

**Mature democracy: on democracy, rule of law, and human rights**

*Address by Professor Ernst Hirsch Ballin, distinguished university professor at Tilburg University and professor of human rights law at the University of Amsterdam.*

It seems paradoxical to be here in Naarden, a fortified town and part of the Water Line defences behind which Holland once barricaded itself, talking about our intellectual ties with other European states. And yet the two are related. The Netherlands was – and, I hope, still is – a safe haven in which to work out the ideas that make a liberal society meaningful. When freedom is merely conceived as meaning ‘individual choice’, it does not connect people and does not lead to a mature democracy. That requires more: ideas, ideals even, about the life projects that people wish to undertake with their loved ones or other members of their communities, and within the context of their state. That is what took place here throughout the centuries, in this relatively free and safe country in the delta of the rivers Rhine, Meuse and Scheldt, linked by sea routes, waterways and roads to its larger neighbours: Germany, France, and England. That freedom was hard won and required us, time and again, to do battle. The Netherlands certainly wasn’t ‘done’ after the Eighty Years War. It took the Patriots Movement and the Batavian Revolution before Catholics and Jews acquired full civil rights; slavery was not abolished until 1863; universal suffrage was introduced between 1917 and 1919; and it is only in the past 25 years that our country has, step-by-step, recognised equal rights regardless of sexual orientation. We may celebrate these historical events as meaningful starting points, even when our memory of them is nowadays clouded by a tardy acknowledgment of persistent injustice.

The Low Countries became a magnet for people who we remember as philosophical trailblazers. Such names as Descartes (1596-1650) and Spinoza (1632-1677) spring to mind; in the twentieth century, they were followed by artists fleeing Germany, such as Klaus Mann, and scholars such as Helmuth Plessner. Others, including Erasmus of Rotterdam, left here to travel the world. This country sought safety by barricading itself, for as long as that particular defensive concept actually worked – but ideas will not be fenced off.

Among those who came to the Netherlands to think and write freely was Jan Amos Comenius (1592-1670). He was born in Moravia, which now, along with Bohemia, is part of the Czech Republic. At the time, the Holy Roman Emperor Rudolph II (1552-1612) resided in Prague, in other words at the heart of Europe, but he was succeeded by Ferdinand II (1578-1637), whose repressive rule and religious intolerance fanned the flames of the Thirty Years War (1618-1648). Comenius’ native tongue was Bohemian, but he is said to have mastered many different languages: High German, Latin, Hungarian, Polish, Swedish, English, and Low German. One of his most important works dealt with language teaching (1632). Initially he travelled out of interest, but later – and especially after the expulsion of the Bohemian Brethren, the Protestant denomination which he served as a minister and its very last bishop – because he spent periods of his life in many different countries around Europe (Bohemia, Germany, the Netherlands, Poland, England, Sweden, and Hungary). He visited Amsterdam for the first time in 1613, returning three more times. He spent the last fourteen years of his life in Amsterdam and died there. For reasons that are not entirely clear, but may be religious-political in nature, he was buried in Naarden. His protector and patron in Sweden was the merchant and industrialist Louis de Geer (1587-1652) and later, in Amsterdam, Louis’ son Laurens de Geer; one of his descendants became prime minister of the Netherlands in 1939.

Comenius' writings were significant in a theological sense, but in their practical application they were, above all else, of educational significance. I quote: 'What I have written for the young I wrote not as an educator but as a theologian'. Education and upbringing are the tools with which to reform humankind and society into a world as God had intended it (in the eyes of Comenius). He is therefore remembered mainly as one of the first educational theorists.

