

Prof CG van der Merwe : In memory of/Ter nagedagtenis van

Marius de Waal

My eerste ontmoeting met Marius De Waal was toe hy in 1974, net voor die aanvang van sy B.Comm regte studies, my kantoor binnegestap het en met daardie effense brei in sy stem my gevra het:

“Professor, nie een van my familie is in die regsberoep nie. Vertel my asseblief hoe moet ‘n mens studeer as jy regte studeer?”

Ek weet nie meer wat ek vir hom gesê het nie, maar van daardie tyd af was hy een van die beste regsstudente wat ek ooit gehad het. Eers was hy my studente assistent wat dae deurgewerk het om al die voetnote in my boek oor Sakereg versigtig deur te gaan.

Daarna het Marius sy LLM oor die mandament van spolie met onderskeiding verwerf. Die tesis het gehandel oor die besitsherstel van plakkershutte wat onregmatig van grondstukke verwyder is. Sy verhandeling is later in verskeie hofsake aangehaal onder andere ook met instemming deur Regter Edwin Cameron in ‘n uitspraak van die Konstitusionele hof.

Daarna het hy vir drie jaar gewerk aan ‘n LLD verhandeling oor die geldigheidsvereistes vir grondserwitute. In die proefskrif het hy onder andere verwys na die serwituut van balhaal ten gunste van die buurerf langs die Maties rugbyveld. Hierdie serwituut het die Matie rugbyspelers verplig om rugbyballe wat oor die grens geskop is, te gaan haal. Toe ek aan die einde van die drie jaar sy verhandeling goedkeur en hom vra om dit vir eksaminering in te dien, het hy gesê:

“Gee my net ‘n kans om dit nog eenmaal deeglik deur te werk.”

‘n Onverbeterlike verhandeling is toe drie maande later formeel ingedien.

Professor Andre van der Walt, wat later die bekende werk oor serwituutregte geskryf het, was vol lof oor die uitnemendheid van die verhandeling.

As akademikus het Marius diep spore getrap. Hy was reeds op jeugdige ouderdom ‘n professor aan die Randse Afrikaanse Universiteit. Daarna was hy vir jare lank regsprofessor aan die Universiteit van Stellenbosch onder andere as Dekaan en verskeie kere as Voorsitter van die Departement Privaatreg. Hy het talle boeke, hoofstukke in boeke en boeke oor die vakgebiede sakereg, deliktereg, erfreg en trustreg gepubliseer. Hy het ook internasionale beroemdheid verwerf met sy besoeke aan die Skotse Universiteite Aberdeen en Edinburgh, die Max Planck Instituut in Hamburg, die Belgiese Universiteite Leuven en Maastricht en die Franse Paris V Universiteit waar hy elke jaar lesings gegee het oor *South Africa as a mixed legal jurisdiction comprising English common law and Romanistic civil law*.

Marius was ‘n begaafde en simpatieke dosent. Hy het besondere moeite gedoen om ingewikkelde hofsake en regsprobleme op ‘n glashelder manier aan studente te verduidelik

Maar... ek wil vandag liever oor Marius as mens praat. Ek was altyd verbaas hoe netjies sy lessenaar was en oor die warmte waarmee hy jou in sy kantoor begroet en na jou welstand verneem het. Hy was bekend vir sy buitengewone integriteit en nederigheid. Hy was in vele opsigte ‘n rolmodel vir sy studente en kollegas met sy waardige optrede, sy oorwoë standpunte, sy gewilligheid om te luister, sy bereidheid tot onbaatsugtige diens, en sy onkreukbare lojaliteit teenoor die Universiteit en die Regsfakulteit.

Professor Roddy Paisley of the University of Aberdeen had the following to say about Marius:

“Marius was one of the most decent men I ever met. A very good scholar but, most importantly, a true friend. I still laugh about that time you brought him to our house for a light tea”.

Toe Professor Paisley vir Marius gevra het hoe hy hom op ‘n Sondagmiddag by hulle huis in Aberdeen kon onthaal, het Marius in sy beskeidenheid gevra vir ‘n koppie tee min wetende dat “tea” laatmiddag in Skotland ‘n volledige maaltyd beteken. Roddy se vrou was nie die betrokke dag by die huis nie en Roddy moes toe rondskarrel om vir Marius sy *tea* voor te berei.

