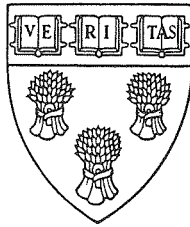


NEELAN TIRUCHELVAM

1944–1999



HARVARD LAW SCHOOL
CAMBRIDGE, MASSACHUSETTS

PREFACE

On September 17, 1999, about 75 people who were family, friends, and professional colleagues of Neelan Tiruchelvam came together at Harvard Law School to grieve his tragic death, to recollect their diverse relationships with him, and to celebrate the life of this extraordinary man. The venue was appropriate. Several of the following talks mention the reciprocally warm and fruitful bonds between Neelan and the Law School, from his days as a student to his several returns as a special lecturer and teacher. Indeed, Neelan was to spend a semester at the School as a visiting professor starting just a month after his assassination, to teach courses on ethnic conflict and paths toward their resolution.

The School's Human Rights Program had a particularly close connection with Neelan. In sadness, but with pleasure, it organized the memorial service that follows.

Henry J. Steiner
Director, Human Rights Program

HENRY STEINER

(Introduction)

We have come here to express our thoughts about Neelan Tiruchelvam, a man who gave his life for his thoughts and his beliefs, as well as to express our feelings about that life and its brutal end. Most of us knew Neelan either intimately, as within his family, or as a close friend, or as a professional colleague over the years—indeed for many of us, over decades. It is wonderful that Sithie and Mithran can be with us today. Nirgunan has unfortunately been held up at a distant airport because of the hurricane. Perhaps that raging, disturbed weather, and today's clearing, are appropriate companions to the mourning of this death, and to the celebration of this life.

The memorial service will include several talks as well as some music chosen by Sithie and loved by Neelan. Our Law School Dean, Robert Clark, wishes to welcome you.

ROBERT CLARK

On behalf of Harvard Law School, I would like to welcome all of you to this memorial service for Neelan Tiruchelvam. I am very impressed, and indeed moved, by the fact that so many of you who knew him took the effort to be here.

Like all of you, I was profoundly saddened and shocked when I heard of Neelan's death. I had a keen interest in seeing him again. I did not really know him, although I had met him when he was last here as a Lecturer. I was looking forward to his return as Visiting Professor this year. We had quite a few students enrolled in the two very important courses that he was to teach: Ethnicity, Constitutionalism, and Human Rights, and a seminar on Federalism, Diversity, and Group Rights. We were all looking forward to benefiting from his scholarship, his thinking, his wide-ranging political experience, and from his commitment and courage.

I know from speaking to many colleagues that Neelan was a truly great human being, as well as a scholar, and a wonderful politician. I found myself, when I heard of his death, reflecting on the fact that he got his S.J.D. degree here at about the same time that I got my J.D., which made us affiliates in a sense. I psychoanalyzed myself later and said, "Why would I focus on that?" The answer, I think, which would be true of all of us, is that when we are in the aura of a truly great person, we would like to find a connection. We search for it—it's a good instinct, and it says a lot, not so much about us, but about the person we're trying to connect to.

Through his visits here to Cambridge, getting his degree, his communication with colleagues, his teaching at the School, his occasional speeches here, and his plan to return this semester, I know that Neelan was extremely proud to be affiliated with the Harvard Law School. I simply wish, today, I wish with all my heart, that we could have communicated to Neelan how proud the Law School is to be connected to him.

STANLEY TAMBIAH

Sithie Tiruchelvam, spouse, partner in legal practice and political activism, Nirgunan and Mithran who share their parents' ideals, and friends gathered on this solemn occasion.

Neelan Tiruchelvam was Sri Lanka's most distinguished constitutional expert and progressive activist. He was committed to creating a better and more just world by constructive involvement in constitutional and legal reform, democratic institutional building, the enforcement of human rights including gender equality, fostering civil society, and crafting conflict resolution in plural societies. He was at the same time actively engaged in legal, political, and sociological scholarship.¹ That this range of attainments had wider global relevance and impact beyond the borders of Sri Lanka was recognized and applauded by various international agencies, and earned for him the honor of being invited to serve as an international observer, evaluator, and adviser in many conflictual situations.² A major recognition was his election as the chairperson of the council of Minority Rights Group International, the London-based human rights organization.

