

CHAPTER 6

CONCLUSION

The relevance of South African common law is to be found in a synthesis between the “antiquarian” and “modernist” approach. Common law contains fundamental legal principles which are of great practical value when extrapolated and applied to contemporary legal disputes. The common law concept should, however, be interpreted extensively to include not only untranslated legal sources directly influencing Roman-Dutch law of the seventeenth century, but also those legal sources influencing European *ius commune* as a whole. The abolition of Latin in 1996 as a required course for the LL.B degree has had a detrimental effect on common law citations. Fewer legal practitioners are able to read and understand Latin, leading to an increased marginalisation of untranslated common law sources. The aim of this study is to provide access to an important untranslated medieval legal source.¹ The first book of the *Tractatus de Fluminibus seu Tyberiadis* has been translated into English and supplied with a historical annotation in the form of endnotes. The author’s references to Roman law and other legal sources have been traced as far as the existence and availability of the original sources have allowed.

It is virtually impossible to construct a linear history of translation theory as the concept of a “true translation” has varied considerably depending upon the focus within the translation itself. A dynamic equivalent approach to translation, implying various grammatical and syntactical adaptations, has been used to ensure the transfer of the “message” without regressing into grammatical awkwardness.² A terminological dispute concerning the classification of fourteenth century Latin as either late medieval or early *Renaissance*, has necessitated an excursus on the grammar and syntax of late medieval Latin. The legal school of the “commentators”, to which Bartolus belonged, has often been criticised for poor Latin, but a lexicological and semantic analysis of the author’s Latin has indicated that it is of a far higher standard than that of his legal contemporaries and represents a synthesis between semi-classical and *Renaissance* Latin.

When translating medieval Latin, the text chosen for translation has to be assessed carefully. An authoritative reading of a specific copy of the text cannot be assumed without extensive comparison between the actual text chosen for translation and other existing copies of the text. The 1576 Bologna edition, chosen as the basis for translation, has been compared with various other copies of the text originating from different text-families as well as different periods to establish an authoritative reading of the text. Other copies of the text have not been found to alter the meaning of the 1576 Bologna edition significantly, but have contributed to a better understanding of the text through altered punctuation and the occurrence of words or phrases which have been omitted in the Bologna edition of the text. Palaeography and the manner of citation in medieval legal monographs have greatly contributed to the understanding and translation of the text.³ Bartolus quoted numerous passages from Roman legal sources verbatim and once these had been traced and analysed, the true meaning of ambiguous passages could be established. A historical annotation has greatly contributed to the value of this translation. The modern reader will be able to refer to Bartolus' original references and citations, providing clearer insight into the author's academic method as well as probable train of thought.

The first book of the *Tyberiadis* discusses alluvion as an original mode of acquisition of ownership. Bartolus utilised the Roman law foundation of alluvion as the basis for the treatise, applying seemingly outdated principles to factual circumstances of fourteenth century Italy. Alluvion in Roman law only occurred where property had an undetermined riparian border (*ager non limitatus*) to which a public river added gradually and imperceptibly, thereby increasing the extent of the owner's property. The division of property amongst various riparian owners often gave rise to numerous legal disputes which the author attempted to solve by using Euclidean geometry. The basic prerequisites for alluvion are still applicable in contemporary South African law. Alluvion is defined in South African law as an imperceptible increase by a non-navigable river to *ager non limitatus*, whereby the extent of the owner's property is increased.⁴ The

common law position regarding alluvion has recently been perpetuated in statutory law by section 33 of the Land Survey Act 8 of 1997.

There is still much work to be done on the *Tyberiadis* of Bartolus of Saxoferrato. The archetype of the text still has to be researched conclusively by comparing all existing hand-written manuscripts according to the rules of textual criticism. The remaining books have to be translated and other types of annotation could provide valuable insight into the true meaning of the text. The translation of this text has underlined the fact that an urgent need exists for the compilation of a comprehensive manual on grammar and syntax of medieval legal Latin.

Latin has been the official legal language of the Western world since the birth of the Roman Empire. It is not the beauty of the Latin language which has promoted its use in law, but rather its functionality. The *Tyberiadis* serves as one of the countless examples of not only the conciseness, but also the brevity of expression rarely found in any other language. To quote Michael Sheridan (1994:46): “Latin is extremely functional. It’s utilitarian. It’s not dreamy like Greek or French, just drifting off. Latin won’t do that, you’ve got to say something and get moving otherwise it’s not going to be good Latin...I always tell the students Latin is as solid and enduring as the Colosseum. Now there’s nothing beautiful there. It’s very impressive, the Colosseum, but it’s total functionality.”

¹ In 1983, the South African Law Commission published an interim working document (project 8) on the accessibility of common law sources. This study is the product of a request formulated therein, calling for the translation of medieval legal sources. For a detailed discussion of the report, see further 1.2.

² For a definition and discussion of “dynamic equivalence”, see further 3.1.2.

³ For a detailed discussion of medieval legal palaeography occurring in the *Tyberiadis*, see 3.7. It is hoped that a compilation of this nature might prove to be of some value to future translators in the field of medieval legal Latin.

⁴ For a definition of alluvion in contemporary South African law as well as a detailed discussion on the prerequisites for its occurrence; see chapter 5 *in toto*.