

Can the Law create Social Welfare Reform?

This morning's papers and discussion outlined many reasons for change and Orla O Connor highlighted the many changes that need to be made, changes that certainly need to be embedded in legal rights. The seminar has highlighted two ways of exploring the role of law in creating social welfare reform; a legal or judicial approach that focuses on how to use the legal system to ensure that every possible existing right is implemented; and a broader campaign focused approach that uses concepts like human rights and international human rights instruments to promote change. Clearly both are valid and necessary.

With regards the first approach that of using the law and legal instruments Noeline and Patrick highlighted issues concerning judicial enforcement. Noeline advocates more use of the Appeals and Ombudsman Office to promote consistency of enforcement of rights. She also highlighted the limits of administrative law and the danger of a hidden policy making system when policy is developed by way of regulation and guidelines and not by the political process.

In a practical sense it is clear that the law and enshrining social rights in hard law is essential. In my own work I have seen the usefulness of legal defence and enforcing legal obligations of the state where the state is trying to retrench social rights. The habitual residence rule for example has to be diluted because it fails to respect legal EU level regulations. I have also seen how the Geneva Convention provided a framework of basic rights for the development of asylum policy.

Patrick while highlighting the constructive use of law to achieve change also highlighted the limitations of our equal status legislation and how changes that could arise from a review of equal status grounds in social security law are necessarily limited by statute exemption in the present legislation. This lets the

state of the hook; a statutory duty would be a more powerful equal legislative framework.

Patrick also highlighted constitutional limitations on equality. Clearly, as women know, the constitution can be used as a legal framework against rights and we need to be realistic about this. We also need to be very tactical when using legal mechanisms to pursue rights and equal treatment. We have some high profile examples when the state was legally required to respect equal treatment but choose to level down.

Niamh offered a critique of legalism. While clearly the law has a role to play and is a key tool in any campaign for change one cannot and should not forget that the main way to achieve change is through the political process. Here rights approaches and – critical feminist approaches offer creative tools to promoting social justice and equality. Niamh outlined a significant number of campaigning opportunities that can strengthen case to win battle and a number of reviews and reporting system that could be used more strategically than they are at the moment.

There are dangers too in overuse or over reliance on such approaches. Groups need to pick campaigns strategically and examine how to ground what can be quite abstract concepts in everyday life and language. There are time and opportunity costs in focusing on international campaigns and there issues about the inclusivity of some of these campaigns and the danger of separating the leadership of groups from members. My own yardstick is that a good rights based campaign has to have the real capacity to make the link from global to national and most important to local. The type of initiative taken by the South West Kerry Women's Network in their project 'Amongst Women' which is an educational tool based on 12 radio programmes on the 12 Beijing Action Points in an excellent example of how such links can be made. Niamh left us with a number of good ideas that could be developed as campaigning opportunities

including the use of quasi legal ngo led 'peoples tribunal' and an annual Social Security Day on May 15th.

When governments ratifying such international conventions they are in effect making policy and they often do this in response to political campaigns. There is a clear overlap between right and legal and political approaches. In the community and voluntary sector there has been an ongoing campaign for a rights based approach, which has been developed in the UN inspired National Anti Poverty Strategy and in various Social Partnership processes and agreements. This right-based approach campaign for justice is inextricably linked to the right to participate in policymaking and the pursuit of participative democracy. This right-based approach has never successfully translated into policy, rather it appears in the NESC Developmental Welfare State as a framework of rights and standards and in language relating more flexible policy aimed at producing targets and outcomes. This approach of 'tailored universalism' leans towards a more discretionary approach to service delivery and is more difficult to translate into a legal based right approach.

I will illustrate what I mean by referring to the DSFA 2006 Supporting Lone Parents proposal, a proposal, which while clearly needing more work is welcome in that, it promotes individualisation of social security, a considerable advancement for equality. This is a challenging proposal from both a legal or rights but also a political framework. It is challenging because it is about trying to reconciling parallel rights, rights that seem incompatible at first. The right to be a mother or carer and the right to work. Sharply distinguishing between two such rights fails to recognise the diversity and complexity of women's lives and the continuum of care and work that is the reality of women's lives. How can you make their rights compatible?

How can you safeguard old rights and improving or advancing new rights? Clearly legal safeguards are needed to ensure there are checks and balances respecting the right to parent while promoting decent paid employment as an effective route out of poverty and a way of securing pensions. Institutional

changes are also needed to ensure that staff are trained enough to have discretion, both personal discretion and regional discretion. Institutional changes are needed to make staff and organisations accountable for quality service delivery. Such functions are often a role of good local government, something we simply don't have. Good policy will only be developed if there is good governance this would include active participation of those impacted and as I said already stronger local governance.

Can law create such reform? – no – only politics can. But such reform needs to be embedded in good law and that respects the multi dimensional needs of women and their economic, social and civic roles. It needs a strongly defined appeals system that can protect women's rights in the face of an over zealous state promoting one form of rights over another and that can protect the right of all children to their parents. The question is how can rights approaches and existing law help such a political campaign develop. Such a campaign, given Ireland's very sensitive proportional representation system needs to be above all else a local delivered campaign.

The discussion today has been exciting. The range of groups brought together has echoes of what a national campaign for welfare reform would look like. Much has been discussed and points of action can be developed. How can the NESC DWS be developed in a rights framework, a stronger appeals structure is needed for a more flexible discretionary system? There are issues of more effective use of the tools of the trade, SWAO, Ombudsman, CIC's etc. There are issues about using the law to defend assaults on welfare; this includes making the links with international tools and legal obligations. The review of equal status must lead to the removal of statutory exemptions and its replacement with a positive duty. There may be test cases (but carefully chosen to avoid levelling down). Above all however politics matter and the NWCI are to be commended for their already creative use of all possible approaches to enable local women articulate their needs and to motivate women to be more vocal. Social Welfare reform of the kind advocated will only happen if it is seen to be

politically relevant. The challenge is take a deep breath and continue to build a campaign for the coming general election.