It is no wonder then that he was invited twice by Harvard Law School, where he obtained his Masters and Doctoral Degrees (LL.M. 1970, and S.J.D. 1973), to teach and dispense his wisdom. If he had been so disposed, he could have adorned the faculty of any leading university. But as politician, humanist, and activist, he was more drawn to the translation and application of his knowledge to the problems of conflict resolution than to the sedentary reclusiveness of the ivory tower.³

In a fitting tribute, a Sri Lankan scholar-activist has stated that Neelan was "the main political link between Sri Lanka's Sinhala, Tamil, and Muslim communities; the bond that held together Sri Lanka's human rights community and a key link between Sri Lanka and the international [human rights] community."⁴

The commitments and practices that forge and sustain institutional structures devoted to collective goals are in short supply in Sri Lanka. Neelan proved to be a consummate institution builder. He was director of the International Centre for Ethnic Studies in Colombo and of the Law and Society Trust, in the founding and designing of which he played vital roles. I myself was privileged to participate in some of the research projects and workshops of the ICES. Its members, many of them young talented scholars, collaborated earnestly and smoothly, irrespective of their ethnic and social origins, in the study of relevant contemporary issues.

One cannot exaggerate the importance of this effort in a country riven with ethnic and other social conflicts that have progressively distanced members of different communities from one another. The ICES was and is a microcosm suggestive of what Sri Lanka *could* become as a plural unity of tolerant coexistence and common effort. I think that, at a different personal level from his official constitutional and political work, Neelan was keenly sensitive and empathetic to the need to reestablish trust and interpersonal links among Sri Lankans who had become alienated. He knew that constitutional reform, though necessary, was not sufficient. It has to be accompanied by the healing and restoration of interethnic relationships, and this cannot be legislated by Parliament.

These remarks lead me to Neelan's creative labors towards forging a lasting solution to the violent ethnic conflict that has ravaged Sri Lanka for 16 years or more, especially since the fateful year of 1983. He had been elected in 1989 to Parliament⁵ as a member of the Tamil United Liberation Front (TULF), a party committed to "unarmed democracy." He later accepted the invitation to serve as a member of the Parliamentary Select Committee on Constitutional Reform.⁶ Neelan was a commanding voice in the deliberations on devising a new constitution which would contain the proposals for devolution of power that he considered to be an indispensable component for solving the ethnic tensions between the majority and

minority communities and integrating them in a single quasi-federal polity. Let it be noted that while engaged in this project he was unyielding in his criticism of the government's violations of the human rights of citizens, and of its other deficiencies in governance, especially in relation to minorities.

I would characterize Neelan's proposals as constituting the non-violent *middle path* and the *third way* for reconciling a deeply divided country. Their diagnostic importance is that the Sinhala majority—divided between two rival parties, namely the SLFP and the UNP and their respective allies, who repeatedly negate each other's moves—must join in bipartisan collaboration to endorse the devolution package. They must also face up to the fact that conducting a punitive war in order to reach a peace settlement is a bleeding contradiction.

On the other side of the divide, the LTTE is also plagued with a destructive contradiction. Its quest of winning a separate state and of liberating civilian Tamils from inferiority denies the latter free voice and choice to express their ideas and hopes for an acceptable solution to their endless suffering and continuing dispersion to a diaspora. Forced silence and assassination is no match and no equal to free speech and choice in participatory democracy.

The middle path and third way requires that the government's army and the LTTE's fighters renounce violence and negotiate for an honorable peace acceptable to both. It is not one way among several and one option among several for attaining peace. It is the *only way*. It enshrines the best of Asian wisdom, such as non-violence and the tolerance of difference, and the best of Western wisdom such as social justice and participatory democracy.

Comforting evidence is emerging from recent public opinion polls that the Sinhalese public at large wants a cessation of the war and favors a negotiated settlement. This development is a wake up call to civilian Tamils to stir themselves from their hapless passivity in order to voice their hopes and wishes.

