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The Prospect for Liberal-Democracy in Troubled Times

A Symposium on Alessandro Ferrara's *The Democratic Horizon. Hyperpluralism and the Renewal of Political Liberalism*

edited by

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Introduction: Democracy as *Pharmakon*

Leonardo Marchettoni

In his "Introduction" to the *Philosophy & Social Criticism* Symposium on Alessandro Ferrara's *The Democratic Horizon* (henceforth *DH*), written just a few months ago, David Rasmussen described the project of the book as that of reshaping and expanding Rawlsian liberalism in order to "meet the demands of a world society half of which can be classified as democratic […] while the other half may be aspiring to be part of a democratic movement but hindered by various forms of repression".[1]

Yet to our ears – mostly after such events as Brexit and Trump's presidential election –, the word "democracy" sounds like a *Pharmakon*, which, according to the Greek etymology, is both poison and drug at the same time, because too often populist and neo-oligarchic leaders attempt to legitimize their policies by invoking the people's consensus. As a result, the same assumption that there exists a multiplicity of civilizational models – one of the leading ideas of political liberalism – gets employed to pave the way to the discomforting inference that we must "immunize" our values.

Actually, however, it is fair to say that Rawls's very model, being committed to the possibility of drawing a distinction between different kinds of value systems according to their reasonableness, is likely to be interpreted in terms that justify the distinction between different classes of people. Therefore, it needs to be reworked and strengthened in order to match the challenges of our "troubled times". Ferrara in *DH* takes Rawls's political liberalism as the starting point of his enquiry but departs from it in several important respects. The aim is that of building a *normative* theory, which is nonetheless *empirically adequate* to the "inhospitable conditions" of our time.

Let's pause to clarify the meaning of this double proviso. Ferrara aims to offer a theory that is empirically adequate, in the sense of taking into account the contextual conditions threatening contemporary democracies. And in fact, in the "Introduction" of *DH*, Ferrara, in the footsteps of Frank Michelman, sets forth the menaces – extension of the electorate, stratification of citizenship, increased cultural pluralism of constituencies,

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[1] D. Rasmussen, "Introduction", *Philosophy & Social Criticism*, 42 (2016), pp. 635-639, p. 635.

prevailing of finance within the capitalist economy, transformation of the public sphere, to name just a few examples – that threaten to kill the plant of democracy. Moreover, since democracy is like a living organism, in that it can flourish or wither, there is room for a normative theory expounding the precepts that secure its well-being. This theory shall neutralize the toxic conditions that risk destroying the plant of democracy. In this sense, Ferrara's stance has a normative twist: it stems from empirical knowledge but does not content itself with depicting the status of political institutions. Instead, it aims at providing a kind of recipe for revitalizing democracy and making it capable of meeting future challenges.

The first step is redefining the core of democracy: democracy does not consist solely in a bundle of procedural rules but also in a kind of *ethos* that leads to the adoption of these norms. In this way, reason and imagination work together: democratic politics is at its best when good reasons move the imagination. But in which sense can reasons be termed "good"? Ferrara maintains that an essential ingredient of the democratic ethos, and hence of the goodness of reasons, is a public propensity or passion for "openness", that is a positive attitude towards the exploration of new possibilities and new life forms. This implies also the attempt to enlarge the democratic sphere. Societal and cultural pluralism are not threats to be confronted. Rather, they represent opportunities to enlarge the democratic horizon.

Thus, the chapters from 3 to 6 of *DH* address the issue of pluralism from several perspectives. First, Ferrara argues for a transition from "monopluralism", which urge us to embrace a pluralist stance assuming the existence of just one set of valid reasons for accepting pluralism, to *reflexive pluralism*, that is the position according to which pluralism can be accepted on the basis of different sets of justifications. In this way, reflexive pluralism advocates the idea that each justification must be internal to some comprehensive conception. This is the skeleton of conjectural reasoning, the style of argument that Ferrara borrows from Rawls: according to this methodology, liberal values cannot be imposed through law; rather, the resources for upholding them must be found within each particular conception.

However, it is fair to say that contemporary pluralism is deeper than Rawls's, since it extends along an array of different dimensions, including cultural, religious,

linguistic and ethnic ones. Hence, Ferrara aptly introduces the category of *hyperpluralism* in order to highlight these specific traits. In some cases, such pluralism is so pervasive that even conjectural reasoning cannot bridge the gap between liberal values and particular conceptions. In those instances, Ferrara advocates a *multivariate democratic polity*, that is a kind of political system in which most citizens agree – from their respective viewpoints – on the basic rules, but relate in a *modus vivendi* with minorities whose comprehensive conceptions endorse only a subset of the constitutional essentials.

