EUROPEAN LEGAL TRADITION AND THE ROMANIST LEGACY IN SOUTH AFRICA*

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SUMMARY: 1.- Introduction; 2.- Colonial history; 3.- Birth of Roman-Dutch law; 4.- Divided society and political exclusion; 5.- Public v private law; 6.- European, Roman legacies and politics; 7.- The British legal tradition; 8.- 1990's; 9.- Conclusion.

1.- Introduction

A preliminary observation concerns the double-edged use of the word "European" in the theme of this workshop. First, today the United Kingdom is still part of the European Union, but since the Hundred years war the UK considered herself – and was considered – not to be part of Europe, but an island with a distinct identity, culture and legal "system". Secondly, it is common cause that in many countries with codified legal systems European legal tradition and Romanist legacy are considered synonyms. Moreover, South Africa gave a special meaning to the word European during her distressed history.[1]

In mixed jurisdictions such as South Africa[2], a distinction between the common law and the Romanist traditions is apposite. Finally, in countries with a colonial past, European legal tradition must be distinguished from indigenous traditions, which makes the search for European and Roman legacies in South Africa a bi-polar challenge.

This paper explains the rather unexpected survival of Roman or rather Roman-Dutch law in South Africa during the 19th century. Thereafter, the role of the English constitutional model is briefly mentioned as this prepared the soil for apartheid. A brief memorial dating from the early twentieth century, is included which shows that discrimination without Diktat from the state or support of Roman law has always been possible and practised.

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[1] See for example the Prohibition of Mixed Marriages Act, 1949, Act to prohibit marriages between Europeans and non-Europeans, and to provide for matters incidental thereto.

[2] Since 1994 (Interim) Constitution all law (including the common law regulating contracts) derives its force from the Constitution and is thus subject to constitutional control *Brisley v Drotsky* [2002] ZASCA 35; 2002 (4) SA 1 SCA. The South African Constitution distinguishes between legislation, the common law and customary law. The South African legal system is not codified, but is a mixed legal system. It is mixed in more than one way, namely between Western law and indigenous law, between the Romano-Germanic tradition and the Anglo-American or common-law tradition, and as a result of the supremacy of the Constitution the boundaries between human rights law and private law have also been blurred.

The main body of the paper addresses the European legacy and the different paradigms within the South African common law after World War 2. Both prolepsis and conclusion of this presentation are found in the cliché: "History determines the present".

2.- Colonial history

It is noteworthy that the first Western law was brought to South Africa by the Dutch East India Company, a private company that in no way represented the Dutch state. It was in fact a monopolistic, multi-national, public company.[3] For reasons of office politics the Cape station considered itself to resort under the regional office in Batavia, which in its turn had been informed by the head office in Amsterdam that the law of Holland applied. As commercial company the VOC had no interest in colonisation, but traded with the Koi and San. However, gradually colonisation was deemed financially advantageous and a colony of so-called free burghers extended into the interior of the Cape.[4] During the rule of the company the Council of Justice was both an executive and judicial body and was short of legal expertise.

In 1795 French revolutionary forces occupied the Netherlands and the English conquered the Cape in order to safeguard the sea route to India. It can be argued that Articles of Capitulation made provision for retention of the Dutch legal system.[5] However, this was a recognized principle of International law, and the peculiarities of the English common law are illustrated by the fact that the 1774 decision by Lord Mansfield in *Campbell v Hall* is cited as the *ratio decidendi* why the law of the Cape remained in force;[6] the *status quo* remained unchanged in 1814 when the Dutch sold the Cape in the Convention of London[7] and the Cape became a British Crown Colony.

3.- Birth of Roman-Dutch law

At first glance it appears miraculous that during the 19th century Dutch law, in other words the law of Holland, un-codified and found in general, provincial and municipal statutes,

[3] P.J. Thomas, "Colonial policy of the Dutch republic.", *Iura and Legal Systems* 2015, B(7), 92-102; at www.rivistagiuridica.unisa.it (14/1/2018). The Dutch East India Company was the first company to go public on the world's first stock exchange. It raised enough capital in 1602 to later create a globe-straddling multinational conglomerate, with over 70,000 employees at its peak; its market capitalization would reach 78 million Dutch guilders, which would be in modern-day valuation about $7.4 trillion

[4] P J Thomas, "Harmonising the law in a multilingual environment with different legal systems; lessons to be drawn from the legal history of South Africa", *Fundamina* 2008 14(2), 133-155; H.W.P. Picard, *Masters of the Castle*, Cape Town 1972.

