

SUBMISSION FOR THE TRAINING ON SOCIAL RIGHTS

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Introduction

Social rights along with cultural and economic rights are often referred to as second generation rights. They differ from political and civil rights in that social rights demand that governments act and provide services. Such rights can be seen as relating to the meeting of people's needs, rather than the protection of their rights from abuse or interference.

The underlying assumption is that individuals have the right to an adequate minimum income, housing, health care, and education. Although it is often advocated that such rights must be entrenched in the constitution of a democratic state, it should be noted that this does not usually happen

In 1993 the Vienna Declaration and Programme of Action which resulted from the World Conference on Human Rights in Vienna emphasised that 'all human rights are universal, indivisible and interdependent and inter-related'. Following on from this it can be understood that fundamental rights, such as the right to life, are diminished if people have no food, or housing, and that they can only exercise their civil rights and protest effectively against abuses of their human rights in a responsible way if they are educated.

Biblical and Theological Approach to Social Rights

The starting point is the doctrine of creation - human beings are created "in the image of God" (Genesis 1.27). This fundamental biblical affirmation gives human beings a very special dignity. This

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dignity is conferred on all human beings without distinction, which is the basis for a belief in equality. Human dignity and equality are the philosophical and theological basis for the concept of human rights.

The covenant of the Old Testament expresses this in terms of law. The Torah sets out in some detail God's will for the kind of society that is appropriate to his own people. Yahweh is a God of justice, so justice must be the basis for this society. A society built on justice is an expression of the righteousness of God.

In the social field, the Old Testament law lays down a particular responsibility to provide for the needs of those who are weak and vulnerable (in ancient society, this meant especially widows, orphans and foreigners). It also laid down measures to prevent the emergence of an excessive gap between the rich and the poor. The prophets denounce neglect of this law. Failure to observe the law, a failure of our social duty towards others, will result in disaster for the nation, and particularly for the rich and powerful.

The New Testament, does not set out to legislate for the wider society, but lays down broad general principles.

Thus, Jesus summarises the law in the two commandments to love God and neighbour (Matthew 22.37-40). The New Testament inspires Christians with a vision of a kingdom based on justice and peace. Again, there is special concern for the poor and the vulnerable. Jesus's "manifesto" states that he has come "to bring good news to the poor" (Luke 4.18). The rich should not look down on the poor, but treat them with dignity (Luke 16.19-31). Wealth is not evil but it does bring responsibility (to be responsible stewards of the resources entrusted to us by God). See also 1 Timothy 6.17-19 and James 5.1-6 for the spiritual dangers and the responsibilities of wealth.

It is the vocation of the Church down the ages, of Christian tradition, to work out the practical implications of these principles for the many and varied social contexts in which Christians find themselves at different times and in different places.

Christians have always recognised that they have a duty of charity towards those in any kind of need. Typically this includes the sick, the poor, the prisoner, the foreigner, but potentially many others too, depending on the social context. Charity can be put into practice by helping individuals or by working through Christian (and other) organisations set up to help people.

But is charity enough? "Charity" often has a bad name because it can easily lead to condescending attitudes. Moreover, however necessary it is, charity is in the end only a remedy, a palliative; it treats the symptoms of social ills but does not attack their causes.

People involved in charitable work often become convinced of the need to change the social, economic and political structures that lead to poverty. This leads them into work of an advocacy or campaigning nature, which may bring them into the sphere of politics.

Human dignity implies many things but must include things like having enough to eat, decent housing and safe conditions of work as well as being cared for in illness and old age. Christians have a duty to try and ensure that all (including particularly the least of Christ's children, Matthew 25.40) enjoy conditions of life that correspond to their God-given dignity.

This means setting up structures that guarantee the dignity of all. Expressed in legal terms, each person, by virtue of their God-given dignity, has an equal right to these things; and governments have a duty to ensure that these rights become a practical reality for all.