Hyperpluralism has a historical dimension as well. In *DH* Ferrara aptly contrasts Rawls's "Western" conception of societal pluralism with his own. In this vain, the rise of pluralism is rooted in the model of *Multiple Modernities*, hence the idea that democratic cultures emerge from different civilizational contexts producing different versions of the "just and stable society of free and equal citizens". This move marks a further step towards what we could call the "pluralization" of pluralism, that is the process through which Ferrara attempts to subtract the same notion of "pluralism" to an ethnocentric understanding. Finally, in the sixth chapter, the issue of pluralism is investigated through the lenses of contemporary multiculturalist approaches in political theory. Ferrara draws on Will Kymlicka in order to elucidate four arguments for the justification of differential attribution of non-fundamental rights and prerogatives to citizens according to their cultural affiliation. He intends to show that Rawls's theory is the better starting point for a new multiculturalist liberalism, free from essentialist presuppositions.

In the last two chapters of *DH*, Ferrara enriches his account by addressing other "surrounding" issues. First, he focuses on the prospect for democracy beyond the boundaries of nation states. His argument is that the empirical conditions of supra-national political structures force us to redefine the same concept of democratic participation, so as to include the recourse to soft law, to best practices or to moral suasion as methods for coordinating political action. Then, he discusses the possibility of adopting a deliberative approach to reconcile global governance structures and democratic legitimacy. Finally, in the last chapter of the book, Ferrara turns to considering the role of truth within the realm of political discourse. He maintains that the distinction between truth and justification cannot be abandoned. However, it has to be redefined in dualistic terms by distinguishing between the truth *within* a given paradigm or frame – to be

conceived in a correspondentist manner – and the truth *of* a given paradigm or frame – and in this case truth will behave as an ideal justification.

David Owen in the opening essay – *A Politics of Exemplarity* – addresses the issues of exemplarity and imagination. He suggests that Ferrara's account of "politics at its best" is based on Thomas Kuhn's dichotomy between normal and revolutionary science and argues that even "normal" politics may host an exemplary dimension. In fact, exemplars do not exist *per se*, as they possess some special quality, but emerge from concrete episodes of struggle and involve the response from an audience, which proves to be sensitive to the contested values.

Matthew Festenstein – *The Normative and the Transformative in Ferrara's Exemplary Politics* – highlights two distinctive features of Ferrara's theory, namely, his commitment to the normativity of a Rawlsian form of political liberalism and to a judgment-centered epistemology. His main thesis is that the former is in tension with the latter because, if judgment were to function as the source of normativity, it should be characterized in a way that is incompatible with the premises of political liberalism.

With Luca Baccelli's essay – *Inside the Rawlsian Horizon?* – the Rawlsian inspiration of *DH* comes under fire. Baccelli acknowledges that *DH* offers a detailed and original portray of the pathologies of current democracies. However, he contends that the normative framework developed by Rawls in *Political Liberalism* prevents Ferrara from effectively addressing such issues and from working out a satisfactory answer to those challenges, since it fails to take into due consideration the roots of pluralism.

David Álvarez García focuses his contribution – *Democracy as Horizon. Conjectural Argumentation and Public Reason Beyond the State* – on Ferrara's notion of hyperpluralism. His main qualm is that Ferrara assumes hyperpluralism as a given, without addressing the global political context that leads to the emergence of this phenomenon. Following this train of thought, Álvarez explores the role that conjectural argumentation can play at a supranational level, arguing that the resort to conjecture cannot result in a kind of transnational fusion of horizons.

Marco Solinas – *Democratic Ethos, Imagination and Emotion* – holds that *DH* tries to overcome the limits of a merely procedural understanding of democracy by

stressing the importance of the mobilizing forces of ethos and political imagination. Solinas, however, maintains that a deeper engagement with the emotional, imaginative and affective dimensions of the democratic practices might allow Ferrara to pursue the methodological goal of substituting the procedural interpretation of democracy with a normative reading in a more successful way.

