Philosophical Reason and Human Rights in the Thought of Norberto Bobbio

Ermanno Vitale

Abstract: In this essay, I focus on Norberto Bobbio’s reflections on human rights. Firstly, I seek to establish his underlying conception of philosophy: although it is impossible to spell out the philosophical foundations of human rights, this does not imply that philosophical thought, in the sense of critical reason, cannot make a useful contribution and provide valuable arguments in support of human rights. Secondly, I examine the related issue of the justification of human rights and assess his theory on the basis of its own conception of a possible foundation. The way we answer the question of coherence also clarifies (a) what model of civil association is compatible with such a foundation, i.e. with such a worldview; (b) what model is absolutely incompatible with it; and finally (c) what intermediate solutions are there, if there are any. I argue that the communitarian variants of the conception of rights are distortions: collective or cultural rights, i.e. rights of a community towards which all of its members have duties, appearing alongside individual rights, trump individual rights, i.e. the rights linked to personhood that once constituted the most effective legal and political means for emancipating the individual from the power of the community. I therefore consider the “Copernican Revolution” of individualism and its consequences in Bobbio’s thought. As the example of personal freedom shows, where rights are ascribed principally to groups or communities rather than to individuals, we have good reason to fear that rights will turn out to be merely the privilege of the few. Once we follow this line of though in Bobbio, the ecumenical openness to alternative approaches and the argument from “the consensus of the people” yield to a clearly universalistic perspective that derives from the Enlightenment and can be interpreted as the product of the specifically modern version of natural law theory.

1.

Norberto Bobbio was a philosopher who had no love for “Philosophy” with a capital letter that likes to sermonize from the pulpit. He never lost an opportunity to emphasize the sterility of all those philosophies which, implicitly or explicitly, lay claim to a higher and more decisive form of knowledge than other fields of knowledge – philosophies which thus regard themselves as entirely self-sufficient and capable of exercising a fundamental grounding function. In other words, capable of providing, on the basis of supposedly self-evident axioms, a coherent and exhaustive worldview where everything has its proper place, even
if this means sacrificing simpler accounts or explanations in the name of systematization. By contrast, Bobbio, a man of dialogue from this perspective too, encouraged us to give careful consideration to the insights of political and legal sciences, as well as of those of natural and social sciences. He thus cultivated with seriousness the intellectual outlook of those who are prepared to learn without ever giving up critical thought, *i.e.* the proper instrument of, and the ultimate reason behind, philosophy, no matter if capitalized. To learn through dialogue and discussion, by raising uncomfortable questions and knowing how to recognize the obscure and problematic aspect of things, to clarify as far as possible the difficult and sometimes tragic choices that human beings in general and political actors in particular are called upon to make – this, it seems to me, was the meaning and purpose of Bobbio’s thought.

His polemical engagement with idealism, Marxism, and existentialism basically grew out of this specific conception of philosophy and his view of the intellectual’s role in society. My aim is not to tally lengthy quotations, but simply to recall the way in which Bobbio responded, in an interview with Raffaele Luise in 1999, when asked about the great question concerning the relationship between faith and reason:

> The future’s major conflict is not that between faith and philosophical reason, but that between faith and scientific reason. I really wish that this were fully appreciated. It is not philosophical reason that is effectively transforming our world. As you will understand, the fact that there is something like “weak thought” counts for absolutely nothing in the history of humanity today, absolutely nothing [...] What is transforming the world today is science, and the immediate product of science that is technology.¹

For Bobbio the only plausible, yet not merely residual, role philosophy plays today is to try to understand, analyze, and evaluate the great social, political, scientific and cultural transformations of our time, together with other intellectuals taking part in public debate.

In his reflections on human rights – that I would like to focus on here – Bobbio also seems to draw upon this conception of philosophy. It is impossible to spell out the philosophical foundation of human rights – in the sense of an ultimate metaphysical foundation – but this does not imply that philosophical thought, in the sense of critical reason, cannot make a useful contribution or provide valuable arguments in support of human rights. As it is often the case when we attempt to strike a balance between seemingly incompatible perspectives, this position was misunderstood, if not directly

exploited, especially by some of those who in the history of the struggle for human rights continue to seek the best arguments against these rights, and especially against any attempt to provide constitutional guarantees for such rights, as if they feared that rights might ultimately prove undemocratic in their ability to limit the power of the electoral majority. Given that rights are a product of history, could it not be so that just as rights appeared at a given time they might also disappear?

