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'On my way out ... for real!'
A Conversation with Joseph H.H.
Weiler on the Occasion of His
Stepping Down as EJIL Editor in
Chief

Sarah M.H. Nouwen* and Joseph H.H. Weiler**

1. Introduction

Sarah Nouwen: EJIL Editor in Chief Joseph H.H. Weiler has written numerous editorials in which he gives advice on academic practices. He titled them: 'On My Way Out'. After 17 years of serving as EJIL Editor in Chief, he is now stepping down. In his words: 'for real'. It is an occasion for an in-person conversation: many people know 'Weiler' by name or by initials 'JHHW'; fewer people know him in person. Who is Joseph Halevi Horowitz Weiler? We meet in Cambridge, UK, on a cold December day. Joseph has just come off an overnight flight — as per usual, it seems. *Shabbat* will start that afternoon. But before it gets dark again, we spend over four hours in the café of Pembroke College, discussing his life as a son, student, scholar, teacher, practitioner, institution builder, father, grandfather and multiple other 'differentities'. His work as EJIL Editor in Chief is the subject of an accompanying EJIL: Live!, the video series of EJIL.

2. JHHW – The (Great-Great-Great-Great-Grand) Son

Sarah Nouwen: You often sign off with your initials, JHHW, rather than your full name. What do the initials mean to you?

Joseph Weiler: They actually mean a great deal. My grandmother, Hannah Halevi Horowitz, the mother of my father, was the granddaughter of the revered Seer of Lublin, and hailed from one of the most famous rabbinical dynasties of the last 600 years. The founder of the dynasty, after whom I am named, was called Joseph Halevi.

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He was born in Girona, Spain. Although everybody thinks of the expulsion in 1492, the actual cataclysmic event was 1391, when in the whole of Spain with the exception of Aragon, there was a huge massacre of the Jews. Joseph Halevi escaped from Girona with his family in 1391, moving to Moravia, to a little town that still exists, Huruvica. So, he became Joseph Halevi de Huruvica and then Joseph Halevi Horowitz. A hundred years later, they moved to Poland, to Lublin, and they lived in Poland for 500 years, until the Germans took care of that. There's an institute in Tel Aviv for the research of that family. So, I know every generation from 1391, father, son, and of course it grows. Vladimir Horowitz, the pianist, is part of that family. I was named in honour of that branch of the family and it means a lot to me.

Sarah Nouwen: What was your father's expectation of you?

Joseph Weiler: My father was a rabbi. He had six children, and I was meant to be the rabbi.

Sarah Nouwen: Were you the eldest son?

Joseph Weiler: No.

Sarah Nouwen: Why were you meant to be the rabbi?

Joseph Weiler: Why did Jacob choose Joseph? Who knows. It was a great disappointment for him when I told him, 'no, I'm not going to be a rabbi'. It was painful for him, because it would be the first time in 600 years that there wouldn't be a rabbi. But I just told him 'I like sinning too much'; as a rabbi I wouldn't be able to sin.

'The world would be a better place if you became a plumber'

Sarah Nouwen: Was your father interested in what you went on to do instead?

Joseph Weiler: In peculiar ways. He had a different scale of values. So, for example, when I told him 'I want to study law', he looked at me and said, somewhat ironically of course: 'The world would be a better place if you became a plumber'. He didn't think much of lawyers. The original meaning of 'rabbi' is 'teacher'. So he was mollified when I became an academic.

I remember once phoning him and saying, 'I have big news'. He said: 'What is the news?' And I said: 'I have a letter in front of me: I've been appointed as a full professor at Harvard Law School.' There was a silence. I said to him: 'Aren't you happy for me? Aren't you proud of me?' He said: 'Ja ja, Harvard; but when will you be a professor at the Hebrew University in Jerusalem?' That meant much more to him than being a professor at Harvard Law School.

Sarah Nouwen: Did he not see parallels between a teacher and a rabbi?

Joseph Weiler: Yes he did, of course. And I saw the parallel in yet a different way. One cannot be a rabbi, a teacher, without being a scholar too. I witnessed my father every day. He would get up at three or four o'clock in the morning and study the Talmud. He wasn't a professional scholar. He always reminded me: a rabbi is a teacher, a rabbi is a

teacher. And that's why, when I went into academia, it was with the self-understanding that I was going to be a teacher. A rabbi after all!

'Scholarship is not pure anymore'

Sarah Nouwen: But a rabbi is in some ways like a good scholar: he studies the primary materials.

Joseph Weiler: Absolutely. But my father's scholarly endeavour was much purer than that of people like me who are in an academic career. It was scholarship for the sake of learning. That also influenced me. But for us in academia, scholarship is not pure anymore.

Sarah Nouwen: Why is scholarship not pure for us in academia?

Joseph Weiler: Because in academia, scholarship is so instrumental to the progress of one's career. And, like it or not, it is also driven by the wish to impress others, to gain recognition, to be praised. A very human failing. *Vanitas Vanitatis*. For my father, when he studied the Talmud, it wouldn't in any material way be instrumental to his career and no one outside the family was even aware of this huge scholarly commitment. It was just scholarship for the sake of scholarship.

Sarah Nouwen: Your father was a rabbi in South Africa where you were born.

Joseph Weiler: Yes. Mandela speaks about him in his autobiography. Because at a certain point he established a school for Black children in Alexandria township. When the Nationalist Government came to power, they decreed that schools for Black children could not teach academic subjects but only vocational courses such as how to be a carpenter or shoemaker. My father just said: 'No.' The government said: 'Okay, you won't get any money from the state.' He said: 'I'll manage to raise the money myself from my community.' A number of years ago, I had a goose pimple experience when I was doing an arbitration at a WTO panel. A South African diplomat came up to me and said, 'Weiler, what a coincidence — I went to a school which was called the Weiler school.' I said: 'No, it wasn't called the Weiler school, it was called the M.C. Weiler school.' He said: 'How do you know?' I said: 'It is my father's school.' It still exists today. I admired my father and still miss him. He has had a big impact on me. Not least his values.

Sarah Nouwen: In what ways?