[5] D. Cowen, "Early Years of Aspiration", in D. Cowen and D. Visser (eds.), *The University of Cape Town Law Faculty A History 1859-2004* (2004), 2.

[6] Cowper 204 at 209, 98 E R 1045 at 1047; Hahlo and Kahn, *The South African legal system and its background* (1973), 575.

7 Convention between Great Britain and the Netherlands relative to the Dutch Colonies; Trade with the East and West Indies; etc signed at London on August 13, 1814. The United Provinces of the Netherlands received five million pounds sterling in consideration, and in satisfaction thereof, the Prince Sovereign of the Netherlands ceded in full sovereignty to His Britannic Majesty, the Cape of Good Hope and the settlements of Demerara, Essequibo, and Berbice. Cf *Larousse Encyclopedia of Modern History* (1968) 283.

customary law, and Roman law as a subsidiary backup,[8] continued to be applied after the sources had been abrogated in their country of origin, by codifications.[9]

In order to create a workable jurisdiction the English colonial administration remodeled the court system and introduced the English laws of procedure,[10] while a steady stream of English based statutes kept the law updated.[11] The subtext was that in time the obvious advantages of the English law would eliminate the outdated law of the colony.[12]

Farlam has mentioned the role the Cape bar played in the retention of Roman-Dutch law.[13] The willingness of the English, Scottish and Irish lawyers manning the courts to familiarize themselves with the old sources in Latin and Dutch has also been cited as a factor.[14] A steady stream of translations of the old sources into English[15] also contributed to the creation of the so-called Roman-Dutch law of the Cape Colony.

It should, however, be added that the reformation of the Cape court and the introduction of English laws of procedure made this development inevitable. The English principle of judicial unpreparedness,[16] in other words the passivity of the common law judge, compelled the court to limit their attention to the arguments and authorities placed before them. At inception of the court all advocates/barristers were schooled in Roman-Dutch law[17] and based their arguments on the sources thereof. Moreover *stare decisis* forced the court to follow earlier decisions and judge Menzies made notes of such decisions.[18]

Another reason for the retention of Roman-Dutch law was the Great Trek. This was the event when during the 1830's a significant part of the Dutch-speaking population moved north in search of greener pastures. This led eventually to the creation of two new states, the so-called Boer republics, in which Roman-Dutch law was declared the law of the land in the respective constitutions.[19]

After the second Boer war (1899-1902) Britain attempted to reconcile with the vanquished boers, which policy left the black population and their interests outside the South Africa Act

[8] P.J. Thomas, "Roman-Dutch opinion practice as a source of law, " *THRHR* 2006 69(4), 613-621.
[9] 1809 Wetboek Napoleon; 1811 Code Civil; 1838 Burgerlijk Wetboek.
[10] P.J. Thomas, "Some reflexions on the role of the judge from a perspective of a mixed legal systen", in S. Corrae Fattori, R. Correa Lofiano, J.L.N. Magalhaes Serretti (eds), *Estudos em homenagem a Luiz Fabiano Correa* 2014, 347-361; Cowen, "Early Years", 5ff.
[11] Hahlo and Kahn, 577.
[12] Cowen, "Early Years", 2-6.
[13] I.G. Farlam, "The origin of the Cape bar". *Consultus* 1988 1(1), 36–40; Cowen, "Early Years", 3f.
[14] Thomas, "Role of the judge" (2014) 347-361.
[15] Kotze, Juta and Maasdorp translated Van Leeuwen's, *Commentaries of Roman-Dutch Law*, Van der Linden's *Institutes of Holland* and de Groot's *Inleidinge*, respectively. M. Hewett, "Old wine in new bottles or the story of translations of the 'old authorities' produced by South Africans" 1998 *THRHR*, 551-564.
[16] P.J. Thomas, " The development of the Cape common law during the early nineteenth century: William Porter, James Kent and Joseph Story" in *Fundamina* 2014 20, 907-915.
[17] Thomas, "Role of the judge" (2014), 347-361.
[18] The new SupremeCourt followed the binding force of precedent. The first law reporter of the decisions of the Cape Supreme Court was Judge Menzies. Albeit published only after the judge's death, tradition has it that the manuscripts were circulated within legal circles and were accepted as authority for precedent. 20 2,
[19] Thomas, "Harmonising" *Fundamina* 2008 14 2, 139 ff.

of 1909, which formed the constitution of the Union of South Africa.[20] A crucial point was that this Act introduced the Westminster constitutional model, which entails parliamentary sovereignty and thus denies the courts the right to review the constitutionality of statutory or common law.[21] Therefore, the constitutional model, which made the introduction of apartheid legislation possible and free from judicial scrutiny after the 1948 electoral victory of the Afrikaner nationalists, formed part of the English legacy.

