

DEDICATION – PROF JMT LABUSCHAGNE

It is a privilege, on behalf of the Editorial Board, to dedicate this issue of *Obiter* to the memory of Professor JMT Labuschagne. Professor Labuschagne had a close connection to the Law Faculty at the erstwhile University of Port Elizabeth, having taught in the Faculty in 1971 and 1972, and contributing two articles to the *UPE Law Journal*, which was in existence at that period. *Obiter* has had a long and fruitful association with Prof Labuschagne, as it has published no fewer than 61 of his articles and notes in the period 1986-2004.

As an intellectual and scholar, Prof Labuschagne had few peers in South African legal academia. Extraordinarily productive, unceasingly prolific and always provocative, 'Lappies' has left his mark on South African legal writing. Much of his writing was ahead of its time, particularly his perceptive criticism of aspects of South African criminal law, in the light of international human rights practice. He was primarily responsible for the systematization of customary criminal law, in a series of wide-ranging articles. His contribution to legal scholarship went beyond the criminal law and customary law however, with his intellectual curiosity drawing him into aspects of delict, family law and environmental law, amongst others. Indeed his scholarship transcended the purely legal, with significant contributions in the area of ethnology.

One cannot fail to be awed by Prof Labuschagne's enormous contribution to legal scholarship, both in terms of his tremendous productivity, as well as the superior quality of his work. Yet it seems that he has been quoted relatively infrequently by the courts and by other academic writers. It may well be that the true appreciation of his work will only start to emerge now, as his scholarship is reassessed in the light of his passing. For many however, the enduring memory of Lappies will not be his extraordinary output as much as his humanity and humility. Long may his legacy endure.

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JMT LABUSCHAGNE : FRIEND, MENTOR AND PHILOSOPHER

Something I will never forget about Lappies is that when he arrived at the office in the morning he would walk down the corridor and congratulate anybody whose birthday it might have been. He never missed one. I told him one day that I was going later that day to see a researcher at the S A Law Reform Commission. He said that it was her birthday, that I must congratulate her. He seemed to know and said something nice about anybody he ever knew.

His second outstanding characteristic was his enormous ability to write legal articles on any conceivable topic. At the time of his death he had written 556. Seven were in the pipeline. His large quantity of publications overshadowed his two doctorates.

During the last five to six years of his life I had occasion to write some articles with him, so I saw him in action. We would discuss a topical issue and decide to write an article on it. I did the spadework - rummaging through case law, statutes and literature for weeks and months on end, eventually producing a draft. He took it and invariably within a week or two had added to and adapted it - mostly with philosophical views of foreign authors, German, French, English and American authorities and his own previous writings, as if he had done nothing else but research that topic for months on end. In the meantime he worked on two or three other articles as well.

He did a great deal of research overseas, but the manner in which he managed to reproduce the knowledge he gained was astounding.

In the same way he worked with me, he added value to the labours of a number of other academic as well. We greatly appreciated it.

As I got to know him better and worked with him, I realised that he was inspired by a spirit of humanism. He was politically somewhat conservative but he was not a legal technician. He, for instance, despite his Afrikaans background, rejected Biblical type injunctions of right and wrong, irrespective of the human beings concerned. His pleas were in my words for a humanistic, not legalistic, approach to issues such as same-sex marriages, euthanasia, abortion and the death sentence. He in fact expressed these views long before our Bill of Rights came into play.

It is interesting that in later years his primary interest was no longer African customary law. He said that too many other things engaged his interest. His latest view was that customary law should be allowed to adapt to social circumstances of its own accord. He thought of expressing his views on customary law as a phenomenon of legal pluralism rather than as a field of conversion into a statutory mould. He was adamant though that there was no room for discriminatory practices peculiar to customary law. An annotated index of his articles will soon be published. It will no doubt make his views more accessible.

Without him South African legal literature would have been so much poorer.

One cannot say that he meant as much to ordinary run-of-the mill students. With the massive number of students, teaching became extremely impersonal. Prof Lappies wryly related the story of a student who was supposed to attend his classes. Halfway through the semester he entered his office and asked to be directed to Prof Labuschagne's office, the professor "who teaches indigenous law".

Even the LLB dissertations did not offer much of an opportunity for intellectual inter-active teaching. For most students it was probably no more than a battle to meet the deadline. He nevertheless paid conscientious and meticulous care to the needs of his students over many years. I gathered that he liked them - he liked teaching law, but his intellectual prowess lay elsewhere. That is why he excelled in guiding doctoral students. In his quiet, unassuming manner he coaxed them into doing academic research of the highest order. What is more, they became life-long friends. Some of them later co-authored articles with him.