Therefore such measures as social security, social assistance, social services and redistributive taxation are not a matter of charity or generosity but they are the means of ensuring, as far as possible, that everyone enjoys the dignity inherent in our humanity. Far from being special privileges conferred on the poor and weak, they are rights to which all are entitled.

Legal approach to social and economic rights

On the international level three of the most important texts on social rights for Europe are:

1. The UN International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR is monitored by the Committee on Economic, Social and Cultural Rights, a global body of human rights experts tasked with monitoring the implementation of the Covenant. It is a follow on from the Universal Declaration of Human Rights of 1948. Recently it has become possible to submit individual complaints.

<http://www.un-documents.net/icescr.htm>

2. The revised Social Charter of the Council of Europe

On a pan-European basis this is probably the most wide ranging agreement on social and economic rights and the one on which we shall concentrate. It is the natural complement to the European Convention on Human Rights and guarantees social and economic human rights. It was adopted in 1961 and thoroughly revised 30 years later. The European Social Charter (from now on referred to as "the Charter") established a supervisory monitoring mechanism to guarantee respect for social rights in the States Parties. States have to report to the European Committee of Social Rights. The revised Charter introduced the possibility for approved non-governmental organisations, such as CEC, to make collective complaints to the European Committee for Social Rights against a country which they consider is not fulfilling its obligations under the Charter. In the last twelve years over 60 complaints have been made. A list of them can be found on the following website. http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp

It would be useful to look at the most recent report of your own country on its implementation of the Charter. Countries report annually on a specified area of the Charter and their reports are examined by the European Committee of Social Rights.

<http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>

3 The European Union Charter of Fundamental Rights

The European Union Charter is in some senses different from the other instruments mentioned because it sets out in one single text the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU. These rights are divided into six sections: dignity, freedoms, equality, solidarity, citizens' rights and justice. Chapters 2, 3 and 4 cover, respectively, freedoms, equality and solidarity. The main aim of the Charter is to make these rights

more visible, not to establish new rights. It brings together in one text existing rights that were previously scattered over a range of international sources.

http://www.europarl.europa.eu/charter/pdf/text_en.pdf

See the following art. In the Charter 30,31,34,35, as well the social clause in the Lisbon treaty (ar. 151).

Social rights on the national level.

At the national level when social rights are enshrined in a constitution or current legislation some experts think that the parliamentary majority should not have the power to repeal the laws or constitutional articles that guarantee social rights, except by special procedures (e.g. by two-thirds majority or by referendum). Certain institutions (for instance, the judiciary) should even be given the power to strike down laws passed by the legislature that are in breach of those rights. In many European countries they already may do so if a piece of legislation undermines the civil or political rights of the population and is in contravention of the European Convention of Human Rights

Thus, particularly, at present with the economic crisis, Europe is at the crossroads of two major issues of contemporary political philosophy, namely the issue of democracy and the issue of distributive justice. There could be conflicts between the demands of democracy and the demands of distributive justice, both of which are crucially important.

The relationship between social rights and full participation in society

There is a current theory of social justice based on a principle called participatory parity. This principle recognises the right of everyone to participate and interact with others as peers (i.e. equals) in social life, the “level playing field” concept. However, a major obstacle to participatory parity arises when one group of people lacks the necessary resources to interact with other groups on the same footing as equals. If they do not have a decent income, education, healthcare or adequate housing, people can find themselves marginalised and cut off from others and unable take part fully in mainstream society.

Social injustice has thus (at least) two distinct dimensions:

- maldistribution – this is usually defined as faulty distribution or apportionment, as of resources, over an area or among a group
- misrecognition - this is usually defined as 'misrecognition' of the true relations between the structure of that field and the structures of economic and political power – not really being aware of an existing relationship.

