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In memoriam

Judge Jan Hendrik Steyn

Tribute by **Jeremy Gauntlett SC**, Cape and Johannesburg Bars

JAN HENDRIK STEYN, judge and public servant extraordinary, died at his home in Constantia on 30 December 2013, aged 85.

He was born in Cape Town on 4 March 1928. He had remarkably talented and energetic parents. His mother, Zerilda Steyn, was a pioneer of social welfare in South Africa, founding the Urban Housing League. His father, Hendrik, had joined the Boer forces in Natal as a 13-year old farm boy. He survived, becoming a gifted scholar in literature and theology at the Victoria College, Stellenbosch and later Princeton. He joined the Dutch Reformed Church ministry and was a tireless secretary of the British and Foreign Bible Society. The first Afrikaans translation of the Bible indeed had the nickname 'Bible Steyn.'

Both Jan Steyn's parents were awarded DPhil degrees *honoris causa* by the University of Stellenbosch for their work. Their dedication to philanthropy left its mark. Turning 80, Steyn recollected in an interview that his mother had said: '*besorgtheid is die mooiste woord in die Afrikaanse taal*' ('concern is the loveliest word in the Afrikaans language').

After matriculating at Jan van Riebeeck Hoërskool in Cape Town, he graduated in law at Stellenbosch. Steyn commenced practice at the Cape Bar in 1950, after clerking to the later Chief Justice Ogilvie Thompson. The early years were not easy. He lectured part-time at both Stellenbosch and Cape Town universities, wrote for the Cape Times and did law-reporting for Juta & Co, to keep the wolf from the door. He became one of the youngest judges in South Africa's history when, at the age of 36, he was appointed to the Cape Bench.

Almost immediately Steyn was drawn into what became the focus of his life. His interest in law was not for law's sake. Throughout his life it was for what law could do. He adhered to the aphorism that civilisation in a society is marked by the way it treats its criminals. He abhorred corporal punishment, especially when imposed for transgressions of prison rules. He felt strongly that bail should be fixed with proper regard for an accused's means, to avoid breadwinners languishing in jail when they could remain in employment. It was also his conviction that as a departure point in sentencing every effort should be made to keep first offenders out of prison. He was a pioneering advocate of non-custodial sentences rather than short prison sentences, which he considered both damaging

and ineffective. He thought the death penalty repugnant, his duty to impose it only in the most exceptional cases, and pressed for its end.

Steyn was an indefatigable prison visitor. One visit he organised (inviting his colleagues Michael Corbett – later a chief justice – and Martin Theron to accompany him) had a dramatic sequel. This was a face-off with the prison commander on Robben Island, Colonel Badenhorst and the head of the prison service, General Steyn. Badenhorst threatened a prisoner who, on behalf of the prisoners, was describing to the judges regular assaults on prisoners – which, he was telling them, Badenhorst tolerated. He was told by the judges to let the prisoner speak. They wrote a report which resulted in the removal of Badenhorst. The prisoner was Mandela; the episode is appreciatively recounted in *Long Walk to Freedom*.

Steyn was concerned that future lawyers should know what social realities were outside panelled courtrooms. In his years on the Cape High Court he assiduously took university classes to see prisons from the inside. He saw also the need to educate the public, and to help former prisoners make new lives. He played a leading role in setting up the National Institute for Criminology and the Rehabilitation of Offenders (NICRO).

HIS IDEAS AND ENERGY – and perhaps his dash and public profile – did not always endear him to all. Chief Justice Rumpff told him bluntly at a cocktail party that he should decide whether he was a judge or a welfare worker. Steyn was taken aback – but Rumpff had put a finger on the fact that ultimately Steyn had concerns and interests beyond the law. Moving to a free society founded on the rule of law and the protection of fundamental rights, building a modern economy, and above all, urban upliftment were his grails.

In 1976 two things came together. One was that Steyn was paying the price of becoming a judge so young: he chafed at the confinement of the office, and the vista of years on the adjudicative treadmill. The other was the Soweto Uprising.

Steyn saw instantly the need for a coordinated response. He was instrumental in organising a summit of black urban leaders like Dr Nthatho Motlana and industrialists led by Harry Oppenheimer and Anton Rupert. From this the Urban Foundation was born: a non-profit organisation funded by business (with international support) to facilitate access to housing, improved education and business opportunities for urban black communities. Steyn was granted special leave from the Bench in March 1977 to head it (he resigned formally as a judge in 1981). He worked without let-up, as his parents had done before, to raise funds and mobilise support.

A priority was legislative reform. Black people had no claim to title in urban areas: their very residence there was on sufferance, under section 10 of the Bantu Urban Areas Act. The fiction was that they were mere sojourners, with home and heart in the archipelago of emergent Bantustans, to which

(from 1976) 'independence' was being granted. Steyn knew that the grant of outright ownership of land to urban blacks would be seen as politically impossible for the National Party (with Jaap Marais' Herstigte Nasionale Party harassing its right flank). He came up with a proposal of 99-year leasehold which, once accepted, he reckoned, could be melded into full title within a few years. Crucially the strategy would create tenure where none had existed, reverse the Canute-like stance of government on urban black settlement, and promote an entrepreneurial black middle class stifled since the Native Land Act in 1913 and its post-1948 legislative extension. The strategy was ownership in all but name.