It is worth noting that Comenius regarded his many travels as an ongoing course of instruction: wherever he happened to be, he gained new insights from the people he met there, and enriched others with his insights in return. Thinking beyond one's own boundaries has long been the product of translating from and into other languages and respecting that which is untranslatable and can only be approximated in another language. It is innate to Europe and typical of all migration, as far back as the encounter between Greeks, Persians and Romans before the Common Era, between Romans, Celts and Germanic tribes, and between the Norman, Germanic, Finno-Ugric and Slavic peoples, as well as in their encounters with Jews, Arabs and Turks. All these encounters have shaped and continue to shape Europe. We do not know what language Comenius used to communicate with his patrons Louis and Laurens de Geer, but I think it must have been Low German, the precursor of Dutch.

Comenius is rightly remembered as an educational theorist. That is what I seek to explore in this Comenius lecture. What learning do we engage in as we attempt to organise our political life and our society into a constitutional democracy? What does this say about the meaning of human rights in the resulting political and social order? Are they merely prerequisites and objectives, or can we claim that a constitutional democracy internalises human rights?

These questions underpin my cautious attempts to put myself in the shoes of the citizens of our constitutional democracy – after all, if all we can talk about is their anger and disappointment, we remove all hope and expectation from the process of learning engendered by our co-existence in that democracy. Others, foreigners for example, are then blamed for disappointments, or even turned into scapegoats. A quote from Comenius' *Panegersia*: 'We are all citizens of one world, we are all of one blood. To hate people because they were born in another country, because they speak a different language, or because they take a different view on this subject or that, is a great folly!' (translation of quote taken from V.-J. Dieterich, *Johann Amos Comenius*, Rowohlt 1991, pp. 129-130.) And that folly is precisely what Comenius the educator wanted to prevent. We may clash with one another in debate, and we may well have opposing views about the future, but it is crucial that we learn to get along with one another. Comenius emphasised the importance of seeing for ourselves, speaking for ourselves, acting for ourselves and applying what we know. These to him are the sole foundations for achieving true knowledge, virtue and – when all is said and done – happiness. Learning, then, has a purpose. It is no good thing if violence is used to force people into obedience (Dieterich p. 130), 'War is something beastly' (Dieterich p. 129). That is what people must learn to see: it is a question of knowledge *and* of virtue (Dieterich p. 128). Scholars, 'whether they be Christian or Muslim, Jewish or heathen, must accumulate the comprehensive knowledge required to create the foundations for society. Scholars must embrace virtuousness, and every good statesman (or physician, or theologian, or philosopher) must be aware of the consequences of applying their knowledge', according to Comenius (Dieterich p. 128). Peace is impossible if people refuse to listen to one another.

This is meaningful advice at a time when we would like to overcome feelings of dissatisfaction with democracy. It is not primarily about the institutions, but rather about

knowledgeableness and attitudes. A mature democracy requires its citizens and public administrators to possess political virtues, virtues that make it possible for them to work together on life projects. That is why in this lecture, I choose to start out from a radically different place; rather than comment on disappointment in institutions, I ask what we need to liberate a democratic constitutional system from the sentiments of aversion and alienation. Can we – the citizens of the Netherlands – find better and more rigorous ways to learn to be, feel and act like fellow citizens of a democratic state?

Learning involves meaningful encounters with others. Many people here will be familiar with the work of the German sociologist Hartmut Rosa, who has written about social acceleration as a feature of modernity (*Social Acceleration: A New Theory of Modernity*, Columbia University Press 2013). Modern communication and transport technology also facilitate the acceleration of cross-border contact between people, aided by the removal of border controls and other barriers. Comenius, who criss-crossed Europe, was a harbinger of modern times. Social acceleration can also provoke feelings of unease and fear about loss of identity and control. When the pace of society accelerates too quickly, people need something to hold on to, to keep themselves from losing control of the steering wheel and going off the road. That is one of the main functions of a system of laws, and when that system is democratic, then there is the guarantee that it will sufficiently reflect the convictions of ordinary citizens. Democratic decision-making processes provide a framework, and therefore leeway, for controlled processes of change, including migration. Many people, among whom some jurists (but not my students, I hope), see the law as unbending, an obstacle to change, a normative dead end. But if that were its dominant feature, the law would turn against the social dynamic, and the social dynamic would turn against the law. It happens, of course. Examples include the political and legal orders of the *Ancien Régime* and of Czarist Russia. They provoked the French Revolution of 1789 and the Russian Revolutions of 1917. But if the law is open to change, without relinquishing its regulatory function, then it *does* serve its purpose. In that case, it offers moorings and sets limits to prevent the social dynamic from turning against people who are more conservative or who want to proceed in a different direction. The law (in particular) allows change to take place without things getting out of hand.

