EDITORIAL 1

HUMAN RIGHTS, INTERNATIONAL LAW AND THE BRITISH PARLIAMENT – THREE MODES OF REGULATING POLITICAL ACTIVITY

The relationship between legal and political activities can be analysed in terms of the genres of rhetoric. In this issue of *Redescriptions*, we present three articles touching on law and politics from different perspectives, namely, Martti Koskenniemi's "Between Coordination and Constitution: International Law as a German Discipline", Mia Halme-Tuomisaari's "'Absolute and Undefined': Exploring the Popularity of Human Rights in Finland" and Paul Seaward's "The Idea of Parliament in British Political Culture: Bolingbroke to Brown".

At first sight the articles do not have much in common. In this editorial I suggest, however, a rhetorical reading of their political dimensions from the starting point that each article thematises one of the main genres of classical rhetoric: Koskenniemi the forensic, Halme-Tuomisaari the epideictic and Seaward the deliberative. All also illustrate historical and contemporary aspects of the genres, referring to different modes of regulating political activities during the last few centuries as well as to current trends in the power shares between these alternative rhetorical styles of politics.

Martti Koskenniemi continues here his long-term study of international law in relation to European political cultures and their intellectual traditions. International law – in Latin *jus gentium*, in German *Völkerrecht* – is not just any subfield of law, but a cluster of thoughts and practices in which it is impossible to regard politics and law as

strictly separated spheres. In international law the power of courts and judges has always been fragile, and the forensic rhetoric always mixed with other genres, especially with diplomatic paradigm for the rhetoric of negotiation. Koskenniemi writes on international law as "a German discipline", perhaps referring to the insight that international law is always also a political project. Its intention is to introduce some degree of regulation and control by law into the pluralistic world of the great powers while trying to avoid the replacement of the "Westphalian pluriversum" with any universal order as well as the claim that no legal regulation of world politics is possible.

The German-language contributions before the end of World War I offered different approaches as to how such a limited use of international law could be constructed. For example, in his essay "*Zum Thema der 'Kriegsschuld'*", published in January 1919, Max Weber proposed four paragraphs "*eines künftigen Kriegsvölkerrechtsstatus*" on the future regulation of war in international law in the League of Nations (see *Max-Weber-Studienausgabe* 1/16, Tübingen: Mohr 1991, 60–66, quote from 62). Although Weber does not share the belief in progress or many other conventions of nineteenth-century international lawyers, his view on European politics and its legal regulations relates to the German tradition discussed by Koskenniemi.

After World War I the situation changed. As Koskenniemi writes, the "League of Nations pacifists" Walter Schücking and Hans Wehberg opted for a more universalistic line, although in the cautious terms of the League of Nations. Nationalistic thinkers – Carl Schmitt and Carl Bilfinger being prominent examples – viewed the League as a winner's alliance against Germany, and more or less questioned whether international regulation of world politics was even possible. In recent decades this specific German tradition of international law has been lost among the scholars argues Koskenniemi. They have opted for an Anglophone universalism, in which international law tends to claim the authority to "solve" questions of world politics, too. The appeal to judgement, prudence, wisdom and other figures of deliberation and negotiation as complements to the legal non-violent regulation of power struggles has been given up, and international law appears more as a world-wide project of moralisation and legalisation.

Halme-Tuomisaari's article accentuates a favourite figure of the moralisation project, namely "human rights". As a legal anthropologist she analyses the everyday and academic use of human rights talk

in the Finnish and Scandinavian context. The point of her piece lies in illustrating how the practice of human rights specialists is distinct from the forensic rhetoric of the judges and courts. The rhetoric of human rights, as practised in today's everyday speech (for example, in Finland), rather resembles the practice of epideixis of applause.

The classical paradigm of epideictic rhetoric was festivity speaking, in which the better the speech, the stronger and longer the ovation (a practice adopted in the Soviet-style party congresses). In today's politics, epideictic rhetoric is prominent in referenda and in presidential elections with two rounds. For Halme-Tuomisaari's piece, more interesting is the link between epideictic rhetoric and academic controversies. They are epideictic insofar as the moment of disagreement is assumed to be a passing, cathartic stage to be overcome by a 'progress' subscribed to by all. All forms of epideictic rhetoric tend to correspond to depoliticising forms of politics – although occasionally to withhold from applauding may have highly political effects, as was the case, for example, with the loss of Milosevic in the Serbian presidential elections in 2000.

Halme-Tuomisaari refers to the characterisation of human rights as the last utopia, in other words, to the human rights claim to be a contemporary candidate for something "inexpugnable", as Thomas Hobbes put it. They are presented as something nobody would imagine opposing without a danger of being excommunicated from the humanity. Halme-Tuomisaari's example of training human rights experts reveals the hierarchies implicit in such rhetoric, corresponding to the religious "rhetoric of the pulpit", as epideictic rhetoric has been called in Britain since the eighteenth century. We can speak of human rights as a 'true religion' that joins the religion of science in terms of an appeal to an authoritative instance beyond questioning. The epideictic rhetoric of human rights claims to supersede the other rhetorical paradigms, namely the legal dispute, the diplomatic controversy and the parliamentary debate on human rights, their content, range and value.

In contrast to the language of human rights that is beyond dispute, Paul Seaward's article focuses on that exemplary institution of deliberative rhetoric, the British Parliament. In the rhetorical literature, the Westminster Parliament replaced the ancient assemblies as the paradigm for deliberative rhetoric over the course of the eighteenth century. A parliamentary manner of proceeding uses the institutionalised

procedure of debating agenda items *pro et contra*, and there is still no serious alternative for realising the deliberative genre.

Nonetheless, parliamentary politics has, as Seaward's piece illustrates, also been contested from within, above all in terms of party government. Rhetorically speaking, party government transfers the paradigm of negotiation into the Parliament, and the relationship between the government and the opposition resembles that of states with unequal powers and different types of diplomatic repertoire. The concentration of party struggle in elections (see my piece in *Redescriptions* vol. 14, 2010) tends, moreover, to devaluate parliamentary debate as serving merely to ratify government programmes, which resembles the epideictic rhetoric of applauding.

However, such tendencies in parliamentary deliberating are anything but uncontroversial. Seaward points to the concept of 'scrutiny' to indicate new possibilities for the parliamentarisation of politics, insisting on the priority of parliamentary control of government and administration. Here he follows Max Weber's pamphlet *Parlament und Regierung im neugeordneten Deutschland* from 1918, in which Weber employs the instruments of deliberative rhetoric to control the authoritative knowledge claims of the officials. The concept of scrutiny also refers to the possibilities of parliamentarians, as persons accustomed to dispute everything and propose unconventional points of view, to get rid of the self-righteousness that characterises the uses of epideictic rhetoric, including the pathos of human rights.

The procedural dimension of parliamentary politics has tacitly gained ground in the recent years, not only in the European Union but also in the United Nations and in many international organisations. Parliamentarism by no means opposes the trans- or supranationalisation of politics; it should be viewed as a scrutinising counterweight to the bureaucracy of the institutions and as an alternative to the epideictic paradigm that confuses the universalisation of principles with the silencing of debate.

Kari Palonen