



Human rights in politics: observations on minimalism, conflict and deliberation

GIULIA BALOSSINO

PhD

Università degli Studi di Milano

giulia.balossino@unimi.it

ABSTRACT

With the essay "Human Rights: Ethics, Rhetoric, and Politics", Lilian Bermejo-Luque explores the controversial aspects of the human rights debate, proposing some conditions through which they could represent a positive element of political life. In particular, Bermejo-Luque proposes the thesis of political minimalism, associated, on the one hand, with the idea that the essence of politics does not reside in conflict, and on the other hand, with a conception of political deliberation based on empirical considerations connected to what communities consider of particular importance. This paper intends to offer some food for thought along the line of reasoning proposed by Bermejo-Luque: firstly by presenting some observations on political minimalism, related to the weight of representation in politics and the complexity of certain political phenomena; this is followed by a reflection on conflict and the importance of justifying political choices to citizens, for which it seems difficult to establish boundaries on what is purely concrete and practical and what instead involves ethical considerations.



DOI: 10.54103/milanlawreview/22191

MILAN LAW REVIEW, Vol. 4, No. X, 2023
ISSN 2724 - 3273

Keywords: human rights; politics; political minimalism; conflict; political deliberation; community

Con il contributo “Human Rights: Ethics, Rhetoric, and Politics”, Lilian Bermejo-Luque esplora gli aspetti controversi del dibattito sui diritti umani, proponendo alcune condizioni attraverso le quali essi potrebbero rappresentare un elemento positivo della vita politica. In particolare, Bermejo-Luque propone la tesi del minimalismo politico, associata da un lato all’idea che l’essenza della politica non risieda nel conflitto, dall’altro lato a una concezione di deliberazione politica basata su considerazioni empiriche legate a ciò che le comunità considerano di particolare importanza. Questo lavoro intende offrire alcuni spunti di riflessione seguendo la linea di ragionamento proposta da Bermejo-Luque: dapprima presentando alcune osservazioni sul minimalismo politico, legate al peso della rappresentanza in politica e alla complessità di alcuni fenomeni politici; segue quindi una riflessione sul conflitto e sull’importanza della giustificazione ai cittadini delle scelte politiche, per le quali appare difficile stabilire confini su cosa sia puramente concreto e pratico e cosa invece coinvolga considerazioni etiche.

Parole chiave: diritti umani; minimalismo politico; conflitto; deliberazione politica; comunità

This paper has been subjected to double-blind peer review

Human rights in politics: observations on minimalism, conflict and deliberation

SUMMARY: 1. Introduction - 2. Some remarks on political minimalism – 3. Conflict and politics – 4. On political deliberation – 5. HHRR cause – 6. Conclusion.

1. Introduction

In her essay “Derechos Humanos: Ética, Retórica y Política”¹, Lilian Bermejo-Luque intervenes in the debate on HHRR, namely “the rhetorical effectiveness of appealing to human rights”, with the aim to show the reasons behind its controversial uses in politics as well as the conditions over which HHRR could be helpful in political deliberation. The paper then supports: a skeptical position towards HHRR discourse; the thesis of political minimalism; a certain conception of political deliberation.²

The skepticism Bermejo-Luque addresses does not question the existence of human rights. It concerns instead the damaging and fallacious effects of the rhetorical framework in which human rights are discussed. Moreover, she does not consider the universality of human rights as a problem, but as an opportunity to shift the attention from metaphysical concerns to empirical ones: societies change ethical commitments over time and HHRR discourse can play its part in promoting this evolution.

Is political normativity based on the correlation between ethical demands and political obligations? This question is at the core of a debate between political realism and political moralism from which Bermejo-Luque keeps her distance: instead, she supports the idea of political minimalism, for which “political” is any practice aimed at planning and promoting the ethical demands communities happen to consider important in contingent circumstances. For Bermejo-Luque this is the best approach in order to satisfy her aim: that is of discussing the rhetoric of HHRR and at the same time recognizing their value in political discourse.

