

Socioeconomic Human Rights, Autonomy and the Cost of Error

MARIANO GARRETA LECLERCQ

Universidad de Buenos Aires - Consejo Nacional de Investigaciones Científicas y Técnicas de Argentina

ABSTRACT

One of the most influential strategies to justify human rights available in the specialized literature is centered on the notion of autonomy. Such a strategy assumes that civil and political and socioeconomic human rights are equally essential to lead a minimally autonomous human life. This article examines whether the ideal of autonomy can really provide support to the view proclaimed in the Covenant that socioeconomic human rights must be realized progressively, according to “the maximum of available resources”. To do so, I focus on the conceptual relation between the ideal of autonomy and a fundamental dimension of moral deliberation which is often overlooked in the debate, namely: the cost of error in decision making. In a nutshell, I argue that once this key variable considered, it becomes evident that any measures governments may implement to promote the realization of social and economic human rights must be subject to democratic control.

Keywords: economic and social human rights, autonomy, progressive realization, cost of error, democratic legitimacy.

1. INTRODUCTION

One of the most common philosophical strategies used to justify human rights – including both civil and political rights (CPHR) and socioeconomic ones (ESHR) – appeals to the notion of autonomy. Cécile Fabre provides a

particularly persuasive example of such strategy (Fabre 1998),¹ which may be applied to the normative justification and juridical interpretation of the UN Covenant on Economic, Social and Cultural Rights (1966).² Her ultimate aim is to prove that socioeconomic rights must be constitutionalized because both socioeconomic human rights and civil and political ones perform the very same normative function: they preserve the value of personal autonomy.

Following authors such as John Rawls (1993), Joel Feinberg (1972) and Gerald Dworkin (1988), Fabre insists that in spite of its obvious liberal origins, the principle that individuals have a fundamental interest in personal autonomy may be accepted by people holding the most diverse doctrines of the good. In her own words:

“Autonomy captures an essential characteristic of human beings, which distinguishes them from other beings, namely their ability rationally and morally to decide what to do with their life, and to implement these decisions, over long periods of time, so as to lead a meaningful existence and through it develop an awareness of the kind of persons they are” (Fabre 1998, 265).

So we have reason to respect people’s autonomy because autonomy is an essential component of the human condition: only autonomous persons can fully develop their human nature. In this vein, Fabre sustains that civil and political rights have normative importance precisely because they are necessary to preserve our autonomy: freedom of expression, freedom of conscience, freedom of association and freedom of movement are obviously crucial to enjoying control over one’s own life. In fact, when such freedoms are not protected, individuals become unable to choose and revise their own life-plans in the most fundamental sense. The same is true of political rights:

“If it is important that I have some degree of control over my life, then surely it is important that I have some degree of control over the social and political environment within which I lead my life: electing representatives in Parliament, voting in referenda and running for office myself are means to acquire that control” (Fabre 1998, 266).

¹ Although human rights can undoubtedly be derived from other normative ideals, Fabre’s argument is particularly relevant. This is because autonomy, under different formulations, has played a central role in liberal thought from Kant and Mill down to the most significant thinkers in the 20th Century, with John Rawls’ theory of justice (1971 and 1993) in the front line. On the other hand, the notion of autonomy has played a crucial role in the specific field of human rights justification: the theories of Alan Gewirth (1982) and James Griffin (2008) are excellent examples.

According to Fabre, the above considerations explain why civil and political rights must be constitutionalized and protected from majoritarian decision making. Importantly, Fabre insists that socioeconomic rights are equally important to preserve the autonomy of individuals:

“Giving these resources –income, education, housing, etc.– to people is important because without them they would be unable to develop the physical and mental capacities necessary to become autonomous. If we are hungry, thirsty, cold, ill and illiterate, if we constantly live under the threat of poverty, we cannot decide on a meaningful conception of the good life, we cannot make long-term plans, in short we have very little control over our existence” (Fabre 1998, 267).

