

Ferrara's Intergenerational Vision of the Liberal Constitution against Populism: Introductory Notes¹

Greta Favara, Roberta Sala

Abstract. In these introductory notes we explore the arguments developed by Alessandro Ferrara in *Sovereignty Across Generations* and illustrate the commentaries collected in this special issue by Mariano Croce, Marco Santambrogio, Anna Elisabetta Galeotti, Federico Gustavo Pizzetti and Francesca Pasquali. We also shed light on the aims that inspire Ferrara's project. As we explain, *Sovereignty Across Generation* has a twofold aim, a philosophical one and a political one: on the one hand, the book aims to develop Rawls's political liberalism by exploring the grounds and scope of constitutional legitimacy; on the other hand, it aims to address an urgent political threat to democratic legitimacy, namely populism. In addition, we emphasise that one of the key theses underpinning Ferrara's argument is the conceptualisation of the sovereign people as an intergenerational entity composed of all generations living under the same constituency over time. For this reason, we conclude by showing how Ferrara's arguments could be developed in other directions and domains, in particular by exploring the politics of climate change.

Keywords: Alessandro Ferrara, sovereignty, populism, liberal legitimacy, liberal constitution

The commentaries hosted in this special issue are the result of an engaging and thought-provoking discussion that took place on 19 October 2023 at the Faculty of Philosophy at Vita-Salute San Raffaele Universi-

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ty around Alessandro Ferrara's *Sovereignty Across Generations: Constituent Power and Political Liberalism*, first published by Oxford University Press in 2023.² Although only recently published, *Sovereignty Across Generations* has already gained considerable attention, with widespread recognition of its philosophical merits. In 2024, it won the prestigious ICON-S (International Society of Public Law) prize and it is worth stating here the reasons for the committee's decision: "*Sovereignty Across Generations* redefines the concept of constituent power, analyses the difference between representing the transgenerational people and representing the electorate, and advances a theory of democratic sovereignty based on political liberalism. The structure is well-organized and the arguments are highly persuasive. This book is a must-read for those who are interested in legal philosophy and constitutionalism". The justifications offered by the ICON-S committee accurately describe the vast scope of Ferrara's research. *Sovereignty Across Generations* is a book that encompasses political philosophy, legal philosophy and constitutional theory but also touches upon political science. Yet the broad horizon of Ferrara's research by no means undermines the specificity of the question he investigates, nor the rigour of the argument developed. On the contrary, in *Sovereignty Across Generations*, Ferrara shows a mastery of every discipline he addresses, and the depth of analysis offered is remarkable. Like every work of such philosophical depth, *Sovereignty Across Generations* revises the scholarship, raises new questions and sparks a lively debate. We are, therefore, very pleased to make available in this special issue an edited version of the comments presented on the occasion of the workshop held at Vita-Salute San Raffaele University. The broad scope of Ferrara's work makes it impossible to fully summarise its arguments in this short introduction. In the following, therefore, we recapitulate the major theoretical elements that build *Sovereignty Across Generations* to illuminate its principal philosophical achievements and illustrate how the contributions collected in this issue dialogue with them.

Sovereignty Across Generation is a philosophical investigation of constituent power: it is about who owns it, how it is legitimated, how it should be

² "Sovereignty Across Generations (OUP): Tavola rotonda con Alessandro Ferrara", 19 ottobre 2023, Facoltà di Filosofia, Università Vita-Salute San Raffaele.

managed and how it should inform and/or transform political practice. A range of philosophical and political concerns bring Ferrara's project to life. To begin with, Ferrara is interested in developing John Rawls's theory of political liberalism beyond chartered territories. As Ferrara explains, liberal theorists in general, and Rawls specifically, have devoted no – or insufficient – attention to the foundations of constitutional legitimacy. Ferrara's effort is first and foremost devoted to illustrating how Rawlsian political liberalism – presented in Chapter 1 as the most compelling theory of political legitimacy – can be convincingly developed to provide a sound theory of constitutional legitimacy. However, his research is also shaped by deeper concerns that make his analysis politically, as well as philosophically, poignant. Indeed, Ferrara's research interests, far from being merely exegetical, are moved by a political phenomenon pervasive in contemporary societies: populism. As Ferrara explains:

During the first two decades of the twenty-first century the upsurge of populist parties, leaders, and movements, sometimes accompanied by phenomena of democratic backsliding, has confronted liberal-democratic regimes with unprecedented pressure. Presidents and prime ministers, legislatures, administrations, and cabinets often claim to represent the will of the people and in its name try to legitimate not just ordinary legislation but also constitutional amendments, projects for extensive constitutional revision, or landmark statutes of constitutional significance. This predicament makes it all too urgent to revisit the tension, at the heart of constitutional democracy, between popular sovereignty as the touchstone of legitimacy and the notion that even the constituent power exercised by the popular sovereign, far from absolute, must operate within normative tracks that call for specification (Ferrara 2023, 19).

In indicating an upsurge in populist pressures, Ferrara has in mind a specific political phenomenon that encompasses both right-wing and left-wing movements and that he describes, in Chapter 2, as identified by three features. In Ferrara's account, populism consists of "(i) the conflation of the people, *qua* democratic sovereign, with the electorate, and of the will of the people with the will of the voters; (ii) the attribution of fully fledged constituent power to the electorate as embodiment of the people; and (iii) presumptively justified intolerance against all opinions

that differ from what populist leaders posit as the general interest of the people” (14-15). Thus characterised, in Ferrara’s account, populism would encourage – if not cause – some of the most undesirable and dangerous political trends that liberal democracies have experienced in recent decades, such as polarisation, extremism, sovereignism and the erosion of political trust. In a Rawlsian spirit, then, Ferrara’s philosophical inquiry starts from a recognition of the urgent political questions arising out of current political practice. While these constitutional dilemmas did not top the agenda when Rawls first wrote *Political Liberalism* in 1993 – and, for this reason, Rawls does not fully explore the grounds and normativity of constituent power – Ferrara persuasively shows why constitutional normativity should be at the centre of contemporary philosophical political research.

We are all familiar with recent examples of political slogans that conflate the people as democratic sovereign with the electorate. As Ferrara recalls (73), “You’re stealing sovereignty!” was the cry of the Italian party *Northern League*, headed by Matteo Salvini. It was used against the President of the Republic, Sergio Mattarella, when he gave the Prime Minister, Giuseppe Conte, a mandate to form a new coalition government in 2019 after the previous government had lost the support of the majority of parliamentarians. The President of the Republic chose not to call an election, but rather to give the Prime Minister a mandate to form a new coalition-sustaining majority. To be clear, the sovereignty of the people was not “stolen” by not calling an election. Italy is a parliamentary democracy: the Italian electorate chooses its own parliament, not its government, whose Prime Minister is appointed by the President of the Republic. As Ferrara explains, by interpreting populism through the lens of a theory of political liberalism, those who invoke voters’ alleged sovereignty claim to defend the authentic democratic spirit of liberal democracies, which they see as threatened by fixed rules and boundaries, political élites and the complex procedures of deliberation that create a significant distance between the government and its citizens. However, while discussions around the *democratic deficit* are to some degree meaningful and urgent,³ populism – far from being the cure – is one of

³ See, for example, Neuhold (2020).

the causes. Indeed, by emphasising the democratic source of political legitimacy, populists get rid of its liberal counterpart: that framework of limits, balances and rights that define the space in which democracies can function effectively. Yet – Ferrara explains – it is on such fundamentally liberal grounds, namely the reciprocal recognition that we are all free and equal individuals deserving equal respect, that democracies find their rationale and flourish. That is to say, democracies require solid constitutional boundaries, as the will of a majority cannot override the fundamental rights held by each citizen by virtue of their equal dignity. However, when the conflation of the people and the electorate is consistently taken to an extreme, the electorate comes to be interpreted as the holder of constituent power: the voters should be able to determine constitutional reforms or proposals.

