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Post-Lecture Discussion

SPEAKER: HENRY J. STEINER
MODERATOR: TRAI LE
SPEECH: "IDEALS AND COUNTER-IDEALS IN THE STRUGGLE
OVER AUTONOMY REGIMES FOR MINORITIES"
DATE: MARCH 1, 1991

Professor Le. On behalf of the audience I would like to thank you for that presentation. I would like to make just two comments; they will be very short, and I believe there are a lot of questions, so I will leave the floor to you.

Now, my first remark pertains to the distinction you make between so-called core rights, or individual rights, which you define as negative rights—rights not to be tortured and so forth—as individual rights, and rights of groups. It seems to me that if a philosopher has defined man as a social animal, I do not see how we can take the individual out of the context of the group. Maybe that distinction between core rights, as pertaining to the individual per se, and group rights is not truly a distinction in view of the context in which the International Covenant on Civil and Political Rights arose.

It seems that the emphasis should not so much be on the individual as it should be on the question of discrimination based on race, religion, and so forth. I would look at the Covenant in that context and spirit. That is my first remark.

The second remark is that I do not really see the contradiction between the rights of individuals and rights of groups, as opposed to the human rights of all humankind, if the purpose is to advance certain types of values and rights. Before you can be recognized as a group, it seems that the question of participation becomes a moot question. That is my second remark.

Professor Steiner. Let me say that I do believe the Covenant contemplates significant social or group activities. I think that one of the great fears has been that people are swallowed up by their group identities, and lose their individual identity. The individual becomes the object of the community rather than being the subject of a human right. We see these tensions in the world today between duties and rights, between communities and individuals,

within different religions and cultures. Nonetheless, I think we need to recognize that we humans must have intercourse with others, in every sense of the word, to survive as human beings and to grow. We need political exchange, we need cultural exchange, we need all sorts of links to and associations with other people. Assuming these are all permitted, group identities will remain strong, but I would not go so far as to say that the individual must be swallowed up in the communal identity. Ultimately, there is the sense that the individual is supreme. I think these covenants reflect their western origin in expressing this ultimate judgment.

I think we must keep the sense of adventure and promise in life. We must guard against the world's becoming divided into constituencies that just want to protect themselves against interchange and growth—that want to go back in history rather than forward, or to hold it just where they are. I do not think any great culture to this day has prospered in that way. I do not think humanity has prospered as a whole in that way. So the question is how individuals participate in social life. It may well be that certain kinds of group claims are very plausible.

Participant: Two of the cultures that I have done field work in are India and, last year, South Africa; these are cultures that have developed two of the most stratified systems of group rights, or the group concept of rights. Perhaps some of the dangers you are pointing out are indeed apparent there. I just wanted to make two observations. One is that the very word "individual" is itself one of the ways we think about what a person is. That is, the word "individual" seems to carry with it a kind of concept of a unity that is not separable, which, in fact, has rights without reference to groups and so forth. And one of the leading anthropologists in Indian culture points out that in India, for example, the concept of the person is really more and is better expressed as the concept of the individual.

I would suggest that perhaps this very concept, this idea that you can look both ways at people, both as social beings and also as entities who carry their own rights without reference to their groups, is one of those sorts of fundamental facts with which we will constantly have to live. There may be no real way to avoid the problem because of the cultural nature of human beings.

I was struck by the fact that in these two cultures, India and South Africa, it is precisely group rights that are the problem. In fact, this concept of group rights has been specifically rejected

because of the fact that this course has been used by whites to suggest, in the future of South Africa, that their rights as a group need to be protected. And civilly, reverse discrimination in India, as you know, also causes so many problems that it will probably be a continuing theme.

Professor Steiner. I have no doubt that some of my beliefs have been influenced by my Western origin. I simply could not be giving the same talk if I had been born a Muslim in, say, India. Communalism is not my cultural experience in this country, but I do not believe that what I suggested is inconsistent with their being powerful but voluntary communities. Who knows what voluntary is? I am born what I am, and never was given choice. To extract or isolate myself from my heritage—for example, to move out of the Hindu community in India—may be legally permitted, but may not be sociologically possible in terms of one's own life. For a Turk to cross the line in Cyprus and marry a Greek may be not just ill advised, but fatal in a given situation of ethnic hostility. So the notion of what is voluntary and what is coerced, of belonging to a community by choice or necessity, is a very complex one.

