

Guest Editor's Preface

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The age of rights is the result of a political paradigm shift: the relationship between governors and governed was no longer considered from the perspective of the former but from that of the latter.

Norberto Bobbio distinguishes three crucial stages making it possible to achieve this result.

The first stage is eighteenth-century rationalist natural law doctrine and in particular the idea, a central one for John Locke, that human beings as such are by nature holders of rights that not even the state can take away from them. This gives us the image, for instance amply exploited by Ronald Dworkin, of rights as trumps that the citizens can also use against the state and the government.

The second stage coincides with the positivisation of rights as a result of American and French Revolutions. Now the effectiveness of human rights is counterbalanced by a loss of universality. Rights do not belong to the human being anymore as such but to the human being as a citizen.

The last stage – with which the age of rights in a strict sense begins – was inaugurated by the promulgation in the 1948 of the Universal Declaration of Human Rights. From now on, the affirmation of rights is at one and the same time positive and universal.

The Universal Declaration is also a way to provide foundations – though historic and contingent – for the values expressed by eighteenth-century rationalist natural law doctrine. For this reason too it can be considered the conclusion of the process leading to the age of rights. The idea of universal consensus on some values is one of the salient aspects of the age of rights.

The expression “age of rights” therefore refers to the period going from the end of the Second World War to our own day. It is intended to mark a radical break with the totalitarianisms and the atrocities that characterized the previous period. It is also an expression of humanity’s trust in the possibility of real universal moral progress, which implies sharing some values, respecting individuals and their rights, and rejecting war as a means of resolution of controversies. Trust in and the wager on a better future are undoubtedly the hallmark of the age of rights. Universal recognition of human rights, however, is a starting point and not an arrival one. Hence the trust that characterizes the age of rights is not naïve trust, nor the passive trust of those who await manna from heaven.

More than sixty years have passed since the beginning of the age of rights and endeavours to draw up an overall appraisal are more and more frequent. In the most recent period, moreover, to the rhetoric of human rights there has been added what Tecla Mazzaresse defines the rhetoric of the anti-rhetoric of rights. Leaving aside rhetoric in one sense or the other, today it is easier than in the past to highlight some characteristics of the language of rights and, in general, of the culture of rights, which influence our perception of human rights.

Without any claim to be exhaustive, I will list some aspects of the language of rights that deserve close examination.

First of all, the language of rights is vague and indeterminate and therefore represents a fertile terrain for wide discretion in the interpretative sphere. For instance, equality is a broadly shared value; however, there can be radical division when it comes to establishing concretely how to protect the right of each person to be treated equally. In this respect, we could recall Douglas Rae’s well-known claim that “one idea that is more powerful than order or efficiency or freedom in resisting equality is equality itself.”

Further, there are many rights, and over the years, with the proliferation of declarations of rights, the number has become bigger and bigger. This implies possible conflicts between the rights claimed by different individuals.

Still, as we are reminded in a successful book by Stephen Holmes and Cass Sunstein, protecting rights has a cost. Thus taking rights seriously means reckoning with shortage of resources.

Lastly, the pervasiveness of the language of rights, which has led Anthony Sebok to speak of “Insatiable Constitution”, forces us to bear in mind the risk that rights can intolerably erode the scope of democratic decisions.

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The link between the papers contained in this monographic part is the endeavour to sum up the situation of the age of rights while avoiding two temptations. One is to look at rights through rose-colored glasses, which would induce us to consider rights as the panacea of all evils. The other is to look at them through distorting lenses that would lead us to attribute to rights, and to the shameless rhetorical use that sometimes accompanies them, all the evils in the world.