

ILO Century Project

Lecture

ILO, Geneva

Title: **The Declaration of Philadelphia Today**

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I always feel rather moved when I come back to Geneva to this great building, our oldest international institution, born from the trauma of the First World War, which led its founding fathers to have inscribed on the pediment above the entrance “there can be no lasting peace without social justice”. When the Second World War came to an end this maxim was repeated in the Declaration of Philadelphia, not as the expression of a Utopian dream, but as a reflection of the lessons learned from tragic and bloody experience.

The thirty-years war which tore the world apart from 1914 to 1944 had just shown what can happen if industrial management methods are used on what the Nazis used to call “human material”. Treating men like objects in the name of science was something that the major totalitarian ideologies of the 20th century all had in common, and from this point of view the Declaration of Philadelphia represented a burst of legal and moral energy as the Second World War drew to a close. Nor did it end there, since the Declaration, adopted in May 1944, marked the beginning of a very prolific period in terms of standards, of which we are still reaping the benefits today, and which came to an end with the adoption of the Universal Declaration of Human Rights in 1948. This period from 1944 to 1948 is particularly important and interesting because it laid the foundations for the organisation of what became known as the welfare state in many countries of the world.

When we re-read the Declaration, we might be rather surprised to find that some of the ideas it contains seem very much at odds with today's thinking. There would appear to have been a complete sea-change in outlook over the last thirty years compared with the ideas adopted at the end of the war. Let me give you just one example. The Declaration of Philadelphia says that the quality of the legal and financial organisation of international relations must be judged by their ability to promote social justice. In other words, legal and financial organisation is a means, social justice is an end, and we must constantly assess the ability of economic and financial systems to attain that end.

It is clear that for the last thirty years our lives have been governed by the very opposite view, that the market is a spontaneous order and the aim is to adapt the law and institutions to that order. This way of thinking is embodied in a powerful book by someone who was a lawyer before he was an economist, Friedrich Hayek. Mrs Thatcher once brandished one of his books in the British Parliament, saying "This is what we believe". It is very interesting to read Friedrich Hayek because he puts things very clearly. He has a legal and institutional programme which says "the distribution of work and wealth stems from the spontaneous order of the market and must be excluded from democratic debate". He explains in his book that politics must be dethroned and replaced by what he calls a "limited democracy", by which he means that we must restrict democratic debate by preventing politicians from talking about the distribution of wealth because, he said, "if we open the door to that type of debate there will be no end to it and we will upset the spontaneous order of the market".

These ideas took off politically in the USA and the UK in the 1980s with what was known as the neoliberal revolution, though I actually prefer to use the term "ultraliberal". You could say that the success of these ideas dates from the collapse of real Communism. The Declaration of Philadelphia was never particularly popular in Communist countries because its aim is to organise the market economy rather than to abolish it. The collapse of real Communism meant that a whole swathe of the elites in the post-Communist countries were converted to these ultraliberal ideas, a conversion undoubtedly made all the easier because they were moving from the idea of dictatorship by the proletariat to dictatorship by the markets. But mentally they still had the attitude that the law is merely an instrument for applying scientifically proven truths.

If we have to give this sea-change a name – and political scientists might like to give this some thought – we might find it in Article 15 of the Constitution of the People's Republic of China, which, in an attempt to define the nature of the regime, says

that it is a Communist market economy. This is a concept we need to think about because it is the concept which China has chosen to define itself constitutionally.

This large-scale political shift allowed ideas to triumph which had previously been restricted geographically and ideologically. I won't go into detail in describing the huge turnaround that took place, but I will just look more closely at two ideas.

The first is that the programme of men like Hayek – and there is no questioning the sincerity of the people who developed these ideas, since each was convinced that they were helping to advance the common good – aimed to dismantle the institutions created by the welfare state. Hayek has some particularly harsh words to say about the ILO and the Universal Declaration of Human Rights in particular.

What happened was not a dismantling. This is why the term ultraliberalism seems appropriate to me, just as we had the ultraroyalists in France who thought they were restoring the old monarchy but actually constructed something new.

