing support within the LLB-curriculum. My search revealed some very interesting facts about the demise of Roman law as an element of the LLB curriculum in, of all places, New Zealand, where the modern trend to relegate these courses to the status of elective courses was experienced as early as 1960.

Peter Spiller, writing on Roman law in the New Zealand curriculum indicated that, in New Zealand, the incorporation of Roman law in the curriculum was heralded by an observation in a Royal Commission Report on the state of legal education in New Zealand that unless a marked change is effected in the legal education provided in New Zealand, the term *my learned friend* "runs the risk of being regarded as a delicate sarcasm". Following this report, the Solicitors' professional course was, as Spiller puts it, given a greater cultural dimension when both Latin and Roman law were added to the curriculum.

Sadly, however, the removal of Latin from the school curriculum in New Zealand resulted in its removal from the law curriculum barely a decade after its introduction. This in turn, sped up the demise of Roman law as a compulsory element in the curriculum. Students lacked context to understand Roman law and Roman law teachers were in short supply. Roman law passed into relative oblivion in preference to English and New Zealand law and is in imminent danger of suffering a similar fate

in South Africa with few institutions clinging defiantly to including Legal history and Roman law as part of their core LLB curriculum.

Why, you may well ask, is what happened in New Zealand relevant to our discussions? Simply put, lawyers need to be apprised of a deep understanding of the historical basis of the law in order to understand its workings, analyse problems and to research effectively. If the fate of Roman law is regretted in New Zealand, a legal system with no direct Roman law influence, how much more will its loss be felt in a country such as South Africa whose entire legal system, especially its private law, reflects strong Roman law influences?

The trend to remove these disciplines from law curricula has become a flood in more recent years throughout the Western world. This is a state of affairs that we have repeatedly bemoaned at these events and in our publications. However, the increased pressure on the curriculum and the need to adapt it to incorporate further skills development, courses on computer law, legal ethics and the like, without any real prospect that the duration of LLB studies will be extended by a year to accommodate for this, is forcing a further reconsideration of the curriculum.

The Council for Higher Education in South Africa has called for a national review of the LLB in 2016. Accreditation of LLB curricula at the various South African institutions will ultimately depend upon the outcome of the review process. It is thus imperative for legal historians in South African institutions to promote their subject field if Legal history and Roman law are to be retained in the curriculum. As in many European curricula, these subjects have been relegated to the pool of elective courses or scrapped altogether in many institutions in South Africa. This is unfortunate, as the constant reminders of the importance of these disciplines are consistently overlooked in curriculum design conversations. Thus, despite the fact that the Council for Higher Education has not directed itself towards the prescription of an LLB curriculum for use in all universities in the country, it is determined to create a workable framework that is socially relevant and politically correct. Roman law, as part of the legal history component of law teaching, may well find itself sacrificed on the altar of Eurocentrism in efforts to offer a curriculum more patently Africanised in its content.

Certainly, Roman law had less claim to inclusion in the New Zealand curriculum than the South African, given that the New Zealand legal system was not subject to the same civil law influences as South African law was. Despite this, the common-sense resort to Roman law principles to supplement the law where this was appropriate in comparable situations meant that Roman law continued to exert an influence on New Zealand law even after its removal from the curriculum. The principles and thought processes associated with Roman law have enriched the New Zealand law and, sadly, as the last of those educated in Roman law gradually retire from the profession in New Zealand, this knowledge will be lost and the law impoverished by it.

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If this is true of New Zealand, how much more important to preserve Roman law in the South African context where vast areas of the law have been subject to extensive Roman law influences. Not only is Roman law and Legal history an essential tool in legal historical and comparative legal research, but its influences in reasoning in court decisions is undeniable. Thus, while we enjoy this conference I ask that you reflect on this conundrum that faces modern legal education and that you leave here with renewed vigour to fight for the future of our subject discipline.

Please enjoy your evening and the next few days of academic exchange.