In order to avoid any misunderstanding and to grasp Bobbio’s thought in its true meaning – a thought that does not lack its own conceptual tensions, as we shall see – I will analyze two issues in what follows. The first concerns a misconception of a brief and famous remark in the opening essay of Bobbio’s collection *The Age of Rights*, entitled “On the Fundamental Principles of Human Rights” (1964). This is perhaps a deliberate misconception due to the ancient art of reading quotations out of context. The quote reads as follows:

The fundamental problem concerning human rights today is not so much how to *justify* them, but how to *protect* them. This problem is political, not philosophical.²

If this observation is abstracted from its argumentative context, a naive and superficial reading might infer that political philosophy and philosophy of law no longer have anything to say, if they ever did, concerning human rights. Whether out of lack of justification, or because these rights are now so firmly established and generally shared that their justification seems self-evident, the quote would seem to suggest that what really matters is that we are dealing with an issue that should be addressed by practical actors rather than philosophers. It is necessary for us to offer protection of human rights, even if the reasons for doing so might be unclear, even if we do not know exactly what these rights are, nor which claims should properly be regarded as human rights. But what precisely should we be protecting, if we do not know with reasonable certainty what we are talking about when we speak of human rights? The only thing that is clear is that Bobbio’s observation – illegitimately abstracted from its context – presents a significant distortion of his thought as a whole. This quote seems to turn him into a rare case of an analytical and enlightened thinker refusing to argue and draw distinctions, indulging in faith as far as human rights are concerned. Less evident, but all the more worthy of attention for this very reason, are the theoretical and political consequences of such a distortion, consequences I will address in the following section.

The second issue, connected to the first, concerns the foundations or justification of human rights: Is this theory still convincing? – or, as I would put it, what worldview is intrinsic in a coherent theory of rights (see section three)? The way we answer this question also sheds light on (a) what model of civil association is compatible with such a foundation or justification, *i.e.* with such a worldview; (b) what model is absolutely incompatible with it; and finally (c) what intermediate solutions are there, if there are any; in other words, what reasonable compromises can we accept in the world of *praxis* (see section four).

2.

Let us go back to the first question, from the opening essay of Bobbio’s *The Age of Rights*. How did he actually develop the view – prematurely emphatic and philosophically rather disturbing as it appears – that human rights should be protected rather than justified? Bobbio himself provides a schematic outline of his argument in the first very brief paragraph of the essay:

I am going to discuss three topics in this essay: first, the nature of the problem we face over an absolute principle [*fondamento assoluto*] for human rights; second, whether an absolute principle is possible; and third, supposing it were possible, whether it would be desirable.³

Bobbio introduces a significant qualification right from the beginning: what we are discussing here is not the possibility of any grounding of human rights, but of an *absolute* foundation of such rights. This is an important requirement precisely because it immediately allows us to refute the false equation between foundations and arguments. It is therefore quite possible to provide arguments in support of human rights, even if they by no means offer any absolute foundations. Yet this correction is not what matters since we could object, first, that a *relative* (or relativistic) grounding is not a true foundation at all in the strict Kantian sense; secondly, such a justification provides no help whatsoever in the task of universally disseminating the recognition and the protection of human rights. It is true, on one hand, that the adjective “absolute” has a certain metaphysical aura, a reminder of the old natural law perspective that for the leading representatives of modern positivism – even the highly critical, such as Bobbio – would certainly weaken rather than strengthen the appeal of such an attempted foundation. In my view, nonetheless, Bobbio is well aware that the task of grounding, if we take this

³ Ibid., p. 5 [p. 3].
problem seriously, amounts to finding an absolute foundation, i.e. an indisputable, incontrovertible, incontestable, irresistible foundation, regardless of the epistemological level on which we search for such a foundation. On the other hand, a more easily reachable ecumenical agreement on human rights, i.e. an agreement that acknowledges a number of different and competing ultimate principles would only weaken the universality that is implied by the very definition of human rights, and would therefore simply promote a Babel of interpretations that would threaten to the very concept of rights.