Leonardo Marchettoni's essay – *Conjecture and Recognition* – tries to shed some light on the role that conjectural reasoning plays within Ferrara's strategy to deal with pluralism. After a detailed reconstruction of the structure of conjectural reasoning, Marchettoni considers the function of conjectural reasoning within *DH*. He concludes that the recourse to conjecture may properly work only in those cases in which individuals already exhibit some relevant common traits that make them capable of recognizing each other as members of the same community.

Finally, Italo Testa – *Is Hyperpluralism Compatible with Dualist Constitutionalism? On Alessandro Ferrara's Conception of Multivariate Democratic Polity* – contrasts Ferrara's "multivariate democratic polity" framework with consensus-based notions of democratic legitimacy. The upshot of his argument is that the multivariate frame is scarcely compatible with the "dualist conception of democratic constitutionalism" adopted by Ferrara, urging a more accurate consideration of the role the emergent transnational demos might play in deliberative processes.

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A Politics of Exemplarity

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Abstract: This essay addresses the focus on exemplars, imagination, affect and democracy at the heart of Ferrara's democratic vision. It argues that Ferrara's account of politics represents an important but incomplete step towards an understanding of "politics at its best" and the developing Ferrara's account helps to support his arguments on hyperpluralism and to indicate ways of extending his analysis.

[**Keywords**: Exemplarity, Imagination, Affect, Democracy, Profundity, Audience]

It is one of the hallmarks of Alessandro Ferrara's *The Democratic Horizon* that it offers a much needed renewal of attention to the affective and imaginative dimensions of democratic politics. Ferrara's claim that "politics at its best is *the prioritization of ends in the light of good reasons that can move our imagination*"[1] echoes Jacques Rancière's view that "politics is both argument and opening up the world where argument can be received and have an impact"[2] – and, despite their difference concerning the character of politics, this shared attention to the *aesthetic* dimension of politics as a human activity is clearly to the fore in Ferrara's anti-rationalist account of political innovation:

> All the important junctures where something new has emerged in politics and has transformed the world – the idea of natural rights, the idea that the legitimacy of government rested on the "consent of the governed", the inalienable right to the "pursuit of happiness", "liberté, égalité, fraternité", the abolition of slavery, universal suffrage, human rights, the Welfare State, gender equality, the idea of sustainability, the idea of a right of future generations – were junctures where what is new never prevailed by virtue of following logically from what already existed, but rather by virtue of its conveying a new vista on the world we share in common and highlighting some unnoticed potentialities of it. Like the work of art, so the outstanding political deed arouses a sense of "enrichment of life", the enriching and enhancement of a life lived in common, and commands our consent by virtue of its ability to reconcile what exists and what we value (*DH*, p. 38).

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[*] David Owen was invited to contribute to this issue. Therefore, his essay has not been submitted to peer review.

[1] A. Ferrara, *The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism*, New York, Cambridge University Press, 2014, henceforth *DH*, p. 38.

[2] J. Rancière, *Disagreement*, Minneapolis, University of Minnesota Press, 1999, p. 56.
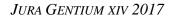
In what follows, I will be concerned to explore this focus on exemplars, imagination, affect and democracy at the heart of Ferrara's democratic vision.

Although the passage from Ferrara just quoted is concerned with political innovation, it is important to note that, in contrast to Rancière, his conceptualization of *politics at its best* is not limited to contexts of emancipatory political innovation but may also encompass political actions that do not break with the existing political grammar of liberal democratic societies. At first glance, this might strike one as odd: as Ferrara is all too aware, our societies are riven with domination, exploitation and other forms of injustice – so surely *politics at its best* must push us beyond our current political order to a less unjust political condition? If we are disconcerted by this move on Ferrara's part, however, it is because we are caught up in an overly simple picture of politics, one that I think Ferrara himself does not fully escape.

To draw out both these points, that it is an overly simple picture and that Ferrara's is not entirely immune to its hold, we can start by noting a tension in Ferrara's argument concerning politics at its best. On the one hand, Ferrara draws on the Kuhnian distinction between "normal" and "revolutionary" science to argue, by analogy, that "Ordinary politics is to politics at its best as normal science is to those paradigm-founding moments and those crises or transformations of paradigms in science that Kuhnian postempirical philosophy of science has shed light on" (*DH*, p. 39). On the other hand, and at the same time, Ferrara claims that

> it should also be emphasized that politics at its best need not necessarily be transformative
> at the constitutional level, though most of the time it is. It can amount to the exemplary
> realization of norms and principles that are long established but rarely put into practice
> (*DH*, p. 40).