Participant. I would like to point to a specific problem in this country between group rights and the rights of a specific ethnic group to exercise its own culture. The whole development of women's rights, the right of a woman not to be discriminated against, causes a dilemma when there is a claim of a specific ethnic entity to exercise its own ethnic identity. In a patriarchal society, there is a very strong conflict between these claims.

I also want to point out that the right to be the same is the same as having economic and political equality. The right to be different is a right you can only exercise with other people with the same right. For example, language: if you speak a language, you can only exercise that right with other people who also speak that language. It is not a question of rejecting group rights as such, but it is a question of speaking of rights in an individual sense, as an individual entitlement, and then protecting that specific right so that you can exercise it within a group.

Professor Steiner. You can see a lot of these rights as either individual or collective, and the notion of gender discrimination is a very good example.

Should a group's self-determination, in some fashion, trump other notions that are considered fundamental in the West? For example, the argument can be made that insistence on gender equality is inconsistent with the freedom of religion that is assured by the Covenant. You can see how these conflicts come up within the very core of the Covenant. A man could argue that it is not that he wants a lot of control over women, but that he is simply repeating what he has been taught by his religion. If he is a believer, an outside analyst may find all kinds of ideological, and economic, and political explanations of his belief, but he may also be manifesting elements of profound and deep belief. All religions have beliefs which are so fundamental.

So what is deprivation of human rights? Do you view deprivation from a perspective outside the culture or from within the culture? For example, are women within Islamic culture free to choose in a Western human rights sense until they become aware of the possibilities of change of their status? Are they free if they then prefer to remain in their status within traditional Islam? Is the infusion of Western norms itself a horrendous assault on the structure of Islam?

Terrible contradictions arise when systems are simply in irreconcilable conflict given the premises of the universality of the human rights movement.

Participant: I think it is just an argument for equal protection, or is our Constitution just as color blind? You said that it is dangerous to create a group autonomy right because it perpetuates the barbed wire between groups. You said that this might be good because putting the barbed wire in will stop bloodshed, or the conflict between the groups. Will it ever be possible to get rid of the barbed wire, or are you perpetuating the split more by leaving it in?

Professor Steiner: Well, that's certainly one of the fears that I expressed in my talk, which relates to what was discussed in Professor Chen's talk. If you treat the state as necessarily the highest good, which not very many people do, and if you say the state is the supreme realizer of human values, then break-downs of that state constitute something very serious. The state is sometimes a defender of human values, but it is often oppressive and insistent upon exerting its own power, or the power of whoever is in control of the state. In those circumstances, this separation of the

oppressed ethnic minority may be the only answer, and it is not simply bloodshed that may justify it. I'll use bloodshed metaphorically. A minority may be systematically trampled upon, its culture denigrated. There are minorities in America that fit that description absolutely, even post-slavery. So maybe during different stages in history the minority will feel, even shy of bloodshed, that it is at the bottom of the heap in its state and that it will remain there forever unless it is given the right to participate in some meaningful way in shaping its own destiny, as through autonomy schemes.

That, to me, is a powerful claim. But, I take it as a reaction to the denial of the ideal in the larger society of opening up, in a genuine way, opportunity and possibility of growth to all. Therefore, it is the second best. If the people in charge are not going to permit these other groups to rise, as those people themselves must have risen, the alternative may become bloodshed, fragmentation, or simply systemic, ongoing oppression. That is why I would never state that group autonomy rights are necessarily a denial of human rights.

Participant: If lawyers and universities looked at the International Covenant of Civil and Political Rights and tried to find these group rights in the three articles you mentioned, they would discover that the individual rights, to some extent, also cover some group rights. It was very important that you mentioned the fact that a declaration on minority rights is now also under discussion in the United Nations. But while the distinction between these two types of rights, group rights and individual rights, is perhaps a little less problematic for analytical jurisprudence, it is of particular importance for practical policy making and practical politicians. I think this contradiction cannot be understood and explained unless we add to the notions of individual rights and group rights a third notion: democracy, or the regime of democracy.