A democracy must therefore always be underpinned by the principle that respect is due to all, without discrimination – even to those who are powerless or thought different or odd. That is the primary principle that drives the recognition and actualisation of human rights: that all people should be respected equally for who they are. Respect for human dignity is therefore enshrined in Article 1 of the Universal Declaration of Human Rights of 1948 and in Article 1 of the European Union's Charter of Fundamental Rights, proclaimed in 2000 and effective as of 2007. It is a principle that has fundamental significance in legal, but also in educational, terms. That is because it says something about the way in which people should treat one another as they pursue their rights and freedoms within a system of laws. It says that we must respect the human dignity of another, even if the other is a stranger, or appears strange to us.

Mutual respect takes effort. The human psyche retains traces of a strong, intrinsic propensity to trust only one's own. Once upon a time, our distant ancestors lived in groups of 160 or 170 men, women and children. But as their capacity for abstract thinking grew, along with their ability to convey those thoughts in language, people learned to put their trust in norms, and ultimately in legal norms, that applied equally to themselves and to those alien to them. That made it possible for them to organise themselves into ever-larger communities (tribes, peoples, states).

So it is that humankind learned – and each separate individual must relearn – to co-exist with others under the operation of the law, which organises people’s lives and offers them protection. And thanks to the confidence that this gives them, they can achieve their life projects. Co-existence involves recurring processes of learning, giving people new perspectives. Comenius saw that clearly when he wrote that every good statesman is a kind of prophet, because a wise man can predict the effect by looking at the cause (pp. 128-129). The learning that comes from co-existence is an inculturation process that makes it possible to plan, develop, and change. But note: inculturation – in education and in other forms of learning – does not mean reproducing what already exists. The ideal in education cannot and must not be that we turn children or pupils into clones of their educators. Comenius was the first to design teaching methods from the pupil’s point of view. A second point of note: inculturation also involves becoming familiar with the norms, including legal norms, that – when abstracted from specific cases – regulate our relationships with others. Once again, these norms are not meant to produce clones, but rather to give people the confidence to build new things, new enterprises, families, structures with one another. A reliable system of laws wants to facilitate the social dynamic.

Today, as the intensity and speed of people’s encounters and relationships continue to grow – whether they like it or not – learning must resonate with people and liberate them from the fear of the unknown. Hartmut Rosa calls that quality in human relationships ‘resonance’, which he later explored in a book that he co-authored with an educationalist. Teachers must attempt to evoke resonance – they should throw out a spark that kindles a fire.

I said earlier that social acceleration largely involves people entering into more relationships, whether they like it or not, and increasingly with people who do not move in the same circles of co-existence as themselves. This means that in times of migration, education, more than ever, must also educate in the ways of co-existence, including the ways of citizenship, an area of instruction that has had a rocky road in this country. The Education Council of the Netherlands made note of this in its comments on the Dutch government’s 2017 coalition agreement. In this document, it makes some interesting recommendations: to improve the provision of education to refugees and to avoid frustrating it by forcing refugee children to move house needlessly (*Het regeerakkoord. Vertrouwen in de toekomst en de adviezen van de Onderwijsraad*, 2017, pp. 44-46). But what the Education Council overlooks is that migration requires a *reciprocal* capacity to learn. Otherwise it is doomed to fail. The cautious passages about citizenship education (pp. 14-15) ignore that side of the story. A migrant enters a society that has its own traditions and values, but the migrant is himself not a *tabula rasa* that can be reset at the instruction of the authorities. Entering into a relationship always means opening yourself up to changes too, provided those changes are based on and compatible with the constitutional framework of fundamental rights and obligations of citizens. Acknowledging the obligation to respect every person’s human dignity leads – to borrow Comenius’ words – to a politico-legal pansophism that must be within everyone’s reach, whether Christian, Muslim, Jew, heathen or adherent of any other faith (Dieterich, p.129).