Assuming political minimalism is the premise to support a certain conception of political deliberation: for Bermejo-Luque “the role of deliberation for politics is not to legitimize political decisions”, but to promote concrete actions to proceed with the political agenda. Human rights are conceived as ethical demands that groups share for the fact that they appeal to moral aims that can be effectively realized and implemented through politics. The positive value of HHRR is

¹ L. Bermejo-Luque, *Derechos Humanos: Ética, Retórica y Política*, in *Milan Law Review*, 2, 2023.

² See also J. Rodríguez-Alcázar, *Beyond realism and moralism: a defence of political minimalism*, in *Metaphilosophy*, 2017, Vol. 48(5), p. 727-744.

therefore that controversies are not concerned with the aims to be realized, but usually the way in which they should be accomplished.

In light of the complexity of analysis and depth of reasoning with which arguments are conducted, this paper is intended to offer further food for thought by remaining adherent to the path Bermejo-Luque built. The points discussed are then supposed to shed light on passages that could be improved or clarified by taking into consideration some methodological and analytical considerations.

2. Some remarks on political minimalism

The idea that politics is about finding the best solutions to the question “what shall we do?” binds good politics to the capacity for progress in the programs the community shares. This conceptual premise is then based on the assumption that “all and only those phenomena that we properly call ‘political’ are answerable to this description”. The first remark is that there is one example of political phenomenon that could not be properly described by this definition: the right to self-determination. The latter has a double and conflicting nature, since it can be valued both from an internal and external perspective: the positive aspect is internal, as the community endorsing self-determination appeals to justice and respect.³ The negative aspect emerges in external considerations, based primarily on accusations of egoism, selfishness, nationalism.⁴

By following political minimalism, the possibility to judge if a program endorsing self-determination is good should be based on its capacity for progress in the community's agenda: in light of the nature of self-determination, the community in question might not correspond to the one that is expressing the judgment. Moreover, the “what shall we do?” question may not be the only and main question emerging: “what is the priority?”, “what are the costs of this decision?”. This case then illustrates the complexity behind political phenomena: is political minimalism, in this way formulated, able to treat this case effectively?

One of the objectives of political minimalism is to assert that politics is not about defining the ends through *a priori* moral principles, but in concrete and current beliefs people share. At the same time, the aims of a political agenda could be ethical commands, based on “community's members' intuitions about what is good or bad, right or wrong”: these are people's beliefs in current times, and this follows the definition of political minimalism. Nonetheless, ethical intuitions could be conceived as *a priori* demands that the community chooses to endorse. Bermejo-Luque does not consider this a problem as she asserts that what counts is only that “such demands reach general acceptance”. What happens if an ethical concern for

³ See C. Kutz, *Groups, Equality, and the Promise of Democratic Politics*, in *Issues in Legal Scholarship*, 2003, Vol. 2.1, p. 1-15; C. Kutz, *The collective work of citizenship*, in *Legal theory*, 2002, Vol. 8.4, p. 471-494.

⁴ J. Klabbers, *The Right to Be Taken Seriously: Self-Determination in International Law*, in *Human rights quarterly*, 2006, vol. 28.1, p. 188.

self-determination does not reach general acceptance, but still generates a political conflict? How is political minimalism supposed to solve the problem of ethical concerns that are differently perceived in different communities? Do human rights lose their ethical force in a community that does not share them?

A final remark on political minimalism is about the fact that good politics are to be founded on the concrete capacity of a certain policy to implement the aims contained in the political agenda. This is opposed to the view based on the procedural aspect of the policy. Is this focus on results desirable? One problem might be that the credibility of politicians could be based on their passed demonstration of proposing effective policies: only those who are technically prepared and able should contribute to the political agenda.⁵ Nonetheless, democratic policies are based also on hopes and desires, on ideals and ethical commitments: people may still prefer to vote for politicians they trust beyond their technical education; communities may prefer policies that meet their hopes but are not properly geared to realizing one of the aims of the agenda, instead of perfect technically built programs that are supposed to obtain a specific aim. Politics seems to be based more on representation than on effective capacity to proceed in a certain program.