Realizing that this is the heart of the problem, Bobbio attempts to pursue a different approach: the inconvenient truth – so the argument goes – is that the we presuppose, pre-rationally, that human rights are desirable, an objective of tremendous moral value that should be attained as soon as possible. Consequently, advocates believe that if we could only discover an irresistible argument, an absolute principle or foundation, the ultimate victory of human rights would be guaranteed: “The mind inevitably bows to the undisputed principle, just as the will bows to undisputed power.” However, as Bobbio observes, the search for this checkmate or key move is an illusion, so much in fact that it produces a “boomerang effect” that simply puts another weapon into the hands of the opponents of human rights. It is sufficient to glance at the different lists of (supposed) human rights that lawyers and philosophers alike have drafted over the past few centuries to see the many inconsistencies and realize that the argument for human rights is anything but irresistible. In order to discover a solid principle or foundation in the nature of things or in the nature of human beings, a unanimous consensus on the basic definitions is required. No such consensus exists, nor will ever exist. Suffice it to mention the incompatible conceptions of “man” defended by Hobbes and Rousseau for example. As far as this first point is concerned, Bobbio concluded: “Every attempt at an absolute principle has proved to be groundless.” It is thus preferable to abandon this vain, if not pernicious, quest.

The second point he makes is, basically, a deepening of the previous argument. Bobbio gives a series of examples that clearly show that the class of human rights – apart from being very hard to define and shifting in time and space – is so heterogeneous that it generates a number of antinomies, of conflicts between different rights. Bobbio mentions the particular case of the conflict between the libertarian rights of the individual, which essentially demand non-interference (non-interference on the part of others generally, including that of public agencies and authorities) and the social rights of the individual that actually presuppose such interference. As Bobbio points out:

4 Ibid., p. 6 [p. 4].
5 Ibid., p. 7 [p. 5].
Two fundamental but contradictory rights cannot have a single absolute principle which makes them both irrefutable and irresistible. It is worth recalling here that the illusion of an absolute principle for some established rights has been an obstacle to the introduction of new rights which were wholly or partially incompatible. Consider, for instance, the obstacles posed to the progress of social legislation by the theory of natural law which upheld the absolute principle of property. For almost a hundred years, opposition to the introduction of social rights was carried out in the name of the absolute principle of libertarian rights. The absolute principle is not only an illusion; on occasions it is also a pretext for defending conservative positions.6

Finally, Bobbio emphasizes that the goal desired by those who seek an absolute principle or foundation, even if the latter were discovered, would still not secure the goal anyway. It would simply lead to another illusion or self-deception on the part of ethical cognitivism. Historical experience shows that consensus regarding basic principles or foundations does not ensure greater respect for human rights. Bobbio gives three examples of this: 1) the age of natural law theory, in which there was indeed a certain agreement on fundamental principles, was certainly not a period of great respect for human rights. I find this argument, frankly speaking, rather weak: with regard to his first point, Bobbio had claimed that there was no such agreement amongst the defenders of natural law theory; in short, since there has never been a consensus on the basic list of rights, one simply cannot know if such a consensus, whatever it might be, would promote the protection of human rights. 2) Bobbio appeals to the fact that human rights have been enshrined, however timidly, in positive law ever since the Universal Declaration of Human Rights. And yet the problem of an ultimate principle or foundation, according to Bobbio, has ceased to be of any real interest or significance for us (though here too one might object that the obvious ineffectiveness of human rights declared in 1948 derives, at least in part, from the difficulty of establishing a genuine consensus regarding the principle or foundation of these rights).

