

## Prof. Szymanski interviews prof. Varennes

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Prof. Szymanski : Good morning. We're very pleased to have professor Fernand de Varennes here today with us. You're teaching a human rights course at our university and it's a great pleasure to have you here. Your list... your accomplishments are almost too large to recount in full number. You're a visiting professor in Australia, I think in China, Hong Kong...

Prof Varennes: South Africa and a few other places...

S: And numerous other places, and you're the editor, I believe of a Pacific-Asia Human Rights Journal, as well in Asia, so you're really leading authority on human rights and again it's an honour to have you here at the university.

V: Thank you for having me.

S: So what are your impressions of Kaunas and of Lithuania?

V: Well, I haven't had time to visit much yet, I've only been here for a week and a half and I'm quite busy during that period, but certainly I'm looking forward to coming back and experiencing the area... but not in winter, let's put it that way. Although it's not always so cold in this country.

S: It's been relatively mild for the last two weeks or so and hopefully it will stay that way during the length of your visit. But again, it's a great benefit for our students to have you teach here.

V: Thank you.

S: I do have some questions for you from the faculty, collectively, about various human rights issues, some general and some specifically pertaining to issues that are current in Lithuania. The first question I have is regarding generally the human rights and the concept of human rights inflation, we could say, or adding various items to the list of human rights. Can there be too much human rights? Is that a possibility, do you see any danger in that?

V: I think you have to be a little bit careful as to this concept of human rights inflation. I am actually not sure if it really exists in terms of international human rights law. I think we have to distinguish between human rights that exist in international law and human rights that is practice in different countries. Human rights in different countries is not the same thing necessarily as human rights in international law. Now, in international law what we're dealing with is basic, fundamental human rights. And in that area I don't think we have a degree of inflation. As a matter of fact I think it is difficult for many governments to accept even basic human rights in international law, so that what you tend to find at the international level, international law, are minimal, basic guarantees of human rights. And even at that we have only very weak mechanisms to implement those human rights because when we talk about human rights, once again, from the point of view of the international law, we're talking about human rights against governments. Now, that may sound a little bit strange, but the main

violator, the party that breaches human rights in international law is actually the state, the government. And in reality the governments have only been willing to accept treaties on human rights that are rather basic, with not too demanding mechanisms. So in reality when we talk about what I consider real human rights in the international law, there is not a huge amount of inflation because what you're dealing with are basic human rights by and large. So unless you have a specific example of a kind of inflation, I am not really sure if what you describe is really a problem at the international level.

S: Sure... You know, maybe it's not in the category of inflation but I guess we could talk about certain types of conflicts with... I guess you can call it cultural relativism, in the sense that if there is the right to marriage, does it include gay and lesbian marriage and those types of conflicts. The rights of disabled people, and then right of unborn, if the foetus has this ability. Those types of collisions.

V: I think at the international level there are not as many collisions as you think, as you may believe or some people may believe. Because for example, quite recently, in fact this week, in the United Kingdom they have adopted, I believe, a law, which recognises gay marriages, I believe, but in the international law it is not so clear that that would be a human right. We do not have any treaties that say that two men or two women can actually legally marry. Therefore is it a human right in international law? Well, I am not so sure about that. Remember, what we recognise at the international level are only basic human rights. Whereas in the United Kingdom, for example, they are willing to go in that direction, as is Canada and I think Brazil and a few other countries. I am not quite sure if that would be necessarily the same thing in international law only because human rights in international law are fundamental, pretty basic.

S: I understand. One other issue regarding the same theme, I suppose, was the concept of animal rights and I've seen there appear, not necessarily here, but in other curriculums, the animal rights law. How do you view that as a professor of human right? Do you view that as possibly related?

V: Well, I hope I don't sound like a broken record, but once again you have to distinguish that what happens in some countries, what they consider to be a right, and what actually is a human right in international law. In terms of human rights treaties, you know, we only have a number of legal documents, say, certain number of legal documents recognising human rights in international law, none of them referring to animal rights clearly. What we do have is treaties on the protection of the environment or the protection of certain species of animals but those legal documents of the international law don't give animals rights as subjects of law, they are object of protection and that's a difference we recognise in international law. Once again, one needs to be careful. The way certain countries, certain jurisdictions, certain governments present rights is not necessarily the same thing as human rights in international law. Human rights in international law are more basic, deal with individuals, are very clearly limited to fundamental areas. It doesn't go in the direction of animal right at this current time.

