

Word of thanks after the presentation of the Comenius Award during the annual birthday celebration for Jan Amos Comenius, Saturday 17 March 2018, Grote Kerk, Naarden.

H.D. Tjeenk Willink



Your Excellencies,

Mr Mayor,

Ladies and gentlemen,

Perhaps you, like me, have in recent years felt a growing sense of unease, if not conviction, that the way in which the Dutch state operates is not offering an adequate solution for the fundamental problems that we are facing. The sense that our connection with the future, with the society that we aspire to live in, is not materialising, while our connection with the past, with the values that once united and still unite us, is being disregarded. Increasingly, I find myself pondering a worrying question: where do we stand, as citizens and as public office-holders, when the going gets tough? Ernst Hirsch Ballin's penetrating Comenius Lecture can help us answer that question. As I understand it, the central tenets of his lecture were: respect for diversity and co-existence, the defence of human values and the importance of education, giving citizens something to hold on to and making change possible, acknowledging reality and offering new perspectives. It would be difficult to think of a better way to honour Comenius. Ernst has inspired me – as he so often has – and I hope that you share that feeling.

It seems to me that *connection* is one of the keys to how Comenius thought and acted. He defended fundamental human and civil rights, the prerequisites for peaceful co-existence. He based his ideas on and drew motivation for his work from pansophism, a philosophy that espouses a universal knowledge of reality that transcends fragmentary knowledge. His syncretic method, which supplements the analytical and synthetic method, was an attempt to compare different phenomena and discover how they might be related.

By working *within* and working *on* our constitutional democracy at one and the same time, I have, since the early 1980s, continuously emphasised the connections, their critical importance and their immense vulnerability: the connections within the state, between

the state and civil society, and within civil society; and also the connection between democracy and the rule of law. It is against this background, with connection as the key concept, that I accept, with deep gratitude, the 2018 Comenius Award. I regard it as *public* recognition of the message that I have attempted to formulate and convey in the past several decades, a message that has, until now, remained unanswered by *politics*. At the same time, the laudatory address has made me uncomfortable. I know full well how great a role serendipity has played at times and which opportunities have come my way, how often I myself committed the same errors in my work *within* our constitutional democracy that I analysed so pointedly for others, and how much my work *on* our constitutional democracy has depended on others.

In my work in public office, but also and more specifically when I was not employed full time – because it was difficult to be assigned a place in a public service in which management, efficiency, and the law of supply and demand had become the benchmarks – I was able to analyse the performance of government from different perspectives: those of public service, politics, public administration, and society. These different perspectives made it even clearer to me that each has its own rationale, its own language, and its own time pattern. The differing rationales are one another's counterparts. The different perspectives have also made me more aware that our democratic legal order gives us a common basis for and functions as the connection between the different rationales. That is an entirely different basis than what has been suggested in recent decades: the concept of government as a corporation.

During the period of politico-denominational compartmentalisation known as *verzuiling*, Dutch society was indeed divided into separate realms of experience, but there were also strong connections: connections within the separate compartments, between their separate institutions, between those institutions and government, and, within government, between politics and public administration at central and local levels. They functioned as the social and political anchors of the state and guaranteed each and every group a role in and a share of the public domain. These connections have had a hard time of it since the 1980s. Let me give you four examples.

(1) Secularisation loosened the connections within the compartments and between the compartmentalised institutions. That was liberating at first, but what replaced them? Consumerism – Sunday fun shopping – seems like a weak substitute for Sunday services.

(2) Increasingly, we hear – mainly from politicians who ought to know better – that religion and ideological convictions are matters for individuals to decide, because church and state are meant to be separate. That view fails to acknowledge that the Netherlands

treats different religions and ideologies as equal precisely so that they *can* play a role – a role that connects – in the public realm. The Pacification of 1917, which ended the ‘battle’ between religious and secular parties by implementing equal funding for *all* schools – is a good example of this. The significance of this relationship between the secular state and the various religions and ideologies is mistakenly underestimated.

(3) Social arrangements in which public institutions once played an important role and on which citizens could once depend – in terms of social security, education, public housing, and health care – have been overhauled. The formal ties between these public institutions and the people that they served, and between the institutions and government, were cut. They were replaced by informal and ad hoc contacts, with no clear division of responsibility.