4.- Divided society and political exclusion

The establishment of the Union was quickly followed by the foundation of universities,[22] a prerequisite for the creation of a local guild of jurists as well as establishment of a national legal science. It is of interest that founded universities reflected South African society: the University of Cape Town v Stellenbosch; the University of the Witwatersrand v the University of Pretoria with Fort Hare as an afterthought.[23] Lost in translation this means that the Union was a white state, in which the population was divided between English and Afrikaans, while the black population remained outside the political arena and under indirect rule. The latter means that the traditional structures of power were adapted and used by the rulers to govern the voiceless indigenous peoples.[24]

5.- Public v private law

It has been argued that the marginalisation of the indigenous people fell squarely within the public sphere and in consequence private law remained untainted. However, a survey of the use of non-statutory restrictive conditions shows that private law apartheid was practiced long before 1948. The 1912 case of *Alexander v Johns & others*[25] sets out how township developers during the beginning of the 20th century used restrictive conditions to market lots for "white man's" towns.[26] Most property deeds included bans on ownership by coloureds or

[20] Thomas, "Harmonising" *Fundamina* 2008 14 2, 143 ff.
[21] Thomas, "Harmonising" *Fundamina* 2008 14 2 144.
[22] In 1829 the South African College was established in Cape Town, followed by the Stellenbosch Gymnasium in 1864/66. Acts 13 and 14 of 1916 provided for the creation of the Universities of Stellenbosch and Cape Town, which became reality in 1918. Cowen, " Early Years", 22; the Transvaal University College (1906) split in 1910 into the South African School of Mines and Technology (Johannesburg) and TUC (Pretoria). The former was incorporated as the University of the Witwatersrand in 1922, while the latter became the University of Pretoria in 1930 (the University of Pretoria Private Act, No. 13 of 1930).
[23] The South African Native College, later the University of Fort Hare, was founded in 1916. The college originated from an alliance between educated African Christians, traditional Southern African leaders, and white liberals, many of them clergy. Though Fort Hare operated in an environment of racial segregation even before apartheid, the college was as racially inclusive as it could be, with black, coloured and Indian students, men and women. The University of Fort Hare produced graduates from Southern Africa and countries as far north as Kenya and Uganda. http://www.ufh.ac.za/About/Pages/History.aspx (12/1/2018)
[24] Thomas, "Harmonising" *Fundamina* 2008 14 2, 141f.
[25] 1912 WLD (Witwatersrand Local Division) 91. Bristowe J relied on English precedents
[26] The condition registered against each title deed read as follows: The (purchaser) lessee (as the case may be) shall not let or transfer to, or in any way give, suffer, or allow the occupation in part or in whole of the said building lot or any of the buildings thereon to or by any Arab, Malay, Chinaman, Coolie, Indian, or

non-Europeans. The Appellate Division held that such restrictions in the title deed were converted into servitudes as leasehold was converted into freehold.[27] In 1988 the same court held that on registration of the title deed restrictive conditions become servitudes.[28]

6.- European, Roman legacies and politics

In spite of the above it has been widely held that on account of the distinction between public and private law, the latter remained lilly-white, and that the abstract, objective nature of legal science was a guarantee against the introduction of politics into this holy grail.

However, the development of two new, distinct paradigms contradict these assertions.

The above mentioned division of the white South African population and the resulting dualism of South African academia were extended during the 1950's to the judiciary by the political manipulations necessary to delete the coloured vote from the South Africa Act,[29] as well as the fast-tracked elevation of LC Steyn to Chief Justice of South Africa.[30]

The first event established the beliefs which would later form the core of what should be labeled the Human Rights paradigm at the English universities;[31] the second made the Chief Justice the torch bearer of the so-called Purist movement, which paradigm originated at the faculties of law of the Afrikaans universities and purported to cleanse South African law of English pollution.[32]

The work of JC de Wet is often qualified as the *fons et origo* of this paradigm. However, de Wet can justly be named the father of South African legal science, as he created a legal system with definite principles and rules,[33] but he should not be held responsible for the attempts to maneuver private law into reverse gear, which as apotheosis the deletion of the *exceptio doli*.[34]

Nevertheless, both de Wet and the purist movement brought Roman law within South African politics.