S: A more specific issue in Lithuania today is the issue of dual citizenship. And right now the policy is that generally it is not permitted in Lithuania, dual citizenship. I wanted to ask you

about your views about the general issue, on the concept of dual citizenship. Is that a right of an individual to have that or is it something that is left completely to the states to determine it as they see it.

V: Actually neither, not exactly. First of all in international law it's quite clear, there's been even a number of international decisions that indicate that the attribution of citizenship or the discretion falls within the prerogative of the state so it's for each country to decide if they want dual citizenship, multiple citizenship or only one citizenship, as long as you respect international law. And that's the qualifier. So on the one hand it is left for the government to decide how the citizenship or what kind of the citizenship is attributed but you cannot do it in a way that would violate for example basic human rights. And the difficulty... So it means that if Lithuania only wants to recognise a single citizenship that's fine. As long as you do it in a non-discriminatory way, and that's the real issue. There have been a few, not many but a few cases of discrimination. If you allow some people to have dual citizenship, which even Lithuania does by the way, then it has to be without discrimination. And if you start discriminating, then international human rights law may kick in and actually change or modify your requirement, if it is discriminatory. You cannot discriminate and say "Only white people can become citizens of Lithuania", you know. That is racial discrimination and the government would be slapped very quickly in international law. So one has to ask the question, first of all, is it true that Lithuania only allows one citizenship, actually it's not, there are exceptions, and the second question is are the exceptions discriminatory, or do they violate some other human rights in international law. So you see, in other words, it's not only that the government can decide about the citizenship, the general rule is yes, but you still have to respect international human rights.

S: Sure.

V: The other phenomenon... There is a phenomenon that's been happening in the last decades- in reality more and more countries are opening up citizenship, in the sense that more and more countries are accepting dual or multiple citizenships. I think allowing individuals to be citizens of one country is a kind of closed door approach. I think with the globalisation, being what it is, people move around, work, live, marry across borders more and more. So I think what has been happening as this greater movement of people around the world, opening of borders... Increasingly so. Even China is no longer as closed as it used to be. More and more governments are actually allowing dual citizenships. Countries like the United States for example are more flexible now in terms of dual or multiple citizenships than it was twenty years ago. Australia does allow dual citizenship, although sometimes people think it does not. It does. I actually hold a dual, Australian and Canadian citizenship. There are restrictions. If you're born in Australia, you're supposed to only have Australian citizenship. In my case, I emigrated to Australia so I had Canadian citizenship first, which meant I can keep both. And that I think is the direction of the future for most countries. So without entering into the debate, which I know is a current here in Lithuania, I am not aware of all the nuances here so I can't really comment too much, I think you have to look at it in a broader perspective. And the broader perspective around the world is increasingly the concept of only allowing one

citizenship seems to be a restrictive concept and increasingly countries are allowing dual or multiple citizenships, even.

S: What are the advantages for states to do that? I mean it's obvious that you notice a trend in that direction. So what would be an advantage for a state, a very flexible one?

V: I think there are probably a number of advantages. One has to think that especially in the case of... how do I say that... very qualified, highly mobile, well-educated individuals, they may actually live and work across borders a lot. So it makes sense not to want to give up those people necessarily, the connections of those people, and recognise what has become an increasing reality. That especially in the case of highly qualified, well-educated people working across borders, they actually have connections to more than one country. And perhaps to keep that you have to allow a little bit more of flexibility, in terms of citizenship also. Perhaps. That's probably one of the reasons.

S: Yes, sure. One specific example that made the news, regarding one of the Lithuania's neighbours was the French actor, Gérard Depardieu, taking Russian citizenship, essentially, I guess, for tax purposes. I don't know if you have any particular thoughts on that case.

V: Oh, I think it was an interesting case but let's look at it in a practical way. That this shows that perhaps one should allow, for different reasons, multiple citizenships. And I think in the context of Europe we should also add that... at the same time, for European Union countries, at the same time as you are a citizen of your own specific country you also have an EU citizenship, and the concept of the EU citizenship does exist. So already here in Europe there is this acceptance that in addition to being a citizen of Europe you can and must be also a citizen of a specific country. So I think we should look at it in a flexible way and Depardieu had his own reasons for doing what he did. I think this is rather an unusual case. Very news-worthy.

