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Post-Lecture Discussion

SPEAKER: ONORA O'NEILL
MODERATOR: JOHN H. ROBINSON
SPEECH: "REASON AND THE RESOLUTION OF DISPUTES"
DATE: FEBRUARY 22, 1992

Professor Robinson: [Professor, Notre Dame Law School.]

Before you boot me out of here, does anybody have any serious questions? Professor Fisher?

Professor Fisher: [Roger Fisher, Williston Professor of Law, Harvard Law School.]

There is so much there Even though it may not settle a dispute—you may not reach agreement—I find instrumental reasoning to (a) illuminate enlightened self-interest and to help people adapt their quite subjective, chosen ends to their chosen means; and (b) to eliminate many highly destructive means that they assume are ways to get what they want. So, I would think instrumental reasoning would do a lot of good in reducing the way we carry on our differences, even though we may not reach agreement.

Professor O'Neill: I'm sure you're right, though I suspect it might sometimes do a good deal of harm, as where people say, oh, yes, you've now shown me a much more efficient way in which to pursue my vendetta with whomever it is. I hope that doesn't often happen, but I think it is in principle a possibility of getting people to reason instrumentally well. I felt there was a lot of contact with the sorts of things I've been thinking here and things in the background of your presentation about the status of theory—and I'm woe betide a philosopher who says that she's against theory because people think of philosophy as being paradigmatically abstract and theoretical. But I have—and it speaks to what you just said—considerable distrust of the model of human nature that sits in the background of a lot of our economic and political science and where the notion of enlightened self-interest is at home.

I suppose one of the reasons why I am perfectly happy with cut-down-to-size instrumental reasoning is because I think we can't do without it—though I'm not very sanguine about its reach—is

that within too much of our discourse this conception of self-interest, or enlightened self-interest, is allowed to pass muster. And I find it, I think, less and less intelligible, and when I can make it intelligible, I think it's false. That is to say, I don't think that people's reason for acting is the satisfaction of their interest, that is, it may be but needn't be.

That's a lot of hostages given to fortune, but your thought made me think about a number of them.

Professor Rodes: [Robert Rodes, Professor, Notre Dame Law School.]

I've been concerned for some time with the idea of natural law. A number of communitarians have done things that seem to me to be alternatives to natural law—I am, I think, for collapsing a communitarian idea into a general idea of human community so that common human nature meets a somewhat tenuous common human community with its own category.

You were mentioning that the categories and concerns are peculiar to the community. Do you see that there are human communities with human categories?

Professor O'Neill: I suppose that I stand on the natural law rather than, as people usually see it, the communitarian side of these arguments. But I would stand on the natural law side of these arguments. In order to get away with using just the notion of human community, we usually, in fact, have to pad our perception of human nature quite a lot. The question is probably whether we can at all plausibly pad it out in ways which aren't, so to speak, projecting our own particular preferences onto a large screen.

The communitarian alternative, in a sense less ambitious, less hubristic, would be to say, well, let us not claim that what we write into our conception of a starting point includes these ambitious claims about human nature at all times and places. Let's just say this works within our community. And the difficulty there seems to me that the assumptions about boundaries are stronger than seem to me plausible. So, to be very unsatisfactory in my answer, I think that you actually have a plurality of communities but that the boundaries are not impervious.

Professor Walshe: [Peter Walshe, Professor, Department of Government, University of Notre Dame.]

You spoke about the historical transformation of categories and norms and then used a fascinating phrase, that we are "con-

ceptually multilingual." Can you see any trend, shall we say over the centuries, in which this multilingual capacity is being enhanced on certain issues? The argument is that the human family is fragmenting again now. I'm asking whether you see anything in the opposite direction.

Professor O'Neill: I've put that question to myself and I don't really know how to answer it because one of the pieces of evidence that won't be available to us is, so to speak, forgotten languages, forgotten sensibilities; although occasionally, because a certain constellation of thought or sensibility was preserved in a great work of literature we can read ourselves into it. I take it there must be an immense amount that has gone.

But to this extent it seems plausible to think that we might be in some ways more versatile in that the experience of living in a homogeneous community is not always the reality now, and is certainly for urban people in developed parts of the world rarely the reality. So, in that respect it seems we must all have a smattering at least of a large variety of languages.

Now, there would be those who argue that in attaining that smattering we've in a sense lost depth and we just have fragments at our disposal. It might be worth thinking that what we ordinarily would think of as a language—and in this respect not meaning literally something like English or Japanese, but one's meaning a certain way of thought—that these are not all that homogeneous. One only has to think of disputes in the theological tradition of Christianity to see that to characterize it as a single language may be already a certain smoothing of differences; or rather, when we define the difference between Christianity and Islam as the big boundary, this may already be a sort of fiction we erect for ourselves. So, I think there are a lot of differences, but I'd be very hard-pressed to produce what I thought was good evidence for us being more versatile than our predecessors.

Professor Walshe: Could I make a suggestion? No matter how we would argue about the origins of this, what about the dynamic of egalitarian values that have contributed towards—let's call it the feminist movement—creating tension within a variety of cultures, but with the roots of this perhaps going back, in some parts of the globe, centuries. It's that sort of dynamic which I want you to comment on. Is that something positive?