Neelan Tiruchelvam was a prophet who has prepared the way. In

the full knowledge that he was vulnerable, a dread prospect which he and his family faced with quiet courage, he laid down his life as a martyr to the altruistic cause that he passionately espoused. His legacy and his posthumous presence cannot be erased.

¹His writings as author, editor and co-editor include the following: *Ideology of Popular Justice—A Socio-Legal Inquiry* (1982); *Ethical Dilemma of Development in Asia* (1982); *Judiciary and Plural Societies* (1987); *Hungary in Transition—From Socialism to Capitalism* (1991); *Democracy and Human Rights* (1996); *Civil Disobedience*(1997).

²For example, he participated in reviewing and drafting the constitution of Kazakhstan, he served as co-chairman of the International Evaluation Team concerned with devising structural arrangements for peace in South Africa, and he was invited to be an international observer in Chile, Pakistan, Kazakhstan, Hungary, Bangladesh, South Africa and Nepal. He thereby acquired a deep knowledge and understanding of these countries' political problems and the measures recommended to effect conflict resolution.

³Immediately preceding his death he was on a fellowship at the Rockefeller Center in Bellagio, where he was working, among other things, on a text dealing with conflict resolution. He was due to teach at the Harvard Law School during the fall term of 1999 beginning in mid-September. He was assassinated in Colombo on July 29.

⁴Dr. Jayadeva Uyangoda, "Neelan Tiruchelvam, A Political Tribute," *Tamil Times*, vol. XVIII, no. 8, 15 August 1999, pp. 24-25.

⁵He was first elected to Parliament in 1982 and served there until the latter part of 1983. In 1979 he was appointed a member of the Presidential Commission on Development Councils.

⁶As an active member of Parliament, Neelan worked to strengthen the activities of the Human Rights Task Force, the Human Rights Commission, and the Office of Ombudsman. He had participated in the deliberations of the Official Languages Commission. Most recently, he was involved in the prospective setting up of an Equal Rights Commission. In Parliament he also served on a number of Consultative Committees on Justice, Finance, Planning and Ethnic Affairs.

ROBERTO UNGER

Neelan Tiruchelvan had an idea and a passion. His idea was that we are all connected. His passion was love.

Civilization grows out of trust. Neelan worked, as a jurist and a statesman, to devise practical arrangements enabling trust to flourish.

We are, wrote Schopenhauer, like porcupines, wounding one another with their spines when they huddle together against the cold, freezing when they separate, and moving restlessly, back and forth, between closeness and apartness. They look for the middle distance. Neelan recognized the need for the middle distance, not as the end, but as the beginning. From separation and protection would come self-possession, from self-possession strength, and from strength magnanimity.

Neelan's genius was to imagine the otherness of other people. His craft was to strike the compromises and to build the institutions that would reconcile people's claims to develop, collectively, the otherness they have and want. The schemes of reform I liked to discuss with him he considered with benevolent skepticism. He understood, intuitively and from the outset, what it has taken me so long to appreciate: that all such plans come to nothing unless we achieve them on the ground of human reconciliation.

To do this work, Neelan had to fight—to fight, if he could, without hurting. It was fighting untainted by zealotry and self-deception, because it was informed by love.

Although Neelan was a hopeful and a faithful man, his love outreached his hope and his faith. Neelan was possessed by love: for his wife, for his sons, for his community, for his country, and for the individuals he met along the way. He had the capacity to acknowledge them as the originals they all really are and know themselves to be.

The fighting without hurting brought hope to his country. To him it brought complete life and violent death.

It was Neelan's fate to come to maturity in a society torn by fear

and hatred. By accepting this fate, and struggling with it, he made himself into a man. But Neelan was not the opposite of Sri Lanka. His country made him. Through him it spoke with another voice. In him it signified its intention to become greater and better than it is.

