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Post-Lecture Discussion

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Post-Lecture Discussion

SPEAKER: ADENO ADDIS
MODERATOR: REV. WILLIAM M. LEWERS, C.S.C.
SPEECH: "INDIVIDUALISM, COMMUNITARIANISM,
AND THE RIGHTS OF ETHNIC MINORITIES"
DATE: MARCH 1, 1991

Rev. Lewers: I am sure that all of you join with me in thanking Professor Addis for this very stimulating and perceptive conference on the subject of individualism, communitarianism and ethnic rights.

Professor Addis and I had been discussing a problem that I had mentioned before this hour: the problem that arises when two values, two goods, come into conflict. The case I posed was the well-known *Lovelace* case from Canada which went before the Human Rights Committee. The case involved the interest in self-determination, the ability to define the membership of a group, and the right of a minority group to exclude persons.

The *Lovelace* case concerned a Canadian Indian tribe and Mrs. Lovelace, who married outside of the tribe. Under the tribal rule and the Canadian law, Mrs. Lovelace and her children thereby lost tribal status. However, if an Indian male married outside the tribe, he did not lose his status as a member of the tribe, nor did his children. Mrs. Lovelace married outside the tribe. She later divorced her husband and wished to move back to the reservation with her children. The question then arose concerning her eligibility to tribal status. The interest in self-determination conflicts with the interests against gender discrimination. Both are good. Both are values. Is there any way in which we can decide for one value, one interest, over another, or is it simply a conflict that we can not resolve?

Professor Addis: That is a difficult question, but my view is that the action of the Canadian government might be defensible. This is the reason:

Rev. Lewers: I would like to say that the Canadian government ruled in favor of the tribe and against Mrs. Lovelace.

Professor Addis: If we are talking about cultural rights, then we must also entertain the possibility that some people are going to be excluded. Admission is an important factor. If the group cannot decide who it wants to admit, if a group can function only so far as it agrees with the majority culture, then there is no minority culture. On the other hand, I think we must be sure that exit is available. Exit is very important. If one wants to get out, I think one should be able to do so.

I also think that some aspects of a culture might not be central to the culture. That is, the culture could survive without them. Now, it is difficult to decide what is peripheral and what is central, if the decision is made from the outside. And it seems to me that without having made that decision, we can not say that they do not have the right to refuse readmission.

Participant: I think a part of the problem was that the Canadian court, which was deciding the matter, was an interested party. So the consideration of and solution to the issue may not only involve resolving two conflicting values, but also may include determining which institution will make the decision. Could you contemplate an Indian court that would review these decisions?

Professor Addis: Yes, and that actually has been the suggestion made by some writers. That is probably the way to go, and that is what I mean by people within the culture determining what is and what is not central to their cultural practice.

What I am reluctant to accept is the idea that the majority could somehow define what is and what is not acceptable within a particular minority culture without that totally destroying that specific culture.

Participant: The basic problem with the *Lovelace* case is, of course, the discrimination, and that is a crucial point here. Either neither the man nor the woman could reenter, or both of them could reenter; that is the basic principle of equality in the Human Rights system. Generally speaking, that principle applies not only to the cultural minority, but also to all societies based on the principle that the international human rights system may require all of us to make certain changes. For example, Norway had to change its constitution in order to become a member of the European Convention. If you accept this national human rights requirement, then you have to change important aspects of your culture.

Otherwise you cannot be party to the Convention. The principle of equality between the sexes, in terms of members or nonmembers, was at stake in the *Lovelace* case. The question is not whether the Indian community could have lost on this issue, but rather, if they had lost, would they have to apply their rules equally for men and women?

Professor Addis: I am not quite sure what procedures Canada uses when it ratifies treaties. Treaties are executed with reservations all the time. You don't have to agree to the whole thing. Many countries do that, as I understand it.

Participant: You cannot have reservations which defeat the purpose of the provision.