Joseph Weiler: Unlike some religious persons, he was truly tolerant, open to Others, deeply liberal. One's convictions had to come from within in a truly Kantian sense. Growing up, I never heard a single derogatory comment about gays, about Arabs, about Christians, about Blacks – all the prejudices that are so common. Liberalism was in his DNA. When I attended a ceremony to celebrate the 80th anniversary of the synagogue that he established in Johannesburg and looked through the archives, I found that he said on assuming his position: 'A religion that discriminates against women is no religion.' That was in 1933! He introduced Bat Mitzvah for girls. All these things shaped me as a liberal, which today is, of course, far more complicated.

Sarah Nouwen: In what ways is being a liberal today more complicated?

Joseph Weiler: My father was born in Poland, but he grew up in Riga. It was a traditional family, but they sent him to a German gymnasium in Riga. That school had a *numerus clausus* of two Jews per annum. My father could never get over that. So, when I grew up, he said: you don't look at colour, you don't look at gender; you don't look at religion, you look only at merit. And unfortunately, I'm like this today. Today, it is said, not without merit, that one should actually look at colour and gender. But for me it is difficult to get rid of that belief in 'blindness'. I continue to be reminded of his experience at the German gymnasium, even decades later. For instance, when I was a fellow at All Souls College, Oxford, I of course went to pay my reverence to Isaiah Berlin. He said: 'Weiler, that's interesting — I had a schoolmate in the gymnasium in Riga who was called Weiler.' They were the two Jews who had been admitted — for other Jews there was no space that year, due to the *numerus clausus*.

'Why do you have the name of God on your shirt?'

Sarah Nouwen: So that respect for the ancestors on your father's side explains why the initials JHHW mean so much to you. Some have floated another reason: JHHW sounds, and looks, a lot like *Jahweh*.

Joseph Weiler: You are right: by happenstance, the initials of my name are in Hebrew also the initials of the Tetragrammaton. I'm a vain person; on some of my shirts I have my initials on the cuff. Once in Poland somebody came to me and said: 'Why do you have the name of God on your shirt?'

Sarah Nouwen: What about your mother? What was her name?

Joseph Weiler: Una Gelman. Thus, when I became a citizen of Spain, where one's name is both patronymic and matronymic, the name inserted in my Spanish passport was Joseph Halevi Horowitz Weiler-Gelman.

Sarah Nouwen: Where did she hail from?

Joseph Weiler: She was born in the Belgian Congo.

Sarah Nouwen: And her ancestors?

Joseph Weiler: They had moved from Poland to Russia and again from Russia to England during the pogroms. But they couldn't make a living in England and moved to Congo. One of the very worst colonial powers, it should be said. They were very poor. We have these photos where you see them living in tents. It moves me. Outside the tent you see the cutlery stuck in the ground: that's a way to kosher the cutlery. When my mother was born, the family had already become successful. Her grandfather had eked out a living by transporting stones on mules during the building of the railways in the Congo. He was nicknamed Bongola Smith, because Bongola is the name for a mule. Then he discovered that he made more money when the mules conked out and he sold the meat. So this guy, who didn't know from what side a cow shat and from what side the cow ate,

decided that the meat business was a good business, and imported cows from Belgium. And 15 to 20 years later, if you ate a steak between the equator and the Cape, it would probably be a steak from him. He ended up being knighted by the King of Belgium.

Sarah Nouwen: And your mother?

Joseph Weiler: My mother went to Oxford.

Sarah Nouwen: Straight from Congo?

Joseph Weiler: No, they had moved to what was then Rhodesia. The family sent both my mother and her aunt – who were the same age, mother and daughter having given birth at the same time – to Oxford. My grandmother never forgave my mother: 'Why did she have it so easy? I never even made it to high school, and she goes to Oxford!'

Sarah Nouwen: Your father inspired you to be a teacher, scholar and liberal. And your mother?

Joseph Weiler: I was very fortunate. My father was scholastic. I don't think he ever read a novel seriously. He was not interested in music, in art. It was all the world of ideas for him. My mother was exactly the opposite. First of all, she was Bohemian, very counterculture. In the house I grew up in, there were bookshelves even in the bathroom. One part was for my father's books. The other part for my mother's: literature, poetry, psychology. She was a musician. She played the piano and the violin, which I still have. My mother taught me how to enjoy music. She said: 'I'm going to go slowly. We will move so that you realize that the human voice is the finest instrument, but we can't start with that.' So I remember the first thing I ever listened to, a famous opera. It was very accessible, and then listening to the symphonies, and then progressing to chamber music, which is more challenging than a symphony, and at the end getting to Verdi and others. If it were for my father, I wouldn't be reading novels, I wouldn't be collecting art, and I wouldn't be listening to music. All of this came from my mother.

Sarah Nouwen: What were her expectations of you?

Joseph Weiler: She was way ahead of her time. She said, you have to do what you want to do, not what we want you to do. I was tremendously lucky that my parents were so different in their cultural sensibilities and their view of life. They were very, very different persons.

Sarah Nouwen: You moved from South Africa to Israel at the age of five. What did that move mean to you?

Joseph Weiler: I spent two years on a Kibbutz. Those two years have earned a lot of money for therapists. It was still very Socialist. The family was considered a bourgeois institution. I was in a children's home away from my parents. It was traumatic for me.

Sarah Nouwen: What did it do to you?

Joseph Weiler: I became the Wandering Jew, just like my father: at home everywhere and nowhere. I have lived like my father. He was born in Poland, grew up in Riga, then

his parents moved to Tel Aviv in 1922, then he left and went to America, then to Africa and then he went back to Jerusalem. I moved with them first to Haifa, then to Jerusalem.

3. JHHW – The Student

Sarah Nouwen: And then you go to university in the UK - why there?

Joseph Weiler: Because it was English. I had this kind of colonial admiration for England. My English, however, was very poor. I had an Oxford learners' dictionary. Every time that I had to look up a word, I put a black dot next to it. I kept that dictionary. I've looked at it again; it's astonishing how poor my English was.

Sarah Nouwen: Where in England did you want to go to university?

Joseph Weiler: Of course, I applied to Oxford and Cambridge. They rejected me.

Sarah Nouwen: You have written an editorial on rejection.¹

Joseph Weiler: It was a good experience, rejection. You have to learn to deal with rejection. Instead, I went to the University of Sussex. At that time, the University of Sussex had a different educational philosophy. There was no law faculty. You could study law in the faculty of social sciences, the faculty of English and American studies and in the faculty of cultural studies. I studied law in the faculty of social sciences. So, 50 per cent of my courses were not law courses. I had a Communist sociology teacher. For a whole semester, we read *Das Kapital*, from beginning to end. Sussex shaped me as a lawyer because the law I learnt was from the beginning embedded in social science.