S: Very news-worthy, yes. Focusing on Lithuania and a specific issue that is happening here is that there is a significant minority population of Polish people and what's more is that not only is there a significant minority but they are concentrated in particular areas outside of Vilnius, the capital of Lithuania. And one of the issues that they have had is that within the communities, these local communities, they in fact may form a majority in a particular village, over 50%, and they would like to have street signs, for example, in both Polish and Lithuanian. I wonder if you could comment on that in terms of minority rights issue and also human right issue.

V: I think... well... for one thing Lithuania has accepted, has ratified a treaty, the Framework Convention on the Protection of National Minorities, and in that treaty there actually is a provision that talks about signs. And in reality that provision indicates that where you have a substantial minority that is concentrated, then states must endeavour to have signs in their language also. Now, the language is a little bit odd and I know that the Constitutional Court here in Lithuania has also commented on that. I believe the Constitutional Court is incorrect, by the way. It is quite clear that here, Lithuania, by having accepted that treaty, legal document in international law, has accepted certain obligations. And because it accepted these

obligations, one of them involving signs, if you have, as you described, communities in Lithuania around Vilnius, where you have the substantial amount of people who speak the Polish language, they are concentrated and might even be the majority, the government of Lithuania has actually already accepted that they have an obligation. So I want to be very clear- there is a treaty, there is the obligation, the circumstances I think are clear enough that you have a substantial number, you yourself said that there might even be a majority in some communities. Well, the answer is there. There is that document which has created legal rights which the government of Lithuania should move towards respecting.

S: Regarding the globalisation, and looking at that issue at a broader level, there's been as you commented, a huge migration obviously thorough history and even in the European Union since the countries of the Eastern Europe have joined the European Union, large numbers of Poles, Lithuanians, other eastern Europeans went to England for example, and reside in London. When we talk about migrations of people or people moving to different countries for work and they do make up a majority or a significant minority in a particular neighbourhood, do those concepts still apply in terms of having street signs?

V: Now, you have a little bit of a problem there. I refer to a specific treaty in Europe, the framework convention. And the problem is that that treaty only deals with national minorities. There's a debate, there's some disagreement but it seems that a "national minority" in the context of Europe, I'm only talking about Europe and that treaty, refers to historical, traditional groups. So that the Polish minority here, I would say the Russian minority in Estonia, they could claim- although there was some movement in Estonia, more recently- but they could claim that they are historical national minorities. In the case of Lithuanians in London or Poles in Ireland, for example, they are simply not. So that specific treaty would not allow the Polish minority in Ireland, which is quite large in total numbers, to claim the right to signs, street signs in their own language. The treaty is very clear, it only deals with national minorities, and that's one problem. Secondly, despite what you've just said, in reality, if you look at the percentage of Polish people in Ireland are they really a high percentage in any city? Actually not really. They tend to be spread out. Quite a few of them are in Dublin, admittedly. But are then 10 per cent of Dublin population? The answer is "no". Even if you could say that they are a national minority, there is a numerical threshold that you have to apply, which refers to percentage in a certain area. It's not always clear what percentage, there are in fact some decisions of the committee of experts that works on that treaty, you need probably to be more than ten per cent of a community to be able to actually claim that kind of right. So, you know, in reality the problem does not exist under that treaty as such in Europe because they don't have such numbers and they are not a national minority.

S: So they wouldn't qualify...

V: Not in that category. But if I could just add one comment. It does not mean that you have no rights as a migrant. You do. You have human rights as a migrant. And there are cases, including in the United States, by the way, that under the equality... what was it called... there is a special civil right act, I think it's called Chapter 7 or Chapter 6, where on the basis of discrimination and non-discrimination, where you have a concentration of migrants in large

enough numbers, that there is an obligation for the federal institutions to provide some services in their language. Not many people realise that. But that means for example that in federal elections in parts of California you can vote in Spanish. In fact there is even a city in California where you can vote in Iranian, in Farsi. Why? Because it happens that in that town actually many Iranian immigrants went there. And they are more than, let's say five per cent of the population. Under the federal legislation, to act in a non-discriminatory way, this migrant population has the right to services in their language, including the right to have voting materials in Farsi. Well, you know what, I think that's reasonable, I think that makes sense when you have a large enough group of migrants. They should have access to some services in their own language when it's reasonable and practicable. And that is what is done in the US and that also does exist in number of other countries, which took the decision.

S: Professor Varennes thank you for a really fascinating discussion and very interesting answers to some very topical issues in Lithuania some of which involve international law and also human rights.

V: Thank you, it's been a pleasure.

S: Thank you.

V: Cheers.

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