

## **Protest address by Professor Cleveringa**

*Address given on 26 November 1940 by Professor Rudolph Pabus Cleveringa as Dean of the Faculty of Law, in protest against the dismissal of Professor E.M. Meijers, professor at the (State) University of Leiden*

I am standing here today at a time when you would expect to find a different person before you: your and my teacher, Professor Meijers. The reason for this is a letter that he received this morning directly from the Department of Education, Arts and Sciences, informing him of the following: 'As directed by the State Commissioner for the occupied territory of the Netherlands, pertaining to non-Arian government staff and those of equal status, I inform you that with effect from today you are discharged from your position as professor at the State University of Leiden. The State Commissioner has determined that those concerned for the time being retain the entitlement to their salary (including allowances, etc).'

I pass on this message to you, stark as it is, and make no attempt to qualify it further. I fear that any words I could find, however I might choose them, would fail to convey the grievous and bitter emotions that this message has aroused in me and in my colleagues, and, I am convinced, also in you and in countless other people within and – in so far as this comes to their notice - beyond our borders. I believe I am relieved of any need to interpret these emotions because I sense that the same thoughts and feelings are being communicated back and forth between us, without the need for words, yet completely and precisely understood by all of us.

It is not for the purpose of any such interpretation that I request permission to address a few words to you; if I had no other aim than to emphasise our state of mind, I would, I believe, have no better instrument than to end here and to leave you to the icy oppressiveness of the horrifying silence that would immediately descend upon us. Nor shall I with my words try to direct your thoughts towards those people who were the originators of this letter, the contents of which I have reported to you. Their very act speaks for itself. All I desire is to remove them from our sight, leaving them beneath us, and to direct your eyes upwards to the resplendent figure of the person to whom we owe our presence here.

I believe it is appropriate at this point in time that we should again try to bring to mind *who* it is, that an authority resting on no other foundation than itself, can carelessly brush aside after thirty years of service; who it is whom we see forced to interrupt his work in this manner. I say to you: this is what I wish to do, but at the same time as expressing this desire, I am also faced with the awareness that my wish can never be fully realised; because the greatness of such a man as Meijers cannot be captured in just a few minutes and with just a few words. I can do no more than attempt with a few sentences, a few references, a few lines to produce an image that may serve as a suggestion for receptive spirits; and of course that applies to all of you. Because of what you have heard from others and what you yourselves have already experienced, each of you to some degree appreciates Meijers'

significance for his University, his people, his country, and each of you is open to the awareness of this.

The collection of essays entitled *Rechtsgeleerde Opstellen* presented to him by his students on the occasion of his silver jubilee, contains a list of his writings and treatises up to 1 July 1935. The mere cataloguing of these works takes up 69 pages of print; at the time the list was almost - but not quite - complete. However, given the present status of his work, this catalogue is already far from up to date. Books such as the following that I will mention, and that - each on its own merits - would assure the author of a place of honour, do not appear in the list: *Het Oost-Vlaamsche erfrecht* (the third volume of what he called *Het Ligurisch erfrecht in de Nederlanden*); *Responsa doctorum 'Tholosanorum'*; *Tractatus duo de vi et potestate statutorum*; treatises such as that on: *De beteekenis der elementen 'waarschijnlijkheid' en 'schuld' voor de aansprakelijkheid uit onrechtmatige daad* (W.P.N.R. 3442 *et seq.*); *over Erfrechtelijke moeilijkheden op het gebied van het internationaal privaatrecht* (W.P.N.R. 3493 *et seq.*), *Het vraagstuk der herverwijzing* (W.P.N.R. 3555 *et seq.*). I mention simply a rather random selection of the many works published since 1935 that were not included and that together could constitute the life work of a prominent lawyer. Various contributions to the *Tijdschrift voor Rechtsgeschiedenis* are also not included. I remind you of this in the driest way that I am capable of, offering you these details as a book-keeper offers his figures: they speak a clear language, clearer than any eulogy that I could produce. It would be most unfitting if I were to try to convey to you an impression of his greatness prompted by quantitative statements; there are, namely, instances where great quantities can evoke aversion rather than respect – and it is also conceivable that a scholar may produce a massive body of work that is of little significance.

How rich in diversity, how thoroughly considered, how masterly in design and implementation, how succinctly everything has been captured that has so far flowed from Meijers' pen and elevated him to become one of the greatest legal scholars of his time and his country; yes, one may even say, of many times and many countries. I repeat: rich in diversity. We have had many legal scholars here in the Netherlands who have accomplished excellent work and who still are known and honoured as grand masters, but whose work has related to only a single field; whose name immediately brings to mind one particular subject. Molengraaff, for instance, is immediately associated with commercial law, Van Boneval Faure with civil procedure, Simons with penal law, Buys with constitutional law. If they ever ventured outside their specialist fields, they did not go beyond [cross?] their boundaries by far, or only in minor matters.

