

*Summary of the discussion  
after the paper of H. Schambeck*

After the oral presentation of Professor Herbert Schambeck the discussion mainly turned around the idea of the law as creating justice or as shaping mentalities, sometimes for the worse. Protection of human life was taken as an important example. Attention was also paid to the role of the law in the social structures of modern democracies with market economies.

Can legislative power create values, or does it simply legalize values that are already present in society? About this major question one can think of the conflict, in some developing countries, between the modern law and traditional law, based on different values, for instance with respect to the idea of equality of all human beings. One may also remember Tocqueville saying that law was very important, but less important than morals (“moeurs”) and cultures. Agreement seemed to emerge on the idea that law contributed to changes in mentalities and in the norms accepted in society. Hence it has a modest ability to promote desirable effects, but unfortunately it also has the capacity to lead to undesirable though unintended side effects, in particular when it increases tolerance with respect to undesirable behaviour or undermines the positive role of mediating structures, which are the only thing standing between the individual and the over-powerful state.

Legalization of abortion was taken as a particularly significant case. A speaker pointed out that the respect for, and protection of, human life had moved from an absolute to an hypothetical right. Another speaker, however, mentioned, that absolute may be too strong a word, as the rights and duties during wars showed. Suffice it to say rather that there is no ethical argument sufficient to negate the right to life to the unborn.

Among the legal institutions that were progressively shaping mentalities one should not forget the role of the international agencies, which are now upholding conscience across nations. They act by conventions, similar to laws, by jurisdiction, and by the interventions of their secretariats.

The constitutions of modern democracies all assert freedom and equality of citizens; as to economic organization their contents vary. The discussion touched on a number of points, which were often suggested as relevant topics for future work and concerned the real nature of democracies. A speaker pointed out that equalization in the standards of

living could be conflicting with freedom. The Social Market Economy was found worth studying. Its growth in Germany was a natural development during the post-war period; establishing it now in European countries in transition was a wholly different matter, for which references were ambiguous. One speaker reminded Academicians that the Law had to prevent the abuses of capitalism.