The maximum form of exercising your group rights is collective exit or separation, excision. But there are no guarantees that this new subdivision, let it be a state, will not be a totalitarian regime, or a new form of suppression. For example, subdivisions in Russia today want to separate themselves from the democratic government of Russia and introduce the classical communist government as it existed in 1945. And now the world community must decide how to weigh these possibilities, because it is not rare that the acceptance of a group right, or the maximum group right

to secede, or to create a state, may directly violate the individual human rights, such as freedom of speech, because the group right and the political structure of the group may be nondemocratic.

Professor Steiner: I agree very much with what you said. I think it is absolutely the dilemma. I don't know enough about the Soviet Union to make the kinds of judgments that you make, but I have met numbers of people from the southern republics, and the South's determination to secede is very real. One of the questions posed is what will a break-up there, or in Yugoslavia, or between Slovakia and Bohemia, or elsewhere, mean for the individual?

The question must focus on the welfare of the individual. And if you are going to find a former Soviet Union in which each group is hostile behind barbed wire, keeping every other language and religion out, it is not going to be an advance in civilization. In some respects, it may be an advance on what was an extreme of authoritarian control from the center. So those are exactly the contradictions and the uncertainties I have in mind. It is so hard to make gross abstract judgments about what is right in these different situations the way we can say, "You have a right not to be tortured."

Professor Le: We have time for one last question.

Participant: We have so far talked about the problem as if there were a tension between staying behind the barbed wire and going across the barbed wire. I certainly grant you that, but in addition, as it is very often with tensions in dialectics, does not the one, in fact, almost further the other? I think many of these determination demands are made because there is not participation because of the 80/20 percent. The minority, in fact, withdraws in order to participate at times. I have often thought that maybe we need a new concept, which we might call "deferred statehood," meaning that the minority holds off the possibility of separating entirely, or is willing to defer separation, so that it has that space, and then it explores from that separate position the possibility of continuing linkage. And, in fact, I think that some of the inter-ethnic relations in Southeast Asia preliminary to the colonial period have features of this concurrent connection and distance, and I would like to ask whether we could borrow some of that.

Professor Steiner. It may be that some modern version of a humane conception of the older empires would be a suitable alternative to the modern exclusive state as a way of thinking of achieving this kind of diversity. It may be the way Western Europe is going, unlike Eastern Europe. I certainly don't think we should view the present state as an absolute given which must forever continue in its present form as the basic unit of an international system.

These have been useful and good questions for me to think about. You probably know more about colonialism than I do. But it seems to me from what I do know that there are two contradictory strands: one is, the rape of native cultures, at every level from pop culture to traditional land holding and status. At another level, it was not in the interest of the colonials to rule every square inch of turf, and there was a lot of diversity left among the many principalities in, say, India: the Muslim communities and the Hindu communities, the North and the South.

In many post-colonial states, the oppressive power of the center, all the way from tax power to the infusion of a particular form of culture, often a Western-derived, modernizing kind of culture, is far more powerful than what was present under colonials who were content to extract their riches, keep the locals in order, suppress rebellion, and otherwise let local life go on, and when necessary divide and conquer by setting one group against another.

So there is this two-edge way of thinking about the post-colonial, self-determining state and its effects on tribal structures, or different ethnic communities.

What was the thrust of your second question?

Participant (repeated): Whether we should recognize the tension or, in fact, see the mutual aspects of these two forms; separating in order to participate.

Professor Steiner. Yes, and maybe we'll have to experiment with lots of forms that way. Recall the attempt to create the City of Mandela a while back, which was an attempt by a group of blacks living in the Boston area, in a place called Roxbury, to form their own self-governing community.

If you really do feel blocked out of a large political process, and you have no access to City Hall, different forms of community organization and devolution of power to community groups may be an alternative that I would encourage.

On the other hand, I'm saying that under the American Constitution, hence under constraints that are ethnically or religiously defined. This may raise thorny problems under our Constitution. Nonetheless, I'm all for experimenting in a lot of different ways that would be ongoing ways of living together or learning from each other.