The origin of political polarisation as a contemporary phenomenon – often bringing with it intolerance and extremism – becomes clearer within the conceptual framework developed by Ferrara: once the people, as the electorate, are seen as the sole source of political legitimacy, those who speak against the alleged *will of the people* as expressed by the populist party or its leaders are seen as enemies, rather than fellow citizens expressing their disagreement. The “authentic” members of the people know what must be done – “Honesty!” used to shout the Five Star Movement party while calling for the dismissal of an alleged Italian political élite, the enemy of the people’s interests. Intolerance spreads as soon as “the people” is seen as the arbiter of right and wrong in political matters, where pluralism is seen as the product of conflicts of power rather than the inevitable result of *burdens of judgment* and a healthy democratic public sphere. In its most worrying form, populist leaders are not simply truth-bearers; rather, they become truth-makers – since they claim to be the only trustworthy politicians. As we write this introduction, hatred and fear are spreading through the Haitian community in Springfield (Ohio), since the former US President, Donald Trump, made the controversial and unsubstantiated claim during a presidential debate on 10 September 2024 that immigrants in Springfield were eating the pet dogs and cats of their neighbours. This claim was immediately fact-checked by the debate moderators and has been widely refuted by local officials. We should also not forget the attack on Capitol Hill on 6 January 2021, fuelled by Trump’s false accusation, following his defeat, that the 2020 US presidential election had been rigged.

In former works – most notably *The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism* (CUP, 2014) – Ferrara has attempted to ascertain whether and how political liberalism could provide a suitable normative framework for *hyperpluralism*, a form of pluralism deeper and wider than the one Rawls had in mind when *Political Liberalism* was published. In contemporary politics, however, populism thrives where pluralism is reduced to mere conflict, and opinions are deployed rather than shared. Political theory, therefore, has now to address the emergence of forces that – within liberal democracies – tend to suppress pluralism rather than manage it. Can political liberalism provide us with a sound normative theory of constitutional legitimacy, capable of reconciling liberal rights and popular sovereignty? This is the challenge that *Political Liberalism* leaves open and that *Sovereignty Across Generations* persuasively takes up.

Sovereignty Across Generations seeks to resolve the tension between liberal rights and popular sovereignty by defending two key theses. First, Ferrara argues for a careful distinction between the people and the electorate, and the interpretation he proposes is original and thought-provoking. While the *people* form the *intergenerational* entity comprising all the generations that follow the original constituent one, the *electorate* is its living segment. Among the consequences that follow from this theoretical shift in perspective, Ferrara explains that the electorate can legitimately exercise only limited sovereign power, as one part of the people cannot be entitled to change the constitutional norms valid for all generations. This brings us to Ferrara's second key thesis, namely, that the relationship between the constitution, the people and the electorate cannot be described simply in terms of the traditional picture of the interplay between constituent and constituted power. Rather, Ferrara elaborates two principles of constitutional legitimacy, building on Rawls's principle of liberal legitimacy: a "liberal principle of constitutional legitimacy" and a "liberal principle of amending legitimacy" which respond to different kinds of normativity and must be assessed separately.

How, and why, Ferrara reaches these conclusions will emerge through the contributions collected in this issue. In order to offer the reader some orientation in this dense dialogue, let us anticipate the points of Ferrara's argument that the contributors wish to discuss. We will proceed in order.

In Chapter 3, Ferrara introduces the originality of a Rawlsian theory of constitutional legitimacy by presenting a comparison of the constitu-

tional theories outlined by Hans Kelsen and Carl Schmitt. This dialogue allows Ferrara to show that a Rawlsian theory of constitutional legitimacy, while bearing some affinity to the accounts of Kelsen and Schmitt, originally cuts across them: Rawls outlines a constitutional theory that is normative and yet non-foundational through the standard of reasonableness. Rawls's account of constitutional legitimacy is, therefore, both "situated" – recalling the Schmittian conception of the authority of the constitution – but also partially "normative" – being above the electorate's will, as Kelsen would affirm. The Rawlsian approach to constitutional legitimacy is most clearly summarised in Ferrara's "Liberal principle of constitutional legitimacy":

1. *Liberal principle of constitutional legitimacy*

Constituent power is justifiably exercised when it is exercised in accordance with a political conception of justice most reasonable for its free and equal holders (134).

