

Words of Thanks

Upon receiving the Award of Merit of the Yale Law School Association

by Luzius Wildhaber

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Yale Law School has given me very much in my life. Yet today you give me even more. I am ever so grateful. Dear Dean, you have been exceedingly generous. Listening to you, I began to think that perhaps after all maybe I even deserved the award.

I came here in 1964 and spent four of the best years of my life in New Haven. The Law School was more than a meeting and networking place; it constituted more than a multitude of challenges; it was also an idea and an ideal of a place of learning and researching. When my Swiss supervising professor saw me in Basel after two years at Yale, he noted in his diary that I had left as an eager student and had turned into a self-confident young man, and he added that it was very impressive how Yale succeeded not only in training academics, but also in shaping personalities. Lest you feel that I was shaped only by Yale Law School, I would add that I spent my first married years in New Haven with my wonderful wife, Simone.

As you have heard from the Dean, I returned to Switzerland, did various things and spent the last years of my professional career as Judge of the European Court of Human Rights.

So I shall say a few things about a Judge's views on human rights, and as befits a judge, I shall tell you all one needs to know in two minutes. Human rights mean different things to different people. I believe that the divergence between mere claims, aspirational programmes and lived reality is characteristic of the dynamics of human rights. If you are a Judge of the European Court of Human Rights, you are likely to accept that such a Court is – within limits -- a law-making body and that the European Convention on Human Rights is – again within limits – a living instrument. How could it be otherwise? In an age of terrorism, the Internet and in vitro fertilization, how is it possible to give shape to Convention guarantees such as the prohibition of torture, equality of arms, freedom of expression or private and family life if – like Montesquieu – you see in the judge only the mouthpiece of the law? I would say that there is inevitably a voluntaristic element in the activity of this mouthpiece. Guarantees of the European Convention on Human Rights are – like human rights guarantees of national constitutions – programmatic formulations, open to the future, to be unfolded and developed in the light of changing conditions.

I do not much believe in closed theoretical systems that are presented as sacrosanct on the basis of murky hypotheses or ideologies. Decision-making in an international court is complex, sometimes contradictory. Often it is hardly possible to demonstrate that a specific decision is uniquely correct. But the decision may be acceptable as the reasoned product of informed impartial choice. And so the Judges' task is doing justice and fairness through a vision of reasonableness.

Yale has greatly helped me in the search for new horizons and truths. If I could indeed contribute to the evolution of common standards of decency and human rights in Europe and maybe even beyond – as your award would seem to intimate – I know how much I owe to the Yale Law School – and to my family – and to sheer luck.