

European Presidents' Conference of Lawyers' Organisations 2021

“Rule of law and democracy – closing the gap between policy and practice”

Remarks

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It is with great pleasure that I join you today to discuss the theme of the rule of law, democracy, and inequality, as I believe that lawyers, and the legal community more broadly, have a critical role to play as agents of transformation in this respect.

At the outset, let me highlight two related trends. First, the growing disconnect between people and the institutions that were supposed to serve them, which has manifested in recent years in an increase in social movements and protests against governance structures [e.g., on gender equality, climate action, and racial justice issues] — in effect demanding a new type of social contract. Second, the receding of international cooperation at a time when global risks demand it more than ever — a reality that has prompted the Secretary-General to call for effective, inclusive and networked multilateralism, a theme he will pick up in a crucial report due later this year.

With these dynamics in mind, it is our task to reflect on how to achieve a shift towards a new social contract, as well as effective multilateralism. What needs to change to bring this shift about, and what type of governance mechanisms could accompany that change?

Against this backdrop, the centrality of the topics you have chosen for this conference, or perhaps the interdependence of these topics, is clearer than ever today, not least as we embark on emerging from the COVID-19 crisis. The pandemic has forced us to recognise the promise and urgency of transformation, precisely by acknowledging the harrowing economic and social inequalities that our world is built upon, and the lack of protection that allows for these inequalities to persist. Women, children, youth and older persons, people of colour and minorities, refugees and migrants, the poor, people with disabilities, persons in detention, members of the LGBTIQI+ community... The discrepancy in the level of dignity afforded to the diverse individuals and groups that comprise our human family, is deeply troubling. When we allow the denigration of just one person, we set the precedent for the denigration of us all. In this respect, the pandemic has exposed systems which fail humanity as a whole.

I would like to begin this discussion by sharing a few reflections on the psychological dimensions of inequality, which are often neglected, and yet -- without which its abhorrent nature simply could not survive.

The first issue is projection. Often, we project onto others what we find uncomfortable within ourselves. This is an expression of deep-seated emotions, of which we are largely unaware. Secondly, we must recognise that none of us is free from unconscious bias, which is informed by deeply ingrained prejudices against people who are in a marginalized situation, or who belong to a marginalized group, or have a trait or characteristic that we do not want to be associated with. Unconscious bias allows for a kind of hierarchy of visibility. The visible are those who are protected from harm, who are afforded dignity and safety – and rightly so. The invisible are those who are perceived as ‘*less-than*,’ or not worthy of dignity and safety – women, people of colour, non-heteronormative people – the list is long and complex; the scale is sliding. To a certain degree incarceration, for instance, epitomises this for certain segments of the population – statistics show that in every country incarceration affects very specific parts of the population, with those who suffer inequalities most likely to be jailed. Is this something that could be overcome in the 21st century? My third consideration on the psychological front, is the reductionist view of ‘the other’. Reductionism, or dehumanisation, can provoke the most heinous of consequences, such as systems of segregation, apartheid and at the extreme end of the spectrum even genocide. It strips the “other” of their humanity entirely.

The sociological and political dimensions that support inequality are spoken about a whole lot more, so I will not go into detail on that front. But I would like to invoke Amartya Sen on identity and violence, whereby he pleads against an approach to human identity that considers human beings as members of just one defined group. He calls for us to consider the richness and complexity of the identity of each individual human being, in contrast to populist or autocratic leadership, under which people are defined as monolithic and homogeneous.

In this vein, people across the globe have been very vocal before and during the pandemic; in what we might look back on as a kind of awakening, a surge of resistance against being reduced or ignored. Even by a quick count, protests, often led by women and young people, were held in some 80 countries in 2020. People are unhappy for different reasons, not only in complex or fragile settings, but also in the global north. On the environmental front, many would like to see national agreements on the use of plastics, or the right to a healthy environment established. And in terms of our increasingly digital world, there is widespread concern over the harm being wrought by a social media ecosystem that enables mistrust, polarisation, and even hate – fueled in

part by commercial interests. This is one of many harms that is connected to the under-governance and under-regulation of the online space -- a problem that social media companies themselves have publicly called out. We cannot seek to provide solutions if we do not take into account the full spectrum of conditions that comprise this particular point in history.

Lawyers, through their engagement with and representation of the individuals most at risk, are often working on the front lines and are amongst the first – in addition to the affected individuals – to detect gaps in systems, laws, and policies. In this respect, you can be instrumental in formulating potential solutions. You can advocate for new legislation, governance, and rule of law structures where required, and for the fundamental principles that need to be guaranteed. It is crucial that the rule of law dimension is properly understood, appreciated as a fundamental contribution to stability, and continuously strengthened; not least as a bulwark against the vulnerability of minorities, or in the words of Alexis de Tocqueville, “the tyranny of the majority”.

We may also draw from the vision of Georges Scelle, who proposed that rather than promote a sole state-centred view, the law should ensure that individuals – the rights bearers – sit at its heart. For the rule of law, this means going beyond the functioning of the judiciary, legislative and the executive. We need to think about how the rule of law can be taken forward by *all* segments of society, in *all* contexts, especially where the basic tenets of the rule of law are being questioned. It is ultimately about leaving no one behind. The potential for Sustainable Development Goal 16 – ‘peace, justice, and strong institutions’ – has yet to be fully explored. Our recovery from COVID-19, and the collective call for a new social contract, as put forward by the Secretary-General, gives us this opportunity.

The question of the social contract is directly linked to the rule of law and governance, and constitutes its fundament. Human dignity cannot be superseded by political or other interests. It cannot be parcelled out only to certain groups. It must not be written out of law. We have an opportunity in the global momentum for transformation, for laws to be founded on respect for dignity and equality. Now is an opportune moment for all of us to anticipate and innovate, to work towards repealing discriminatory legislation and policies.

Within the UN we have the privilege of not having to resolve the question of the ‘Grundnorm,’ or fundamental norm. Our work is fundamentally based on and anchored within the Charter – an instrument created in response to the horrors of WWII. The UN outlook on rule of law as fundamentally value-based and rights-driven is an important aspect of our work that needs to be recalled again and again. The Charter and the Universal Declaration of Human Rights show what it means to place dignity at

the centre of our actions and what can happen when this fundamental quality of being human is denied.

There is a widespread discontent with the *status quo* that is not going to subside if we return to business as usual, or try to pretend that populations are monolithic or voiceless. Let me close by drawing your attention to the Secretary-General's *Call to Action for Human Rights*, launched last year, which speaks to a vision in which we recognise human beings as central to the solutions, decisions, and policies that will allow us to address these challenges. In the Secretary-General's words, "This is not a time to neglect human rights". It is a time when, more than ever, human rights are needed to navigate a better future; one in which each and every human being is afforded dignity. The rule of law is crucial to this vision.

I look forward to an inspiring discussion.

Thank you.