Sarah Nouwen: Also practically – you worked in order to finance your own studies.

Joseph Weiler: Unlike most of my fellow English students, I had to work when I was a student to survive. At that time English students all received a living grant. My parents were not rich. My grandparents had become rich, but then lost everything. But it is no bad thing, to grow up without wealth. I got a job on British Rail, maintaining the railway; really hard labour, five nights a week, from 8 o'clock in the evening to 4 o'clock in the morning. During the day, I was studying. On Sundays, I worked as a dishwasher in a Russian restaurant in Lewes, Sussex, because that was my chance to have at least one great meal a week...

'It was my good luck that Oxford and Cambridge rejected me'

Sarah Nouwen: Was the Oxbridge rejection good only because it is good to learn to deal with rejection, or also for substantive reasons?

Joseph Weiler: If I'd gone to Cambridge or Oxford to do my BA/LLB, I would have been a very different scholar. At the time, Cambridge was much more doctrinal than

¹ https://www.ejiltalk.org/desk-rejections-2/.

Sussex. Sussex shaped my outlook on law from the very start. It was my good luck that Oxford and Cambridge rejected me.

Sarah Nouwen: You went to Cambridge after all for an LLM, after you obtained your undergraduate degree from Sussex.

Joseph Weiler: When the results at Sussex came out, I already knew I wanted to be an academic. But I got an Upper Second, not a First. I thought: okay, I'm not good enough to be an academic. Then I received a letter, saying there had been a miscalculation in my grades. During my undergraduate, students had boycotted the course in statistics. So, the university had cancelled out one mark for all students that year. But then the university discovered that I had actually taken the course and had passed it (how can one do social science without statistics?). I got the mark after all, and thus a First. That was the entry ticket to academia. If that secretary had not meticulously checked and discovered that I was the one student who had taken the statistics exam, I would not have gone to Cambridge. So yes, you have to be talented, but you also have to have luck.

Sarah Nouwen: How did you discover that you wanted to be an academic?

Joseph Weiler: When I went to Sussex – things may have changed – the teaching was very tutorial-based. They even had a slogan there: 'if it's good enough for a lecture, it should be written.' So, the focus of the teaching was on tutorials in which two or three students would discuss their work. One would write two essays a week, for three years. My international law teacher was the mythical Colonel G.I.A.D. Draper.

Sarah Nouwen: The international humanitarian lawyer.

Joseph Weiler: Yes, he taught international law. Every week I would hand in an essay and it would come back covered in red and with disparaging comments. After a couple of months, I went to him and said: 'I'm very demoralized; I never seem to manage to write an essay that satisfies you.' He had a whole pile of essays next to him. He picked up one. It had only one little OK red tick. He said: 'That's what you want, isn't it?' And I said: 'At least once, just say: "good".' He responded: 'Don't you realize you're the only student that it's worthwhile dialoguing with?' That was an experience as a student, but also a future teacher. In those three years, I fell in love with studying, with scholarship. It was paradise for me.

Sarah Nouwen: Which teachers influenced you during your LLM at Cambridge?

Joseph Weiler: Quite a few: Robbie Jennings, Clive Parry and others. But it was Philip Allott who influenced me most. I was hugely impressed by the way he went about things.

Sarah Nouwen: How did he go about things?

Joseph Weiler: It was his innate critical approach to all issues combined with his deep humanity.

4. JHHW and the Jewish Tradition

Sarah Nouwen: Perhaps there was also the affinity between a devout Catholic and a devout Jew. How important is the Jewish tradition to you?

Joseph Weiler: My Jewish identity is very, very central, both as religion and culture. But when people think of Jewish identity, they immediately go to stereotypes. When we say 'German identity', 'Italian identity', we immediately go to common prejudices. And so it is with Jews. 'Jews are smart'; 'Jews are rich'; 'Jews are dishonest'. That's a common prejudice that still exists. Most Jews are not smart. Half the Jewish population in Israel doesn't succeed in a *baccalaureate* or *maturità*. Of the 14 million Jews in the world, most are poor; some of them live in abject poverty. And of course there are Jewish cheats. But because of the prejudice, if there's a banking scandal, they say 'the Jewish banker'; they never say 'the Christian banker'. The Jewish identity is also very difficult because Judaism is so variegated.

Sarah Nouwen: In what ways is the Jewish identity central to you?

Joseph Weiler: It's very central to me, because, first of all, I'm religious, an observant Jew. It really is a somewhat different outlook on life and a different way of living. And secondly, there are the cultural habits. For example, it seems to me entertaining that I have five nationalities. And when people ask me 'so where's your real home?', I say 'my patria is the book', and they can understand it as either The Book or books; both are true. I am a voracious reader.

Sarah Nouwen: What is your relationship with Israel?

Joseph Weiler: I grew up in Israel. It's an oxymoron to say 'I'm an atheist Christian', because if you're atheist, you're not Christian. But most Jews would define themselves as atheist Jews. Judaism is a religion. It is also peoplehood. So, there is a Jewish people. For centuries there was a confluence between the two. So, I belong to the Jewish people. I also belong to the Spanish people, etcetera.

Sarah Nouwen: Etcetera being, in addition to the Israeli and Spanish peoples, the South African, Italian and United Statesian peoples.

Joseph Weiler: I'm not a territorial person. But I do believe that Jews as a people have a right to self-determination and I do not believe it could have been realized anywhere but in their ancestral land. Anywhere else they realized that right to self-determination when it emerged would have created the same problem: 'What are you doing here?'

Sarah Nouwen: And the Palestinian right to self-determination?

Joseph Weiler: The very first book I published, still a student, was *Israel and the Creation of a Palestinian State*. It was driven by one principal sensibility. The Jewish right to self-determination was existential: caught between pogroms in the East and the Dreyfus trial (with everything it represented) in the West. If you're drowning in the sea, you have a right to reach out to the only floating log that offers salvation, but

you don't have the right to push somebody else off that same log. My father was my role model: Justice comes before everything else. Even the Almighty is subject to the strictures of Justice. As Abraham boldly confronts the Holy One Blessed Be He when he is told that Sodom and Gomorrah are to be destroyed: What if there are 50 innocents in the cities? Will the Justice of the whole earth Himself not do Justice?