At any rate, 3) if the great majority of modern states ratified the Charter, they did so because they had their own good reasons and it is therefore pointless to waste time trying to determine which of these reasons is the most valid, or, even worse, what the final or ultimate reason is – the reason of all reasons. The problem is thus to move from the sphere of good intentions to that of coherent deeds, to the effective establishment and realization of those guarantees that can ensure the real enjoyment of rights on the part of those who hold them. If philosophers wish to make a useful and specific contribution to this direction, they must abandon the search for an ultimate founda-

6 Ibid., pp. 13-14 [p. 9].
tion and attempt instead to propose from time to time possible principles or foundations, that is to say, contingent ones, relative to different historical, economic, and social situations:

The philosophical problem of human rights cannot be dissociated from the study of the historical, social, economic and psychological problems inherent in their implementation. The problem of ends is a problem of means, and this signifies that the philosopher is no longer alone. The philosopher who insists on staying alone is condemning philosophy to a sterile role. The crisis of belief in principles is also an aspect of the crisis in philosophy. 7

In the light of these remarks it may now be easier to understand more fully the passage we cited earlier, in which Bobbio invites us to protect rather than to justify human rights. The reader familiar with Bobbio’s thought will certainly recognize his incessant criticism of “Philosophy,” especially against neo-Thomism and Idealism, but also against Marxism and void existentialist and nihilistic speculations generally. In short, against the philosophy which under different labels, lays claim on the capital letter, but is not seriously interested in addressing the great scientific, cultural, and political transformations of its time; the philosophy that thus condemns itself to suffer from self-imposed isolation and irrelevance.

In this context of harsh criticism of “Philosophy,” Bobbio gives his first answer to the question of the possible foundations of human rights, of the convincing reasons that have motivated states and people to bestow almost universal recognition upon the doctrine of human rights and thus to provide positive legal expression to this doctrine. I quote the essay “Human Rights Now and in the Future”:

The Universal Declaration of Human Rights represents a unique demonstration that a value system can be considered to be founded on humanity and thus acknowledged by it: the proof is in the general consensus over its validity. Advocates of natural law would have spoken of consensus omnium gentium or humani generis. 8

We are talking about a consensus omnia, or at least of a consensus that prevails in the most civilized areas of the world. It goes back to Cicero, and more remotely still, to the Aristotelian idea of natural law or justice. Again, it is a philosophical idea. It refers, however, to the world of praxis, i.e. the realm where arguments hold “for the most part,” the realm of likelihood; often,
the realm of changing conditions through time and space. Wherever human beings perform sacrifices, Aristotle claimed, they do so in different ways according to time and space. Only the inhabitants of Amphipolis offered sacrifices in honor of the Spartan general Brasidas. No matter how different the units of measurement may be, nor how the terms of buying and selling may vary, goods are exchanged and traded everywhere (Aristoteles, *Nicomachean Ethics*, V, 113b-1135a).

In short, as people trade with one another everywhere, and honor the Gods everywhere, their customs, values, and practices can nonetheless vary greatly. It is not a matter of natural justice to trade with one another, nor to honor men and Gods. To establish the specific ways and forms in which we offer sacrifices and practice trade, is a matter of positive law or justice, varying from one city and another. This line of thought was destined to enjoy considerable success in the subsequent history of European political thought. Indeed, with due caution and appropriate qualification, we could say that the popular Rawlsian conception of “overlapping consensus,” developed a couple of decades after Bobbio, that basically grasps human rights as a set of claims deriving from sources common to various traditions, religions and cultures, also takes up and continues precisely this line of thought that passes from Aristotle down through Stoicism to humanism and various types of republicanism.

Here we glimpse the Achilles heel in Bobbio’s first answer to the question of a merely possible, and yet necessarily universal foundation of human rights (I speak of a first answer because Bobbio also offered another argument that I find much more convincing and consistent, to be discussed below). As mentioned, the point is that different interpretations of human rights, deriving from cultures and traditions that are sometimes very remote from the history of Europe and North America, have clearly prevailed over the letter of the international charters; a letter that in itself harbors strong semantic and terminological ambiguities that condition the hope for at least some general agreement. In brief, the argument of “overlapping consensus” can easily produce a general overall perspective that not only involves very few specific elements, but where these elements are merely shadows, simulacra, appearances of a consensus that has never really been achieved, except at the level of generic declarations of principle. The consensus gentium can simply give rise to a void and generic outlook.