It is no easy matter to live and work according such ideals, as Comenius also experienced in his own way. It takes determination and the ability to swim upstream. The acceleration of social and cultural change processes in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries has been considerable, after all – so much so that it seems to be asking too much of a political and social order that is receptive to change. That is aggravated by the manifest indifference of the upper political and economic echelons towards the existential uncertainty that rapid change

has caused many people to feel. They have not only lost the underpinnings provided by a familiar, stable living environment, but also the protection that was once afforded to them within the context of the welfare state. People living in former mining and industrial areas, who are watching their young people move away and their public services deteriorating, have been hit doubly hard by the changes. There is nothing positive about globalisation for them, and the attendant rise of the ideology of neoliberalism has deprived them of their material certainties. For some, even the certainties that they once derived from their faith and their church have eroded. The British developmental economist Guy Standing described these people as the ‘growing class of "precariat" workers’ (and retirees) (*The Precariat: The New Dangerous Class*, Bloomsbury 2011; *A Precariat Charter: From Denizens to Citizens*, Bloomsbury 2014).

It comes as no surprise that radical socio-political movements in politics and trade unionism are concerned about the fate of people who have ended up in such circumstances. Both here and elsewhere, that has contributed to the political rise or comeback of radical left-wing politics, at the expense of the moderate left. But there are other movements that frame the threat to the precariat worker as a cultural conflict. In the present day and age, we are seeing movements gain momentum that are so frightened of the cultural changes wrought by migration and Europeanisation that they have barricaded themselves behind a mental wall – a sort of psychological Dutch Water Line. They are calling on governments to close the borders to asylum seekers and, preferably, to end the free movement of persons within the European Union.

These movements haven’t come out of nowhere. To some extent, they are a new manifestation of the cultural conservatism that has existed in Europe for centuries, associated with such names as Edmund Burke and Gottfried Herder. That cultural conservative beliefs were also a breeding ground for fascism and national socialism does not mean we can identify them with such; they have their own history. The New Right of neoconservatism was, according to Zeev Sternhell (*The Anti-Enlightenment Tradition*, Yale University Press, 2010, p. 437), ‘able to play down economic problems and, by turning them into psychological questions, launch an unprecedented cultural war’. These movements turned against the primacy of the individual in political thought – and were not necessarily consistent about it (see Merijn Oudenampsen's dissertation *The Conservative Embrace of Progressive Values: On the Intellectual Origins of the Swing to the Right in Dutch Politics*, Tilburg University 2018). Instead, they bestowed that primacy on ‘the historical, ethnic, or linguistic group’. Two steps are critical here: the identification of the state with a cultural and/or ethnic community (the ‘nation state’), and the claim that the nation’s cultural and/or ethnic identity must be defended against cultural intruders. Divested of all the nuances that these authors were careful to include, we have here the *Clash of Civilizations* by Samuel Huntington, or the *Culture Wars* by Frank Furedi. The nationalist motif in these movements thus dovetails – despite all evidence to the contrary – with the denouncement of hardship: if the migrants had not come, or if the EU did not exist, ‘we’ would have been better off, is their representation.

Of course, there are glimmers of truth in these arguments. Open borders do have displacement effects and criminals do operate in ethnically structured gangs and networks (see various studies by Frank Bovenkerk) that are involved in both petty and serious crime. Denying this only allows the problems to linger and increases aggravation. With a view to preserving and improving social cohesion, however, I believe that there is quite a different pitfall: to represent an ethnically or culturally defined community as unique or superior to

others ultimately discredits that very community. Think, for example, of the aversion to German culture in the Netherlands and elsewhere that followed upon the Nazi Occupation, and the backlash against Afrikaans in South Africa after the end of Apartheid. I would like to defend an enlightened sense of cultural identity against those who would abuse it.