(4) Finally, thinking in terms of profit and loss and competition, as much in the public domain as elsewhere, not only led to the disappearance of familiar faces – the neighbourhood postman, the person who handled all your health insurance claims – but also influenced the relationship between individual citizens and between public servants. It is a way of thinking that severs the bonds of solidarity, and the first to be affected is the least able citizen – often the one who depends on public services the most.

It is the unravelling of so many connections – in many cases irreversibly – that makes the nonchalance displayed towards the democratic legal order in recent decades such a serious matter. It has become subservient to the concept of the state as a ‘corporation’, with products and clients, costs and benefits. That road – the state as a corporation – is a dead end. The emphasis on efficiency has eroded our democratic legal order. Admitting more competition has led to issues in the provision of public services. The aim of reducing the size and cost of the ‘state corporation’ while improving it at the same time has had the opposite effect for citizens: more rules to follow, more forms to fill in, more monitoring, more costs. And it is precisely those in the weakest position who suffer first. This is at odds with the inclusiveness that is a hallmark of a democratic legal order. Nevertheless, so far politicians and public administrators have not renounced the idea that government is a corporation. It is high time that they did!

It is not government as a corporation but our democratic legal order that gives us the normative basis for dealing – peacefully – with diversity and uncertainty. Democracy allows for diversity. The common bonds of the law – which are imposed equally on citizens and government – provide certainty. A democratic legal order does not exclude, it *includes*. That is an important, normative, feature. It is why our democratic legal order is

also a social legal order. But it seems as if we are no longer conscious of the social rights that were included in our constitution in 1983 by common consent.

The democratic legal order is not static but must be continuously reinvented, including in the connections between state and society. It is, at all times, a democracy and a legal order 'in the making'. The process of reinvention and reflection has been completely neglected in recent decades. And yet there was every reason for reflection after the decompartmentalization (*ontzuijing*) of Dutch society. Which norms serve as the basis for our democratic legal order? What do we mean by the 'inclusive nature' of the democratic legal order? How should we interpret our constitutional social rights? What does 'politics' actually mean as a concept? What is the value of bureaucracy? What is the role of the courts and what is the role of the law in a changing society? What does citizenship 'as a public office' mean and what competences does it require? These are all questions that we have largely, if not entirely, ignored over the past thirty years. In reality, we have never really got past the decompartmentalization of our society.

Since the 1980s, an insidious crisis has been under way in our state – a kind of decay. It is visible in expensive administrative fiascos (the national police force, the customs and tax administration, high-speed trains, IT projects), in the rising chorus of complaints by public servants who say that they never have enough time to do their real work, and in the growing number of citizens who are trapped in the mass of rules and fall by the wayside. All these problems undermine the credibility of our democratic legal order. Are we sufficiently aware that if democracy does not function properly, the state will get into trouble, and if the state does not function properly, the law is at risk, and if the law is at risk, then the law of the jungle will prevail? Why did we – especially our political parties – ignore that crisis or do nothing to avert it when an opportunity to make changes presented itself: in 1994/1998 when the 'Purple' coalition took office; in 2002 after the 'Fortuyn revolt'; in 2005 after the referendum on the EU's Constitution (regarded then as a wake-up call); in the 2006 and 2010 coalition negotiations; and in 2016 after the Ukraine referendum, once again regarded as a 'wake-up call'? There was no discussion of political substance, no shift in existing political-administrative patterns; governance remained largely a regulatory matter. That is not enough to ensure the survival of our common basis, our democratic legal order. Why was nothing done? The answer is that the insidious crisis in which we find ourselves is not an organisational one that can be resolved by reorganising a department here or appointing a better manager there, despite numerous suggestions to the contrary. It is a political crisis that politics neither will nor can resolve on its own.

For that reason alone, we cannot continue shifting the responsibility that we ourselves bear for our democratic legal order onto the shoulders of ‘the politicians’ or ‘the government’. If representative democracy is malfunctioning, then ‘civil democracy’, i.e. civil society, must act. It was eighty years ago this month, in March 1938, on the eve of the Second World War, that Thomas Mann described it thus in a lecture that he gave in Constitution Hall in Washington D.C.: ‘Democracy requires of people an awareness of the responsibility that they themselves bear for preserving that valuable possession. That is their responsibility as citizens, with their vote as the ultimate means of expression.’ In a living democracy, many voices make themselves heard, citizen initiatives are welcome, relationships are entered into with others, and resistance – when necessary – is offered. Such resistance

‘.....starts not by talking big, but by acting small... Asking yourself a question, that’s how resistance starts. And then asking someone else that very same question’ (Remco Campert).