Professor Chen Lei, formerly Vice-Dean of the City University of Hong Kong and now Professor in Chinese Law at the University of Durham in the United Kingdom, and the first Chinese student that obtained an LL.D degree from the University of Stellenbosch wrote the following in an e-mail:

“Just saw the very sad news that Professor Marius De Waal has passed away at such a young age. I was shocked when I heard the news. He will be sorely missed. He was very kind to me when I first arrived at Stellenbosch in 2005. This is a huge loss to Stellenbosch Law Faculty and surely, the field of comparative private law internationally. Please pass on my condolences to his family.”

Dirk Erdelkamp, an assistant of Professor Reinhard Zimmermann in Hamburg and a former LL.M student at the University of Stellenbosch had the following to say:

“The sad news about Marius reached me last night. I have gotten to know Marius as an incredibly warm-hearted, attentive, gentle, and open-minded person. I shall miss the cordiality with which he welcomed me on all my visits to Stellenbosch, his humour, and his interest in my academic development. I still hear his voice very clearly in my head and cannot believe he is gone. It is comforting that with Andreas Humm and Professor Zimmermann there are people here in Hamburg who knew Marius well, so that we are not alone in our grief.”

Dan wil ek ook met u deel wat Marius junior vir my gesê, na sy toespraak tydens die gedenkdiens in die Moederkerk:

“Hy was so ‘n fantastiese vader vir my en vir Greta. Ek het net mooi herinneringe van hom. Hoe kon ek anders as om net goeie dinge oor hom te sê?”

There is a Latin maxim which reads as follows:

Ubi felix sum, ibi patria est: Where I am happy, there is my fatherland.

Marius was happy at the University of Johannesburg, the Universities of Aberdeen and Edinburgh in Scotland, the Max Planck Institute in Hamburg, the Belgian Universities of Leuven and Maastricht and Paris V in France.

But his special love and affection remained for Stellenbosch: his beautiful house on Lanserac Road with his wife Elmarie and their children Marius and Greta, the University of Stellenbosch, the Law Faculty and the Ou Hoofgebou, which he served with unfailing loyalty for the most of his life.

I want to conclude with the words of the Roman poet Catullus to his late brother:

Atque in perpetuum frater ave et vale

And forever my beloved friend Marius, hail and farewell. May you be blessed in the house of your Heavenly Father.

Mag jy welgeluksalig wees in die huis van jou Hemelse Vader.

Prof JM Pienaar: In memory of/Ter nagedagtenis van

Marius de Waal

Dear Elmarie and family, colleagues and friends,

I have known Marius de Waal for 27 years, since I joined the Faculty on 1 April 1994. Before I arrived here in Stellenbosch, I received a telephone call from Marius enquiring as to whether we needed any assistance in finding accommodation or other assistance with our move from Potchefstroom. Once my lecturing duties were clarified, I received a package in the mail containing hard copies of Marius' hand written notes for Roman Law, one of the modules I was to teach at Stellenbosch. For many years those hand-written notes formed the backbone of my teaching, expanded on and tweaked over the years. There was no obligation on Marius to extend his hand in assistance before I joined the Faculty, yet he kindly did so. I think all of us here today can relate to a similar interaction with Marius. Indeed, I think this sums up Marius perfectly: a kind person, interested in his fellow colleagues and staff members, certainly as members of the Department of Private Law and of the Faculty, but more importantly, as individuals and as persons.

Marius was a multi-dimensional, balanced, rounded person – much like a fine-textured, balanced merlot. His multidimensionality resonated in his expertise and brilliance in the Law of Trusts and of Succession, his hard work in the Department and Faculty where one could always rely on his presence and support, his dedication to lecturing and students, his commitment to research and his community work, the latter often under the radar. He was not someone for the limelight. But if he had to, he would handle it with grace and humility. Over and above all of these qualities, was his personal interaction with colleagues and students: as soundboard, guide, mentor, friend and colleague.

He was a role model and inspiration – in the big things, like his NRF-rating, his Chancellor's award, his steadfastness in the turbulence that is tertiary higher education, or the small things, like his neat and organized office and desk. On a lighter note, for me personally, the latter was rather interesting. My first office was the one that Thala now occupies. A few years after my appointment I relocated to my current 'corner office'. Marius used to phone before he popped into one's office, just to make sure the time was convenient. He did so one afternoon in his capacity as head of the department, about a year after I relocated to my current office. After alerting me of his visit, I moved a few things around on my desk to make it appear more tidy and more organized. He knocked, always very polite, looked past the office door and said: "Juanita, trek jy al weer?" "Nee Marius, dis hoe my kantoor lyk." / "Hallo Juanita, are you moving again? No Marius, this is what my office looks like." I had to smile.