He received the University reward for outstanding academic achievers from its inception in 1989 until his death in 2004. Now he's gone, but his memory will live on.

Jan C Bekker
10 February 2006

PROFESSOR JMT LABUSCHAGNE : “ONSE LAPPIES”

My “kennismaking” as student met Professor JMT Labuschagne gaan terug na 1979 se Uitleg-van-Wette-klas. Nie alleen was die lesing die vroegste moontlike lesing van die dag nie, maar moes ons worstel met LC Steyn se groen *Uitleg van Wette*. In vandag se dwangbuis terminologie sou die boek as “dosent/student verbruikersonvriendelik” afgemaak word. Oor die tyd van die lesing het Prof Lappies verskonend verduidelik dat 'n advokaat vroeër dae die kursus aangebied het, dit die enigste geskikte tyd was en roosterveranderings moeilik is. Ons moes maar die tradisie voortsit en half wakker worstel en leer dat de Groot, Averanius, Christinaeus, P Voet, J Voet, Donellus, Glück, Maestertius, Menochius, Cujacius, Forster, Pothier Pufendorf en 'n paar ander ouens omtrent dieselfde oor elke afsonderlike uitleg reel te sê gehad het. In nabetraging kan ons bly wees dat Tukkies se onse Lappies op daardie stadium, vir sover ek weet, nog nie geskryf het oor uitleg van wette nie! Die groen boek se klomp “ou manne” sou dan 'n vulletje gewees het.

Met die eerste lesing moes ons toe ook 'n kaartjie invul met ons naam en besonderhede daarop. Met die deurgaang van die kaartjies merk Prof Lappies toe op dat ek en hy in die selfde straat in Meyerspark woon. Omdat ek 'n stoute knaap op skool was en ek en my vrinne heeldag op en af in die strate van Meyerspark (en omgewing) op ons Japanese “fifties” rondgejaag het was ek bekommerd dat ons dalk op 'n stadium die professor in sy wandeling kon gepla of aanstoot kon gegee het. Of daar 'n vroeëre “kennismaking” was sal ek nooit weet nie. Later het ek besef dat dit in elk geval nie saak sou gemaak het nie. Prof Lappies sou 'n logiese wetenskaplike verklaring vir ons jeugdige “café racer” uitinge gehad het.

Reeds as student en later as dosent het ek die gereelde en alomteenwoordigheid van Prof Lappies in die regstydskrifte agtergekom. Oor Prof Lappies se bydrae tot die regswetenskap kan boekdele geskryf word. Sy alomteenwoordigheid in die regswetenskap sal altyd gemis word. Sy passie vir die regswetenskap was aansteeklik. Met my planne vir oorsese navorsing het ek by hom in Meyerspark gaan aanklop vir advies. Nie alleen het hy my van goeie raad bedien nie maar ook die belang van die Afrikaanse regswetenskap as skakel met Europa uitgelig, so op sy rustige manier. Ek onthou ook dat hy al jare gelede gesê het om kinders pakslae te gee onvanpas is, omrede mens nie probleme met geweld oplos nie. Miskien moet hierdie wysheid van hom as beginpunt vir toekomstige generasies gebruik word in die geweldadige post-nuwe Suid Afrika.

Van alles geskryf en ongeskryf het die nederigheid van Prof Lappies as akademiese reus my altyd opgeval. Ek sien hom nog voor my geestesoog met sy kortbroek en mandjie stap op pad na die Meyerspark kafee. So met die stap het hy seker geworstel met 'n nuwe teorie of twee of die skepping van 'n paar nuwe (germaanse) regswoorde in Afrikaans. Tydens sy wandeling het hy dan ook vir Thys April teekom. Thys was sedert die laat veertiger jare in diens van my familie, as skaapwagter, kinderoppasser, kelner, huishulp en vriend van mens en dier. Thys het altyd in die laatmiddag die (vet) huis poedel vir 'n wandeling geneem.

Thys en die poedel was in daardie dae 'n bekende gesig in Meyerspark. Op 'n dag het Thys my vertel van die hoflike man waarmee hy gereeld gesels. Na 'n bietjie uitvra het ek agtergekem dat dit eintlik Prof Lappies is waarmee hy gesels. Ek het vir hom vertel hoe groot gees die professor is. Gereeld daarna het Thys my met oorgawe vertel dat hy weer so lekker met prof "Labaskagie" gesels het. Soms wonder ek waarom die twee gefilosofeer het. Al twee sulke besondere mense met unieke uitkyke op die lewe. Thys is lank reeds oorlede. Prof Lappies het ons ook ontval. Oor geloofsake kan ek my nie uitlaat nie. Al wat ek weet, is dat Thys die eerste sou gewees het om Prof "Labaskagie" te verwelkom.

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