If we truly wish to see urgent issues being tackled within the context of our democratic legal order, then we will need to harness the enormous, creative potential of society and take a stand ourselves, individually and collectively, as members of our profession – as scientists, artists, business people, journalists – and as socially engaged citizens. We will have to embark on a public debate of the bigger issues. But we will also have to draw public attention to the way the state is actually performing in specific cases, not only because it is the individual citizen who matters in the end but also because specific cases reveal general patterns and mutual relationships.

We can only improve the performance of the state if we learn to think bigger and act smaller.

Comenius was a big thinker whose life was influenced by European history, just as the lives of all the people in the member states of the European Union have been influenced by European history. At a time when countries have become closely entwined, people worldwide are on the move, capital increasingly ignores borders and information has become borderless, we can only keep our national democratic legal order on its feet if we do so in cooperation with others. Such cooperation must, however, satisfy the minimum requirements of democracy and the protection of the law. We cannot shut out the world. We must not deprive ourselves, or let others deprive us, of the European perspective. European cooperation is designed to function as a normative concept that includes, not excludes, with a common legal order which respects national diversity. Our British friends could never really bring themselves to accept that normative concept, that European

perspective. They were too invested in being the protagonists of neoliberalism, where the thinking is dominated by free trade and return on investment – including the return on one's investment as a member state ('I want my money back'). It is a line of reasoning that also came to permeate Dutch politics. The United Kingdom's (awaited) exit is a good time to re-calibrate Europe as a normative concept and to clarify that it is about much more than free trade.

That recalibration is necessary for a variety of reasons. Just as the evolution of the Netherlands' constitutional democracy never really got beyond decompartmentalization, so too has the evolution of democracy and the legal order in Europe never really gone beyond 1989 and the Fall of the Berlin Wall. That is true of most of the then-member states and of many of the member states that joined afterwards. In the first category, the elimination of the external threat led to an internal neglect of the institutions meant to shore up a constitutional democracy that had also aimed to be a social democracy. After all, the future belonged to free-market liberalism ('the end of history'). The member states in the second category often lacked the counterweight that every economic market needs: a sturdy civil society and a strong democratic state with a solid rule of law. Civil society had to be rebuilt. For decades, their state was an authoritarian state that had obstructed liberal democracy. As much as the situation in the European Union's member states differs after thirty years (and how could it not), the inclusiveness – and thereby the credibility – of the democratic legal order is at stake in all of them to a greater or lesser degree. That is why we would do well in Europe to join together in paying greater attention to the values that we share and regard(ed) as universal but that cannot be taken for granted: personal freedom and human dignity, equality before the law and solidarity. Joining together in paying greater attention to these values – with input from each member state – would benefit the democratic legal order in each country. There is another reason to re-calibrate Europe as a normative concept, however. Europe's place in the world is changing, it no longer automatically sets the philosophical tone, and it is no longer the epicentre of global events. The EU has become a global actor that must continually redefine its position, not only economically but also geopolitically and culturally; not quite the same thing as establishing rules by consensus and taking the time to do so. Today is all about 'event-driven politics', in the words of Luuk van Middelaar. To practise that kind of politics, we need to know the shared values, the shared culture, that Europe stands for. Europe as a normative concept: *that* is what must be conveyed. *That* is the essence of the *public* debate that should be taking place within and about Europe, not least on behalf of our own democratic legal order. This is not the same as arguing about how much money the EU ought to cost, an issue that tends to dominate the *political* debate in the Netherlands. If we have learned anything in this country in the past few

decades, it is that if we focus only on the money and neglect the substance – the underlying values – then the cost to government and the community will ultimately be much higher.

Ladies and gentlemen,

As you will have noticed, I have taken advantage of – if not abused – the opportunity occasioned by this celebration of Comenius' birthday and the presentation of the Comenius Award to emphasise, once again, what I believe our concern should be if we want to retain the normative and inclusive nature of our democratic legal order and safeguard our peaceful co-existence in this lovely, multifaceted country of ours. Comenius would perhaps no longer feel at home here 426 years after his birth, but the normative and connecting concept of the democratic legal order would doubtless provide fertile soil for many of his ideas. That imposes obligations, especially on those of us who are commemorating him here today.

