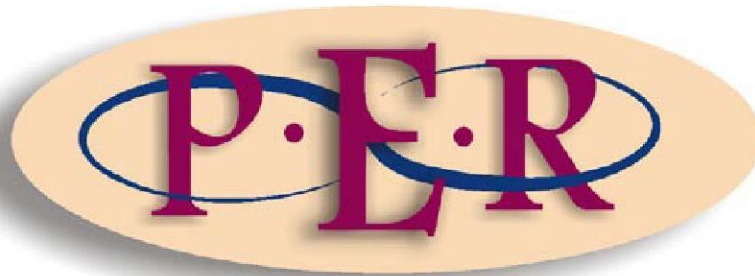


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## The life and times of a learned jackal for justice\*

L Du Plessis\*

"Foxes have holes and birds of the air have nests,  
but the Son of Man has no place to lay his head."  
(Holy Bible, Matthew 8:20)

*Noscitur a sociis.* You are known by the company you keep. *Aan jou vriende word jy geken.*

If this saying holds, my friends, then I, your guest of honour at this auspicious occasion, am a human being beyond compare, and perhaps even a semblance of the laureate so profusely showered with your praises today. However, acceding to honest introspection, I fully reckon with the possibility that the proverb may be amiss and at any rate not applicable to me. But let me first speak the following words in bold before I say anything more:

**"My friends, thank you, simply but sincerely, for your unfaltering camaraderie through the years, as together we negotiated the labyrinth that is académie; for your enthusiasm to walk many an extra mile with me and, in sum, for your amicable and caring involvement in the fulfilment of what to me has been a thoroughly gratifying career (so far).**

And now, having said what under no circumstances could have been allowed to remain unsaid, please take no exception when I emerge from my lair to disenchant you. For verily I must say unto you, I am not in the habit of being beyond compare, and therefore my conscience enjoins me to construe words of praise coming my way with judicious circumspection. I appreciate and, indeed, treasure your benevolent observations nonetheless, but allow me also to introduce to you a downsized laureate. You may have a clue to what species (s)he is. Emerging from a lair, which is a

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• This writing originates from a colloquium hosted by the Faculty of Law, University of the Western Cape, on 2 October 2015 to celebrate the life and work of the author of the piece, and to present him with a *Festschrift* in his honour: cf De Ville, Jacques (ed) *Memory and meaning. Lourens du Plessis and the haunting of justice* (LexisNexis Durban 2015). The laureate's response mostly draws on words of appreciation and reflection coming from the said piece.

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habitable *hole*, a fox or vixen (s)he must be, for the Good Book assures us that “foxes have holes”. Foxes also have jackals in the *Canidae* family as relatives, and *vice versa*, going by the generic designations *Vulpes* and *Canis* respectively. “Fox” and “jackal” are therefore not two names for the same animal, but names for two distinct but similar-looking carnivores.

Ronald Dworkin confidently asserts that it is the “usual way of philosophers” to describe the impossible. Trying my shaky hand at the perpetration of what is impossible, I premise that a “fox” and a “jackal” are one and the same kind of animal, and I stretch my capacity to describe the impossible to a point where, in my book, a “fox” will denote a younger and a “jackal” an older exemplar of the species.

Now that the two-in-one fox-jackal (or jackal-fox) has been introduced, come and meet Ms Hedgehog who, together with the *Canids* just mentioned, is another one of the main characters in a saying which is attributed to the ancient Greek poet, Archilochus, and which has remained alive and kicking to this day. Erasmus Rotterdamus in his *Adagia* from 1500 translates this proverb into Latin as follows:<sup>1</sup>

“*Multa novit vulpes, verum echinus unum magnum.*”

For those of you with a Latin as rusty as mine:

“The fox knows many things, but the hedgehog knows one big thing.”

This apothegm actually denotes the adversarial unlikeness of generality and specialisation, and interrogates the aptitude of, among others, a scholar, to determine whether (s)he is more of either a generalist or a specialist. Proficiently harnessed, the ancient axiom can have a decidedly philosophical impact, helpful and instructive when a particular kind of philosophical point needs to be made. Thus, to maximise the gains to be had from looking at the pithy wisdom of the poet we must take a closer look at the characteristic demeanour, the instinctive reasoning and the respective “worldviews” of the characters in our mini-drama, heeding the following advice: *behold the fox, beware of the jackal and let your dealings with the hedgehog modesty bespeak.*

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<sup>1</sup> From the Greek πολλὰ οἶδ' ἀλώπηξ, ἐχῖνος δ' ἓν μέγα.