Sarah Nouwen: In the book, you support a two-state solution. What about a one-state solution?

Joseph Weiler: At the time, writing about a Palestinian state for Palestinians was shocking to many Israelis. Later, the two-state solution became a common position. [With a smile] I also have the three-state solution: Israel, Palestine and the Republic of Tel Aviv.

Sarah Nouwen: And what about one multinational state?

Joseph Weiler: In 1947, Martin Buber and Judah Magnes, the founder of the Hebrew University, advocated for a binational state. I don't have anything ideological against it, as long as peoples can realize their right to self-determination within such a construct. I'm not sure how today a bi-national state would work, because of the way the dynamics of the conflict have developed. I think that many Palestinians want their own sovereignty, as do most Israeli Jews. So I am still among those who favour the two-state solution, though there are as you know many formulae for realizing self-determination.

I wrote an article some years ago on the Catalan issue. I have never received so many hostile emails for anything I had published. I wrote that both the Spanish and the Catalan held Francoist positions. The Spanish say: 'One nation, one state – Spain.' That's Francoist. And the Catalan say: 'One nation, one state, namely Catalonia.' It is the same. I asked: why don't they have the imagination to have a nation of nations? So I do not exclude such options so long as they respect the legitimate aspirations of both peoples to self-determination.

Sarah Nouwen: What are the chances now for a two-state solution, let alone a nation of nations?

Joseph Weiler: There was a moment when it was on the cards. Less so today. First, the societies have become more right wing, on both sides. Secondly, the abhorrent settlement movement might have killed this. Implacably, from the very beginning, I have written that the settlements are in violation of international law and aberrational for a whole range of other reasons. The settlements have been a monumental historical mistake, not least for possibly foreclosing the two-state option. Ultimately, both sides bear responsibility for the two-state solution being out of sight.

5. JHHW - The Scholar

Sarah Nouwen: You published your book Israel and the Creation of a Palestinian State while at the European University Institute, where, after

your Cambridge LLM, you started as an Assistant Professor. You also did your PhD there. What did you learn from your supervisor, Mauro Cappelletti?

Joseph Weiler: Cappelletti was certainly a model for me. On the one hand, the seriousness of his scholarship: beautifully documented; not cutting corners. At the same time, it always had a strong normative dimension – seeking to make the world a better place.

I also learned from him that the single most important thing for a successful doctorate in law is the research question. I came up with one and he said 'no, this is not a good research question'. I came with a new proposal, and he said he liked it. I then said to him: 'Okay, what's our next step?' And he looks at me incomprehensively: 'What do you mean? What's the next step?' I said: 'Well, you want to see something. When should we meet?' He said: 'Come to me when you have a draft of your doctorate. I looked at him and said: 'But you're my supervisor!' To which he responded: 'But it's your doctorate.' There was much wisdom in that approach. Classical supervision creates a co-dependence between supervisor and supervisee. The supervisee ends up working 'for' his or her supervisor. The supervisor has a tendency to make sure the doctorate is the kind of doctorate that he or she would be writing. It is a very common phenomenon. It is not helpful for the formation of independent critical scholars.

Sarah Nouwen: But for the first time sharing a draft after, say, three years is also very risky. We all go down rabbit holes. What if the project has gone entirely off the rails?

Joseph Weiler: A good doctoral programme would have built in certain signposts along the way – like the June paper at the EUI, to prevent such. But whoever said that academia and scholarship is without risks? In reality it worked well for me and for my own doctoral students. I know that few agree with me on this approach to supervision.

Sarah Nouwen: In what ways have you departed from Cappelletti?

Joseph Weiler: Cappelletti was a young partisan during the Second World War. The rise of fascism in Italy and elsewhere horrified him. He totally believed in the importance of courts; that courts are the real guardians of democracy. He admired the American system of fundamental rights protected by a court. I am still of the generation of public lawyers who are very court-centric, but with a much more critical and Critical approach to courts and judges. I give this just as one example.

Sarah Nouwen: One of your most frequent criticisms of an article is that its normativity is too simplistic.

Joseph Weiler: To my research students and the fellows in my programme, too, my constant comment is: 'your normativity is too simplistic.' There is typically more grey than black and white in our central normative commitments. Even when an article has a strong normative commitment, it should not read as a brief for the prosecution or the defence.

Sarah Nouwen: You learnt this not directly from Cappelletti but from your reaction to him?

Joseph Weiler: In a way, yes, but that is learning. I want my students to think critically of what I say to them, and then to have the autonomy to say that Weiler is wrong. My *Transformation of Europe* was in some ways canonical. But I was pleased when, say, Daniela Caruso early on picked serious holes in it and others followed in her footsteps. How is scholarship otherwise to advance? That is what I took from Cappelletti. He liked and encouraged my critique of his work.

Sarah Nouwen: Did your supervisor have academic practices that you intentionally departed from?

Joseph Weiler: When I left, I had a list of the aspects in which I did not want to be like him. I've never sent a reprint in my life. He had a mailing list and sent everything that came out. He was very baronial vis-à-vis the secretaries. I was a young assistant professor, and the senior professor can tell you what to do. I once came with a text in which I had made a spelling error: I had written 'tarrif' instead of 'tariff'. He started screaming at me. I stood up, 20 cm from his face, and said: 'This is the last time you raise your voice with me. I'm not your son, and even my father didn't scream at me.' He changed colours. It changed the relationship between us – totally. For the better! That's why he could also accept my critique of his work.

Sarah Nouwen: Do you think that many students are in a position to do this?

Joseph Weiler: Perhaps not with everyone. But there might be other ways. Assistant professors might be even in a lesser position to do that, because their promotion depends on the professor. But here you see the interaction between my father and Cappelletti, because my father was my role model. My father taught me that the Talmudic way is all about contestation. And there's another thing that's so beautiful in the Talmud. You have two positions that contradict each other. It's hard to translate the cadence and the beauty of the language, but the Talmud says: 'both are the living word of God,' even though they contradict each other. I grew up on that.

Sarah Nouwen: To embrace the contradiction.