3. Conflict and politics

Another interesting point in the paper is about conflict. Bermejo-Luque refuses the idea that conflict is the essence of politics “because political decisions taken to achieve common interests against no one, such as saving as much people as possible from the COVID pandemic, would be political all the same”. Regarding this quote, two are the doubts emerging: one is about the example, and from that follows a conceptual consideration. Saving lives during the pandemic was the aim of all political agendas, but it cannot be said that its concrete realization was in the interest of everyone: to be clear, this is not an evaluative judgment, it is a methodological concern. Though this problem is taken into consideration by Bermejo-Luque in her note on the topic, it is not only about the controversies emerging after the decision to stop social activities, the point is that the blocking of activities was a necessary action in the political agenda that answered the question “what shall we do, in order to save lives?”. However that emerged only after other important aims of the communities were set apart, through intense and profound discussions.

The methodological concern leads then to suggest that it is difficult to imagine politics without conflict: disputes about values are essentially political

⁵D.A. Bell, *Il Modello Cina: Meritocrazia Politica E Limiti Della Democrazia*, Luiss University Press, Roma, 2019.

disputes.⁶ Every political decision, even those that happen to favor every member of the group, is the result of a conflict. Again, the case of self-determination is useful to illustrate the point: not only its nature already presents a conflict, but also rights in general in our world seem to be themselves intense manifestations of political battle.⁷ Again, the discussion on human rights is in itself the exemplification of the fact that politics is about conflict.⁸

4. On political deliberation

For Bermejo-Luque political deliberation faces the problem of incommensurability, as in many situations people can't share a common solution, an answer to the question "what shall we do?". A suggestion on this point follows on from the consideration on conflict: only by refusing the idea that the essence of politics is conflict, we happen to give reason for incommensurability as a special problem that has to be justified and solved, since it is supposed to bring society to collapse. Instead, if conflict and polarization are conceived as essentially constituting political phenomena, then incommensurability is not a surprise, but part of the essence of the process of democratic deliberation.

In order to avoid the risk of incommensurability, political deliberation is presented through political minimalism, being characterized by empirical considerations on aims and ends that communities consider relevant. This is for Bermejo-Luque not problematic as long as aims and ends regard ethical issues. In controversial situations where the political agenda has to choose between aims that have the same priorities, Bermejo-Luque affirms that political minimalism could accept the luck of the draw as the principle of choice as long as these aims regard desires and wishes and not moral intuitions.

Nonetheless, the line between moral concerns and simple desires in politics is difficult to draw, in virtue of the fact that politics is about choosing how to distribute scarce or limited resources, inevitably imposing ethical consequences. Who is supposed to decide what is a "mere wish" and what is an ethical concern? Choosing to build a bridge in a neighborhood and not in another is not only about choosing between two similar economic contexts: it is about choosing the future development and investments in a particular area and not another, choosing to allocate resources in a way and not in another.

Political agenda implies taking responsibility for choices that the luck of the draw can't justify. Again, the case of self-determination illustrates the point:

⁶ On this topic, see e.g. W.A. Galston, *Realism in Political Theory*, in *European journal of political theory*, 2010, Vol. 9.4, p. 385-411; E. MacGilvray, *Reconstructing Public Reason*, Harvard University press, Cambridge, Mass. London, 2004.

⁷ In addition to previous references, see e.g. G.A. Cohen, *If You're an Egalitarian, How Come You're So Rich?*, Cambridge, MA and London, England: Harvard University Press, 2001.

⁸ See e.g. T. Campbell, E. Keith, A. Tomkins (eds.), *Sceptical Essays on Human Rights*, Oxford, 2001; online ed., Oxford Academic, 1 Jan. 2010.

the claim to secession emerges to satisfy political desires that are not met in the actual situation of bonding, such as economic independence. Moral intuitions are undoubtedly present in the idea of democratic ideals behind the claim of choosing for their own community.⁹ Political deliberation is about explaining and justifying choices in order for the people involved to understand: if sometimes the roll of the dice is an acceptable solution, often people expect institutions to give reasons for their actions.¹⁰

5. HHRR cause

The conclusive conceptual point is that human rights represent an ethical concern that generate agreement and therefore useful for overcoming incommensurability. For Bermejo-Luque the rhetoric of human rights shifts the conflict from the fact that they should represent the aims of the political agenda, to the ways in which this would be effectively realized. Nonetheless, human rights are inevitably vague and they need to be supported by empirical considerations. This means that critiques against HHRR are biased by the fact that they are conceived as the only parameter in order to express a value judgment on a certain politics, the only way to distinguish between good and bad policies.

