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J. H. H. WEILER REPLY TO THE *LAUDATIO* ON THE OCCASION OF THE CONFERAL OF THE *DOCTORATE HONORIS CAUSA* BY THE UNIVERSITY OF BUCHAREST, APRIL 30TH 2013

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Abstract

Professor Weiler received the title of *Doctor Honoris Causa* of the University of Bucharest after a lifelong career dedicated to the study and practice of international and European law. In his reply to the *Laudatio* he explored the question of justice, through an overview of its ecclesiastic roots. In this respect, he identifies four important elements: the rejection of collective punishment, the connection between the idea of justice and the existence of God, the source of injustice in the world, and the need to maintain coherence in God's way to do justice.

Keywords: justice, divinity, righteousness, Bible, political theory.

You will forgive me, Dean, distinguished guests and friends, if in my reply to the generous *Laudatio* by Professor Motoc, I leave aside the world of work – for me EU and international law means work – and focus on the theme of Justice.

More specifically I want you to learn with me four lessons on Justice from the life of our Patriarch Abraham – from a passage in the book of Genesis.

In Genesis 18 the Lord decides that the iniquities of Sodom and Gomorrah are such that the two cities have to be destroyed.

Now I read:

> *"And the LORD said, Shall I hide from Abraham that thing which I do; {18:18} Seeing that Abraham shall surely become a great and mighty nation, and all the nations of the earth shall be blessed in him? {18:19} For I know him, that he will command his children and his household after him, and they shall keep the way of the LORD, to do justice and judgment; that the LORD may bring upon Abraham that which he hath spoken of him."*

So the Lord informs Abraham of his design. The reaction of Abraham represents one of the most important moments in the evolution of our sense of justice, and our understanding of Justice in Western Civilization.

> *"And Abraham drew near, and said, Wilt thou also destroy the righteous with the wicked? {18:24} Peradventure there be fifty righteous within the city: wilt thou also destroy and not spare the place for the fifty righteous that [are] therein?"*

This, of course, is a rhetorical question. Following which Abraham lectures the Lord:

> *"{18:25} That be far from thee to do after this manner, to slay the righteous with the wicked: and that the righteous should be as the wicked, that be far from thee: Shall the Justice of all the earth Himself not do Justice? {18:26}"*

There are four important lessons concerning justice here:

The first is substantive and reflects our revulsion from collective punishment, from group guilt, from justice which is rough and not individual and discerning. This is now written into our collective consciousness and reflected in the most primordial of our legal precepts. It is taken for granted. But it was revolutionary and it finds one of its most powerful foundational and constitutive moments in this Biblical narrative.

The second is even more profound and anticipates Kant by a few thousand years – the rhetorical nature of Abraham's question has epistemic consequences: Even God himself is bound by the strictures of Justice. He is not God if He is not just. If it is not just, it cannot be from God. But note the audacious ontological move: It is the Copernican Moment in our understanding of the relationship between Theology and Morality. The typical theological proposition – if it is a divine design, it must mean, per force, that it is just – is reversed: It it is not just, it cannot be divine. If that were not so, Abraham would have no basis to challenge God. Reach to your aspirin and think about this.

In this well known passage there is a third, great lesson on Justice which we can see only if we pay very close attention to the text. It is a lesson which answers the question – what is the source of injustice in the world.

Note carefully the words of the Almighty:

> *"For I know him, that he will command his children and his household after him, and they shall keep the way of the LORD, to do justice and judgment."*

What is so interesting that the Lord has never instructed Abraham on the content of justice and judgment? It is a huge point: In *Immitatio Dei*, in the commitment to follow in the ways of the Lord, one is ***presumed to know intrinsically*** what justice requires. For some this is the source of the notion of natural justice, hard wired into the Human Condition. It is also an extraordinary delicate play on the relationship between heteronomous and autonomous normativity – the subtle religious challenge to the pure Kantian vision of the

human, a vision which, as the last century proved so painfully, can yield the sour and bloody grapes of human hubris.

The fourth and final lesson requires a particular close attention to the text: Note the delicacy in the phrase in which Abraham is designated to: "…keep the way of the Lord to ***do*** justice."

Abraham is immediately put to the test with God's plan to destroy Sodom and Gomorrah. As I said, the question Abraham posed is rhetorical: everyone – God, Abraham and the reader *knows* that killing righteous and the wicked is wrong, is unjust. The issue is about the doing, about praxis.

A lot is folded into this fine distinction between knowing and doing. Let me conceptualize. The hidden, truly sublime message of the text in this delicate phrasing is that the problem of injustice in this world is almost invariably not Epistemic and / or Cognitive. In most situations we know what justice demands. The problem of injustice is Performative. We know what justice demands, but do we have the strength of character to do what the ethical imperative demands? The audacity of Abraham is breathtaking. He rises against the most powerful of all, the ultimate father figure, the epitome of authority, the almighty creator of the world himself. God must have been satisfied by Abraham's conduct. The daily challenge is not to discern what justice demands. That La Rochefucauld little voice is always presents whispering in our ear what it is that we need to do, what it is that justice demands. The question is always, do we have the strength to follow the voice, to act. Do we have the courage of Abraham to speak up – and his is a speech act – to act against the powerful, and sometimes our own self interest is the most powerful impediment of all, no matter who they are?

Thank you Ladies and Gentlemen.