Joseph Weiler: To see the value of the contestation among scholars. It's not just about proving who is right and who is wrong.

Sarah Nouwen: Yes, as the Talmud says, 'When scholars vie, wisdom mounts' – the rationale of the EJIL: Debates! Apart from your supervisor, Cappelletti, which other EUI professors shaped you?

Joseph Weiler: Nino Cassese had a very big impact on me, also more in disagreement than in agreement. We liked each other very much, but disagreed.

Sarah Nouwen: On what?

Joseph Weiler: He wrote an essay where he said that when God tells Abraham to go and kill his son, Abraham was obedient to superior orders. I said: 'You don't understand Abraham; you have not read the Bible carefully.'

Sarah Nouwen: Why was Cassese wrong? What is the better reading of the Bible?

Joseph Weiler: The answer is in Chapter 18, where God says to Abraham: 'the evil of Sodom and Gomorrah has come up to me. I'm going to destroy the city.' Abraham says to God: 'What if they're 50? What if they're 40? Will the justice of the whole earth not do justice?' The end of the conversation is a just one. I call it the Copernican moment on the concept of justice in religion. It is not: 'If God says it, it is just.' Rather: 'If it's unjust, it cannot be from God.' Abraham has that experience. The answer is also in Chapter 22, which begins: God tested Abraham. I say: Abraham tested God. Abraham is standing before God, suggesting: 'I'm going to do it. I'm going to do it. I'm going to do it.' And God reacts: 'No, no, don't do it!' Abraham knows he can go safely, knowing that no injustice will be committed, because it is a just God and indeed, his faith was justified.

By contrast, soldiers don't have a reason to have this faith in their superiors, absolutely not. They should speak out, and in extremis refuse a superior's order. Sodom and Gomorrah is fundamental in another sense too. God says: 'I shall not hide from Abraham what I am going to do. After all, I've chosen him to teach him and his descendants the ways of the Lord to do justice.' And yet God never instructed Abraham on the substance of Justice. It is part of our existence as humans. We can distinguish between good and evil. It's a Kantian proposition. And another nuance in the text: He instructs him to do justice, it's not enough to know what is right and wrong. 'You have to go and do it.' Justice requires the courage to speak truth to power. Abraham speaking to God is the ultimate example of speaking truth to power, because who is more powerful than the creator of the world? Yet he brings God to accept that even He, the Almighty, is subject to the strictures of justice. Say you don't kill the just with the unjust. That's the Copernican moment that we learn that it's not 'if God says it, it's just', but 'if it's unjust, it cannot be from God'. Camus was also a huge influence. I still teach (in a course called Texts and Ideas) L'Etranger and La Peste. I teach the first as posing the question of justice. And the second as – just go and do!

Sarah Nouwen: What does this mean for the responsibilities of a scholar, for instance, in the current situation in Gaza?

Joseph Weiler: The way we act is by writing, by speaking up. That is our way of 'doing'. But I want to make two preliminary observations. Let's talk a minute about human rights. Your values are tested when they demand of you to do something that your inclination is not to do. It's easy to protect speech I agree with, but you have to protect speech with which you disagree. It is good old Voltaire: 'I hate what you're saying, but I will defend to the death your right to say so.' In the current climate, the real test of 'not just knowing, but doing' is when it comes with the cost of speaking out against one's reference group. Most of the literature speaking up at the moment gets three cheers from the peer groups. I'm not saying they shouldn't do it. But it is easy. In academic life it's easy to protest when you're going with your reference group. It's much more difficult

when you go against your reference group. There I see a lot of cowardice. Still, when it comes to Gaza, one has to speak up consistent with one's convictions.

Sarah Nouwen: Who shaped your sensibility about standing up against the crowd?

Joseph Weiler: Well, my father of course, in, for instance, his fight against Apartheid. But academically speaking, Raymond Aaron who courageously stood against the French intellectuals including Sartre who idolized the Soviet Union. Aaron was a social democrat. He wasn't a right-winger. His intellectual courage inspired me already as a student.

Sarah Nouwen: Do you see positive examples of speaking up against one's peer group in today's academia?

Joseph Weiler: Here is one shining example. Thomas Nagel, in my view, the finest moral philosopher writing in the United States today. If you want to read one book, read *Mind and Cosmos*. You can read it in one afternoon, and it's beautifully written. It's an incredibly courageous book, because Tom Nagel, clinically and conclusively, shows that in the current state of our knowledge, Darwinism cannot explain the emergence of human consciousness. That took courage. He certainly does not endorse Creationism, not having, in his words, a single religious fibre in his body. But current science, Darwinism, has no explanation. That took courage. I don't see enough of that courage of going against one's peer group. It's not about going against the powers, for instance the Governments of Israel, Hungary, Poland, etc. Say something of which your peers will say: Joseph, how could you write such a thing?

Sarah Nouwen: But isn't that contextual, too? Some Israeli scholars are currently using the label genocide to describe what is happening in Gaza. That goes against their government, as well as against many of their peers in Israel.

Joseph Weiler: And if that is what they believe, they should speak it with no fear! But the same would be true for those who disagree.

I certainly do not want to say that academics never speak out against their peers. But grant me that the temptation of pleasing our peers is always present.

Sarah Nouwen: Have you ever written something for which you have paid a price?

Joseph Weiler: It depends. I have written stuff that has definitely gone against the peer group – for instance on European integration and on the European Court of Justice. But have a paid a price? In, say, career terms? I doubt it. Certainly not in recent times. All I can say is that my career is laced with articles that took a position that was not the orthodox position. But I am, too, fully aware of the human propensity to lie to ourselves about ourselves. So maybe all this is self-deception.

'International trade law is very, very important, but the field of classical international law disregards it'

Sarah Nouwen: You've been Editor in Chief of the European Journal of International Law for 17 years, but when you speak about your own work, you highlight pieces on European law. Do you see these fields as integrated or is it more that you mostly write in one field and teach and edit in the other?