The second claim entails that politics at its best may also be analogous to "normal science" and even here it seems to me that Ferrara is still in the grip of the identification of alignment of politics at its best and paradigm-change in the sense that he wants to emphasize its atypicality in line with his view that "politics at its best can be experienced only a few times in a lifetime" (*DH*, p. 39). To see why we might want both to embrace the idea that politics at its best can take "normal" and "revolutionary" forms and to resist the view that in the "normal" mode it is restricted to rare realizations of formally

established but practically ignored norms and principles, we can take up Ferrara's own emphasis on the analogy between politics and art by looking at the issue of profundity in music.

We can start this discussion by distinguishing between "epistemic profundity" as the capacity of something to show us something significant about a matter that is (appropriately seen as) of real importance to us, on the one hand, and "structural profundity" as the centrality of something to an organized unity of heterogeneous elements, on the other hand.[3] The senses are related in the following way:

> The distinctive value of things that are epistemically profound […] lies in the kinds of understanding they make possible; by bringing to light features of the world or the human condition that may be structurally profound for our grasp of them. This relation is not reversible. […] And the reason for that, straightforwardly enough, is that not every system that is capable of being understood in terms of its structurally profound features is one that is, or deserves to be taken as being, or real interest or importance to us.[4]

This general analysis of the concept of profundity enables us to link together the features of the concept of profundity that are intuitively central to its use, namely, depth, insight, significance and value. However, the point on which I want to focus is that it also enables us to distinguish at least two modes of epistemic profundity which, and here is the analogy with Kuhn, we may call "normal" and "revolutionary" in that the former can be seen as developing a style and working within the grammar of a practice, whereas the latter transforms the style by changing the grammar of a practice. So, for example, we might see Mozart and Haydn as exemplars of the Classical Style; whereas Beethoven stands as an exemplar of the revolutionary transformation from the Classical to the Romantic style. All of these composers succeed in disclosing to us features of the human conditions that are important to us but whereas Mozart and Haydn do so by developing the expressive resources of the Classical style and in doing so reveal, for example, the place of sensuality (Mozart) and cheerfulness (Haydn) within a world that is still conceived in terms of a rational natural order, Beethoven transforms the style in order to be able to give expression to another way of seeing the world, and our place in it, in which

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[3] Cf. A. Ridley, *A Philosophy of Music*, Edinburgh, Edinburgh University Press, 2004, p. 144.
[4] *Ibid.*, p. 145.

rational order is not given but, rather, is something humans must struggle to create. Few would, I think, doubt that many of the works by Mozart, Haydn, and Beethoven represent exemplars of "music at its best" that move our imaginations.

Returning to "politics at its best" in the light of this brief digression into the philosophy of music should, I think, alert us to the point that exemplars of politics at its best may be instances of "normal" politics that disclose with particular force and salience the meaning of political values that are already embedded and expressed within normal politics but, perhaps for this very reason, often do not strike us. We might recall Wittgenstein's remark: "The aspects of things that are most important for us are hidden because of their simplicity and familiarity. (One is unable to notice something – because it is always before one's eyes.)".[5]

A legal judgment, a political debate, a piece of legislation, a popular protest – all of these may serve not to transform how we see our political relations to one another but to remind us, in a way that brings home to us what we easily forget, of the value of our existing political achievements: of respect for the rule of law, of electoral participation, of solidarity in the times of crisis, etc. This is not to deny that more needs to be done but to remind us that what previous generations of political struggle and ordinary politics have built has considerable political value. There is a reason why this point may be of particular importance for Ferrara's argument rather than being a mere theoretical worry on my part. This reason emerges when we bring the (thus far elided) issue of audience into the discussion.

Exemplars are not given but constituted in the relationship between work-act and audience. The struggles of the Chartists, the Suffragettes and the Black Civil Rights Movement are constituted as exemplars because the values for which they struggled are, in large part, held by the majority of the political audience for whom these acts appear in collective memory. But the relationship between work-act and audience in the constitution of exemplars matters in contexts of "hyper-pluralism". Ferrara's acute diagnosis of this condition and his response to it in terms of the idea of a multivariate democratic polity containing both overlapping consensus and *modus vivendi* types of

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[5] L. Wittgenstein, *Philosophical Investigations*, Oxford, Blackwell, 1958, s. 129.