The main goal of this paper is to suggest that even if socioeconomic human rights are relevant to preserving the autonomy of individuals, there are cogent autonomy-based reasons to resist their constitutionalization. Of course, this does not mean that the satisfaction of socioeconomic human rights should not be regarded as a political priority by democratic societies. It simply means that any specific decisions about their implementation must remain under ordinary democratic control: neither courts, nor experts are authorized to make unilateral decisions to ensure their fulfillment under the clause of progressive realization according to the maximum of available resources. In this sense, the paper provides support for one particular understanding of what specific obligations governments have under current international law: while the fulfillment of subsistence needs is certainly a high priority mandate, they cannot be enforced by courts or public policy experts. How to implement them must be decided by the people.

The paper is structured as follows. In section 2 I discuss a demanding interpretation of article 2 (1) of the Covenant and explain why it is problematic, at least if we accept that human rights are grounded on the value of autonomy. In section 3 I develop an original argument in favor of adopting a more modest interpretation of state’s commitments under present International Law. Such argument sustains that when our actions involve serious risks for the interests of others, they cannot be implemented unless their implementation is authorized through democratic or representative mechanisms. Otherwise, the autonomy of those affected by our actions is seriously compromised. In section 4 I discuss an important objection to my view, according to which lack of expert knowledge on the part of citizens may render democratic authorization unpalatable in the context of extremely poor societies. Finally, in section 5 I present some concluding remarks.

2. AUTONOMY AND THE PROGRESSIVE REALIZATION OF SOCIOECONOMIC HUMAN RIGHTS

The view that value of autonomy may justify the authority of both civil and political human rights and at least some socioeconomic ones, appears to be plausible in principle. In this vein, the 1966 UN Covenant proclaims human rights to adequate food, decent housing, fair and just conditions of work, health and education. Nevertheless, because in present conditions their immediate satisfaction may be unfeasible, the Covenant also asserts that their realization should be *progressive* and that states must invest the *maximum* of their *available* resources to achieve their realization. This is how article 2(1) is framed:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

As we see, article 2(1) constitutes an attempt to re-articulate the idea that socioeconomic human rights are of major normative importance even in contexts where resources are scarce: although some states may lack the resources required to bring about their immediate realization, they must nevertheless use all the resources at their disposal to ensure their satisfaction in the shortest period of time. Otherwise, they would be failing to live up to their international commitments. However, the very notion of progressive realization according to the maximum of its available resources is opaque. It can be interpreted in a number of ways.

On a demanding interpretation, article 2(1) implies that states must devote all their resources to promoting socioeconomic rights, unless this implies undermining the satisfaction of other human rights, such as civil and political ones. In the context of developing countries, this account is vulnerable to two interrelated objections. The first objection is that it may seriously undermine the political autonomy of citizens. To see why, imagine that a government elected by a majority of votes proposes to implement a number of political reforms in order to improve the economic performance of the country. The nation is poor and the government wants to achieve a reasonable level of economic development. If the plan is incompatible with the progressive realization of ESHR in the terms mandated by the Covenant, then it will be indefinitely blocked, even though it is supported by a majority of citizens. Of course, this does not imply that economic development is more valuable than ESHR; rather, the

point is that on the demanding interpretation, the Covenant may erode the political autonomy of the people, understood as their freedom to make collectively free decisions about their social environment. Predictably, such restriction of political agency will have a negative impact over individuals' personal autonomy as their capacity to control important aspects of their lives would be curtailed.

The second problem has to do with the burdens that bringing about the realization of ESHR may have over the population. On the demanding interpretation, governments are obliged to use all the resources they can find to ensure their progressive satisfaction. In many cases, this will force them to impose heavy taxes on their most productive sectors at the expense of economic growth. So even if such measures increase the present capacity of the government to deliver on socioeconomic human rights, this strategy may nevertheless render the society poorer in the long run. Furthermore, there are persistent disagreements as to what measures can most effectively promote the realization of ESHR. Most likely, liberals, social democrats and socialists will propose alternative programs to achieve that goal and insist that the rival strategies are problematic as they may end up eroding the very values they aspire to promote. As a result, the demanding interpretation of article 2(1) is seriously incomplete as societies have no clear orientation about the exact policies it calls for.