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other coloured person, nor shall the (purchaser) lessee allow to be located on the said stand or any part thereof any such person as aforesaid unless he is in the *bona fide* employ of the (purchaser) lessee, his tenant or tenants, on the said building lot.

[27] *Alexander v Johns* 1912 AD 431 at 447; P. J. Thomas and F. Viljoen, "Mixed Blessings of Mixed Legal systems: Seritudes and Restrictive Conditions," *SALJ* 1997 114 IV, 738-749.

[28] *Malan & Another v Ardconnel Investments (Pty) Ltd* 1988 (2) SA 12 (A).

[29] *Harris and Others v Dönges (Minister of Interior)*, 1952 (2) 428 (AD); Cowen, "The Cowen, Price and Beinart Years", 62f; I. Loveland, *By due process of law: racial discrimination and the right to vote in South Africa, 1855-1960*, 1999.

[30] D.J. Joubert (ed), *Petere Fontes: LC Steyn- Gedenkbundel* (1980); E. Zitzke, "The history and politics of contemporary common law purism", 2017 23 1, 185-230 at 195ff.

[31] D. Visser, "Teaching under the Jackboot 1960 - 1990", in D. Cowen & D. Visser (eds), *The University of Cape Town Law Faculty A History 1859-2004*, 2004, 75- 108.

[32] Zitzke, *loc. cit.*

[33] J. Gauntlett, "Inleiding/Introduction", in J. du Plessis and G. Lubbe (eds.) *A Man ofPrinciple The Life and Legacy of JC de Wet*, Claremont 2013, xv-xx; R. Zimmermann and C. Hugo, "South African Legal Scholarship in the 20th century: The Contribution of JC de Wet (1912-1990)", in du Plessis and Lubbe, *A Man of Principle*, 3-22.

[34] *Bank of Lisbon and South Africa v De Ornelas* 1988 (3) SA 580 (A).

An apolitical interpretation can attribute this development to the fundamental role of language in legal culture and the systematic interplay between language and law; this would have established within Afrikaner academia an affinity for the abstract, rational, systematic, individualistic civilian legal culture, which increasingly separated itself from the pragmatic casuistic English paradigm. This rational and utilitarian vision of jurisprudence and justice, in other words to view private law as an unattached system that was legitimate and functional, regardless of time and place, was able to placate many a legal conscience.
Another, more damning explanation is that an existential gap divided the two paradigms. This distinction was based on a fundamental difference in understanding of the rule of law, which placed the common law tradition of a democratic, pragmatic understanding of law and justice, represented by the legal professions and the judiciary, in opposition to a politicised, manipulation of the law, based on beliefs and superstitions.
A zopa interpretation may be that the *petere fontes* approach was a scientific paradigm which chose history as an instrument to define the confusing political, socio-economic and legal development of post-World War 2 South Africa.
However, in the prevailing politico- ideological atmosphere of the apartheid era, private law scholarship proved unable to remain in critical control of its method and social role. Racialism in statutory form introduced dreadful injustices in the law of persons and marriage, property law, and labour law. If some disciplines, for example contract law, appeared less affected, this was not only fallacious, but a perfect example of the perversion of legal realities in academic textbooks.
Nevertheless, it may be argued that as a result of the strict division between public and private law, combined with the incompatibility between social reality and legislation, the injustices embedded in legislation, legal decisions and application of the law, did not find their way into legal theory and textbooks of private law.