What really happened instead was a process in which welfare institutions were privatised, the most obvious example being the pension systems and the pressure for pay-as-you-go systems to be funded in order to boost their finances. We can see just how resilient these systems are, because they managed to survive the pressure they came under throughout continental Europe. The countries which completely committed themselves to a funded system are now facing serious problems, although the pay-as-you-go systems are also in trouble. This is the first idea, that something new is being created and we are not going back to the 19th century.

The second idea, the keystone created in the course of these thirty years, is what the book calls “Total Market”. The term “total” is carefully considered here: it is not a word to be employed lightly since it was used to refer to totalitarian States.

The use of the word in this sense goes back to a German philosopher, Ernst Jünger, who wrote an article in 1930 called “Total mobilisation” which examines the experience of the First World War. He describes this first experience of massacre on an industrial scale as “a mobilisation of all human, technological and natural resources, which were sent to the battlefield day and night, where an equally mechanical bloody maw took over the role of consumer”.

What he remembers from the First World War, therefore, is the invention of a new style of managing human beings, who become like ammunition in a competition where everyone is risking his life, and, said Jünger, “the management methods invented during the First World War are still being developed in peacetime”.

Jünger wrote this at the time when Chaplin was filming “Modern Times”, in other words at a time when workers in the industrial world really were treated as technical apparatus that had to adapt to machines. We are no longer living in that sort of industrial world, but one of the conclusions drawn in the Declaration of Philadelphia is that we have to reject that type of management, that man is not a material, nor is he capital. The term human capital, which is the exact equivalent of Hitler’s human material, was coined by Stalin in a speech in 1938, which I would urge people to re-read.

So this is why we can talk about “Total Market” today, because confidence transformed that period into a spontaneous order which would find its ultimate expression in the financial markets, now the arbitrator and supreme legislator of human life. Hence – and here the sea-change from Philadelphia is total – the belief that the law and standards are themselves competing products on an international standards market.

As you may be aware, this belief has led to the development of the World Bank’s “Doing Business” programme, which ranks national business regulations according to their ability to meet investors’ expectations. It is a sort of self-service tool which provides investors with a convenient way to choose the regulations that suit them best.

The employment section of the “Doing Business” programme is currently being reviewed following considerable criticism, but that is only one particularly visible part of a broader development in private international law which is encouraging what my colleagues who are specialists in international law call “law shopping”, in other words the possibility for large firms, now that borders have been dismantled, to choose for themselves the law that they want to apply.

Now, if there is one thing we can be sure about, it is that you cannot have both “law shopping” and the rule of law at the same time. The rule of law applies to everyone. If you let everyone decide which law suits them best, what you get is not the rule of law but a rule of widespread violence. There are not many certainties in life, the law does not claim to be a science, we do not have the same skills as our economist colleagues, but one thing is certain: because human beings are selfish, violent and vindictive, there has to be a regulatory framework which channels the resources of that violence. If the whole regulatory system is dominated by the fact that everyone is fighting against everyone else, then all you will ultimately have is violence. This is one of the few lessons that we can learn from studying law.

You mentioned earlier that in this book I have also tried to introduce a few new ideas and show just how contemporary the Declaration of Philadelphia is. What I mean here is the spirit of the Declaration. The world in which it was conceived no longer exists. The major institutions which were constructed on the basis of the Philadelphia principles – social security, say, or certain types of trade unionism – have aged, and I am certainly not saying that things should stay as they are. What I am saying is that we need to get back to that spirit, which men and women have constantly asserted over the period I described, in order to trace our route for the future. The principles set out in the Declaration are as relevant as ever, but we have to acknowledge that many of the solutions invented on the basis of those principles – during the “thirty glorious years”, as people called them – now need reviewing.

To give you just a few examples – since we agreed that I would try if possible to be very brief – we need to take an idea as a starting point, and I’m going to venture into the economic field of my colleague sitting beside me here.