Bobbio wrote these two essays between 1964 and 1968, during the end of the process of de-colonialization sustained by the illusion of building new nation states on the European model. It may well be that the interrelated phenomena of multiculturalism and globalization could not yet be appreciated in their full significance. Today, with the resurrection of more or less aggressive forms of nationalism and particularism, the increasingly “domestic” interpretation of human rights can only be a cause for concern. One may think
in this respect of the so-called “Asian values” that are often interpreted as a regional variation of “universal” human rights, properly adapted to the supposed specificity of the Asian character. Or we may mention the innumerable claims that are raised by the francophone inhabitants of parts of Canada to the indigenous Mexicans of Chiapas, on the same communitarian, differential, and particularist grounds, albeit for opposed social, economic, and political reasons. These variants of the conception of rights are actually distortions, or, if we prefer, transmutations that are understood as specific interpretations. Collective or cultural rights, *i.e.* rights of a community towards which all of its members have duties, appear alongside individual rights, as asserted by advocates of difference. In reality, however, these rights *trump* individual rights, *i.e.* rights linked to personhood that once constituted, or still constitute, the most efficacious legal and political means for emancipating the individual from the power of the community (even from the national community, or from allegedly shared values and sentiments). This is why I speak of distortion or transmutation. Everywhere we witness the heirs of the historical antagonists of human rights — the new embodiment of Burke and de Maistre — in the process of restoring privileges through the discourse of rights. This remark is not simply intended to create a paradoxical impression.

In more recent years, and specifically in 1991, Bobbio pointed out this problem, stressing for example the different conceptions of the primary right — the right to life — on the part of non-believers and believers, particularly on the part of the Catholic hierarchy. Thus, for the latter, the right to life should also, and perhaps above all, protect the person *in nuce* — and, as we know, debate rages over the appropriate criteria for personhood — from the prospect of abortion, and protect a merely vegetative life, or life in its terminal stage, from the possibility of euthanasia. For the explicitly secularized charters and declarations of rights, on the contrary, the right to life refers “to the protection of life in its fullness” rather than “to the borderline cases of life that is about to begin or life that is about to end.” These are profound differences, therefore, which Bobbio does not try to cover. Nonetheless, he claimed that

> the various traditions are coming closer together in a general defense of humanity, including the three highest goods of life, liberty, and socioeconomic security.10

In the early 1990s a far from transparent ecumenism, with various ambiguities and opacities, could still seem more attractive than an intransient but utopian universalism; a reasonable price to pay if mankind as a whole is

---

9 Ibid., p. 266.
10 Ibid.
to attain precisely the three goods that Bobbio identifies. But is it still true today, in a time of supposedly preventative and humanitarian wars, of constantly growing global inequalities, of alleged clashes of civilizations, of self-proclaimed exportation of human rights and democracy by military means? What is left today – I ask – of this ecumenical approach? Can it still serve any morally defensible purpose, or has it not revealed itself as a cloak that merely conceals new manifestations of an old and enduring kind of oppression?

3.

As I suggested, however, this same collection of essays, *The Age of Rights*, also gives evidence of another argument put forth by Bobbio. Further explanation is needed in order to avoid (further) misunderstandings: here Bobbio does not argue in ways that are opposite to the line of argument just presented. He still argues as a critical thinker pondering upon his own role. He had referred to the problem of grounding human rights, at the level of contested consensus. Bobbio’s train of thought that I have in mind is complimentary to this first line of reasoning focusing on a more demanding definition of the conditions, and preconditions, that the set of rights emerging from the consensus of humanity must satisfy in order not to be spurious. In other words, what I am proposing here is not a “reduction” of Bobbio’s argument that is the inverse replication of the one already criticized. Rather, it is an attempt to interpret “the age of rights” in its problematic unity and overall consistency.

This attempt to establish the relevant conditions and preconditions is certainly not without inner tension and difficulties compared to the more welcoming and ecumenical approach, or the approach that is perhaps simply more realistic in a Hegelian sense. For the acceptance of the individualistic worldview – for his “second” line of reasoning such a view represents the most demanding and intransigent theoretical foundation of human rights – actually sets specific limits on any generically ecumenical approach and, at the same time, it sets ambitious goals for state institutions and for supranational institutions, including precise goals and binding procedures that are fundamentally challenges the empty rhetoric of rights and democracy currently prevailing in the world. Let us proceed in due order: starting from the “Copernican revolution” that implied – and still does imply for those who understand what is at stake – the prevalence of an individualistic worldview over the holistic tradition that is remarkably widespread in pre-modern (and post-modern?) political philosophy.