Professor O'Neill: I find it positive and I think it's certainly real if we consider the accessibility of the discourse of human rights. Now, I have many criticisms to make of that discourse which I think is open to all sorts of misuse and has certain undesirable implications. But of its accessibility to a variety of people, we can have little doubt.

The question one should ask oneself—ask oneself on the inside—is “What is it like to find one's self fluent in two idioms that don't really cohere?” I think the answer, certainly for me, would be I find I'm fluent more or less in a number of idioms and I know they aren't wholly consistent. Perhaps one of the fruitful things is the way in which we try to work out ways of making them consistent. To use your example, it may be that although one could think that the rhetoric of human rights and egalitarianism has put in some ways great pressure on ideals of domestic life, that nevertheless something that is good could emerge from this great pressure.

Professor Attanasio: [John Attanasio, Director of the Hesburgh International Institute for Peace Studies and Professor, Notre Dame Law School.]

Would you say that one of the recommendations that flows out of your talk is that one has to take a long-run view of conflict resolution, such as Roger [Fisher] did, that is, when you talk about education and increasing the sort of expanse of shared agreement, that one has to do that over a period of time? And the shorter the fuse is, the more difficult that becomes?

Professor O'Neill: I think it's probably true that one has to take a long time horizon because it's a very slow process to develop and extend our languages. And also because, after all, there being a dispute is a sign that there are some pretty vivid and compelling reasons why people's patterns of thought and patterns of action have got at variance in this particular way. So, I'd agree entirely on the time frame, but I sense you have something bigger behind that.

Professor Attanasio: What troubles me is what the short term people do. What do people here do when things really are at the cusp and have grown to be highly problematical, if not violent? At some level what you're saying is somewhat pessimistic in terms of how much can be done at that stage. You mentioned mediation.

Education takes a longer period of time. Is it sort of a sharing of ideas—trying at least to get people to exchange ideas at the point when things have truly grown into a major problem, when the bubble has sort of burst, trying to get people to sit down and exchange ideas for as long a time as possible—in order to build some fragile shared agreement on at least a temporary basis?

Professor O'Neill: No. My thinking is much more institutional than that suggests. That is to say, although I can see how mediation of a particular dispute at a particular time might work by changing hearts and minds—and not winning them, but changing them—it seems to me that that's probably a bad model for dispute resolution in the longer run simply because people are immediately involved in other situations that may lead them back into patterns of dispute, or because different leaders come to the fore, or new issues arise. In the longer term, what we look to as modes of dispute resolution are institutions that provide set procedures for doing this.

And so, we think of the relative success of dispute resolution within a jurisdiction where there's reasonable compliance with law and a whole other set of social institutions, a set of institutions that has coped, more or less, with the resolution of the sorts of disputes that typically come up. So, if we're looking towards extending the domain of dispute resolution, I would see—and this was the point of the gestures in the last paragraph—the process as more one of seeking to embody certain principles in institutional structures rather than seeking always to return to the process of mediation. Mediation is emergency aid.

Professor Fisher: I suppose I feel disagreement with a lot of what you said. And it's in part because I think there *are* widely shared norms. For example, I have never found anybody who is not against ineffective, pointless bloodshed—*deliberate*, ineffective and pointless bloodshed. Most don't just kill people unless there is some purpose. There is a lot of shared belief on this point.

I also believe that the model of having institutions decide is probably less important than a successful family which doesn't have a judge decide what they do on the weekend or what they do today. They have learned to deal with each other by a reasonable process of hearing and listening and looking at it and deciding jointly. I would say that that model of dealing with differences, where we both agree that it's better to talk and listen and reach

an interim decision even if we don't settle the final ones, day by day, is more persuasive than the domestic police system with judges, courts and the like deciding it.

I see no reason to believe that there are not *processes, processes* of working together where both sides will agree. This, at least, avoids unnecessary high cost techniques of carrying on differences. So, you don't have to ever reach the definitive agreement on issues like abortion and things like that. They agree on *how* they're going to go forward and how they're going to deal with the problem. And in dealing with it, they will discover that listening and talking and reasoning is a very good way to cope with their endless differences—and it doesn't take an institution to have them do that.

Professor O'Neill: In large part, the difference between us is verbal in that my construal of what institutions include is clearly much broader than yours. I use the conventional example of a legal resolution of dispute, but I think families are institutions if you wish. But maybe that's not the accepted usage.

But there was a point of difference of a deeper sort between us where you say you have never met anybody who actually was keen on pointless bloodshed. I suppose I have a rather more fearful view of what people are capable of. Certainly, everything I have read suggests that the Nazi program of death camps was wholly damaging to their war effort. If that isn't pointless bloodshed, I don't know what is. It seems to me there is, alas, some evidence of people who don't, so to speak, start with the things one would hope they'd start with. Now, it may be that such people can't be reached by mediation or can't be reached at that time.

I think we also have much humbler examples of certain sorts of crimes where it may be very difficult to reach particular individuals who do certain things that we find compellingly dreadful. So, I'm not inclined to make a very strong claim that reason will, *de facto*, in every particular dispute, be of use. And that's why I think that in human conditions, the institutionalization of processes of reasoning will not be a pure and perfect institutionalization and that it will probably include elements, for example, of coercion. Though, of course, it would be nice to think that we could always do better than we've already done.

Professor Robinson: And on that note, we'll call the formal proceedings to a close.