For many years we lectured Law of Things and Law of Succession in tandem, when the modules were still linked credit-wise. Long before internal moderation was the official policy in the Faculty Marius guided me in doing exactly that, considering the marks of each and every student, using rulers and moving along the mark sheets, individually scrutinizing each student's performance. Where there were discrepancies between predicates and exam marks, we scrutinized the examination scripts to find out what went wrong. I still do it exactly like that. I learnt a lot from Marius regarding processes and checks and balances.

His institutional memory was unsurpassed. He was the 'go to person' concerning programme and assessment concerns. One would first consult Marius for a succinct, precise answer instead of trying to figure out what the Yearbook provides for.

As Head of Department he led by example, by his research contributions as well as his exceptional student evaluations. Before dealing with the formal part of performance appraisal, he would first enquire about the family, whether everyone is doing fine, about your health and general disposition. This year's performance appraisals were on Microsoft Teams, the technical side organized by Shazneen. When my time appeared in the slot of Microsoft teams and I could not join the link, I contacted Shazneen to find out what was happening. The schedule fell behind because of Marius first finding out how everyone is doing. Needless to say, we also exceeded my allocated time slot.

While his legacy lives on in the Old Main Building, as we aspire to treat each other like he would have done, in how we approach our students, prepare for our lectures and attend to our daily duties, we are grappling with our loss. I think we are starting to consider on an abstract, theoretical level what his untimely death means for the Department and Faculty, but in reality we will only realize the full impact, going forward. Indeed, we can and have to conceptualize, construct and plan, but the gap will remain.

Someone else will now have to attend all of the Faculty functions – each and every Law Dance, Final Years Dance, Inaugural Lecture, Public Lecture, Graduation Ceremony, special event, research discussion, senate meeting, departmental meeting and JV-function. And even if we do find such a person somewhere or appoint such a person, in future, it will not be the same. Because there was only one Marius de Waal.

And we miss him.

Edwin Cameron for Marius de Waal
University of Stellenbosch: Law Faculty Tribute
Friday, 28 May 2021

Introduction:

1. Elmarie, Greta en Marius, ek is dankbaar vir hierdie geleentheid om my diepe respek vir Marius – en my ontsag vir julle verlies – te kan uitspreek.
2. Dit sou julle, as Marius se naastes, miskien nie verbaas het nie om te besef hoeveel mense met geweldige skok en smart sy onverwagse oorlye ervaar het.
3. Ek is een van daardie mense.
4. Elkeen van ons het ‘n deel van Marius besit – ek in ons lang, humorvolle vriendskap; en, meer belangrik nog, as medeskrywers, toe Marius die reuse taak onderneem het om saam met my *Honore’s South African Law of Trusts* te redigeer.
5. Dit was ‘n *vreugde* en ‘n *openbaring* om met Marius te kan saamwerk.
6. *Vreugde* omdat hy sekerlik SA se hoflikste, liefste en bedagsaamste mede-outeur was.
7. *Openbaring* omdat Marius se diepe intelligensie, grondige verkenning aan die bronne en sy uitnemende begrip van grondige regsbeginsels, ongeëwenaard was.
8. Professor Smit, I thank you, as Dean, for giving me this slot in Marius’s memorial at the Law School.

9. It is my deep regret that a long-standing prior commitment to an seminar on violence in prisons that I am hosting today makes it impossible for me to join you in person.
10. I share the Faculty's and the University's shock and grief at Marius's terribly premature death.
11. He was without question one of South Africa's most deeply intelligent, scholarly, penetrating, observant, rigorous and productive legal minds.
12. His premature death is a staggering loss, not only to his loved ones here today, Elmarie, Greta and Marius, but to the many many friends who deeply treasured him.
13. At Marius's funeral service on 1 May, I was struck by how vividly and feelingfully the Rektor, Professor de Villiers, Marius's friend, Charl Hugo, and others spoke – but most movingly of all, of course, Elmarie, Greta en Marius.
14. After nearly two months, Marius's death is still an acute shock.
15. It is also a feelingful loss for Stellenbosch University as a whole – and especially for the Law School.
16. To me, Marius was a warm, funny, wry, generous and delightful human being.
17. He was as diffident as he was enormously talented.
18. I treasured my friendship with Marius and it gave me delight every time I was able to make him laugh.