It is precisely in order to emphasize the reversal of our moral perspective – independently of whether it is gradual or sudden – rather than the
aspect of violent and unexpected change, that Bobbio adopts the image of the “Copernican revolution” from Kant, and which he interprets as follows:

Using a common metaphor we may say that rights and duties are like the front and reverse side of a medal. But which is the reverse and which the front? It depends on the position from which we look at the medal. In the history of moral and legal thought this medal has been looked at more from the side of duties than that of rights. And it is not difficult to understand why. The problem of what we should or should not do is principally a question of society as a whole rather than of the single individual. Moral codes are originally established for the sake of the social group as a whole rather than of its individual members. [...] For the transition from a code of duties to one of rights to be accomplished, the medal had to be turned round: so that we could begin to consider the problem no longer simply from the perspective of society but also from that of the individual. A true and genuine revolution was required. This great turn began in the West with the Christian conception of life [...] The modern doctrine of natural law, which flourished in the 17th and 18th centuries, from Hobbes to Kant, and was quite different from the doctrine of natural law developed in the ancient world, and which culminates in the Kantian principle “Be a person, and respect all others as persons,” can be regarded in many ways as a secularization of Christian ethics (“etsi daremus non esse deum”).

This “revolution” involves two key elements: the reversal of the priority with respect to the relation between duties and subjective rights, which is just another way of saying that the state, the body politic, is a common power over the citizens, expected to exercise this power serving the governed, absolving individuals of the duties that correspond to (and are imposed by) the fundamental subjective rights of persons and citizens. If we take a further step back, we can see that this reversal of perspective is based on the “revolutionary” assumption of the logical, but above all axiological, priority of the individual. It is grounded on an individualistic conception, rather than a harmonizing and holistic view, concerning the nature and origin of the political order and its institutions. The older holistic view can be abandoned, as Bobbio underlines, because, basically speaking, the progress of the human race, no matter how resisted and contested, appears to have relieved groups and communities of the need to preserve their cohesive identity or their survival at the cost of the single individual, foremost by imposing duties and obligations on the individual in order to safeguard the group.

In the end, therefore, I think it is appropriate to stress individualism that does not necessarily imply – Bobbio clearly states – a kind of existential solitude

and/or a simply unchained spirit of rivalry and competition between individuals, but can be interpreted as a “democratic individualism” marked by cooperation and solidarity. This is so because there is a sort of caveat to which we must pay particular attention: where rights are not ascribed chiefly to individuals, that is, where rights talk prevail but in the sense that the holders of these rights should be groups or communities rather than individuals, we have good reason to fear that rights will turn out to be merely the privilege of the few or a “Trojan horse” that introduces new excuses for the arbitrary exercise of power, benefitting only the inner elites of those same groups and communities.

Let us then consider more in detail what these rights are, starting with the rights associated with freedom itself. They can be captured in a formula of Bobbio’s according to which these fundamental rights of the individual are the “four great freedoms of modernity.” These rights are:

- personal freedom, or the right not to suffer arbitrary arrest and to be judged according to established penal laws and properly defined procedures; the freedom of the press and the capacity to express opinions freely; the freedom of assembly which has been attained by peaceful means, although it has also been contested, as can see from the events of Tiananmen Square; and finally, the freedom which has proved the most difficult to obtain, the freedom of association from which has permitted the emergence of free trade unions, free political parties, and the pluralist social order without which democracy cannot exist at all.

Viewed from the perspective of power, looking at the other side of the coin of freedom, personal freedom is the principal device for avoiding the police state and ensuring the separation of powers, in particular that between the executive (and its peripheral organs and institutions) and the judiciary. It is the full autonomy of the latter that allows it to discharge the extremely delicate role of depriving the individual of his or her personal freedom once the courts have declared, beyond any reasonable doubt, that this individual is guilty in accordance with the criminal law and clearly defined legal procedures. Where a police state no longer prevails, the right to personal freedom is the bulwark that should hinder or prevent the return of such a state in whatever form. Why do I feel the need to emphasize the possibility of a return of the police state, something that ordinary common sense (which sometimes coincides with a philosophy that rather naively trusts in a linear conception of historical progress) might well regard as an absurdity, a highly unrealistic hypothesis, or at least as an extremely remote possibility?