This line of reasoning includes on the one hand the idea that human rights are supposed to be shared by all the members of the community; on the other hand, vagueness is stated to be the primary characteristic of the expression of human rights, in virtue of the pluralism people endorse in conceiving them. Nonetheless this vagueness is not a problem for the ethical force of HHRR, which shifts the disagreement from ends to means. Could vagueness be the symptom of the fact that human rights, and politics as well, are essentially characterized by conflict? Could this be useful to support the importance of HHRR and not just a controversial point? In fact, pluralism is the democratic guarantee that all the interests are considered: the case of self-determination seems again an illustration of this point, since the very acceptance of this human right is controversial, not only for the way in which it should be realized.

The final consideration presented by Bermejo-Luque is that political agendas are constituted by several aims different in nature, so that HHRR coexist with aims that are not ethical or morally-sensitive. The fact of having given extreme priority to human rights has misconceived their value and generated the critiques of them. The conceptual point seems to be founded in the aims political agenda share, not in the means: even though the community could agree on the fact that a certain right should be realized, the way in which it structures the

⁹ J. Klabbbers, *The Right to Be Taken Seriously: Self-Determination in International Law*, cit., p. 187.

¹⁰ J. Elster, *Local Justice How institutions allocate scarce goods and necessary burdens*, Russel Sage Foundation, New York, 1992; trad. it. a cura di E. Colombo, Giangiacoimo Feltrinelli Editore, Milano, 1995, p. 133-138.

priorities of the agenda is still a matter of discussion. Ends still seem to be a matter of disagreement.

6. Conclusion

The great merit of Bermejo-Luque's analysis is to prompt the reader to go deeper into the nature of human rights and to challenge the way in which they participate in defining our democratic communities. This paper was intended to shed light on the most fruitful points of discussion: political minimalism's premises lead to further reflect on the role between ideals and concrete political aims; the relation between conflict and politics was analyzed by suggesting reasons to support a certain role for conflict in the essence of politics; finally, the strong bond between ethical demands and people's desires emerged through the consideration of the role of political deliberation. The questions Bermejo-Luque shares are challenging and stimulating, and also particularly precious, in times in which politics needs ideas and analysis to progress.

References

- D.A. Bell, *Il Modello Cina: Meritocrazia Politica E Limiti Della Democrazia*, Luiss University Press, Roma, 2019
- L. Bermejo-Luque, *Ethics, Rhetoric and Politics*, in *Milan Law Review*, 2, 2023
- T. Campbell, E. Keith, A. Tomkins (eds), *Sceptical Essays on Human Rights*, Oxford, 2001; online ed., Oxford Academic, 1 Jan. 2010
- G.A. Cohen, *If You're an Egalitarian, How Come You're So Rich?*, Cambridge, MA and London, England: Harvard University Press, 2001
- J. Elster, *Local Justice How institutions allocable scarce goods and necessary burdens*, Russel Sage Foundation, New York, 1992; trad. it. a cura di E. Colombo, Giangiacomo Feltrinelli Editore, Milano, 1995
- J. Klabbers, *The Right to Be Taken Seriously: Self-Determination in International Law*, in *Human rights quarterly*, 2006, Vol. 28.1, p. 186-206
- C. Kutz, *Groups, Equality, and the Promise of Democratic Politics*, in *Issues in Legal Scholarship*, 2003, Vol. 2.1, p. 1-15
- C. Kutz, *The collective work of citizenship*, in *Legal theory*, 2002, Vol. 8.4, p. 471-494
- W.A. Galston, *Realism in Political Theory*, in *European journal of political theory*, 2010, Vol. 9.4, p. 385-411
- E. MacGilvray, *Reconstructing Public Reason*, Harvard University press, Cambridge, Mass. London, 2004

J. Rodríguez-Alcázar, *Beyond realism and moralism: a defence of political minimalism*, in *Metaphilosophy*, 2017, Vol. 48(5), p. 727-744