19. Our collaboration as co-authors of *Honore's South African Law of Trusts* brought me great joy, and taught me a very great deal.
20. Trust law was, of course, one of Marius's specialities. When he agreed to join me as co-author it was an enormous gain for the book and for trust law in South Africa.
21. Now Marius was the author not only of the chapter on trusts in the *Annual Survey of South African Law* and of numerous penetrating, internationally-recognised contributions to trust law – he was also the main contributing author to our country's standard work in this field.
22. Marius brought immaculate expertise and scholarly precision and exactitude to the work.
23. (Elmarie, ek wil amper se, dat die woorde immaculate, precision and exactitude, met humor natuurlik begevoeg asook deurnisvolle menslikheid, Marius opsom).
24. We mourn Marius profoundly – I mourn him profoundly, and can only imagine the loss that Elmarie and Greta and Marius, and others who were even closer to him, must feel.
25. Our consolation, if there is any consolation, is that this huge-spirited, hugely intelligent and delightfully generous human being has left a profound mark on scholarship, on this University and on each of us.
26. And through his profound impact, his memory and brilliance live on.

Marius de Waal Memorial Event - Concluding words by Jacques du Plessis

I would like to convey my appreciation to the Dean for the opportunity to say a few concluding words at this sad, but also celebratory occasion.

I would first like to express a few words of thanks. As Marius's sister said in her moving address at his funeral service, beware of a woman with a list – *pasop vir 'n vrou met lys*. Well, a man with a list should not be underestimated either.

And on my list I would first like to thank all the speakers today who so kindly and courageously shared their appreciation of a person who meant so much to them and to us all. Your tasks were not easy, for Marius was very close to you, and his loss was so sudden, but you vividly recreated him in our minds, and reminded us why he was so dear to our hearts.

Tweedens is 'n woord van dank verskuldig aan almal wat vandag se huldigingsgeleentheid ondersteun en moontlik gemaak het. Aan Elmarie en die familie, wat sulke ongelooflike krag en standvastigheid in hierdie moeilike tye openbaar het en aan vandag se gebeure hul seën gebied het. En dan ook aan die Dekaan en haar personeel wat gehelp het met die opstel van die program, die uitnodigings, die tegniese reelings, asook die byeenkoms hierna.

Thirdly, a word of thanks goes to all here in person, as well as those of you who are present virtually. Many of you have in various ways – through messages, posts and even words of poetry – expressed your sadness, but also your deep appreciation for all that Marius meant to you in your lives. We are glad that you could be part of today's event, and in this way not only support us all in coming to terms with a terrible loss, but also join us in expressing gratitude for the gift that was Marius.

To conclude means to bring to an end, but also to express an evaluation after some consideration. *Afsluiting verg dat 'n lyn getrek word, maar ook 'n waarderende terugskouing.*

What can one say today in conclusion about Marius? The previous speakers have highlighted so many facets of him. I would like to tell just one story that to me sums up so much of him.

At the end of each year, when we as staff members feel that we have given all that we possibly can in the key performance areas of conducting research, teaching, administration and community service, our University, rather clinically, in terms of a system of so-called performance evaluation – *prestatie-evaluering* – expects of us not only to say what we did, but also to give ourselves a mark out of 5, where 3 is just doing the minimum, 4 is good and 5 is unattainable. Even worse, these self-evaluations have to be discussed with your Head of Department. Well, a few years ago, when I was Head of Department of Private law, I had the unenviable task of conducting these performance evaluation interviews, including one with Marius, a task that I found rather awkward, given that he was my teacher from the first year of my legal studies. In fact, the first time I met him was in this very lecture theatre, when he stood exactly where I am standing now, and I sat in the back, blissfully unaware of how our paths would cross right up to the end.

I suppose that you can guess what happened during our performance evaluation discussion. Marius gave himself low scores for each and every of the performance evaluation categories, mostly just barely above a 3. To some this might sound strange, for we all know how extraordinary his achievements really were. But my impression was that Marius really felt that in terms of a proper, perhaps rather literal interpretation of the wording of the performance criteria he deserved no more. So to me fell the unfortunate task of explaining to him that on a more expansive interpretation his performance was actually quite excellent. Marius would accept these explanations only reluctantly, but in the end we would settle on some amicable compromise. I do hope that Marius took this lesson to heart, and that when he and Saint Peter met at the Pearly Gates of Heaven and he may have been asked to account for himself, he did not once again give himself a too low mark, thereby ending up in the wrong place.

Ultimately, what really mattered to Marius was not formal accolades or admiration. What really mattered to him was just to be a principled and kind person.

May we honour him by expressing these values in our own lives.

Thank you.