In "Democracy and Its Matter: Juxtaposing Carl Schmitt and John Rawls", Mariano Croce examines the comparison that Ferrara makes between Schmitt and Rawls and argues that Rawls's liberalism has more in common with Schmitt's thinking than Ferrara admits. Croce examines the writings Schmitt completed between 1928 and 1934 and shows that major similarities can be found between Schmitt and Rawls, above all in the key interest in defining a freestanding "political" space insulated from disruptive forces and the importance assigned to a shared political conception of justice based on the constitutional essentials that can guarantee stability.

In "Whose Constituent Power Is It?", Marco Santambrogio challenges Ferrara's political conception of the people. A constitution, indeed, needs a bearer – namely a holder of sovereign power, and in Chapter 4 Ferrara provides such an account for democratic contexts. This is, as Ferrara observes, a much-neglected topic in liberal philosophy. A major challenge must be unpacked here: how is it possible for a people to legitimise the authority of a constitution if, for that people to exist, a constitution is needed? Ferrara's solution hinges upon two key notions, *ethnos*

and *demos*, according to which he is able to explain how a group of people with shared ethnocultural affinities (*ethnos*) can become a group of people agreeing upon a specific set of normative commitments that define the constitutive rules of their coexistence (*demos*). Ferrara's conception of the people, then, sees the basis of constitutional sovereignty as residing in the formation of a group of individuals who choose to endorse mutual commitments. This is the thesis that Santambrogio challenges. In contrast to Ferrara, Santambrogio claims that an actor endowed with intentionality who establishes a constitution can only be fictional. In fact, Santambrogio argues, to be qualified as endowed with intentionality, an actor must possess – among other attributes – will, memory, preferences and rationality. Yet, by relying on Condorcet's and Arrow's theorems, Santambrogio explains why a plurality of subjects, albeit rational, can sometimes be irrational by holding cyclical preferences.

As we have anticipated, besides the people being – in Ferrara's account – a real entity, it is conceived as comprising all the generations – in the past and in the future – living in the same constituency. This is, as we emphasised, one of Ferrara's key theses. Several reasons lie beneath this thought-provoking conceptualisation, among them the fear of the tyranny of the majority, the idea that generations should be treated as equals, the value of intergenerational reciprocity, and the key role attributed to political stability that would be undermined if constitutional essentials were as changeable as the electorate. By exploring Chapter 5 of *Sovereignty Across Generations*, in which Ferrara reveals the interpretation and implications of intergenerational sovereignty and reframes political representation accordingly, Anna Elisabetta Galeotti, in "Sovranità generazionale vs. costituzione permanente", scrutinises the concept of intergenerational sovereignty and suggests that an equivalent, and more convincing, function could be played by a suitably specified account of *generational sovereignty*. If – Galeotti argues – we conceive of the people not merely as a set of individuals but, rather, as an aggregate non-reducible to its members (e.g. a football team remains the same even when its players change) and comprising the set of generations currently overlapping, we mitigate many of Ferrara's concerns: the people is not reducible to its ethnic features but is a political entity; moreover, its representatives should take into consideration the interests of future proximate generations, thereby curbing concerns about the tyranny of the majority.