I do so because, if we consider the matter closely, the constitutional state, which legally limits the exercise of power – its own powers and the powers

---

12 Ibid., p. 334.
of the social order (economic and ideological power) – is by no means firmly established and is certainly far from perfect: even the most advanced constitutional systems reveal ambiguities and lacunae, which are perhaps just signs of the times – with regard to the way in which they recognize and protect the right of personal freedom. Here, I am thinking of the distinction between the rights of persons and the rights of citizens, where the former are ascribed universally to everyone, including foreigners, and the latter are ascribed to all citizens, or exclusively to the citizens of the state in question. According to the Italian constitution, for example, certain rights which logically derive from personal freedom are actually recognized only for citizens. The right to travel within or take up residence in the territory of the state is treated as rights of the citizen rather than as rights of the person. Strictly speaking, we could say the same about the freedom of assembly and association, which the letter of the Italian constitution attributes to “all citizens,” thereby excluding aliens. I suggest that these things are perhaps only signs of the times: in the sense that the constitution proclaimed in 1948 could not really have anticipated the social transformations and the labor migrations that we are witnessing in more recent years. Then there are also certain signs of the times in another sense: some signs are signs of our times, times that oppose the spirit of traditional constitutional approaches and, generally, that oppose the very idea of a constitution based on the recognition of fundamental rights. It is sufficient to think of the torture practiced in the notorious Abu Graib prison, for example; or of the behavior of the London Metropolitan Police, where Scotland Yard senselessly killed an innocent young Brazilian in their zealous anticipation and application of “the new rules of the game” that Tony Blair expressly announced just few days later.

The other three great freedoms of the modern age – freedom of thought and freedom of speech, the freedom of assembly and the freedom of association – can also be seen as ways of limiting absolute power: the criticism directed towards those who hold political power – first and foremost in democratic systems: towards the majority enjoyed by the government in power – is communicated not merely through the individual expression of dissent (the journalist, the intellectual, the concerned citizen), but it is also formed and strengthened through the freedom to collectively express dissent (as individuals coming together peacefully) through the rights of assembly and association. The right of association guarantees the possibility of shaping social and political subjects, especially political parties and trade unions that should channel and give voice to the different projects, ideals, and interests of the persons who make up society in general. It is the right of association that guarantees political pluralism and the pluralism of social forces, and thus the possibility of choosing between real alternatives and peacefully bringing
them about, through free elections, that the minority can turn itself into a majority and come to govern.

Here, again, we must observe that the freedom of assembly and the freedom of association are hardly in better health than the right to personal freedom. It is true that these rights still appear intact in the rhetoric of freedom that exalts and extols them, by casting, once again, the “free” world of the West against the despotism and totalitarianism of the East. However, more and more the freedom of assembly and the freedom of association tend to become empty shells where the mass media are mainly in the hands of a single individual or a highly restricted hierarchy defined by commercial interests; or again, where the ruthless expression of economic and financial power gains the upper hand over the system of countervailing constitutional checks and balances, or perhaps even occupies the vital ganglions of this system precisely in order to render it more “flexible” with regard to such interests. What becomes of an assembly, a protest, a demonstration, a strike, if media hardly even reports about it, hardly acknowledges it, even through concealing its significance, or, worse, by distorting the reasons behind it? What becomes of the capacity of political parties to compete with one another, if one enjoys tremendously greater financial resources?

It is not necessary to add that the vast majority of individuals, beyond the borders of what, for a vague variety of reasons, we sometimes call “the West,” and sometimes call “the First World,” do not enjoy these four great, but fragile, freedoms. This does not imply, however, that the regulative idea of the “age of rights” may ultimately settle for anything less.