What can we call a market? Not a total market, a real market, a market that works. When I have to explain this to my students, I always give them the architectural example of the market square in Brussels. Those of you who are familiar with Brussels know that the city wasn’t bombed, but fell victim to a number of architects who disfigured it. In the city centre there is a magnificent marketplace, the Place du Marché, which also serves as a lesson in economics. To begin with, the first lesson to be learnt is that the area of the marketplace is defined by a number of buildings. You have the buildings of the various guilds, representing organised labour which produces wealth. You have the town hall, which guarantees the fairness of trade without which no market or contracts are possible. When we say the area is defined, what we mean is that once you go beyond the limits of the square you are no longer in the market. If you leave the marketplace and head to the law courts, you are in principle no longer in the market; then again, if you think of the law courts as a market, then it would have been the courts’ decisions that were up for sale, and no honest trader could have survived. In other words, the market is an institutional structure which requires all these different elements: organised labour, rules on fair trading, a guarantor, limits. All of this may not be quite as old as mankind, but almost. It does not date from capitalism. The market economy is much older than capitalism, which is merely a recent form of it.

What made capitalism different from other earlier forms of market? This was explained very well by a great socio-economist, Karl Polanyi, who said that capitalism

was born when men, land and money were treated as commodities, whereas neither men, land nor money are products. But for there to be capitalism, for there to be a labour market, for example, you have to treat men, or at least their labour, as if they were a commodity that can be bought and sold. Similarly, in all traditional systems of land ownership land was governed by personal ties which lawyers examined, extremely sophisticated ties of relationship with the land. The idea that an individual can have an exclusive relationship with the land is one that has no rational meaning in many civilisations. In my view it is in Africa that the most subtle concepts here are to be found. Africans have not forgotten that people are, in the end, absorbed back into the land, even if they claim to own it. The relationship between man and the land is thus an ambivalent one.

For there to be capitalism, there has to be this triple fiction. It is a fiction which is a legal fiction: we pretend that labour is a commodity, that money is a commodity with the financial markets, and that land and nature are commodities like everything else. A legal fiction is perfectly all right, but you have to remember that it is a legal fiction and is only viable or sustainable – to use rather trendy expressions – or defensible if there are legal conditions. For instance, you can treat land as a commodity, but there has to be environmental legislation, you can treat labour as a commodity, but there has to be labour and social security legislation. For the last thirty years we have been systematically dismantling the legal structures which made these fictions viable. It was always likely that the first to collapse would be the financial markets, because that was where we have been most radical in dismantling the system of rules.

On that basis it is certainly not up to experts or academics to say what should be done. It was practice in the employment field, and political debate in particular, which came up with collective bargaining and generated new ideas. The best an academic can do is to suggest a few guidelines, map out a few possible routes or set out a few principles. In the second section of the book, I list five – don't worry, I'm not going to go into all five, I'll just look at one or two – and in particular I say that we have to rediscover how to use five senses: the sense of limits, the sense of moderation, the sense of action, the sense of responsibility and the sense of solidarity. I'll take just the first two of these as examples: the senses of limits and moderation.

The sense of limits means a sense of rules. When we say rule, we do not necessarily mean – this is almost impossible to translate into English – the contrast between regulation in the sense of control and regulation in the sense of binding

legislation. I won't go into this here, we can come back to it in the discussion. English does distinguish between government and governance. In the past people used to say we needed a government, now they talk about governance. Where does the word governance come from? It comes from cybernetics, which itself comes from the adaptation of biology and physics or engineering. Regulation is the same thing. A central heating regulator is an automatic mechanism. Governance, for the founding fathers of cybernetics, meant mechanisms which avoided the need for external regulation, self-regulating mechanisms. This was the justification for dismantling a number of limits.

You might think that one of the main differences between the situation now and in 1944-1945 is that people in 1944 saw the world as a patchwork of nation-states and each State imposed its own law; consequently, every State was responsible for implementing the Philadelphia principles, each in its own way. But the general idea was government by laws, what the Universal Declaration calls the "rule of law", which was translated into French at the time as "régime de droit".

