

*Discussion of Prof. T. Kohler's paper*

MALINVAUD

J'ai beaucoup appris à lire votre très intéressant rapport, en particulier quant aux différences entre nations dans l'histoire du droit du travail. Mais je me suis interrogé sur les observations qui se trouvent aux deux dernières pages.

Si je vous ai bien compris, vous percevez que l'ordonnancement ancien, entre pouvoir d'initiative individuelle et réglementation étatique, a été bousculé et ne peut plus être restauré tel quel. Il faut donc, selon vous, imaginer un nouvel ordonnancement. Vous avez des mots forts pour exprimer votre thèse: "Les gens au travail, à presque tous les niveaux de l'économie, deviennent les objets d'une administration plutôt que des agents actifs s'autodéterminant. De telles conditions sont inhumaines au sens le plus sérieux". Elles ne survivront donc pas.

Après des phrases aussi fortes, vous ne vous étonnerez pas que nous vous demandions de vous exprimer un peu plus. Quelles pistes envisagez-vous pour la définition d'un ordonnancement plus humain? Serait-ce implicitement, vous incitez notre académie à se préoccuper du diagnostic à porter sur la situation qui de fait règle les conditions du travail actuellement. Comment recommandez-vous que nous abordions ce diagnostic?

KOHLER

In some ways, the subsidiarity principle provides real guidance for how we might think about concretely restructuring the trends that I see as being dangerously destructive. Subsidiarity has enormous potential, and there is a great and growing interest in it today. The problem with subsidiarity at the moment is that many people regard it as an indeterminately vague principle. For example, Lord Wetterburn, a well-known English legal and labour law scholar, described the subsidiarity principle as feline in its inscrutability. Building out more concretely what subsidiarity might mean, and how it might actually be realized, is becoming a pressing need.

The key is to recognize the subsidiarity principle as a methodological principle. It is not a recipe, or a set procedure intended to produce a predetermined result. Instead, subsidiarity represents a heuristic device. Accordingly, it sets the conditions for creative discovery and adaptation as

opposed to planning for a predetermined outcome. In this way, subsidiarity draws on the approaches of Aristotle and Aquinas, who as thinkers distinguish themselves from everyone else because they employed an approach that provided a method for working on problems, but which avoided any attempts at prescribing comprehensive but abstract “solutions”, which necessarily prescind from concrete situations and conditions. Both put an emphasis on the procedures by which one knows, not on the content of what can be known.

I think that such a methodological approach would have to be employed by the Academy which will not be in the position to provide the world with a sweeping recipe for the complete ordering of all economic and social relations, but which may ground its advice on the anthropology of the human person. As for concrete applications, let me take two examples: first, we in the United States say continually that we want and need flexibility. Interestingly, both American and German scholars understand their collective bargaining systems as concrete applications of the subsidiarity principle. The collective bargaining process does put into the hands of the actual actors the ability to determine what sort of order makes sense for them, in their concrete circumstances; it requires them to deal with the outcomes of their choices. In the United States, part of the rigidification of labour relations came about from the courts, who just couldn't keep their hands off this supposedly autonomous process — the judges just had to “help”. Moreover, subsidiarity can assist people to develop other visions for schemes of ordering. Second, there is a terrific tendency today to see choices in terms of Weber's “iron cage”, where the state or the market represent the sole ordering alternative. This is deeply problematic, and the shortcomings of this approach now are very clear. Subsidiarity provides — I won't use the term “a third way”, because I think it's inaccurate — but provides a new set of questions for a new way of thinking.

As Bernard Lonergan pointed-out, questions are the normative thing; if one has a good question, one has the start to an appropriate solution, toward a new understanding. There is a normativity inherent to the process of raising and answering questions. Raising the right question, I think, is much more important than trying to work out and impose a global, “one-size fits all” solution. I hope that responds to the question.

ARROW

Professor Kohler's paper puts very well the nature of the social institutions of the labour market. There are at least two aspects of these institutions: the primary one is the relation between workers and employers, and then there are all the institutions that surround that relation. In your last

pages, you discuss, disapprovingly, the dissolution of the worker's autonomy by the market, the "wiping out of the little platoons of social life". This is a very old theme; Marx and Engels in *The Communist Manifesto* ...

KOHLER

Actually, that term is Edmund Burke's, it's a very old theme ...

ARROW

Burke precedes Marx. Carlyle was talking about the same, and Engels was a great admirer of Carlyle. They all saw the market as destructive of social relationships. Yet in fact labour unions arose in this apparently unfavorable environment.

One of the problems today is the degree of freedom of the employer. A claim is made that in a competitive environment the employer has essentially no discretion. Do you think this view is a correct diagnosis or is it unduly restrictive?