relations points to the pluralisation of exemplars. So, for example, a political act may serve as an exemplar for those who have reached an overlapping consensus on a political conception of justice but not for those who stand in *modus vivendi* relations to the state, or alternatively what the act is exemplary of may be different for this latter group. It is a further implication of this point that what is "politics at its best" in its "normal" mode for those standing in overlapping consensus relations may be "revolutionary" for those standing in *modus vivendi* relations. Thus, for example, the current response to Trump's travel ban serves to remind US citizens in overlapping consensus relation of the value of the rule of law, separation of powers and democratic protest, while perhaps also recruiting those (for example, Muslim immigrants) who stand in *modus vivendi* relations to the US state into the overlapping consensus. This is one reason why I have emphasized the need not to downplay "politics at its best" in its normal politics mode. Indeed, Ferrara's sensitivity to hyperpluralism and the multivariate democratic polity helps to draw out the point that such a polity has good reason to be aware of the value of political acts that both *remind* and *recruit*, that is, that reinforce the values of democratic political justice for those standing in overlapping consensus relations and transform individuals from standing in relations of *modus vivendi* to those of overlapping consensus. It is a feature of Ferrara's discussions of multiculturalism and multiple modernities that he provides many of the resources for addressing this topic, however, in my final set of comments I would like to touch on an issue that Ferrara pays little attention to but which I think is crucial for his account.

The preceding remarks drew attention to the point that the constitution of exemplars involves a relationship between work-act and audience. I now want to add the point that this relationship is mediated, that is, the relationship of the audience to the work-act takes place through media of communication and expression. Although these media are not limited to what we refer to as "the Media" even when expanded to include the "new" Media (YouTube, social media networks, etc.), there is little doubt both that the audience's relation to political acts is highly mediatized in this narrow sense of "the Media" and that the scope of the audience as communicative community has widen considerably to encompass not only resident citizens and non-citizens but also a transnational audience that may include expatriate citizens, relatives of citizens and

residents, and non-citizens. However, although this process may have some benefits (abuses of human rights may, as Kant hoped, reverberate around the world), it has also seen a fragmentation and polarization of media in ways that fail to support and plausibly undermine the modest forms of "enlarged mentality" and the "common world" that democratic politics at its best requires. The demonization of political opponents and negative affective register of much contemporary politics as well as the rise of virulent forms of populism is symptomatic of this process. This matters particularly in terms of (a) sustaining overlapping consensus and (b) generating exemplars that "remind and recruit". In this context, one problem that urgently need to be addressed is that of trust in media – or, more precisely, trustworthy media that audiences with internally diverse political views can take to offer reasonably unbiased reporting. For all its problems, the BBC still commands considerable public trust in the UK, certainly more than any privately-owned news outlet, and it may be that a publically funded, but independent of government, media source is a part of an adequate response to this first issue. However, what is clearly further needed is the training of a public in the arts of critical media scrutiny, that is, a public who have the skills required for critically reflecting on the ways in which their reception of acts and events is mediated through the media. Media education is now, more than ever, a key part of civic education. Ferrara's book covers an already large range of issues and hence it may seem unreasonable to chide him for not addressing this topic, but it is precisely the welcome and important attention that he brings to the issues of exemplarity, imagination and affect that makes visible how central issues of media are to democratic life and politics at its best.

There is much more in this invigorating book than I have focused on these comments. The breadth of Ferrara's engagement with democratic theory is remarkable. However, in limiting my critical attention, I hope to have raised some questions and issues that will resonate with the central theoretical approach and the democratic concerns that animate Ferrara's work – and perhaps press him to develop them still further.

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The Normative and the Transformative in Ferrara's Exemplary Politics

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Abstract: In *The Democratic Horizon* and other works, Alessandro Ferrara offers an original theory of political judgment, exemplarity and political liberalism. This article examines two distinctive features of this theory, his accounts of the normativity of a Rawlsian form of political liberalism and of democratic openness or transformative politics. It is suggested that there are some tensions between his commitment to a judgment-centered epistemology and political liberalism.