Joseph Weiler: I have quite a bit of international law writing though I am less known for this. Perhaps two influential pieces, at least pieces I am proud of, are on the geology of international law and the book Israel and the Creation of a Palestinian State. But what people forget is that most of my work is in international economic and trade law. This is something that was part of the change that I introduced to EJIL - international trade law is part of international law. A lot of European law is international trade law, but international trade law does not follow the logic of the European Union. In fact, I'm a critic of people who dream that the World Trade Organization will become like the European Union, that it will be constitutionalized, etc. International trade law is of huge significance to the world we live in, but the field of classical international law tends to disregard it. If you look at the case books and even many textbooks, they do as if international trade law does not exist. That is ridiculous. In every decision, the Appellate Body of the WTO cites Articles 31 or 32 of the Vienna Convention on the Law of Treaties. And before the current times, with the crises in Ukraine and Gaza, the geopolitics of the world were dominated by economics and trade, not by war and peace. And yet you don't often see that in traditional public international law. One of the good things that we did in EJIL was, I think, to integrate trade and investment into mainstream international law.

Sarah Nouwen: And now many pieces that suggest a historical turn in international economic law.

Joseph Weiler: Yes, very important historical revision of the field with new perspectives and sensibilities such as the importance of colonialism. Integrating the economic into international law is almost like a mission. How could we disregard one of the things which explain so much of contemporary geopolitics? If you're interested in social justice, you have to be a trade lawyer too. To understand colonialism, North-South issues, globalization, the politics and law of international trade are central.

Sarah Nouwen: You've mentioned some influential pieces. Are there pieces that you regret having written?

Joseph Weiler: My second book, *The Foreign Affairs Committees of the European Parliament*, which I wrote at the invitation of Nino Cassese. Oy vey! It was shortly after the first direct elections to the European Parliament, which were in 1979, and the turnout was dismal. So I wrote his book. I was probably more arrogant then than I am now. I wrote in this book: What do you expect? The European Parliament has no powers. Why should people bother to vote for it? And I said, when the European Parliament gets powers, you will see how the turnout increases. It was such a superficial analysis. First of all, the facts. With every treaty amendment, Maastricht, Nice, Amsterdam, Lisbon, the powers of the European Parliament increased. It is a co-legislator with the Council. And yet, the turnout to European elections decreased, totally falsifying my prediction.

But the reason I really regret it is that I fell into the same trap as most people did, and still do, namely to think that the problem of the democratic deficit of the European Union was that the European Parliament didn't have power. And that once we give the European Parliament power, we've solved the democratic deficit. That was wrong then, and it's wrong now. So that's a book that I would eliminate from my list of publications. I also published too many edited books, and I think not all of them are particularly good, for all kinds of reasons.

Sarah Nouwen: In your editorials in which you give advice to more junior scholars you have warned against edited books. Is the advice in your editorials based on your own mistakes?

Joseph Weiler: An awful lot. A little bit like the proverbial British officer: 'Don't do what I do; do what I tell you to do.' But I think there are some advantages in getting all that experience. And if you learn from your mistakes, would you not want other people to avoid committing the same mistakes?

6. JHHW - The Teacher

Sarah Nouwen: So you are, after all, a 'rabbi', in the sense of a 'teacher'.

Joseph Weiler: I understand myself *first and foremost* as a teacher and an educator rather than a scholar – without dismissing the importance of scholarship. I will teach you law the way I think law should be taught. But I'm also going to educate you in a more holistic way. And it has shaped many decisions that I've taken. For instance, I have turned down many invitations to go to conferences, but I've never in my entire career turned down an invitation to come and teach. Before I became EUI President, in 2013, I sat down and counted the number of students I had taught. I stopped counting at 10,000, and that was in 2013. Teaching is dominated by inertia. A lot of professors act like 'this is how I was taught; this is how I will teach', or 'if I've developed my own way of teaching, then I'll just repeat that way of teaching for the next 10 years of my life.' I say: 'But if you were a scholar like that, just repeating the same methodology, you wouldn't be a good scholar.' You have to revisit your teaching all the time and think about it. How can I do it better? Teaching demands the same amount of mental and creative energy as scholarship.

Sarah Nouwen: But does the academy reward investing the same amount of energy in teaching as in scholarship?

Joseph Weiler: No, quite the contrary. Is that not a bit sad? I don't blame people of the younger generations who tell me: 'That all sounds great, but it doesn't correspond to how the Academy works today.'

7. JHHW – The Practitioner

Sarah Nouwen: Your teaching heavily focuses on practice. Is it important to you, to practise on the side?

Joseph Weiler: I tell early career scholars when they say 'I want to do both practice and academia', you can't start in this way. A professor is not a practitioner with more time, and a practitioner is not a professor. If you try and do both you will be best in neither. You should either be a first-class lawyer or a first-class professor. Then you can cross cut. Once you become a first-class professor, the practice will start coming.

There are two advantages to practising as an academic. First, you're paid as a professor, so you don't have to take the practice just because you need to earn money, though I have nothing against extra income. You can choose what's interesting for you. You can take cases and do them *pro bono*. And you learn so much about the profession of law. When we teach students, we are not teaching them to be professors. That is only in the doctoral programme and the post-doctoral fellowship programme. No, most of our students, we are teaching them to be lawyers. So it is critical to understand the practice of law. And I have learned tons from my practice experience.

And think of the versatility. Countless times, I have helped governments negotiate. I like to draft. I learned tons when I was on the *Comité des Juristes* of the European Parliament's Institutional Affairs Committee. In arbitration, deciding a case is altogether different from commenting on a case decided by others.

That's what's so nice about our profession: we can be involved in legislation, in arbitration, in negotiation, in litigation. I don't think a doctor or engineer has the same range of possibilities. It's just so wonderful. And you learn so much! When I worked on the tobacco advertising case, I had to learn how advertising works in relation to smoking. Eye opening. Then I worked on an intel case on rules of origin. For about two and a half days I was a world expert on how microchips are made because I had to come to some conclusion on what is the last substantial operation in the construction of chips. So, one day you're doing advertising, another day the construction of microchips, on the third day crucifixes in the classroom, the fourth day confiscation of property in Venezuela etc. How can you not like this?

8. JHHW – The Institution Builder

'you can't really have as friends people who the next day come to your office and ask for a salary raise'

Sarah Nouwen: Speaking of 'liking' one's work, did you enjoy the major administrative roles that you have fulfilled? For instance, did you like the role as President of the European University Institute?

Joseph Weiler: No.

Sarah Nouwen: Why not?