KOHLER

I see that as part of the diagnosis. I am not sure that it is unduly restrictive. When I talked about workers being objects of administration, I meant that more and more people are simply accepting the terms that are available to them. They do not, in any serious sense, participate in determining the character of the order in which they live their day-to-day lives. Quite often, as you say, managers find choices effectively available to them very restricted, and they are unable to do much either. General Motors, for example, was known as a very good employer, and it felt that it had a social obligation in the small towns in which it had plants. During the early '80s they got clobbered for being good employers. So, in some ways their hands were tied. We as humans are being pressed more and more, in part because the whole idea of humans as free, reasonable and responsible beings is harder and harder to express. The situation is not one in which, if we could tinker just a bit with our social structure, we would have all the problems fixed. We now have to think in a much more, if I can use the term, radical fashion. In particular, a lot of things about markets make tremendous sense. Problems, however, never go away. For example, for Aristotle, the institutions of private property and markets were matters of prudence; but, prudence always tempers the range and extent of these institutions. What sorts of things should market transactions govern? What sort of arrangements do we want to have, and how would they lead to human flourishing?

I fear that we have given up on the question of what sorts of arrangements we want to have; in a way we have simply abandoned these important questions. If so, we abandon our responsibilities as human beings, and we strongly tend to put the people who are the weakest at greatest risk. Many people cannot effectively make determinations about how they are going to live. Such a position is not consistent with their status as humans. The most truly human of activities are understanding, reflecting and choosing.

#### SCHOONYANS

M. Kohler a apporté une dimension profondément humaine à l'approche des problèmes que nous étudions. Après nous avoir expliqué que le système économique dominant est celui du Siècle des Lumières, il a montré que le marché risque de détruire certaines institutions. C'est sur ce dernier point que je désire intervenir.

La première question est celle-ci: quelles sont les menaces qui pèsent actuellement sur les nations? J'ai l'impression que parmi les institutions évoquées, il y en a qui font peser de réelles menaces sur la *souveraineté* des nations. Des interventions de plusieurs collègues, il ressort que le marché conçu comme de plus en plus globalisé, risque d'éroder la souveraineté des nations. N'y aurait-il pas lieu de distinguer, mieux que nous ne le faisons habituellement, entre internationalisation d'une part, globalisation et/ou mondialisation de l'autre?

Je voudrais soulever une seconde question concernant la famille. Dans l'économie traditionnelle, la contribution des femmes, des mères, à l'activité économique est considérable. Aujourd'hui même, on constate que beaucoup de femmes ne peuvent exercer un métier que parce qu'elles bénéficient du support de la grand-mère qui s'occupe régulièrement ou occasionnellement des enfants.

Or, toutes ces activités maternelles et, plus généralement toutes ces activités de la femme au foyer, ne sont pas reprises dans la comptabilité du marché ni dans celle des nations. N'y aurait-il donc pas lieu d'envisager de sauver, en les modernisant, certains comportements, courants dans l'économie traditionnelle, qui ménageait une place importante aux *relations interpersonnelles*?

Mme Archer, résumant le papier de M. Betancour, a évoqué les expériences de *recupero* à Medellín. A Salvador de Bahia, j'ai un ami qui, après avoir ramassé de vieilles machines, a institué une école de couture et de dactylographie qui marche très bien. Cette école ne coûte rien à la société, mais fournit à celle-ci des couturières et des dactylos de bon niveau. Dès lors, ne serait-il pas opportun d'inclure dans nos réflexions une

étude sur des projets d'*économie solidaire* qu'on essaie de relancer actuellement?

Je me demande aussi, avec M. Rémond, si d'importants "gisements d'emplois" ne pourraient pas être exploités. Je partirai d'un exemple concret. Je m'occupe d'un home pour personnes âgées. Beaucoup viennent y mourir dans l'abandon. Bien des enfants ne s'occupent plus de leurs vieux parents, surtout quand ceux-ci sont dans des conditions physiques précaires. On a toutes les peines du monde pour trouver des soignants et même des visiteurs. On observe la même chose ailleurs: qui veut s'occuper des drogués? Qui veut s'occuper des handicapés? Qui veut s'occuper même des enfants? etc. Il y a là toutes sortes de possibilités qui s'ouvrent et qui pourraient également contribuer à une revalorisation du rôle de la femme dans la famille et dans la société.

Actuellement, une importante majorité des femmes seraient disposées à rester chez elles et à s'occuper de leur famille — de leurs enfants, de leurs parents — si elles n'étaient pas "forcées" de travailler pour des raisons économiques. Dans la pratique, cela signifie que beaucoup de femmes d'aujourd'hui n'ont *pas une véritable liberté de choix*. Elles ne peuvent pas concilier leur juste aspiration à être épouses et mères avec la non moins juste aspiration à une réalisation professionnelle. Nous-mêmes, dans le cadre de notre Académie, ne pourrions-nous pas prendre en compte ce problème central? Il concerne, non pas la moitié de l'humanité, mais toute l'humanité, puisque du bonheur de la femme et de l'épouse dépend le bonheur des familles, et donc le bonheur de la société.