Today, the situation has changed inasmuch as there are no longer many States which could be said to be totally in control of all the legislation applicable in their territory. New structures are now developing which are reminiscent of a feudal system in that they are based on allegiance. When a State agrees to a structural adjustment plan, it does allegiance to an organisation, an organisation which cannot directly control what happens in that State and which is therefore not in a sovereign position, but a suzerain position (I'm not sure if this sovereign/suzerain idea will translate into English!). You need to bear this distinction in mind if you want to understand the nature of the European Commission, for instance, which is not a sovereign body, but is manifestly a suzerain body. What characterises the feudal relationship? When you no longer have a common law that applies to everyone, the only way to gain a little security is to do allegiance. So it is the return of personal ties that is the key to security. We can see this as clearly in economic organisation, what people call the "network society", as in the basest forms of social ties in deprived districts, where the law no longer applies. So we are coming back to systems of personal ties.

It has to be said that this trend is not something we should condemn. The question is: now that we have reached this diagnosis, how can we restore some limits? One of the consequences, it seems to me – and people hesitate to come out and say this, but there are a few of us who agree – is that the right scale for trade systems these days is a continental scale. The idea of an unlimited market doesn't make sense, the idea of a

world without limits or a global government doesn't make sense – the failure at Copenhagen showed this all too clearly. If we wait for all the States in the world to shake hands and agree on the same environmental rules we will get nowhere. But if Europe or Africa said tomorrow “These are the rules I'm applying, and I'll take them into account for allowing access to my market”, then things will change, there will be a positive incentive. You cannot say, within any given continental group, I'm imposing continental rules on my companies and then tell them that they are in free competition with companies that are not under the same constraints. That won't work, and what applies in the environmental field also applies in the social field.

One final word about the sense of moderation. I wanted to make a point here about indicators. One of the features of what we call governance is that it tries to direct the world using figures, numbers, statistical categories, performance indicators, accounting rules. These figures are no longer intended to inform but to programme what we do. I'm not condemning the use of indicators, but I want to show that if we forget that we still need to be able to discuss statistics and compare them with the situation on the ground, we will end up going down the same cul-de-sac as the Gosplan in the Soviet Union.

Let me give you one practical example, to spare you any theoretical digressions. I owe this example to a friend of mine who was the Minister of Labour in an African country that shall remain nameless. He told me all about aid negotiations with EU representatives and the conditions that apply to the various schemes, and how the conditions now include human development indicators. If you want to obtain aid you have to improve your indicator. These development indicators – a fine invention – include school attendance rates. So what happens? He told me that children who used to work with their fathers tending livestock, for instance, traditionally – and this is not exploitation, this is traditional work – an activity that was an ideal way to learn about other things as well, the constellations, botany, family history, etc., are told that they have to go to school instead. There is no money, so they build sheds where they put 200 kids with a teacher who can't cope, and they say they are attending school. The indicator goes up and they get their aid. The children's level of education collapses because the only thing they learn is that they went to school and are no longer fit to do the work their parents do. So in reality, in a case like this, what you should perhaps do is to start with social democracy, in other words if you want to create a performance indicator to improve children's education, the first thing to do is to go and talk to the people

concerned. They might say that they want their children to maintain a link with their native culture, but they also want them to have new opportunities. Perhaps then you might actually create measurement tools that are linked to people's own experiences.

Similarly – and this will be my last point – a few years ago in the working group that I had the honour of leading, we suggested new types of standards for the ILO, based on universal principles, which would mobilise local democracy and local knowledge so that people could discuss how they would be implemented. Here again, when you are dealing with human affairs, you must not be tempted to be too scientific. Of course people have knowledge about labour. I know a lot of things about labour, things I have read, just as there is knowledge about illness. A specialist knows more about cancer than anyone else. But if one day his child develops cancer, he will gain a new type of knowledge, and if one day he is told that he has brain cancer, he will gain a different type of knowledge about the disease, his own experience. This is what human experience is, and the only way to tap into it is through democracy. This is my final plea, still true to the spirit of Philadelphia.