Sojourner foxes and jackals know how to depend on cunning to survive – hence the advice to behold them and the warning to beware of them. They know many things and survive because they draw on widespread and diversified experience. In their conviction the big world “out there” cannot boil down to a single idea or “law”.

The hedgehog, on the other hand, sees the world through the lens of a single defining idea or feature, knowing but one thing and using this knowledge in every situation where wisdom or advice of a sort is called for. This it does with the confidence and flair of a connoisseur, but also with an inclination to succumb to the temptations of immodesty.

You may think that, up to now, I have been trying to prepare you for a scenario where I duly acknowledge your *laudationes* but then request you please to abstain from exaggeration for, after all, I am but an ageing jackal who has come a long way, surviving, every so often, on a cunning less than exemplary.

Well, here is an important announcement: I have not been a *Canid* all along. In about my second year as a student I became more and more possessed with the intricacy of doing justice in a country inhabited and, indeed, besieged by injustice. During this phase of my mental growth Ms Diké, the timeless Greek goddess of justice, began to haunt me, in season and out, supplying all the best answers I had to annoying questions. Eventually an impressive array of conventional defence mechanisms failed to stem the tide of justice rising inside me and fast becoming the *Leitmotiv* in my thinking and doing. Defence mechanisms that failed include my childhood status as “son of the magistrate”; my exposure to apartheid propaganda aplenty; ingestion of the poison of civil religion, masquerading as wholesome “Calvinism”; Christian-national education; ten months of compulsory military training; a superfluity of apartheid propaganda fabricated and spread by the Afrikaans Press and the SABC and, to top it all, my ambition to hoard loads of money as a practising advocate and then, after retirement at age forty, to “do something for my country”.

For quite some time I espoused and defended the naively erroneous half-truth that, inherently and inevitably, and perhaps also genetically, law and justice are stablemates always coexisting peacefully and even interdependently. Experience, however, has

taught me that the struggle for justice is perennial and that law may or may not be conducive to it. In a state where harsh laws were enacted at the drop of a hat, I came to know that *summum ius summa iniuria* in practice could (and did in actual fact often) mean invoking law to mete out harm and injustice.

My Calvinist convictions bequeathed to me the faith that the Bible is the highest normative authority determining the dos and don'ts of a just life well lived. And within this scheme of faith, it began to dawn upon me that apartheid was a major don't – if you take the Bible to heart. However, in white Potchefstroom, at the time, only a handful of confessing Christian believers were prepared to voice concerns of this kind openly. I was privileged to have been in frequent contact with and to befriend some most outstanding human beings, professors, peers and students, among that handful. I wrote my doctoral thesis on *The juridical relevance of Christian justice* ("Die juridiese relevansie van Christelike geregtigheid") in quest of, if not perfect justice, then at least justice as good as it gets. Justice, I thought, is a major social virtue that I could help eternalise by reducing it to coherent writing. I am probably the only *homo sapiens* still around who will still understand my enigmatic definition of Christian justice and the thinking behind it. I beg you, though, as a gesture of amicable consideration, not to use my definition. Rather opt for something that we can be sure does not exist, such as Jacques Derrida's justice as deconstruction, and *vice versa*.

I forewarned that the hedgehog, with its one big thing, can get out of hand. Imagine, for instance, the threat that the spines of a *boerboel* or even just a fox-sized hedgehog could pose. An ethico-philosophical example of such exaggeration occurs in one of the last books of the late Ronald Dworkin, the ultimate hedgehog of our day. The book is, quite appropriately, entitled *Justice for hedgehogs*.<sup>2</sup> For Dworkin *value*, in all its forms, is "the one big thing" to know. What truth is, what life means, what morality requires, and what justice demands are different aspects of the same large question, and every variation on a theme of scepticism (philosophical, cynical and postmodern) threatens the unity of values. Dworkin's self-assured upsizing of the hedgehog's one big ethical reality and the space that it demands truncates the ability of the fox to get to know

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<sup>2</sup> Cf Dworkin, Ronald "Justice for Hedgehogs" 2010 Boston University Law Review 469-477.