7.- The British legal tradition

It should be noted that on the whole professional bodies which represent justice, the bar and side-bar, by and large remained true to their legal tradition. The respected position held by barristers, academics and judges made it possible to maintain a core of legal conscience. Thus, a nucleus of jurists within the wider ambit of lawyers,[35] prevented total disregard for justice and the rule of law even during the darkest days of racial discrimination.
During apartheid mainly English academics addressed the judiciary's role within this system; Sachs,[36] Dugard,[37] Corder,[38] Forsyth[39] and Dyzenhaus[40] stand out. In spite of their justified

[35] This is following Wieacker's disticntion between jurists and lawyers.
[36] A. Sachs *Justice in South Africa* (1973).
[37] C.J.R Dugard, *Human Rights and the South African Legal Order*(1978).
[38] H. Corder, *Judges at Work* (1984).
[39] C. F. Forsyth, *In Danger for their Talents* (1985).
[40] D. Dyzenhaus, *Hard Cases in Wicked Legal Systems: South African Law in the Perspective of Legal Philosophy* (1991).

criticism, the judgment of Radbruch[41] in respect of the judicature during the Third Reich[42] may serve as a guideline. It may thus be argued that the judges as a profession should not be blamed for this aberration, but that the triumph of legal positivism in tandem with the Westminster system had allowed a politicisation of law which had led to such injustice.[43]

8.- 1990's

During the 1990's the political and societal changes were deemed to necessitate a new curriculum for the study of law.[44] Cowen has mentioned that each generation must face the perennial issues of legal education, amongst which he lists: whether law should be taught in a university solely as a professional discipline, or also as part of a general education in the humanities; the linguistic requirements for the adequate study of law; and the extent to which members of the judiciary, the bar and the side-bar might, appropriately and realistically, become involved in determining the policy of a law school. He concluded each generation must face them anew and find its own appropriate method of adaptation and adjustment.

The new curricula emphasise legal practice at the expense of the Roman tradition and her companions Latin, foreign languages and other *humaniora*. Championed by academics keen to extend their own fields of study at the expense of general European culture, it constituted a manifestation of the new jurisprudential stance to legal theory and history.

Generally viewed as a generational achievement against dogmas of outdated academia and proclaiming the intertwining of practice and knowledge, the aim was to approach legal training from a very down-to-earth angle, and the emphasis is on practical jurisprudential problems.[45]

A question which emerged after the transition to constitutional democracy concerned the basis and principles in accordance to which the judiciary should interpret the meaning of the law? This theme not only refers to the division of tasks between the courts and legislators, but also to the separation of powers between the executive and the judiciary.[46] A more intellectual

[41] Gustav Radbruch (1878-1949), German jurist and legal philiosopher; https://www.britannica.com/biography/Gustav-Radbruch (12/12/2017); B.H.Bix, Radbruch's Formula and Conceptual Analysis, *The American Journal of Jurisprudence* 2011 (56), 45-57;

[42] G. Radbruch, "Gesetzliches Unrecht und übergesetzliches Recht", *Süddeutsche Juristenzeitung* 1946 (1), 105-108.

[43] A. van Blerk, *Judge and be Judged* (1988); I.J. Kroese, "Doing things with values: the role of constitutional values in constitutional interpretation," Stellenbosch LR 2001 (12), 265.

[44] See Cowen, "The Wille, Wylie and Emmett Years to the 1940's," in Cowen and Visser, who lists among the perennial issues of legal education at 29: "(3) Whether law should be taught in a university solely as a professional discipline, or also as part of a general education in the humanities; (7) The linguistic requirements for the adequate study of law in South Africa, ..; (8) The extent to which members of the judiciary, the bar and the side-bar might, appropriately and realistically, become involved in determining the plocy of a law school." He concludes:" Each generation must face them anew and finds its own appropriate method of adaptation and adjustment."

[45] Contra Zitzke, *Fundamina* 2017 23 1, 185-230, who argues that that common-law purism is currently the dominant theoretical approach in private law common-law to shield the common law against a human-rights inspired Constitution.

[46] See for example the recent decison of the Constitutional Court in *Baron and others v Claytile (Pty) Limited and Another* (CCT241/16) [2017] ZACC 24; 2017 (10) BCLR 1225 (CC); 2017 (5) SA 329 (CC);

rephrasing would be to ask which institutions are responsible to bridge the gap between the norm and an emerged social demand? The sad saga of the rise and fall of good faith and the *exceptio doli*[47] may be a metaphor for the spirit of South African private law, namely that the Roman law origin and interpretation have been ignored and the original application has been reduced to lip service.