Participant: But, we have many communities that violate fundamental notions of norms, like gender norms. For instance, religious communities and churches. The Judeo-Christian community contains great differences among Protestant churches and within Judaism. Your point may focus on who decides upon the change, someone within the church or some external body. For instance, the Mormon church had a serious problem with racism. Consider the rules as to who can become a Mormon. Now, we may differentiate that from the Indian tribal situation by saying that the Mormon racism is not a state action. Maybe that is how the Human Rights Committee viewed it, I am not sure. But, in fact, in terms of the affect and importance to people's lives, these other communities may de facto have as much power or more power than states do.

Participant: Regarding the question of the rehabilitation of culture, it seems like one of the things that we get into when we bring up the example of Indian culture being discriminatory against women (and that is always the kind of objection that is made) is a bias against tradition per se—enlightenment v. tradition—and we negate the possibility that other traditions have the internal critical resources to develop those concepts themselves. It seems like we are digging into another part of a rehabilitation of culture which entails a different understanding of what it is to be traditional, which is not a static, oppressive, unenlightened position. The resources for a critical encounter within the tradition might be different from the western tradition or the enlightenment tradition.

But those resources do exist, and at various times they will diminish, and when a culture is under siege those resources may be less visible than when it is prospering.

Participant: I think we have come to an extremely difficult and important question: What do we do in a situation in which basic values, which you call rights, conflict between the majority group and the minority group? Obviously, I don't have a solution either. I want to make one point: Those values which we consider to be basic values now change fast. The prohibition of gender-based discrimination didn't exist thirty years ago, but started maybe twenty years ago. One thing that we should always keep in mind is that absolutely granted and absolutely essential values might change.

Furthermore, I can't imagine that the cultural majority could allow a minority to have, for example, courts which would inflict cruel penalties, such as mutilation; that would be unacceptable to the U.S., Germany, or any other western country. It is a very complex situation, and we must limit tolerance toward minority cultures while keeping in mind that it is a floating and continuous process.

Participant: I would like to return to the question of the trade-off between respect for international, individual needs and rights and the preservation of the culture. First, I think it is important not to completely link that issue with the question of minorities because exactly the same problem appears for states. Small states also have cultures, and the international community may affect those cultures. It is not only an issue for minorities. It is not a problem related to minorities; it is another small state syndrome. It is an old issue regarding the universal recognition of individual rights.

Regarding the trade-off, you have to weigh the importance of that particular aspect of the culture which is underfed against the importance of that particular avenue in that particular provisional, international human rights requirement. If it is a marginal aspect of the culture, then you can let it go in order to accommodate. And, as I mentioned with the case of Norway, in the 15th or 16th century their feelings about Jesuits were pretty strong. But by 1956 the Jesuits were a nonproblem, yet we had simply kept the constitution as it had always been. So letting that part of the constitution go was not a problem. But in other situations the questioned element is crucial to maintaining the culture, and without it, the

culture will break down. In that situation, of course, the trade-off is different. If the conflicting principle is a minor aspect of the international human rights system, then the minority's cultural norm would survive against the international principle.

Professor Addis: I agree. I said earlier that some values might be peripheral and some central. The question is: Who decides how to characterize the value? Who decides what is peripheral and what is central? I prefer that groups have internal mechanisms by which they decide themselves what is peripheral and what is central. I know there is conflict, but I also know that the voices of "enlightenment" and "rationality" have inflicted a great deal of damage on those they regard as not enlightened enough, all in the name of higher principles. It seems to me rather odd to say that the very groups (majorities) who have traditionally viewed minorities and their cultures to be on the whole peripheral be invested with the authority to decide what is central and what is peripheral in these cultures.

Rev. Lewers: I am going to exercise my prerogative as the chair, since it is now 5:00, and ask you to join me in thanking Professor Addis for a very provocative and stimulating presentation and for his insights and perceptions.

