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A SELF-INTERVIEW: REMEMBERING  
MAURO CAPPELLETTI – 10 YEARS TO HIS DEATH

Q. What was the nature of your relationship with Mauro Cappelletti?

A. Our relationship was shaped by a cultural clash. Two early incidents stand out. Incident 1: I was appointed back in 1978 as an Assistant (Professor) in the Department of Law. Specifically, I was attached to the Project which Mauro was planning – Integration through Law: Europe and the American Federal Experience. In Mauro's mind I was of course his Assistant in the classical or old fashioned Italian way. (Some of my young Italian colleagues tell me that not much has changed since then [...]) In my very first week on the job Mauro had asked me to draft something short for him. I was called to his office with my short draft in front of him. Apparently I had spelt 'tarrif' instead of tariff. (Another parenthesis: Though English is my mother's tongue it is not my mother tongue. Mauro's command of English and other languages was truly impressive. Envious and inspiring – it could be done!). «Did you proofread this draft?» he asked. This I later realized was my first lesson in the habits and practices of good legal science. I am not sure I even knew at that time what "proofreading" was. Then he raised his voice and sort of shouted at me. That was a first for me. So I stood up, looked at him and said – «You're not my father, you know». That was a first for him. He never again raised his voice with me. (When it happens to me to raise my voice with someone who works with me, and it has happened, I am doubly mortified and shamed recalling that experience.) Incident 2: Shortly after, I was invited, for the first time, to lunch at the Cappellettis. They still lived in that beautiful rambling house in Settignano. Throughout lunch and coffee, the inimitable and unforgettable Mimma Cappelletti could not hide a peculiar grin. Finally, I could not resist and asked what humored her. «Well», she said, «this is the first time ever that an Assistant of Mauro invited to lunch has showed up without a jacket and tie». I was wearing clogs, jeans and a T-shirt.

To say I became like a son to him would be a cliché. But I did become in some way 'family' and our relationship was definitely Rabbi-Pupil in the comprehensive and best possible way. He was always teaching me, understood his role as such, and law was only a small part of it.

Q. Can you give us some examples of the type of things you learnt from him which were not strictly law?

A. Sure. There are so many. For example, one gets so many invitations to write papers, give lectures, contribute to volumes. Mauro drilled into me, again and again: «Never do any of the above if you do not have a strong idea, a truly original and important thought, a memorable intervention. Never write simply 'per la cronaca'. So much that is written in law is boring and trivial. What's the point, he would say, of writing about a decision of a court, if there is not some critical added value to simply reading that decision?» Of course we all delude ourselves about the importance and originality of our own work. I am sure I have published plenty a boring and trivial piece. But I have found myself again and again throughout my life rejecting invitations or even pulling out of commitments when I realized I had nothing particularly insightful to say.

I will give another example. This was a situation where he found himself in conflict with one of his colleagues. Academics, as we know, have big egos and big egos breed conflict aplenty. Many of these conflicts are left to simmer and poison working relationships for years. I recall Mauro sitting at his desk and brooding about some such issue with this colleague. He then abruptly stood up, and as he went to the door he turned to me and said: «It is very hard, but you just have to steel yourself and go and talk it out». He was on his way to meet that colleague. He was a proud person, very proud, but never too proud to acknowledge his own errors; to apologize.

Q. He must have influenced your scholarly persona too?

A. He did in most profound ways. I was schooled at the University of Sussex of the 70s, which broke the mold of traditional studies – there were no disciplinary faculties but Schools of Study. I studied law in the School of Social Sciences so that when I arrived in Florence I was already a Law in Context type. Maybe even more than Mauro. But 'Justice' was not integral to my legal thinking – still a pervasive malaise in our legal education. For Mauro the words law and justice were practi-

cally synonymous. Make no mistake: He understood legal positivism through and through. But he simply despised an approach to law which did not put justice as a permanent part of the enquiry. That was the defining feature and the underlying connection of his three great and enduring projects: *Judicial Review in the Contemporary World*, *Access to Justice and Integration through Law*. They were all, sometimes naively and endearingly, about furthering the cause of justice in an oft unjust world. He was secular through and through, but in some ways Law was a religion to him in the sense that he believed in its redeeming power. Very Jewish, of course.

Q. Did that ever come up you being a Jew?

A. Mauro was a man who hated prejudice, racial religious or otherwise. And for his generation he was even reasonably gender-aware. But he enjoyed his status as a Gentile in a very Jewish profession. His generation of Comparative Law was dominated by Jewish scholars, one obvious explanation for which being the forced emigration of Jews (those who were not murdered) to the United States and the United Kingdom. He once told me with a grin how in some major conference, sitting next to René David, he leaned over and whispered – «We are the only non-circumcized in the room [...]» I mention this as an illustration of the mutual confidence we enjoyed.

Q. What of Comparative Law?

A. Mauro's approach was complex and sophisticated. Also very serious. He often used to say (and write) that Comparative Law was our only 'legal laboratory'. I found that the most flippant of his observations, even though he was quite serious about it (though also quite serious in understanding how imperfect a laboratory it was). It is only rarely that comparative law can truly give us laboratory quality results for, say, legal transplantation. But at a deeper level, comparative law was a state of mind, a state of consciousness for him, a way of always questioning one's own legal convictions, legal understandings, legal rules, realizing that they were always set in specific local contexts and that even that which might seem axiomatic might, as a result, have a contingent quality. It is this very realization – how local and culturally dependent law was – that made him so aware of how difficult it was to do good comparative law. His *modus operandi* is legendary – elaborate national reports, the templates for which were designed by him, thus allowing

truly local experts to map the terrain, and on that solid basis he would perform those truly exemplary General Reports – comparative law at its very best with the whole so much greater than the sum of the parts. It is, in my view, a model which is difficult to surpass—but its success depends entirely on the ability of the General Reporter to construct a whole which is greater than the parts. Few have matched Cappelletti in recent decades.

And yet master as he was, there was also one common fault line (and fault) which runs through all the work: Cappelletti again and again and again, in the large projects and the small vignettes, always went to great length to show unity beyond or beneath difference, and in dynamic terms, there was always a convergence ‘trend’. My purpose here is not to explain the limitations, or critique the general or specific conclusions, in this or that study, but to explain the genesis of something which is so distinct in his work. It is in my view a result and reflection of three traits characteristic of many of his generation: A combination of idealism, a strong belief in progress and an enlightened view of the individual – we are all human – and this humanity transcends all difference. It is an understandable posture for that post WWII generation, with a revulsion of what they had experienced, the world which they were trying to change, their belief, desperate and essential, in a better world. The confirmed anti-clerical secularist ends up with a powerfully messianic vision of the world and its trajectory and his own prophetic vision of the Kingdom to come.