Two strategies are suggested for coping with this situation. One strategy which can be called the affirmative strategy for redressing this injustice aims to correct the inequalities present in society, without in any way disturbing or changing the underlying social structures that have generated them. In contrast the other strategy aims to correct unjust outcomes by restructuring the society that generates them and this can lead to political and social upheaval

On the other hand one of the key disadvantages of affirmative strategies to remedy maldistribution, such as programmes of help or social assistance is that they tend to provoke ‘a recognition backlash’.

They may brand those who are benefitting as in some way inferior and always needing more and more. Their net effect can be to add the insult of disrespect to the injury of deprivation.

Good practices

Thus churches and religious bodies in Europe are more likely to remedy social injustice and try to correct maldistribution by giving material help – food, clothes shelter - to those lacking such necessities. This might unfairly be described as everlastingly plugging holes in the dyke instead of building a new one. For example, it has been said if you give a man a fish you feed him for a day, but if you give him a fishing rod you feed him for a lifetime. On the other hand if you give him neither he may well starve.

A church might similarly allow organisations that work for social rights or social welfare to use church property for meetings.

Individual Christians may feel that they should join or support the work of the political or social organisations or movements in order to advance social rights such as Diaconia, Secours Catholique in France ect.

Proposals for Actions to support Social Rights

There is a need for actual programmes to both support social rights and give aid to those in need. As such programmes cost money and usually need trained staff, churches have to concentrate on voluntary help. A simple training programme on helping in a dignified manner those in need, centred on the words of Christ that “in as much as you have done it unto one of the least of these my brethren you have done it unto me” might be useful.

Education is a social right and churches could help children in difficulties, especially migrant children, with homework and provide drop-in centres after school.

The churches should be mindful of the needs of the elderly and marginalised.

Points to ponder and discuss

Questions r Discussion

Think about the differences between social justice, which involves the redistribution of goods, and the concept of social rights which insists that as human beings, made in the image of God, people have the right to a decent standard of living.

Social rights place obligations on States through international treaties. If States have obligations to provide various services, however, which ones are the most important? Is there a hierarchy? What social rights are missing? For example, the right to work is enshrined in Article 4 of the Italian constitution which states that “the republic recognises the right of all citizensd to work and promotes conditions to fulfil this right.”. The right to work appears in the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) but is related to States educating people to be able to work, find suitable jobs etc. In the revised version of the European Social Charter Part 2, Article 1 States are asked:

“1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;”

Give examples of how churches in your country are helping those suffering because their social rights are not being taken into account.

How can one design measures to ensure that the dignity of those who receive help is respected?

The relationship between church and state is always a thorny issue. To what extent do you consider that churches should campaign for better social rights and how should they do this?

Should a democratically elected government be able to change legislation or constitution articles when the result would be to penalise those living in poverty or injure social rights? Discuss whether social rights should be protected at all costs, even to the point of the judiciary intervening as may already be the case in the question of civil and political rights?

Is there an area where any organisation to which you belong might consider an injustice worthy of making a collective complaint under the provisions existing in the revised European Social Charter?

How can one stop a culture of dependency developing and the creation of an over-protective State which can stunt initiative and the development of personal independence and responsibility?

Should individual Christians and Churches join or even perhaps found bodies to campaign against the actions of States and governments which negate social justice, as affirmed by social rights?

Resource Material

The three treaties mentioned at the beginning of this article all have helpful websites, the details of which can be found in the text. Besides the actual texts there is also a lot of general information on the web pages.

ractical Impact of the Council of Europe monitoring mechanismspp 27-31 published by the Council of Europe, DG of Human Rights and Legal Affairs 2010, gives an overview of changes countries have made in recent years in order to comply more closely with the European Social Charter.

On the connection between social rights and participatory parity see :

Sandra Liebenberg: Needs, rights and transformation: adjudicating social rights Center for Human Rights and Global Justice, Working, Economic and Social Rights, Series Number 8, 2005

On the right to work see:

Massimo D’Antonio: The right to work in the Italian Constitution and the European Union <http://aci.pitt.edu/606/01/n1-dantono.pdf>