As we can see, once we follow this second line of thought in Bobbio, the ecumenical openness to alternative approaches and the argument from “the consensus of people” give way to a clearly universalistic perspective that derives from the Enlightenment and can be interpreted as the product of the specifically modern version of natural law theory. There can certainly be many forms, many shades, many degrees and levels, many approaches, many starting points, both theoretical and historical, that may help us to fulfill or to initiate the Copernican revolution of which we have spoken. But with respect to the question of rights, it becomes a matter of taking or leaving a certain approach. In other words, there can be practical compromises, or even historical convergences, between holistic conceptions of the world and the commitment to human rights, but there is still a basic and insuperable theoretical incompatibility between these two approaches. In this context, Bobbio’s theory of rights reveals itself to be a social individualism, or an expression of liberal socialism, which lays the emphasis on
human rights not as a list of mutually incompatible claims and demands, but as a cohesive, though still internally problematic, theoretical nucleus regarding the minimum civil conditions required to ensure a life that is worth living. If this is to be accomplished, at least from the perspective of what we have called social individualism, it is not enough that there should be a little bit more, or a further morsel, for everyone, that everyone should be, or consider themselves to be, economically better off, in accordance with the (delusory) promise of the so-called “invisible hand” of the market. On the contrary, it is because no man is an island, but an individual living a life with others, that every individual is a part, and feels a part, of a collective social order that does not humiliate them, that does not destroy them as persons, that is, an order without endemic and massive economic, civil, and moral inequality.

The attempt to reduce such inequality – without thereby pursuing an impossible and deleterious egalitarianism, is the theoretical task and also the best argument, the best possible foundation for the doctrine of human rights, at least in the most convincing version of the doctrine that was defended by Bobbio and has been so vigorously taken up by Luigi Ferrajoli in recent years. I would like to close with a personal recollection of Bobbio, who also used memories and personal experiences to explain his perspective as a leftist, something which coincided for him with being an emphatic supporter, albeit a critical and disenchanted one, of the new ethos of human rights. As he approached the final observations in the first edition of his book Right and Left, Bobbio made the following statement:

During my life I have on occasion shown some interest in politics. In other words, I have felt the need (I will not say that I felt the duty, because that is too grand a word) to get involved in politics, and, more rarely, to engage in some political activity. The fundamental reason for this has always been an uneasiness over the spectacle of the enormous, disproportionate, unjustified inequalities between rich and poor, between those at the top and those at the bottom of the social ladder, and between those with power [...] and those without power. [...] These differences were particularly evident during summer holidays in the countryside, where we city lads played with the sons of peasants. To tell the truth, our friendship was based on a perfect understanding, and the class differences were completely irrelevant; but we could not help noticing the contrast between our houses and theirs, our food and theirs (in the summer they went barefoot). Every year when we started our holidays, we learnt that one of our playmates had died the previous winter from tuberculosis. I do not remember a single death among my school-friends in the city.\(^{13}\)

The Italian 1948 constitution, the *Universal Declaration of Human Rights* of the same year, and the *International Covenant on Economic, Social and Cultural Rights* of 1966, were, and indeed could still be, the principal means of going beyond and building on the impressive scientific progress that, to cite Bobbio’s own example, has already killed tuberculosis in the wealthier countries of the world, and promoting the further development of moral and civic progress. But why, we must ask ourselves, are there still places where tuberculosis – like other diseases which have already in principle been vanquished by modern science – is still a cause of premature death?

For these simple but also profound and terrible reasons, which required and still require no recourse to particularly sophisticated forms of philosophy, Bobbio never renounced the ideals of the French Revolution, or the “empty rhetoric” as it was contemptuously described during the Fascist era, as Bobbio recalls. On the contrary, as he emphasized once again in *Right and Left*, with his characteristic combination of irony and severity:

If I still entertained any doubts in this regard, there appeared at the most perfect moment, as I was writing these very pages, an article in the new explicitly right wing magazine *L’Italia settimanale* under the title “Down with Equality.” That is exactly what it said: Down with Equality. This did not mean, as one might be tempted to believe: Long Live Difference! No, it meant precisely what it said: Long Live Inequality.\(^\text{14}\)

To all those who see themselves as defenders of moral and civil progress, in Italy and in the world at large, but are so captivated by the various current appeals to difference and plurality as to distrust every universalistic conception of rights, I would suggest that they reflect carefully on these words – the words of a philosopher who had no love for “Philosophy” with a capital letter.

*(Translated from Italian by Nicholas Walker)*

Ermanno Vitale  
University of Valle d’Aosta  
vitalermanno@libero.it

---

\(^{14}\) Ibid., pp. 87-88 [p. 117, note 4].