

Summary of the Discussion

The presentation clearly disabuses us of the lay reaction to social problems, namely that “there should be a law against this”. Given that we do not know very much about how law works in practice, could you give any guidelines about “smart” legal manoeuvres in relation to reducing unemployment which would do more than merely increasing the public visibility of this objective?

(Prof. Glendon). Lawyers themselves have unintentionally contributed to the idea that a problem can be solved by passing a law or bringing a lawsuit! Since the 1960s there has been a gradual realization that the role of litigation in the area of social justice has all-too-often been ineffective or counter-productive. The best way forward is to be attentive to the concrete and to foster creative, limited, experiments. That means promoting limited pilot programmes rather than introducing big regulatory schemes from the top-down.

It is intriguing why there is such a concentration on rights in political discourse. It seems that politically there is a premium in getting the term “rights” attached to some particular goal, which in one sense then de-politicises these objectives. This underpins the trend in international politics where new rights are constantly being defined, as part of the politics of global persuasion. The crucial problem is to ensure that the various rights recognized are integrated with one another. Such integration must hinge on their common grounding in the human person, whose universality overrides the particularism of the interests driving the political process. This is where the universalistic tradition of Catholic social teaching has a vital role to play in the international arena, where the decisions taken then act back on national politics.

In relation to the possibility of enforcing social and economic rights, there are examples where this has not been empty, as in the recent Swiss Federal Court’s condemnation of the relevant authorities for not having ensured a person’s right to the minimum necessary for subsistence (and this was an illegal immigrant). It is more difficult to move from condemnation

to corrective action if rights are to be realized. However, such difficulties should not give leverage for annulling rights (as was recently attempted by the US and the European Union in relation to the right to housing). Upholding the rights to which commitments have been made is important as a statement of legitimate personal aspirations and of governmental responsibilities in these areas. Implementing such commitments cannot be achieved by fiat on the part of governments, if only because other factors come into play. It seems more fruitful to identify what facilitating role governments can play, so that the right will be realized for as many people as possible in a process of progressive implementation of the original covenant, based on learning about appropriate means of enacting it.

(Prof. Glendon). The US resistance to recognizing such rights as those to housing is related in great part to pathologies in the American civil litigation system. There is a fear that if social and economic rights become part of customary international law, then they could become the basis for private individuals bringing private damage actions against the government — as when Civil Rights Law generated a tenfold increase in case loads in the US federal courts over a ten year period.

In the twentieth century many rights are legally acknowledged, but it is necessary to convince our world of the value of solidarity. In certain African countries, solidarity is part of the normative framework and the Ivory Coast is currently considering the creation of a Ministry of Solidarity with appropriate responsibilities, but how can this kind of solidarity become global?

(Prof. Glendon). If we understand the concept of “right” properly, this reduces the tension between rights and solidarity. The key lies in how the human person is conceptualized: if seen as a radically autonomous individual, which is common in economically developed countries, this is bound to conflict with the notion of solidarity. However, in Catholic social teaching the individual is seen as unique but not radically autonomous; s/he is also constituted by relationships with others and with God. With this more appropriate notion, encompassing the social and spiritual dimensions of personhood, then rights and solidarity are complementary and mutually reinforcing.

If we introduce the important social dimension of the “right to work”, then the latter may not be possible in a given social situation. Catholic social teaching needs to explore these implications further because *Laborem*

exercens insisted upon full employment in any given economic system. When the economy does not function in this way then we have to stress that the social dimension of work is an ethical principle and not simply an economic option.

(Prof. Glendon). As an ethical principle embedded in Catholic social teaching it has considerable support from secular legal traditions such as the Universal Declaration of Human Rights. Far from being based on individualism, the Declaration recognizes the need to protect surrounding institutions (the family and religious associations) which are necessary for individuals to flourish. Similarly the German Constitution has provided a good example of an integrated approach to rights, through the process of interpretation (*praktische Konkordanz*) which gave each constitutional value maximal scope.

My concern is about whether too much state intervention and social engineering are required in order to implement “reflexive law”, by setting conditions and securing the functioning of intermediate structures. Equally, such law is opposed by the dark forces of individualism which are clearly enshrined in the prevailing orthodoxy of economic rationalism. How can these two powerful forces be countered to achieve the desired outcome?

(Prof. Glendon). This is extremely difficult, but it seems to me that the key to it is the role played by the mediating structures of civil society, in order to avoid the stark opposition between market and state. Many countries seem to be recognizing that such institutions (unions, religious associations, the family and combinations of them) may be able to deliver certain types of services better, more cheaply and more humanely than government.

This prompts the thought that we have to go beyond concepts of unemployment or full employment which are actually administrative artifacts without social meaning. Perhaps we should build on what we have managed to develop, namely a series of rights *not* to work — and to have a decent standard of living without working — for the old, the sick, students, mothers and those who cannot find work compatible with human dignity. Each of these can be contested and is constantly debated. But these debates are concrete ones, about who has the obligation to preserve these rights; whether work of a different kind be provided; under which specific employment policies, etc. This via *negativa* may prove much more useful than thinking about the “right to work”.

Returning to the question of *who* is the subject of rights we confront the long debate about individualism versus collectivism. For example, the Italian Constitution recognizes man as an individual “singular being”, in the French revolutionary tradition, but it also acknowledges social rights. Now are the latter of a different nature and who is their subject? The Italian Constitution recognizes social groups or organizations as the subjects of rights because these are necessary for the formation of human personalities, the two being interdependent because humanity is naturally social. So too does the social doctrine of the Church, because when it speaks of social rights, these are those which acknowledge that human beings are necessarily social beings and it is this which differentiates our outlook from any kind of individualistic conception. Thus we cannot talk about work as a social right without also referring to the family, as a social subject, for whose well-being work is essential.

The history of human rights has not primarily been one where those rights were legally enforceable. It entails a distinctive series of propositions about the relationships between the individual, state and community. Within this complex only certain rights such as freedom can be legally enforced: thus it is imperative to be clear about which rights are under discussion. However where one is dealing with rights which entail relations between the individual and the community, which need spelling out in detail, it is dangerous to argue that these are only minimally enforceable because then they tend automatically to be reduced to a bare minimum, with the effect of reducing the concept of “rights” correspondingly.