9.- Conclusion

European legal traditions, both common law and Roman, supplanted the African traditions in most areas of life. The English casuistic approach was applied to the un- codified Roman-Dutch law and adapted the *usus modernus* to changing economic circumstances. The study of Roman law instituted a way of legal thinking and concomitant, legal argumentation which merged perfectly into the English approach. The British method introduced in the Cape colony and subsequently in the Union consisted in the introduction of institutions, structure and process. By placing the focus on legal procedure, values were ignored and law became a technique to solve conflicts. The Roman legacy is found in the institutional system of South African private law. The *Institutes* of Gaius and Justinian, but especially the *Introduction* by Grotius were considered primary sources from the beginning and together with the work of the German Pandectists were the inspiration for the creation of a Pandectistic legal science[48] parallel to the ruling English casuistic approach.[49] However, it is remarkable that within this tradition the emphasis of the Historical School on the cultural background and history of a legal system, remained limited to a narrow section of history and culture. In consequence, the collective experience of the inhabitants of South Africa and the sense of justice of the people as a whole was ignored. The meta reduction of justice to the rationality of power politics had repercussions in private law, where the mechanisms to combat exploitation were negated by strict formalism. In consequence, the role of Roman law as a platform to share the European legal culture is not acknowledged at present. The contrary is true, as it appears that Roman law is considered tainted by apartheid and the opportunity is lost to develop a common legal culture based on integrating human rights into a legal tradition which already incorporated many similar values.

Abstract.- The paper addresses the survival of Roman or rather Roman-Dutch law in South Africa during the 19th century; the role of the English constitutional model in laying the foundation for Apartheid and the bizarre frozen turkey interpretation of

P. de Vos, "Pious wishes or directly enforceable human rights? Social and economic rights in South Africa's 1996 constitution," *SAJHR* 1997, 67-101; H. Corder, "Judicial authority in a changing South Africa", *Legal Studies* 2004 24 1-2, 253-274.

[47] P.J. Thomas, "The changing fortunes of bona fides in the South African law of contract," in L van den Berge, M. Neekilappillai, R. Kindt, J. Valk (eds.), *Historische Wortels van het Recht*, 2014, 147-155.

[48] G. Lubbe, "Die Laaste Pandektis? JC de Wet in Metodologiese Perspektief," in du Plessis and Lubbe, *A Man of Principle*, 105-137.

[49] Zimmermann and Hugo, 8-12.

Roman-Dutch law during that era, with as interlude a case showing that discrimination without Diktat from the state or support of Roman law has always been possible.
The emergence of two new distinct paradigms during the 1950's contradicts the assertion that the distinction between public and private law and the abstract, objective nature of legal science kept politics outside private law.
The bar and side-bar, by and large remained true to their legal tradition and maintained a core of legal conscience. It may be argued that the judges should not be blamed for enforcing apartheid legislation, since legal positivism and the Westminster system had allowed politicization of the law which led to injustice.
New law curricula, a new political dispensation and the demand for Africanisation have eroded the classical *humaniora* in legal training and the Roman law legacy is gradually being marginalized.

L'articolo traccia una ricostruzione dello sviluppo del diritto romano (e segnatamente del cd. "Roman-Dutch Law") in Sud Africa nel 19° secolo, prendendo in considerazione il ruolo esercitato dal modello costituzionale britannico alla base del sistema di apartheid e l'interpretazione statica del diritto romano-olandese in questo periodo, che permetteva che la discriminazione fosse sempre possibile, anche senza uno specifico intervento normativo statale o un appiglio nel diritto romano.
L'evidenza di due nuovi distinti paradigmi negli anni '50 contraddicono l'asserzione secondo cui la distinzione tra diritto pubblico e privato e il presunto carattere astratto e obiettivo della scienza giuridica avrebbero tenuto la politica al di fuori del diritto privato.
Gli avvocati e i loro ausiliari restarono spesso largamente fedeli alla loro tradizione di diritto e preservarono un fondamento di coscienza giuridica. Può essere perciò asserito che i giudici non dovrebbero essere accusati per avere applicato la legislazione dell'apartheid, perché sarebbe stato il positivismo giuridico e il sistema legale di Westminster a permettere quella politicizzazione del diritto che provocò l'ingiustizia.
Nuovi percorsi curriculari negli studi di diritto, una nuova amministrazione politica e una richiesta di "africanizzazione" del diritto avrebbero eroso, nella formazione dei nuovi giuristi, la tradizionale tendenza romanistica a un'interpretazione più umana delle norme, in modo da marginalizzare sempre più l'eredità del diritto romano.