The cultural sociologist Andreas Reckwitz (*Die Gesellschaft der Singularitäten*, Suhrkamp 2017) has provided a penetrating analysis of this development. In opposition to the openness of liberal, cosmopolitan politics, populist parties have embraced a politics of exclusion. In opposition to the overemphasis on ‘singularity’, what makes individuals special, they offer the image of a socially and culturally homogenous people of ‘true Finns’ (by way of example, in other words, fill in a random people). Their message, as Reckwitz (pp. 414-417) describes it, is that it is the ‘common folk’ who have worked hard and built the country whose culture and lifestyle are allegedly under threat by outsiders. He calls this concept of culture ‘cultural essentialism’. But criticising such movements does not mean that those that only prize the individual, and that see the state as a formal framework for an amalgamation of individuals, are ‘right’. That is why, to put it in domestic terms, I am pleading for us not to throw the baby out with the bathwater.

While it is true that communitarianism has often served as the social theory of intolerant, exclusionary movements, there is also something known as ‘liberal communitarianism’. The sociologist Amitai Etzioni has been associated with this movement for many decades; he is about to publish a new book in which he contrasts this distinctive perspective both with populism and its associated idealisation of closed, immigrant-free communities, and with neoliberal individualisation. Thinking in terms of communities and their cultural identities does *not necessarily* involve the rejection of and hostility towards migrants, for example, and their cultural identity, when people understand that cultures *have always* evolved in interaction with their cultural environs, both inside and outside ‘national’ borders. That is why François Jullien asserts that ‘there is no such thing as cultural identity’ (*Il n’y a pas d’identité culturelle*, Éditions L’Herne, 2016). What he means, for example, is that French (and European) culture can be traced back to many sources that are not mutually exclusive in their variety and interplay. Conceived in this manner, we can acknowledge and highlight the value of sources of identity in the history of a country and a people, their religions and cultures, their institutions and holy scriptures. Taken as a whole, they can forge shared convictions that urge people to wage battle on behalf of noble causes, for example to bring an end to oppression. Such sources have nurtured movements like *Solidarność* in Poland, which fought against communist repression. Whenever a power monopoly with ideological underpinnings establishes itself (such as totalitarianism in the 20<sup>th</sup> century), the strongest opposition comes from a humane, often religious or nationally motivated movement. Does that movement then assume power itself, or does it lose its relevance after achieving victory? History is not consistent on that score. An individualistic liberalism that uses ideological nihilism to negate all religious movements will be seen as a new threat to freedom in countries that have struggled out of the grasp of the communist regime. Contrary to what people – often on both sides – think, the desire to cherish communities that draw strength from such apolitical sources as religion, culture and national history need not be pitted against the values of constitutional democracy with its individual rights and freedoms.

Let us therefore consider the features of constitutional democracy. A radical-individualist interpretation would lose itself in an ideological vacuum. The German constitutionalist Ernst-Wolfgang Böckenförde referred to this in his renowned ‘Dilemma’: the liberal, secularised

state lives by prerequisites that it cannot guarantee itself. What did Böckenförde mean by this (*Recht, Staat, Freiheit*, Suhrkamp 2006, pp. 112-114)? Surely he wasn't longing for the sort of political theology proposed by Carl Schmitt? But if not, what did he mean then? In my view, he clarified his meaning in the following line of reasoning. He was not prescribing a particular state ideology, let alone advocating its enforcement. There is, Böckenförde wrote, no way to return across the threshold of 1789 without destroying the liberal order. But, he asserted, the secularised state also depends on the inner mainsprings and binding ethos arising from the religious faith of its citizens. That is not a return to the Christian state; rather, it means that Christians must value the secularity of the state as something that allows them to preserve and exercise their freedom.