However, if the people as sovereign is an intergenerational entity, as Ferrara claims, how can it be represented? Only the living segment of the people can express a preference, yet Ferrara claims that the electorate cannot have unlimited political agency: constitutional principles are intended to represent and safeguard the people as a whole. Who, then, can represent the people? Constitutional courts are intended to play this role in Ferrara's framework. More precisely, constitutional courts must safeguard the constitutional essentials but are also entitled to *interpret* the constitutions to adapt them to new social and historical circumstances. How this complex process of interpretation works, how it is related to the standard of reasonableness and how it interacts with the electorate are questions extensively discussed in the sixth chapter of the book. Federico Gustavo Pizzetti, in "Constitutional Interpretation and People's Representation in the United States and in Italy", offers an enlightening reconstruction of the diverse roles that constitutional courts have historically played in the United States, Europe and Italy. Pizzetti's analysis sheds light on two fascinating issues, whether European constitutional courts should, and could, fulfil the function that Ferrara imagines, and how we should conceive the representative role of a multilayered system of constitutional courts such as the European one.

The concluding chapter further investigates the potential power of the people and the electorate to amend the constitution. Ferrara traces the limits of such power in light of the fundamental requirement of *vertical reciprocity* that underpins his entire philosophical project: any amendments to the constitution should consider what the living generation owes to past and future ones, that is, they should respect the legacy of former generations and protect the interests of future ones. The extension of the Rawlsian liberal principle of legitimacy that Ferrara envisages for amending the constitution runs as follows:

2. *Liberal principle of amending legitimacy*

Amending power is justifiably exercised when it modifies the constitution in full respect of the (explicitly and implicitly) unamendable essentials and of ideals and principles acceptable to present citizens as rational and reasonable, as well as compatible with vertical reciprocity among all the generations of the people. (281)

It is easy to see, then, how Ferrara's conclusions undermine the populist attribution of full sovereign power to the electorate. Yet Francesca Pasquali, in "Potere emendativo, popolo transgenerazionale e agency politica", while acknowledging the internal consistency and philosophical sophistication of Ferrara's analysis, raises some doubts regarding its efficacy against the populist menace. After all, by emphasising the sacred and central political role played by the people, are we not implicitly backing the populist rhetoric? And are we not significantly undermining the political agency of living people by invoking respect for vertical reciprocity?

To all these comments, doubts and questions, Alessandro Ferrara offers detailed answers in the concluding section of this special issue. By way of conclusion, and taking into account the comments collected here, we would like to emphasise the many strands of research opened by Ferrara's discussion. We believe, as Galeotti suggests, that Ferrara's philosophical investigations could be extended beyond the bounds of constitutional normativity. Intergenerational reciprocity and respect are of the utmost importance, particularly in times of environmental crisis. Among current political challenges, climate change and populism stand out, and the two often go dangerously hand in hand. In this regard, certain recent episodes come to mind. Take, for instance, the Trump administration's withdrawal from the Paris Agreement in 2017. Commenting on the withdrawal, Trump declared, "In order to fulfil my solemn duty to protect America and its citizens, the United States will withdraw from the Paris Climate Accord. [...] As *President*, I can put no other consideration before the wellbeing of American citizens. The Paris Climate Accord is simply the latest example of Washington entering into an agreement that disadvantages the United States to the exclusive benefit of other countries, leaving American workers – who I love – and taxpayers to absorb the cost in terms of lost jobs, lower wages, shuttered factories, and vastly diminished economic production" (emphasis added).⁴ Trump here refers to the American people as synonymous with living American citizens and his task as that of safeguarding their interests, despite potentially undermining those of future American citizens by neglecting climate

⁴ Statement by President Trump on the Paris Climate Accord, 1 June 2017.

agreements. Trump is not talking of constitutional amendments here; yet, is the duty of the highest democratic offices simply to enact the will of the living electoral body? Should other normative considerations be factored in? If so, how and to what extent? Such concerns raise, in turn, philosophical debate about the limits and scope of political agency and multilayered sovereignty. We believe that philosophical studies on reasonableness and political legitimacy cannot but be extended in this direction, especially in light of current political circumstances. Therefore, alongside its many philosophical merits, Alessandro Ferrara's *Sovereignty Across Generations* makes a valuable contribution to the ongoing political debate.

References

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