(too many) things. Dworkin's argumentation seeds my mind with scepticism about any philosophical proposition overly grandiose.

As a young scholar and a fox awakening, I saw growing opportunity for my scholarship to contribute to the transformative healing of an unjust society, but then only if my discipline with its sub-disciplines could honour its entwinement with other disciplines, notably and especially in the social sciences. My interdisciplinary work added to my profile as a fox and an academic activist writing critically about apartheid in both scholarly and popular-scholarly publications (including the daily press).

As a jurist and social scientist criticising a despotic regime one had to mind one's academic Ps and Qs, because those not taking kindly to your kind of criticism almost invariably sought to portray it as "emotional" and "unscientific" – and thus they dismissed it. In legal discourse this dismissive attitude manifested as an insistence that "pure black letter law" and predisposed political views do not belong in each other's company. I was at pains to come forward with research output passing muster as solid scholarly work with its critical edges as well as its interdisciplinary integrity intact. These standards I sought to maintain in popular scholarly writings too.

The advent of constitutional democracy in South Africa in 1994 marked the achievement of crucial ideals and objectives for which a handful of academic activists in fields in which I have also been working had struggled for so long. Suddenly these academic strugglers' expertise was needed to help shape the many facets of "a new South Africa". Research and reflection on how to meet this need left its indelible mark on my career as a legal academic (a researcher and a teacher). The focus of my academic interest gravitated towards specific areas within constitutional law and theory, each with its own bundle of distinctive issues. However, at the pinnacle of my interest was constitutional interpretation – and it still is. Thus I have become less of a fox and more of a hedgehog, though I realise that in the final analysis I never really had the inclination to turn out to be a fully-fledged hedgehog. As my thinking is maturing, so is my reverence for the justice I embrace with measured commitment. And I promise, once more, never again to try to define this *primus inter pares* virtue which requires to be done (in the first place) and then to be defined (if necessary).

“Keep on walking until the quest for justice has been fulfilled!” I persist in reminding myself.

“What are the odds that some traumatic event, say a botched evolution, can turn the laureate of today into the foolish old jackal of tomorrow – one who rushes in where angelic hedgehogs fear to tread?” “Disturbingly favourable,” the disgruntled soliloquist in me retorts - quite uncalled for. But also hear me, the cautious optimist, now living in the incomplete absence of justice denied and hope frustrated. I have come to a crucial hole in the wall of the earth, recently (re-)discovered and dubbed *Homo Naledi's cave* – the cave of the stars! I may be able to enter through this hole, sooner rather than later, upon shedding the overloads of physical and mental baggage in my life. These excesses of living human tissue (and sparks of mind) come in my way and make it well-nigh impossible for me to worm myself through the hole into the cave. I have pinned my hopes on camaraderie eventually arriving to my aid and push-pulling my XXXL persona, body and soul, into the cave – a birth in reverse indeed!

Failure to access the cave will leave me at the mercy of others for but secondary accounts of what had been going on beyond the strategic cave opening to (pre-)history for millennia on end. Regrettably I also stand to forfeit quality first-hand observations of what it looks like inside the cave at any given moment in what has come to be known as “the present” or “today”.

Pray that obstacles increasing with age, *my age*, will not smother my pursuit of two lately acquired interests, the first in Palaeolithic history taking us back as many as two and a half million years in time, and the second in pre-colonial histories from our part of the world, going back some 20 000-30 000 years. I remain committed to “today” and “the present” nonetheless.

In the Cradle of Humankind, the world famous archaeological site at Sterkfontein about 40 Kilometres northwest of Johannesburg, foxes spoilt for choice have had their holes, birds have had their nests and various exemplars of *Homo Sapiens*, in contradistinction to the Bible's exemplary Son of Man, have had a place to lay down their fossilising heads. This is more than enough to capture the inquisitive mind of the

jackal and precipitate action. Be prepared, therefore, to run across this creature at Sterkfontein soon. And remember, at all times: Behold! Beware! And take care!

*Fossils of the world unite!*