As we reach middle age, we fall into a funnel of narrowing possibilities. Around each of us a mummy begins to form. We must break out of the mummy to continue living. Neelan avoided the many small deaths that waste away a loveless and uninspired life, and lived for real until the day he was killed. He knew that the essence of moral wisdom is to unprotect ourselves, being prudent in the little things, the better to be foolhardy in the big ones.

Into this dark world comes redeeming love, unshaken, unsubdued, unterrified. It comes and it changes us, although we would rather be ruined than changed.

Thirty years and a month have passed since I first met Neelan, only a few steps from the place where I now stand. The thing about him was his uncanny shine—from his eyes, from his skin—enveloping me, and going out, further and further into the darkness around him, and promising to last, until we can see the others, and hear their voices, and find our hearts of stone turned into hearts of flesh.

CLARENCE DIAS

My first impressions of Harvard Law School, gleaned when I was a teenager in law school in Bombay, I must admit came from reading Erich Segal's novel *Love Story*. It is about a love story that I will talk today. In Colombo, last month, Upen Baxi moved us all, when he described the moment we both first met Neelan and Sithie. Twenty-nine years ago, we met a radiant Sithie and an obviously smitten Neelan whose life is one of the great love stories of all time.

But it is about another love story that I wish to talk today—the love story of Neelan and Harvard Law School. Neelan's passion has *always* been the law. So it was entirely natural that his love was Harvard Law School. A love, possibly unrequited at the very start, but requited today with an amplitude that almost surpasses understanding. Harvard Law School has given much to Neelan and continues to give even more. But equally, Neelan has given much to Harvard Law School and he continues to give even more.

A few dubious detractors of Neelan callously chide and criticize him for his love for Harvard Law School, deriding it as being born of pride, snobbery and elitism. Little do they know the charming, and disarming, person that is Neelan. Neelan does belong to a select and rare elite. But it is an elite both of ability and of meritocracy. Neelan, as ever, a connoisseur of excellence. Excellence of the intellect, excellence of the heart and excellence of the soul.

Acutely aware that it is but a single letter of the alphabet that separates the best from the rest, Neelan dedicated his life in Colombo, in Asia and at Harvard to bringing out the best in young, budding lawyers and jurists who were lucky enough to come in contact with him. From them, he would ask no more than their fullest ability. Yet he would settle for no less. His challenge was never to the good become the enemy of the best. But his compassion was also to ensure that never would the best be the enemy of the good.

Neelan views legal education as a process not only of putting in

but indeed of drawing out—a process of self-learning and self-fulfillment within a nurturing, caring and challenging environment. It is precisely such an environment that he fostered in the two institutions he created in Colombo: the International Centre for Ethnic Studies and the Law and Society Trust. It is precisely such an environment he fostered at Harvard.

Over 55 years, Neelan has constructed an intellectual legacy that will remain forever challenging. For me that legacy is encapsulated in just three words, in just three concepts: *reimagining*, *constitutionalism* and *diversity*. Especially cultural diversity and pluralism as a gift to be cherished and nurtured—not feared and repressed.

So today, let us celebrate Neelan:

Neelan: a consummate crafter of consensus

Neelan: a master of the uncompromised compromise

Neelan: a warrior for peace whose only weapons are truth,
integrity, compassion and non-violence.

Neelan's intellectual soul-mate Roberto Unger has called Neelan a saint. I think Neelan, with his irrepressible sense of humor, will relish the irony of my ending this tribute with the words of a Saint who was never canonized and indeed was probably uncanonizable. Words which to me best capture the reality that is Neelan:

*My candle burns at each end;
It will not last the night;
But, ah, my foes, and, oh, my friends—
It gives a lovely light.*

Sithie, Mithran, Nirgunan, Neelan, thank you for letting me be part of your lives.

HENRY STEINER

Neelan and I met about three decades ago, when he was a graduate student here, and I a teacher. We grew close then; we grew only closer over the decades. Particularly when my work turned toward human rights, particularly after the Human Rights Program began, all sorts of collaboration with Neelan and the Sri Lankan institutions that he directed became possible—at times, it seemed, inevitable.