3. AUTONOMY AND THE COST OF ERROR

The above considerations point to another problem which is often overlooked in contemporary debate: in scenarios where the costs of undertaking mistaken courses of action are particularly high, the ideal of personal autonomy involves some particularly stringent demands. To see this, consider the following example:

Imagine that two scientists, A and B, plan to carry out some experiments that prove necessary for the development of different technological applications of a particular theory. The chances of success are identically high in both projects. The scientists' work is not moved by prudential reasons, but by moral ones: both are persuaded that the result of their work will imply a significant improvement in the quality of life of their community. Assume also that A and B have equally sound reasons to make such moral judgment. Therefore, they both have a fallible moral knowledge that provides a *pro tanto* reason to act. There is, however, an important difference between both cases: the cost of error. If A's research fails, this poses no substantial costs to the wellbeing of third parties. The situation is very different in B's case: should her

research fail, it will cause serious and irreparable harms to a substantial number of people – say, B’s research requires a kind of experimentation, which may be extremely dangerous for the environment and for people’s health.³

This thought experiment suggests that when a moral agent deliberates on how to act, she must not only make a moral assessment of the various courses of action at her disposal; rather, she must also consider the cost of error each alternative involves – such as those of making a false moral or factual judgments.⁴

So how are we to interpret the situation of scientists A and B from a moral perspective? Both are in similar conditions to think that they know – albeit fallibly – that the following statement is true: “Proceeding with my research is the best alternative from a moral point of view, since the result of such decision will bring about a significant improvement in life-quality for members of the community.” Consequently, they also seem to be equally morally justified to act on the basis of such judgment and continue their work on their research projects. The latter statement, however, is deeply problematic: there are cogent reasons to believe that while A is effectively justified to act on the basis of her factual and moral knowledge, such is not the case with B.

The above conclusion may be thus backed. It is obvious that A is morally justified to act based on her knowledge. From an epistemic perspective, A is justified in subscribing the factual and moral tenets we attribute to her, and they constitute enough reason to act accordingly. Should something go wrong, neither A nor any other persons involved would endure any damage. Yet, the analysis varies as we move to a context in which the costs of error are drastically high. To see this, imagine for a moment that one aspect of B’s situation is different from what we described above: error-cost is very high but it only concerns the scientist’s welfare, not that of third parties. Although B firmly believes that her research will be successful, she is aware that in cases of error her experiments could be dangerous for her own wellbeing. B might decide that it is not worth running the risk, even if the chances of failure are very low; or she might alternatively decide to run the risk and proceed with his research. Both courses of action appear equally acceptable from a moral perspective. But what happens when, as in the original example described, other people could be seriously harmed

³ This example, applied to the moral field, is modeled after some well-known cases in the epistemological debate around contextualism and pragmatic encroachment: DeRose’s bank case, Cohen’s airport case and Fantl and McGrath’s train case. See DeRose (1992), Cohen (1999), and Fantl and McGrath (2002).

⁴ Interesting exceptions to the tendency to overlook the relevance of the cost of error in the process of moral deliberation are Thomson (1986), McKerlie (1986), Lockhart (2000), Hansson and Peterson (2001), and Hansson (2003).

if B is mistaken? B may research further and try to diminish the probability of error. However, since time is limited examining all potential sources of mistake is impossible.

From an epistemic perspective, there is no way out of this situation. No matter how solid the arguments and evidence displayed by B, those who could be harmed have the right to refuse taking the risk: B is not entitled to decide in their name as this would undermine their equal moral status. In other words, in case B did so, she would fail from a moral perspective in her relationship with those agents. Why should B arrogate herself the special prerogative of deciding in the name of others, without their consent or some kind of authorization? Why might B deprive these people of their right to make a decision that may prove crucial for their lives? If B neglects such fundamental moral right, she would be treating those involved as mere instruments for the achievement of her own goals, rather than agents whose interests and projects have a weight of their own and are irreducible to interests and projects of other individuals. In essence, if B acted unilaterally in the way she judges best from a moral perspective – despite having good reason to presume her judgment is correct – she would infringe the autonomy of the potential victims – in Fabre’s terms, this would entail depriving them of holding significant control over their existence.