En résumé, mon intervention porte essentiellement sur deux points: tout d'abord la *souveraineté de la nation*, et d'autre part la *famille*, et plus particulièrement le *statut de la mère* dans la famille et dans la société.

KOHLER

Regarding the first question, it is undoubtedly true that nations are surrendering their sovereignty. To some extent, this is being done through intentional surrenders. The European Union calls on the European Court of Justice to make decisions that are supranational, and that bind the courts and legislatures of the member states. The North American Free Trade Agreement transferred a number of decisions from national sovereignties to an unreviewable body of experts who, amongst other things, will determine certain tax questions and certain labour relations questions. The affected topics will no longer be matters of national sovereignty.

There is another way that sovereignty is being lost; governments have lost the initiative to make decisions, as Professor Tietmeyer was talking

about briefly this morning. Germany, for example, has a particular labour relations system, which in many ways it would like to keep, but the future of this system doesn't appear to me, at least, to be bright, given the fact that it is going to be very hard to sustain it in light of international competition, which calls for more flexibility.

Let me refer again to Aquinas' idea, which is picked up by Burke when he writes that it is in the "little platoons" where one learns to love others, to cooperate with others, to have solidarity with others and which build, from the local level out to a love, as he put it, of all mankind. That might represent a certain form of internationalization, of thinking about others that is not exclusive, that is not seen only in the self-referential terms of "what I can get out of it?".

As to your question about the family, we must keep in mind that women who stay at home today face what I might call the three D's. Women with careers face the danger of losing their place in the fast track in professions. So, the first danger, the first D, if you will, is the death of the career. The second one is danger of divorce (in the United States the divorce rate is, all told, something around 50%, and the feminization of poverty is largely tied to the divorce rate). The third danger is denigration; by stepping out of one's career for some time, or if one works only part-time, one is not regarded as being truly serious about one's work or profession. Perhaps we need to think completely differently about family and about the whole role of women. We certainly don't want to restrict women to the home, and away from the contributions they make in all spheres of human activities. But how men and women can balance the demands of family and career, needs more serious attention.

You talked about taking care of the aged, and whether this might lead to new forms of employment. It certainly has in the United States. But, unfortunately, this often has led to very low-prestige jobs which have minimum wage. Father Utz talked yesterday about what I might call the death of self-sacrificing love. For example, in the United States, the vast network of Catholic institutions, such as schools, hospitals, and the like, all existed and operated on the basis of self-sacrificing love of nuns, who took on enormous responsibilities, who ran these institutions. But now that sort of life where you do tremendous things for little or no pay, just doesn't make sense to us anymore.

How to produce solidarity in the economy, goes back, I believe, to the question of knowing what human beings are. As we typically understand any sort of relationship, it is always in terms of monadic, otherwise unasociated individuals, who come together, in a sort of alliance, to achieve some limited end. For example, marriage was described by the United

States Supreme Court in a recent decision, as a "personal affiliation" from which the parties gain the ability to define their personal identities. There seems little idea that marriage could involve others. Thus, the Court states, the decision whether to start or to remain in the marriage was wholly private. This is a very strange way of describing something that frequently involves not only minor children, but everybody in society.

We need a new way of thinking about the meaning of solidarity. Solidarity doesn't mean, as some unions suggest, that individuals band together simply as an interest group. But we don't have today an adequate language to speak about it. So perhaps again, to refer to the President's question: what can this Academy concretely do? Perhaps describe and discuss our personhood and our relations to others in a new language, and inject this new language into the culture; introduce new ways of thinking into the culture; get people speaking, and thus thinking in a different way.

MARTIN

In your presentation you draw attention to the fact that, traditionally, Catholic social teaching has given great support to workers' associations. At the same time, you point out that these associations are today in crisis almost to the point of being endangered species. What, from your experience and from your discipline, should the social teaching and the social activity of the Church be saying today to the workers' associations, so that they can be more relevant to the people they represent, and can be more effective in the actual economic and social climate in which they are working?

KOHLER

Great question: I have first to say that everything written by this Pope about unions is extremely powerful and extremely effective. Perhaps we should simply make the Catholic social teaching better known to people.

We should also reflect on the following fact. Whereas unions used to be one of the most argued about topics, today liberals and conservatives agree: there would be no purpose to unions. Liberals see them, like all mediating institutions, largely as a threat to individual freedom. Conservatives, again, using the term very loosely, tend to see unions simply as economic institutions that shift resources. The other things that they do, that are so well described, particularly in the encyclicals of John Paul II, simply aren't thought about. Perhaps concretely we need more description of what unions do to ground other sorts of mediating institutions; the contribution they can make to grounding the habits that support those

institutions should be emphasized. At the same time, unions represent one sort of human institution that we need to think more seriously about.

And once again this should lead us to re-form the language in which we typically operate. The language of individualism is everywhere. Hans-Georg Gadamer framed some of what I am speaking about in terms of what he calls the nominalist prejudgement and he points out how deeply it influences the way we think. That is part of the challenge today.