Joseph Weiler: All in all I am happy to have done it, and the EUI was and is close to my heart. A real alma mater in more than one way. It was a challenging experience from which I learnt and grew. But did I like it? No. Because it didn't agree with my personality. I wasn't a good choice for that role. I have ideas, I'm determined, I can

be tough, but I was too 'dictatorial'. In other words, I would listen, but then I would decide. People didn't like that. I wasn't good at building consensus. And since the President of the EUI has more power than the President of France (if you look in the Convention setting up the EUI, for instance, all residual powers are in the President; the President even has the power to make exceptions to the rules), it is a very powerful position. My successor, Renaud Dehousse, was much better in achieving some of the goals he wanted to achieve in a more consensual way.

I also didn't like it because I became socially very isolated, not because of conflict but because you can't really have as friends people who the next day come to your office and ask for a salary raise.

Sarah Nouwen: Do you think that this is specific to the EUI role because of these excessive powers or is it the case for most deanships?

Joseph Weiler: I don't know enough about other deanships. I know that an American Dean has more power than for instance a dean in Germany, who is more a short-term manager of the faculty. I don't have the experience of other institutions to answer that. But I think the following is probably true for all positions of academic leadership. What didn't bother me was the actual administering, because I had really wonderful administrators at the EUI. But there are two aspects of the job that are very difficult. First of all, you totally lose control over your time, your daily agenda, your weekly agenda, your monthly agenda, your yearly agenda. It's far more constrained than when you're a professor – professors have almost exceptional control over their time, and you lose that totally. I would joke with the office staff: 'Am I free to go to the bathroom now?' The second difficult aspect is that 70 per cent of your energy is absorbed not by big strategic goals but by solving day-to-day problems. And 70 per cent of those problems are ego determined: it's dealing with difficult personalities – professors... I really did not like that.

Sarah Nouwen: Whether you enjoyed the role of administrator or not, you have built a lot of institutions. You were involved in the creation of the European Policy Unit, which became the EUI's Robert Schumann Centre; the Academy of European Law; the Florence School of Transnational Governance; EJIL and ICON-S. What is, to you, the most important institution you have built?

Joseph Weiler: None of these. It is the creation, together with the formidable Blu Greenberg, of an international court to resolve the terrible plight of divorced women under Jewish law. It's a scandal: even when a religious court decrees a divorce, if a husband says 'she is not divorced', she is not divorced. So it is a problem of recalcitrant husbands. The Court, called the International Beit Din, is now celebrating its 10th anniversary. It was a fight because it had to be Orthodox – it wouldn't work if it was only for progressive Judaism. And some of the Orthodox fought it tooth and nail. But it has become more and more accepted. I believe that is the most important institution building I have been involved in.

Sarah Nouwen: Abraham and Camus taught you not just to know justice, but also to do it. But there is so much injustice in this world. Why did you choose this cause?

Joseph Weiler: Possibly it came down to one factor: my conviction that I could actually do something concrete to fix a serious problem beyond writing about it. Why this particular cause? Perhaps because the status quo, the enduring gender injustice, offended me both as a liberal human being and an observant Jew. I considered it a desecration of the name of the Almighty.

Sarah Nouwen: We started with your initials: JHHW. We have begun to explore who JHHW is: a son, a student, a scholar, a teacher, a practitioner, an institution builder. What else?

Joseph Weiler: If you ask me 'how do you define yourself?' I wouldn't immediately say I'm a scholar, I'm a teacher, etc. I would have to think about it and say it depends on what day you're asking me. I really don't want the professional dimension of my life to define me. We have two overlapping tendencies. First, we allow our professional life to take over our life, which is terrible. I'm a committed academic, but it's only one part of my life and maybe not even the dominant part. But when we ask each other about our lives, we always ask about the professional side. I once wrote an article arguing that the word identity is a very bad word. We should use the word differentity because we have multiple identities. I wrote it in the context of nationalism. I ask a student: 'What are you?' He will then say: 'I'm American. I'm German, I'm Latvian, etcetera.' But I say: 'You could say I'm American. You could say I'm a man or a woman. You could say I'm a Beethoven lover, etc.' The assumption usually is that I'm a scholar, or a teacher or a lawyer. But I'm a novelist; I'm a photographer; I have exhibitions; I'm a beekeeper. These are all important parts of my life, and they do not touch on my professional identity as a Professor of Law. Probably the book I am most proud of is my novella, Der Fall Steinmann. Certainly not legal scholarship...

Sarah Nouwen: You are a karaoke singer.

Joseph Weiler: Yes! Maybe I could have had a successful career as a wedding singer. Do you know what is the best email I got in my life? When I go to China, I always go with the students to a karaoke party because in China they take karaoke seriously. I once got an email from one of the partygoers who wrote: 'Professor Weiler, you are the Prince of Love Songs.' That's worth 500 doctorates!

Sarah Nouwen: Do you practise for karaoke?

Joseph Weiler: I have my repertoire.

Sarah Nouwen: What is your favourite?

Joseph Weiler: *Nights in White Satin* by The Moody Blues. It's probably not your generation.

Sarah Nouwen: There is thus more to life than law.

Joseph Weiler: There's so much more to life than work. Since I'm a rules-based Jew, I put strict limits. I don't allow the professional part of my life to take over my life. During all my years at Harvard I didn't have a single law book at home. When I would go home in the evening, that was it: law didn't exist anymore.

Sarah Nouwen: Have you managed to keep this up? I thought you spent many of your Sundays reading EJIL articles.

Joseph Weiler: I do a lot of reading for EJIL and ICON, but on Shabbat I don't even remember EJIL and everything else that exists.

9. JHHW – On His Way Out as Editor in Chief of EJIL

Sarah Nouwen (jokingly): 'I don't even remember' rings a bell. In editorial meetings, you often remark 'I wouldn't remember his or her name even if my life depended on it'. For many of us, remembering becomes harder with age. Do you experience advantages of getting older?

Joseph Weiler: Not many, but some are cardinal. Anything I do these days is because I decided to do it; I was not pressured to do it; it was not important for my career to do it. In situations where I wonder why I accepted to do something – a conference, to write something – I can blame only myself. There really is a great deal of liberty which comes with advancing age. It's an appreciable leap of sovereignty. Another advantage: I am becoming more tolerant. Oh, my gosh! When I was a young professor at Michigan, the students had this wonderful thing: apart from the official class evaluations – which in the US, students get to read – they had their own book evaluating the professors. The entry on me said: 'In time of war, he would shoot the stragglers.' I was much less tolerant to what I considered intellectual *faiblesse*, not thinking through things. Now I'm more understanding of the human condition. To me, that came with age.