If one tries to classify Meijers in a similar way, the rich diversity of his work will immediately speak for itself. To what branch of the law should one link his name? 'To civil law,' will be the initial reaction of many people. But those who do so should think again. In the first place there is the fact that he has countless treatises and essays to his name that are no more related to civil law than in so far as some connection can be found between all earthly things. His first book, his doctorate thesis, was not on civil law, but on philosophy. In this work he defends Utilitarianism against the Rationalism of

Kant, and assumes general well-being to be the objective of every legal institution. On this basis, he further determines the role of dogma in the formation of *ius constituendum* and the formation of judgments based on *ius constitutum*; and in so doing he subjects the most difficult issues of interpretation and enforcement of statutes to a precise and critical analysis.

Anyone who picks up the book without knowing the author and is not misled by the unadorned simplicity of its language, style and structure to believe he is dealing with simple matters, will be more likely to suspect he has before him the work of an individual who during his life has matured to a high and well-balanced wisdom which most people only attain after many years, rather than of a 23-year-old student. It may well be that his first publication was jurisprudential in nature, but what he wrote about topics published in the 1935 list under the heading of 'Economic Issues' is also completely outside the field of civil law. I may reveal here a small, but, I believe, illustrative experience from the time shortly before I became a student. I remember hearing someone from the banking world resolutely tell my father, who rightly disputed this, that he had heard that that Meijers was a Professor of Political Economy; what he had read of his works made this abundantly clear, and he knew moreover – which was in itself true – that some years previously Meijers had acted as adviser to the Association for Political Economy and Statistics.

But there is also a second point: what is this 'Civil Law' to which people wish to link Meijer's name like that of Molengraaff to commercial law, Faure's to civil procedure, etc. Anyone who wishes to have the right to make this connection, and in so doing to restrict Meijer's work to one particular field, has to interpret the term 'Civil Law' very freely indeed. It has to comprise commercial law and civil procedure, as well as private international law, Dutch legal history, French legal history and medieval Roman law; because anyone who fails to do this and who claims that Meijers is properly categorised by describing him as a civilist, is giving a completely inadequate representation of him! And does 'Civil Law' then not approach an all-encompassing description? A description that almost ceases to contain any element of division or distinction? Is it not like saying that an issue is not relevant for the whole of the Netherlands, but remains a provincial matter because it only affects ten of the eleven provinces? Actually, if Molengraaff is commercial law and Faure civil procedure, then Meijers may be civil law, but this is still not a pure classification of equal ranks; rather it is an inclusive classification and simultaneous placement at a higher level. Given both the diversity of his work and its substance, he ranks first among these and other leading figures.

In terms of commercial law, Meijer's work comprises a selection of his famous memoranda on company law, insurance, transport, trademark law and much more, and includes a number of papers. The same applies to civil procedure, and every student who comes to take his final exam knows about his completion and addition to Caroli's masterpiece on 'Summary Proceedings'. And what essays these are! Just consider what he wrote about 'The influence of practice on the formation of Dutch Civil Procedure' in the first volume of the T.v.R. [EvP: *Tijdschrift voor Rechtsgeschiedenis*]. It concerns what is basically a very simple and obvious matter; people complain about the slowness of civil proceedings even *after* several revisions - including two

major ones - in 1838 and 1896 - that were intended to simplify matters. One can only conclude how deplorable it must have been before 1838. Is this right, the author asks. He sought an answer in the archives of the Amsterdam District Court, with this surprising outcome, that it appeared that the average duration of a court case in the years between 1811 and 1938 was two to three months! One might say that anyone could have found this. Indeed, but even if everyone could have done it, the fact remains that nobody did; and why not, if it was so easy? Or is this a case, as so often, of half the problem being solved simply by formulating the question; and does Meijers' greatness perhaps lie in the fact that he can provide the answer to questions that appear dangerous because he is able to express them in a simple form. Take the question of legal personality and read about the subject in the law literature before 1932; you will soon be confused by all the theoretical attempts at comprehending the issue! And then December of that year saw the publication of his article in the W.N.P.R. (3285 *et seq.*) on the meaning of the problem of legal personality with the almost too simple introduction: 'Should we not begin by considering on the basis of case law what difference it makes whether we adhere to construct theory, reality theory, or even superorganism theory or nominalistic theory?' And as a result of this, and of what follows, such a light suddenly starts to shine on the whole dark affair that in 1935, in a review of the umpteenth treatise on 'The essence of legal personality', one of our shrewdest and most prominent legal experts exclaims: 'It should be forbidden, under penalty of being completely ignored, to publish anything more about legal personality, its problems and essence without first demonstrating clearly that one has taken good note of Meijers' opening in W.P.N.R. 3285' (W.P.N.R. 3405).

The same is true of the introduction to the paper on civil procedure that I mentioned. But, after the simple statement of the question, pay attention to how this is further expanded: how he was able not only to uncover the fact of the shorter duration of the proceedings, but also to demonstrate – with arguments so well-documented as to resist any attempt at refutation - that the adverse shift came at a later time; whatever the causes may have been. And ask yourselves the question again, whether you, too, could have found this, whether you would have thought of looking where he looked; not to mention actually finding what he found!