With this in mind, we can now reexamine the problem of implementing ESHR. As we saw, it is plausible to hold that the moral reason why ESHR must be fulfilled is that they prove just as indispensable as CPHR to respect people’s autonomy. However, in view of the large amount of economic resources required – particularly within unfavorable contexts – complying with ESHR demands launching dangerous economic experiments; and in case of error, this may bring about substantial damage to the people (both those who lacked the chance to have access to the resources necessary to enjoy those rights and those who did have access to them prior to the implementation of the necessary redistributive policies). So as in the case with scientist B, when the state unilaterally decides to enact risky economic measures, it undermines its citizens’ autonomy. Consequently, at least at first sight, we have reached a dead end: while ESHR are grounded on respect for people’s autonomy, implementing them in contexts such as those described proves incompatible with such very grounds, namely: respect for the autonomy of individuals.

Fortunately, there is a solution to the paradox. Let us assume that B manages to persuade all the potential victims to allow her to proceed with her research: they all decide to voluntarily run the risk, having received sufficient information about its potential costs. In such case, should B decide to carry out her experiment she will not be acting unilaterally, nor

violating the autonomy of others. She is not running the risk in their name; all share responsibility for the decision. Similarly, it is reasonable to hold that, under certain conditions, democratic resolutions with a high level of legitimacy may have the same result. We can imagine in this vein that B's decision to proceed with her research results from a free and open deliberation process in which all the relevant information was circulated, all those concerned were part of the process, and the decision was backed by a majority.

Whenever these conditions obtain it is reasonable to say that, through their participation in the political process, all those concerned have authorized the decision – or, at least, none can protest that the decision was arrived at with no previous consultation. Of course, the kind of authorization provided by democratic procedures may not amount to unanimous consent. Yet neither unanimous consent nor the effective consent of all concerned is expectable within the context of ideological pluralism that pervades contemporary democratic societies. But it is generally accepted that a democratic procedure governed by majority rule is an adequate substitute of unanimous consent – at least when it complies with stringent legitimacy standards.

Now if we admit the legitimacy of the democratic system in general, then we must also accept that such system offers an appropriate instrument of authorization, both in the case of scientist B and, more broadly, in the selection of public policies in which the cost of error is significantly high. A committee of experts, or members of a tribunal, may certainly believe that a certain policy will promote the welfare of the people better than the others. However, if the cost of error is highly significant, they will not be morally justified to act unilaterally based on their (fallible) knowledge. For if they did so, they would be deciding in the name of others, thereby undermining their autonomy and their status as independent moral agents. In cases where fallibility is combined with the high cost of error for the wellbeing of those concerned, knowledge is not enough to justify action from a moral point of view. By contrast, the situation is radically different when that kind of decision results from an inclusive democratic process: even if not everyone agrees, implementing the policy that receives a majority vote is not comparable to a unilateral decision. In sum: if we assume that democracy is a valuable political system, we must also accept that it constitutes an adequate tool to authorize the implementation of risky measures in way that respects the autonomy and equal status of individuals.

Similar considerations apply in the case of decisions about the amount of resources to be devoted to comply with the ESHR included in the Covenant. If the measures to put them into practice are the end result of a

process of democratic authorization with high levels of legitimacy, the cost of error will not have the moral implications described above. Plus the fact that it cancels the plausibility of the notion that implementing ESHR, no matter how risky, violates the autonomy of those concerned.

4. DEMOCRACY, POLITICAL AUTONOMY AND SCARCITY

There is an important potential objection I need to tackle before concluding.⁵ The argument I am suggesting is grounded on a connection between autonomy and democratic deliberation. However, it could be countered that although such connection is plausible in conceptual terms, it is nevertheless unrealistic in the context of most developing nations. This is because citizens of such nations may lack the capacities or resources to engage in sophisticated economic debates. As a result, their autonomy could perhaps be better promoted through alternative means, such as decision making by courts or technical experts. In the example of the scientists, it was argued that B has no right to decide in the name of others because this would be incompatible with honoring their equal moral status. Yet one may recognize the equal moral status of individuals while at the same time insisting that they have no capacity to understand or contribute to complex technical debates.

So if scientist B enjoys genuine expertise on the subject matter, she may legitimately refuse to take into account the views of others. Along the same lines, it could also be argued that when basic human needs are not secured and people lack adequate education and reasonable access to information, democratic debate and democratic authorization may not be the best option to promote the autonomy and wellbeing of individuals.