Replies to questions

The first question: are wars necessary? When people see injustice, there are those who turn to bombs and there are those who turn to the law. I chose the law because I sincerely believe in man's ability to avoid the worst. Having said that, your comment is quite right. Experience shows that it is often at a time of very violent upheaval that there is the sort of burst of energy such as we saw during the Second World War, or even with the creation of the League of Nations here in Geneva after the First World War. Do we need to resort to war? I hope not. We are certainly facing escalating violence, and our societies are riven by deep feelings of injustice which we cannot afford to ignore ("afford" is an understatement here). But the crisis you referred to could actually be an opportunity to raise certain questions again. It seems to me – since we have been talking about the Communist market economy – that we are in a period of "Brezhnevisation", when the elites know that the ideology is no longer sound, but since there is nothing else to put in its place, they continue to cling on to it. These are periods when there is a certain degree of openness, but they never last.

The next question was about this same idea of a Communist market economy. I have translated this as Communist market economy, but in the Chinese text it is called the socialist economy. However, I was afraid that French readers would think I was talking about Mr Mitterrand... I think your question reflects a particular belief that we once had but has proved incorrect. It was the rather naïve belief of those in the west that their system had won and that we would now be able to extend it to the rest of the world, with some people even saying that it was the end of history. This explains the strategic mistake that the EU made – I’ve written a short chapter on this – towards the former post-Communist countries. Brussels arrived in these countries a little like the World Bank arrived in the southern countries, with the attitude “we know what we’re doing, we’ll show you what to do”. So countries that had just rediscovered their national pride were now told that they would have to accept the *acquis communautaire*, thousands of pages of regulations, without taking any particular account of what the people there thought about it all. No-one had thought this through. Europe could once again have become a model for the whole world – not through enlargement, which suggests mere extension, but through reunification. A pact should have been agreed, and it was an opportunity to experience a full-scale union of poorer and wealthier countries, a pact in which the countries of the west would agree to pay a lot and those of the east would accept fiscal and social discipline. But because that didn’t happen there is now misunderstanding on all sides. It was certainly a missed opportunity.

Also, there has been no victory of one system over another, the two have been intermingled. Many of today’s ultraliberal think-tanks are populated by former Maos (in the Parisian sense of the word). Even the President of the European Commission came from a radical Maoist movement before he became the architect of the new Europe. These are not chance connections – I could quote my sources. But I won’t say any more on this point.

Next, the role of the ILO. I will combine Mr Maupain’s rather gloomy question with the one about the Viking judgment. The ILO has certainly done its best to contain the impetus that has been created. An international organisation cannot put up a fight on its own. Some moments are historic, and it is fair to say that it has done a number of things. Quite honestly, however, I felt that the 1998 Declaration went a bit too far. It was a political compromise. The 2008 Declaration basically got back to the spirit of

Philadelphia. If I may, I would just like to make one criticism of the ILO, and I will put it in management terms: its main job is the law, but it is shifting away from that because it is very complicated. So I think the whole question of standards is today's burning issue. We cannot just say we are going to ratify and adopt conventions that no-one is ratifying. We need to think about standard-setting methods that are right for today.

Having said that, we must also not neglect the positive role that the ILO has played. In the case of France, there have been several occasions when arbitrary deregulation has come into conflict with international labour standards, and in the case of the EU, as you mentioned, there is a clear conflict of case-law developing between the EU Court of Justice, which is determined to see deregulation and competition between workers, as is obvious from the Viking and Laval judgments, and the European Court of Human Rights, which is trying to develop the concept of principles that are common to all civilised countries. Obviously, the ILO could play a very important role in this tension between the two. So come on, ILO, have another go at being a lawyer! You don't have to defend a hierarchy of disciplines between law and economics, you just have to say that economics has institutional foundations. I think we can both agree on that, you and I.