If Meijers is 'Civil Law', then this can only apply if it is interpreted in its broadest sense; including commercial law and civil procedure, private international law and the whole civil law history of the Netherlands, Belgium, France and Italy. I would remind you of his *Contribution to the history of Private International and Criminal Law in France and the Netherlands* of 1914 and his work 20 years later on *l'Histoire des principes fondamentaux du droit international privé à partir du moyen âge*, just to restrict myself to his private international law books, that are known far outside the borders of our country; I would remind you of the discovery (written in the first volume of the T.v.R.) of Bynkershoek's *Observationes Tumultuariae* and its later publication with other contributors; of the *Memorialen-Rosa*, the customary law of Kamerrijk and St. Amand; and above all the enormous work – in fact the continuous development and endorsement of a few bold key propositions, into the details of which I do not wish to enter here – about Ligurian inheritance law, of which

further volumes are expected. Olivier Martin, in his own words 'très hésitant' about these propositions and therefore by no means inclined towards uncritical approval, begins, when called upon to express his opinion on this work, to express his respect for it:

'Surtout à notre époque où l'on aime mieux brusquer le succès que réaliser pas à pas une oeuvre longuement mûrie, tous les historiens du droit qui le liront, même si la nouveauté et l'hardiesse de son thème essentielle les laisse un peu hésitants, seront frappés de son évidente sincérité et rendront hommage à la conscience de ses recherches, à son sang juridique, à l'ingéniosité de ses idées'. The archives of a large part of Europe opened up: from Austria, Swiss cantons, France, Belgium, the Netherlands and England; shortly to be joined by Spain; and even if the main propositions posited there were rejected, there remains a series of powerful works which – I will quote Martin one more time – 'garderont leur valeur absolue' (R.M. 1935, pages 77 to 81).

We are proud of the fact that they were wrought by a Dutch scholar, a Leiden professor, who earned the rarest distinction of the Thorbecke medal with them. What Meijers has meant for civil law in a narrower sense I scarcely need to mention here; there is no Dutch legal expert who fails to recognise that one comes across him at every turn, and always as an important author; often as the most important in a broad field – I have in mind of course primarily and mainly inheritance law -, as the authority par excellence, whose greatness and eminence are indisputable.

A scholar of extraordinary standing; a teacher with a rare talent as an educator; a professor who not only inspired the thoughts and work of thousands of scholars whom he preceded, but who also, without even the slightest sign of desire for popularity being observed in him, has won the hearts of his students. Not only has he gained admiration, he has gained no less in affection, and rightly so! The number of people whose first and also later strides in society he has inspired, as he has done for me, is impossible to establish; that there are countless such individuals is something we may all be sure of. He has also provided, outside any academic connection, both material and spiritual support to many. For the city where he resides he has been a praiseworthy citizen who, if he wished (although he never would), could point to much quiet work and altruistic dedication in the service of his community. He has been a good and loyal son to his people. When the first volume of the second part of the work on Ligurian inheritance law - of which the first part understandably had appeared in French - was published in his native language, he explained this as follows: 'I could not allow myself to write in a foreign language on regional law, the legal sources of which have been written in Dutch.'

It is this Dutchman, this noble and true son of our people, this human being, this father of students, this scholar whom the invader, who currently dominates us as an enemy, 'relieves of his position'! I said I would not speak of my feelings; I will keep to this promise, although they threaten to spill like molten lava through all the fissures which I at times have the feeling, could open up in my head and in my heart, under their pressure.

But in the faculty, that - as is apparent from its purpose - is committed to justice, this comment may not be left unsaid: in accordance with Dutch traditions the Constitution declares that every Dutch person is eligible to be appointed to any service of his country and to hold any rank and any office, and affords him, irrespective of his religion, the enjoyment of the same civil and citizen rights. According to article 43 of the *Laws and Customs of War on Land*, the occupier is required to honour the laws of the country 'sauf empêchement absolu'. We cannot take any other view than that there is not the slightest impediment to our occupier allowing Meijers to remain where he was. This implies that we can only consider as unjust the decision to drive him out of his position in the way I have explained to you, as well as the similar measures that have affected others (I refer in the first place to our friend and colleague David). We had expected that we might and should be spared this. It was not to be. We have no other option - without lapsing into to futile foolishness, against which I must urge you most strongly - than to bow to *force majeure*.

Meanwhile, we are continuing our work, as well as we can. My colleagues Telders and Kollewijn and I will try to fill the gap that has arisen, even though we know very well that we will be able to do no more than provide a poor surrogate, convinced as we are that nothing more can be achieved. On Tuesday 3 December my colleagues Kollewijn and Telders start at 11 o'clock; I will start on Thursday 5 December at 10 o'clock.

And meanwhile we wait and trust and hope, and hold in our thoughts and our hearts the image, figure and character of the person who - we cannot cease to believe - ought to stand here, and who, God willing, will resume his place here.

From: R.P. Cleveringa, *Afscheidscollege & 26 novemberrede*. Zwolle, Tjeenk Willink, 1973, p. 23-30.