The proposals were received glacially by Dr Connie Mulder and his senior officials at Bantu Administration. This was in a meeting in 1977 in Mulder's office in the then HF Verwoerd Building with Steyn and his legal team, led by DP (Lang Dawid) de Villiers QC. (De Villiers had powerful credentials: he had led the South African legal team in the World Court case over Namibia in The Hague, and was managing director at the time of Nasionale Pers). Eiselen, Mulder's director-general, was confident enough then to attack Steyn and De Villiers head-on: 'Judge Steyn and Advocate De Villiers are supposed to know the law – yet they put up this sham. You know what you are trying to do: undermine our whole society'.

There was silence in the lift down from Mulder's office at Parliament. To the wide-eyed junior advocate, new to Cape Town, whose first brief had been to draft and translate the proposals, Steyn said trenchantly: 'Now you know what it's like to piss into a black South-Easter.' He hated what he saw as a suicidal obduracy in hardened rightists like Mulder. He was appalled at the plight of victims piling up in burgeoning *blikkiesdorpe* outside South African cities and towns, and still being 'endorsed out' to Limehill, Morsgat and Dimbaza.

Steyn refused to give up. He had considerable charisma, eloquence and energy for the cause: again those parental genes. The political gale he had come up against in Mulder's office had itself to yield to relentless economic and demographic pressure. When influx control was repealed, De Villiers called to congratulate Steyn: 'There falls the first pillar of apartheid.'

It is infrequently remembered that FW de Klerk's speech of 2 February 1990, announcing the release of Mandela and the lifting of political restrictions, also announced the allocation of R2 billion to an independent trust to be chaired by Steyn. Those who served with him – a recognition of Steyn's standing – included Dr Stanley Mokgoba, Eric Molobi, Harriet Ngubane, Dr Wiseman Nkhulu and Dr Mamphela Ramphele.

It grieved Steyn to see that a decade later, matric history textbooks had it that the Urban Foundation and its successor had been an instrument to modernise racial domination.

In 1996 Steyn handed over the reins to Nkhulu. He had been appointed a judge of appeal of Lesotho, where he served for eighteen years, eleven as President of the Court of Appeal. His human and administrative skills were fully extended; he rebuilt the court after the military coup, saw in the new era of constitutional government, coaxed reforms in the profession, raised funds for a court library (to which he insisted students should also be admitted), and secured the publication of the Kingdom's statutes and law reports and advocacy training for practitioners. Simultaneously he served as a judge of appeal in

both Botswana and Swaziland, and as South Africa's Ombud for the Long-term Insurance Industry.

Steyn's gifts for persuasion and his shrewdness are illustrated by just one example: his fund-raising for the court library in Maseru (to which he insisted students be admitted). He went to see a close friend, Julian Ogilvie Thompson, and asked if Anglo's chairman's fund might perhaps assist. Ogilvie Thompson said that it was perhaps beyond its remit. 'That,' said Steyn sadly, 'is a great pity. I wanted to name it after your father and my mentor.' He got the money.

Steyn declined no public service. As a judge, he chaired several commissions of inquiry. He served for seven years as chairman of the Commission on the Remuneration of Political Office-bearers. He served for ten years as chancellor of the Medical University of South Africa (Medunsa), as chairman of the Community Chest and the Unclaimed Shares Trust, and to his death as a trustee of the Abe Bailey Trust. He derived great pride from his wife Ann's own work as President International of Reach to Recovery, a breast cancer NGO based in Geneva. He found time too to serve on the boards of several public companies, including Anglo American, Barloworld, Barclays (later FNB) and Metropolitan Life.

Steyn delighted in his friends, and especially the seven children, fifteen grandchildren and a great-grandchild he shared with Ann, scattered from Hong Kong to Switzerland. Together they had tumultuous family holidays, where they revelled in his ebullience and warmth. All seven children, six spouses, fifteen grandchildren 'en vyf partners van die kleinkinders' celebrated his 80th birthday in a villa at Hvar in Croatia. He was the magnetic pulse of the extended family. 'Op sy kop' they learnt was his highest accolade, while a comical misfortune was always 'n ligte mistyk'. He delighted in the 'ligte mistykies' of the mighty, although he himself was partial to tea with Thatcher and cricket with Major.

Honorary doctorates were awarded to Jan Steyn by the Universities of Cape Town, Stellenbosch, Witwatersrand, Natal and Medunsa. When he retired as President of the Court of Appeal of Lesotho in 2008, he was accorded a knighthood by King Letsie III.

STEYN narrowly survived a serious car crash seven years ago, and coped bravely with pacemakers, a triple heart bypass and other tribulations of age. (These included being assaulted and robbed twice in his home.) He made a pact with his wide circle of friends, whom he treated liberally with warmth and red wine: no one was allowed to discuss his health. He continued almost to the last to write occasional media pieces: he was outspoken on what he saw as obvious corruption and a sustained assault on critical institutions of democracy, through media controls, secrecy measures and judicial appointments. It was not necessary, he said, to aspire like Lenin to seize the commanding heights of the economy and the state. He pointed to Frantz Fanon, who said it was enough to control the neutral middle ground. He was anguished, and angered, by the fall from grace of the new society he had worked for.

The epitaph chosen for his father on his death was Esther 10:3 – '... he was great... and accepted of the multitude of the people.' It fits the son too. His *besorgdheid* endured to the end. **A**