Sarah Nouwen: You use this expression, 'it is the human condition', quite often in editorial meetings. What, for you, are the key elements of the human condition?

Joseph Weiler: To understand the human condition it is better to read novels than sociology, philosophy and social science. Yes, all these disciplines try to explain human behaviour in some ways, either as individuals or socially. The scientific literature has very simplistic paradigms to explain individual behaviour: power, money, greed. Even the psychologists sin with simplifications. But in the novel, you have two things that don't exist in the professional literature: it is contextual and there is empathy. If you read, say, normative legal literature, it's always hectoring about these bad people. But in novels, you develop empathy, even for a Medea who murders her children. It is the human side. In novels, you see how complex it is to negotiate life. You see the accident of birth. It's such a rich way to understand the human condition. My obsession with the human condition is also the obsession of the social sciences and the humanities. We're all trying to understand how and why society behaves as it does and why humans behave as they do. I just think that literature does such a better job in giving us insight and understanding. The normative dimension is so much more nuanced and complex than in the social science. Why do we still read, say, Dostoevsky's *Brothers*

Karamazov or *Medea?* The classics have withstood time because of the way they deal with life and the life of people.

Sarah Nouwen: Which aspect of the human condition is the dominant emotion in our profession?

Joseph Weiler: Narcissism and jealousy would certainly be in contention.

'Jealousy manifests itself in a particular way in academia because it is jealousy of reputation'

Sarah Nouwen: Why would jealousy be more important in a law faculty or another academic environment than in any other social environment?

Joseph Weiler: It is not necessarily. But I think that jealousy has a particular manifestation in the academy that it doesn't necessarily have elsewhere. It is, perhaps, because reputation and recognition count more than power and money. That is the currency of the academic profession.

Sarah Nouwen: Should our currency be a different one?

Joseph Weiler: Well, I also think that the Messiah should come (or return).

Sarah Nouwen: Could this adoption of reputation as currency be a manifestation of an Einsteinian culture – a culture in which we still think that academia consists of individual geniuses instead of recognizing that we all depend on the collective?

Joseph Weiler: It's a good question. I came to realize this only when I became President of the European University Institute. A dean can tell you what you have to teach and how much you have to teach. They can't tell you what to research. They can't tell you what to write. They can't tell you how much time to spend on this and how much time on that, which is very different in other labour environments. That shapes academics. They become less collectivist because autonomy is cultivated as a virtue and as a privilege.

Sarah Nouwen: In academia we get paid in freedom.

Joseph Weiler: And, as a tenured professor, job security. So I used to joke that anything I proposed as EUI President, I would know that 20 per cent of the faculty would be radically opposed, arguing: 'This is changing civilization. This will destroy the institution.' Twenty per cent would listen carefully and say: 'I like this, I think I will support it.' The critical thing is that 60 per cent thought 'I'm okay with this, as long as I don't have to do anything different to the way I'm doing things'. That's why universities are so immune to change. That's why universities are some of the most conservative in human institutions.

Sarah Nouwen: And yet, the world in which you started your career is very different from the world in which the younger generations whom you have

been addressing in your 'on my way out' editorials are starting their academic careers. What do you think are the main differences?

Joseph Weiler: The main difference is rooted in the way the academy is financed and the turn to quantification as a proxy for measuring quality and worth. In public universities in the past, the Professor didn't have to worry about money, didn't have to write grant applications and didn't get kudos from getting an European Research Council grant or Horizon 2020 project. It has had a corrosive impact because people now determine their research agenda on the basis of what the last Horizon 2020 is interested in instead of doing what they are interested in. Another change is that there is now too much quantitative evaluation of merit and value. That doesn't work well in the humanities. Citations are a very bad proxy for quality. Now deans, rectors and presidents worry enormously about their ranking. Rankings are done by quantitative criteria, for instance productivity, determined by whether a journal is in Scopus 1. That, too, has a corrosive effect. Now a scholar has to worry not only about writing a good article but also that it is read and cited. These are big changes and they change the experience of what it is to be an academic.

Sarah Nouwen: Has your Editor in Chiefship shifted your sense of what it is to be an international law scholar?

Joseph Weiler: It has changed my perception of international law by being exposed to a far greater diversity in what counts as international legal scholarship. What international legal scholarship is has changed in my lifetime. International legal scholarship today is much more heterogeneous than it was when I studied international law with Robbie Jennings and Clive Perry. Because of the heterogeneous scholarship submitted to EJIL, and the peer reviews, I think of international law differently than I thought about it 35 years ago.

Sarah Nouwen: What are you going to do now that you won't be spending hours and hours every week reading EJIL articles, drafting letters, attending editorial meetings and managing EJIL?

Joseph Weiler: Well, there is still ICON. I am not giving that up quite yet... I will have more time for photography. I've been working for many years on my second novel. I have already a first draft; maybe I will finally finish it. I love the movies. I have a weekly appointment with one of my sons. We go to the movies together.

Sarah Nouwen: More time for children and grandchildren, if they have time for you?

Joseph Weiler: Maybe. There's a study that shows that when you ask old people what they regret about life, they would say that they didn't have a good enough relationship with their children; that they had prioritized other things. I hope I wasn't a bad father. I want to believe that I have a great relationship with my children now. It's probably the thing that gives more meaning to my life than anything else.

Sarah Nouwen: And now also the grandchildren?

Joseph Weiler: Sometimes I wonder why we can't move straight to grandchildren and skip the phase of children: the children–parents relationship is so much more complicated and fraught than the grandparents and grandchildren relationship.

'I'm glad that I'm sad about it'

Sarah Nouwen: How do you feel: 'thank God, no more EJIL', sad, something else?

Joseph Weiler: I'm absolutely honest when I say that I'm a little bit sad leaving EJIL. I loved the work, no matter how much it was. But I'm glad that I'm sad about it. It means that I'm leaving when I'm not sick and tired of it. If I need to thank God it is that I'm leaving EJIL when I still want to stay on EJIL.