Should we drop the word governance? This is more than just a question of terminology, or to be more precise, when people write documents – and there are plenty written here in this building – the choice of words is never irrelevant. Take the report “Beyond Employment”, which recommended that people should have security in all aspects of their lives, not just their jobs. This was understood in two different ways. The European Commission used the words “human capital” and “flexibility”. It is not the same thing to talk about human beings and freedom, or employability and capacity. In the first case you are starting from the human being and asking in what sort of institutions he will develop the most, in line with the spirit of Philadelphia, which talks about the satisfaction of demonstrating one's abilities, while in the other, if you are thinking in terms of employability and flexibility, you are starting from the organisation and saying I am going to bend human beings to fit. If you bend them too far, they break. A very fashionable word in management at the moment is resilience, which goes with flexibility, all of it very suitable terminology for materials. That's fine for physicists, but I think we would be better choosing concepts like freedom, individual ability, collective ability, which start from the human being and produce noticeably different results.

I can see the growing importance, in all the western countries' legislation, of a concept that was completely ignored before, the concept of mental health. In Chaplin's "Modern Times", Charlie risks his life, but not his reason. When people talk about a spate of suicides – in France we are up to 25 at France Telecom – this is not an epidemic, it is because there is something rotten in the management methods. If we keep on treating men as objects, they will break. Initially they turn the violence on themselves. There is no reason to think that they won't then turn it outwards, in ways that no-one can control, which could be very dangerous for the safety of products and property. In a nuclear power station, for instance, it would be preferable for everyone to stay sane, if you see what I mean! So there is a link between job security and service security, and here again we have to start from the human being if possible.

The role of labour law. Poor old labour law! The suggestion was – and this is a very good example, so thank you for the question – that we need to move away from the ideas inherited from the industrial age. If we look at the world as a whole, the industrial labour model of paid employment actually applies to only a very small minority of male and female workers. This does not mean that the others do not need protection. But it is why the concept of decent work, which applies to everyone, is to be welcomed. Labour law has a future if it becomes the law for all forms of labour. If it becomes the preserve of the last few workers in stable employment, then it won't have a future.

My last point is about Marx. Are people going back to Marx? He was a major author, as you know, but I think he bears responsibility for a mistake which the trade union movement made in some of the major debates in the 1920s and 1930s. There was a debate about whether or not the unions should be involved with the technical organisation of work, what people then used to call rationalisation. This was discussed in the main European unions at the time, and in the end the unions and left-wing politicians said "no, this is a technical matter, social justice only involves working hours and pay. The work itself is a scientific and technical matter". Lenin used to say that Taylorism should be widely used in the Soviet Union; he was a great admirer of Taylor.

With the economic forms we have today we need to open the black box of labour organisation if we really want to rely on individual capacities. We need to break

away from this type of management, and I believe that many of those thinking about management are ready to make that break.

On the subject of responses to the crisis, there is one question I haven't answered, which was Peter Auer's, about whether we now need to be Communist to be successful capitalists? We shouldn't focus only on China. If you look at India – I often go to India and learn a lot from my Indian friends – it is a great democracy. They have been much less badly affected by the crisis. Why? Because their banks weren't part of this mad system. Nor are the banks in Lebanon, either, because the head of the National Bank would not allow it, and as a result the banks are now inspiring confidence and petrodollars are heading back to Lebanon. One reason is that they didn't fully embrace the widespread deregulation of the financial markets. There are other aspects in the case of China. Having said that, as far as China is concerned... but then, we shouldn't talk about things that we don't really know about.

Otherwise, on the responses to the crisis: have you yourselves seen any response on an international level?

What is clear is that this is an excellent example of a lesson in privatising State resources. The American banks were handed a cheque for 800 billion dollars without giving anything in return and this was interpreted as the “return of the State”, but it could also be seen as a giant step in the privatisation of the State. They managed to transform a mountain of private debt into a bottomless pit of public debt, and now they are preaching austerity to everyone. This was never likely to pass off happily, as we can already see from what is happening in Greece.

The danger is – and history has taught us that this is indeed very dangerous – that we are trying to put the blame on other people. With drastic cuts about to be made to public and social budgets, the political temptation could be to stir up anger against those of a particular identity. This is one thing that we need to keep a very close watch on at the moment.

On structural reforms relating to money and the financial markets, for instance, I don't think we can honestly say that any significant reforms have been adopted to date. We'll have to wait for the next one!