It surprises me how vivid my recollections of Neelan are, for we were not everyday companions. The quizzical face, turned slightly upward; the frown of concern and seriousness; the wryness; the quiet humor relieving his utter dedication and seriousness. We saw each other five times over the last decade. Each meeting held its intense talks; there was so much to be debated and proposed in so short a time. It was a special treat when Sithie too was there, as in our garden in Cambridge a few years ago, full of talk and laughter, including, of course, Sithie's wry observations about her husband, such as his remarkable daily ritual of disappearing for hours into a sea of newspapers.

Our last meeting was in Geneva, during a month when UN groups on minorities and ethnic conflict were convening. Several younger people from his organization, ICES, were there, accompanying Neelan as he strode briskly and purposively from the Hotel Mon Repos to the Palais des Nations. His interns and students were in tow, observing and learning, led by their mentor through the mystifying UN rounds. As in so much of his work, Neelan the teacher was here seeking to realize his passionate desire of achieving through discussion and understanding what bloodshed and terrorism could not.

I felt a great fondness toward this remarkable man. I deeply enjoyed him, with his quiet but persistent way of advancing serious beliefs, with his tact and politeness in advancing a direct proposal, never demanding but always asking, "Do you think, Henry, when you speak with so-and-so, you could say something about what we've been

discussing?” He was, yes, so gentle and considerate, but also persistent, patient, and firm—quiet and never seeking to dominate, but so strong and full of a wiry energy.

I never spoke with Neelan about the source of his vivid beliefs in the right paths toward peace and justice. Courageous he surely was. But there was more than raw courage. His person and work expressed not only a love for humankind, but a deep faith in human nature, in our capacity for empathy and understanding, in our ultimate goodwill.

Was that faith a religious one in any specific sense? Or was it not that rooted, but rather a large spiritual sense of mission and hope that enabled Neelan to pursue his path despite the evil that all saw about him? I now wish we had talked about these matters. So frequently when someone who is admired by and beloved to us dies, the relationship doesn't end but almost renews itself with urgent questions. My memories of Neelan are rich indeed, but would that I had known him, and his deepest beliefs, still better.

MITHRAN TIRUCHELVAM

Friends, it is fitting that we gather here today to celebrate and reflect on the life of my father, Neelan Tiruchelvam. While growing up, my brother and I often heard of the happiness my parents shared at Harvard Law School and in Cambridge. In our imagination, it was a place of intellectual wonder and excitement, a place marked by curious adventures in a foreign culture, a place of deep and enduring friendship.

As a university, Harvard enshrines the values of an open society, the very values my father held dearest to his heart. At this dark moment, it is difficult to recapture that spirit of freedom and faith in the possible. Everywhere we seem consumed by the forces of bigotry and destruction. The feeble political resolve of the state and the hypocrisy of those who feign to represent the aspirations of the victims of our conflict have compounded the pathology of violence that is Sri Lanka.

In such a context, there are many who declaim the violence and reason that all hope is vain, that the decay of society is beyond redress. But my father refused to surrender hope. This was his great quality that we so desperately miss. His was a hope that arose from his absolute moral conviction about the dignity and the potential of human beings.

Some of us may feel that we have lost the staff on which we leaned, lost the spirit and foundation that we needed for our own development. But in truth we have been enriched by my father's life of generous spirit and gentle courage. We have been given the gift of a shining dream, and it is up to us to make of it as we can. Surely there will be other people, some among us here today, who will be inspired by his example to carry on the struggle for peace, justice and reconciliation.

On behalf of my family I would like to thank Professor Steiner and the Human Rights Program for organizing this event. Thank you all for being here.

SPEAKERS

Robert Clark is Dean of Harvard Law School and Royall Professor of Law.

Clarence Dias is President of the International Center for Law in Development.

Henry Steiner is Jeremiah Smith, Jr. Professor of Law at Harvard University.

Stanley Tambiah is Esther and Sidney Rabb Professor of Anthropology at Harvard University.

Mithran Tiruchelvam is a student at Cambridge University.

Roberto Mangabeira Unger is Professor of Law at Harvard University.