Nevertheless, the argument I have offered precludes the kind of epistocratic view underpinning this objection. As David Estlund points out, epistocracy tends to rely on three fundamental tenets:

The Truth Tenet: there are true (at least in the minimal sense) procedure-independent normative standards by which political decisions ought to be judged.

The Knowledge Tenet: some (relatively few) people know those normative standards better than others.

The Authority Tenet: The normative political knowledge of those who know better is a warrant for their having political authority over others. (Estlund 2008: 30)

⁵ I am thankful to an anonymous reviewer for Law, Ethics and Philosophy for raising this key objection.

The case of the scientists accepts the first two tenets, which look more or less plausible. It accepts the second tenet because it assumes that scientist B enjoys some privileged expert knowledge by virtue of which she knows that a certain course of action is the better one; and it accepts the first tenet as the claim that B's knowledge is independent of any particular decision making mechanism. However, my account firmly rejects the Authority Tenet: since knowledge is in principle fallible, and the experiment involves high costs in case of mistake, then B is not morally allowed to act on her own personal assessments of merit. This is because even though her potential victims may lack relevant technical knowledge, they have a fundamental right to veto any unilateral decisions on the part of B. To enjoy such right they just need to know that the costs of a mistake are high for themselves and that the chance that the scientist is mistaken is significant. Thus, the only solution is to achieve the consensus of those who may be potentially affected by the experiment or, alternatively, to setup reliable mechanisms of democratic authorization. The same is true of citizens living in poor countries: they are entitled to resist any unilateral decisions adopted by epistemic elites, ranging from courts of justice to expert policy makers.

On the other hand, it is worth emphasizing that, contrary to what the objection appears to presuppose, these kinds of decisions hamper the *moral* autonomy of individuals rather than just their *political* autonomy. If scientist B unilaterally decides to go on with her experiment under the assumption that this will significantly benefit her community, she not only undermines the political autonomy of the potential victims but also fails to respect their status as separate moral persons endowed with an intrinsic dignity. And the same is obviously true of an elite of experts who make unilateral public policy decisions that may compromise the interests of those in their power.

To illustrate the point, imagine that after considering a set of alternative economic policies – P1, P2, P3 – a group of economic experts concludes that P1 is the best option. If P1 is successfully implemented, it will considerably improve the life prospects of the people. Yet, if the strategy fails, it will have a devastating impact on low and medium income classes. It is evident that in such case the experts are not morally allowed to impose their views on the citizenry. For even if the experts know that P1 is the best policy, they have a fundamental moral duty not to impose serious risks on others or decide in their name on matters that may seriously compromise their vital interests.

Of course, the existence of a minimally legitimate democratic system requires that at least the most basic socioeconomic needs of the people are

fulfilled. In this sense, the duty to satisfy certain ESHR is supported by distinctively democratic considerations: such rights are preconditions for a genuine democratic deliberation. In fact, when people lack adequate education and are deprived of the means of subsistence, political autonomy is a chimera. Yet, even if the satisfaction of ESHR constitutes a political priority, this does not imply that courts or experts can make unilateral decisions as to how to implement them. Since any such decision would presumably involve considerable risks, they call for democratic authorization. Naturally, when a nation is desperately poor, or when minimally reliable democratic frameworks are absent, we may have to consider other options. But in most present developing democracies, it is up to the people to figure out what specific policies must be implemented in order to promote their satisfaction and honor their commitment with human rights instruments.

5. CONCLUDING REMARKS

The conclusion of my argument is that even if we admit that ESHR are essential to the development and enjoyment of genuine autonomous agency, their unilateral implementation by governments or courts may be morally unjustifiable in many contemporary societies. Fundamentally, this is because in view of the extreme costs their implementation may involve, unilateral implementation violates the autonomy of individuals. It is important to emphasize, however, that this implies no skeptical view about the feasibility of ESHR or about their normative status. On the contrary, the account I propose suggests that governments and citizens are morally obligated to engage in democratic conversation about what measures to undertake in order to fulfill ESHR and grant this issue a privileged role in public debate. Within such political processes, people must compare rival interpretations of the “progressiveness” and “maximum available resources” clauses and their precise implications. Yet, if they want their human rights policies to be legitimate, they must result from democratic decisions about what risks the political community is willing to run to fulfill them.

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