This reference to the backbone of religious faith should be interpreted plurally. What Böckenförde wrote about how Christians should view the secular state also holds for other religions and ideologies. Abdullahi Ahmed An-Na'im has written in a very similar manner about Islam (*Islam and the Secular State: Negotiating the Future of Shari'a*. Cambridge MA and London: Harvard University Press 2008). The political community of a constitutional democracy must engage with other communities, and with their identities, but it should not be at their mercy. (That is different to what Schmitt wanted: that the order imposed by the state should be decisive.) A constitutional democracy cannot shape its own ideological movement but must depend on the support of (a plurality of) such movements. They may include movements of religious citizens, as I referred to them in an article some years ago. Freedom of religion for religious citizens is a positive factor in a liberal society. At the same time, this implies that the invocation of that freedom by fundamentalists must be rejected. They are out to abuse that freedom, abuse it in order to deny others the same right. Such 'faith communities' are as dangerous as anti-democratic political parties.

This takes me back to the citizen, who made a brief appearance when I addressed the task of citizenship education. Many years ago, Herman Tjeenk Willink told me that citizenship should be regarded as a public office, in fact the most important public office of the state. Compared with the customary doctrine of public office, that was a provocative statement. As with many other topics that I discussed with Herman, for a few years almost on a daily basis, his statement started me thinking. And indeed, I now believe – as I said in my own book *Citizens' Rights and the Right To Be a Citizen* (Brill Nijhoff 2014) – that citizenship means personhood within a democratic political system. But people are more than voters and potential elected officials. All the other roles that they play, in all sorts of communities, are made possible because their civil rights and freedoms are protected. That is why Martin Luther King battled for the civil rights of African-Americans.

Citizenship education does not mean learning a state ideology. Citizens can differ considerably in their religious and ideological convictions, their culture, and in many other respects. In a national context, democracy is a polity in which people can undertake their life projects; in the European context, democracy is a polity of polities, a 'demoicracy'. The multitude of their sources creates the ideological arena for which there is space in a constitutional democracy. The secular nature of that space does not mean that it is an empty shell. In a liberal state, it is a civic virtue to respect that political order.

Aristotle and, in his wake, Thomas Aquinas recognised that public officials must exhibit the same virtues as citizens to perform their roles properly (Aristotle, *Politics*, 1277b8-32; Thomas Aquinas, *In Politicorum*, Liber III, Lectio III). In a mature democracy, citizens accept responsibility for the state. That is what we may expect from citizens, since a state

under the rule of law protects their personal rights and the freedom of all kinds of smaller communities. Such non-political communities may unite, connect and dissolve themselves. Taken together, they represent a 'democratic society', a key concept in the European Convention on Human Rights and Fundamental Freedoms.

Within this fluid pattern of communities, the citizen operates and enjoys his freedoms, such as the right to vote. They create the space for the life projects that the citizen can embark upon with others. The process of discovery that this entails is a quest that has been undertaken by many great minds before us. Their journeys of discovery took them to many different places, both mentally and physically. Comenius, before his time Aquinas, and, more recently, Hannah Arendt and Amitai Etzioni are all people who did not live out their lives in one place in just one country. They spent time learning about and probing the convictions of many different people in many different places.

Social and political orders that protect people against fear, repression and want make that possible. They don't come about by themselves; they must be dearly won, time and again, from the forces that conspire to subjugate people and reduce them to their economic value. What is at stake here is the dynamic force that drives the actualisation of human rights which guarantee human dignity. They can no longer be viewed only as protective competences (and duties) of government. They permeate societies and create space for interaction between governments, social relationships (in the broad sense) and individuals.

Within that interaction, people can undertake their life projects both individually and collectively. A mature democracy allows us to co-exist in freedom, broadens our view, and offers hope for a just and peaceful future.