[**Keywords**: Alessandro Ferrara, Political Judgment, Exemplarity, John Rawls, Political Liberalism]

In *The Democratic Horizon*, Alessandro Ferrara deepens his project of developing a post-foundational conception of political normativity built on his conceptions of exemplarity, authenticity and judgment.[1] He seeks to redeem what he sees as the unique promise of Rawls's political liberalism in helping democratic theory rise to a series of critical contemporary challenges by subjecting it to a hermeneutic and conjectural turn. Theorists who have emphasized the significance of political judgment, whether inspired by a realist sense of or, like Ferrara, by the conception of reflective judgment in Kant's *Critique of the Power of Judgment* (and by Hannah Arendt's influential political interpretation of this) have tended to be skeptical about the kind of political liberalism. On the face of it, the gap between Rawlsian political liberalism and the judgment paradigm seems ominous. The former seems to offer a set of theoretical constraints on legitimate political action, which must be applied to political practice. The latter seems to reject a priori theoretical constraints in favor of the primacy of practice in determining how we orient ourselves to

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pp. 18-28

particular concrete political situations. In part, the boldness and originality of this important book lies in its attempt to bridge this chasm. This article traces a very narrow path through Ferrara's rich and wide-ranging discussion to suggest some difficulties with this bridging project.

Ferrara has been at the forefront of what we can think of as the strong program for political judgment to political theory. This breaks with weaker views of judgment that restrict it to the formation of belief or envisage it is merely a necessary supplement to the broader principles or rules.[2] For these theorists, general principles cannot or should not provide guide rails for political judgment, which instead has a more autonomous status as a means by which agents guide, orient and shape their action in political contexts. He shares with realist proponents of political judgment an appreciation of the distinctive character of the political (informed not only in his case by Rawls's conception of political liberalism but by engagement with wider literatures in political science, including governance theory) and the contextual character of political judgment. Yet he shies away from the radically contextual view of political judgment espoused by realists such as Raymond Geuss in favor of a conception of judgment that is meant to support a particular view of ideal liberal political theory.[3] Ferrara's project is more intimately related to the strand of thinking about political judgment inspired by Kant's *Critique of Judgment*, from which core notions of reflective judgment, exemplarity and *sensus communis* derive, and which was given an influential political elaboration by Hannah Arendt.[4] For this

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[2] "For a concept of understanding, which contains the general rule, must be supplemented by an act of judgment whereby the practitioner distinguishes instance where the rule applies from whose where it does not. And since rules cannot be in turn provided on every occasion to direct the judgment in subsuming each instance under a previous rule (for that would involve an infinite regress), theoreticians will be found who can never in all their lives become practical, since they lack judgment" (I. Kant, "On the Common Saying 'This May be True in Theory But It Does Not Apply in Practice'", (1793), in *Political Writings*, ed. H. Reiss. Cambridge, Cambridge University Press, 1991, p. 61).

[3] R. Bourke, R. Geuss (eds.), *Political Judgment: Essays for John Dunn*, Cambridge, Cambridge University Press, 2009; M. Philp, "What is To Be Done? Political Theory and Political Realism", *European Journal of Political Theory*, 94 (2010), pp. 466-484; R. Geuss, "Political Judgment in Its Historical Context", in his *Politics and the Imagination*, Princeton, Princeton University Press, 2010, pp. 2-16; Id., "Realism and the Relativity of Judgment", in his *Reality and Its Dreams*, Cambridge, MA, Harvard University Press, 2015, pp. 25-50.

[4] I. Kant, *Critique of the Power of Judgment*, (1790), ed. P. Guyer, Cambridge, Cambridge University Press, 2000; H. Arendt, *Lectures on Kant's Political Philosophy*, ed. R. Beiner, Chicago, Chicago University Press, 1982. See A. Azmanova, *The Scandal of Reason: A Critical Theory of Political Judgment*, New York, Columbia University Press, 2012, R. Beiner, J. Nedelsky (eds.), *Judgment, Imagination and*

approach, political judgment combines the appraisal of concrete situations with a context-transcending claim to validity. The Arendtian approach shares some features with Rawls's political liberalism, notably a view that inherited moral criteria no longer provide an authoritative framework for political decision-making, an emphasis on accommodating a plurality of perspectives and the expulsion of truth as a standard in political evaluation. However, its proponents also distinguish themselves quite insistently from what is seen as excessively principle-centered and unpolitical conception of political theory.[5]

In aligning his project with Rawlsian political liberalism, Ferrara stands out from, and challenges, these alternative views of the judgment paradigm. Before examining the machinery of Ferrara's account, we need to set it in the context of some of the key features of Rawlsian political liberalism. For this account, modern democratic societies are characterized by "the fact of reasonable pluralism": that is, their members possess "comprehensive doctrines" (moral, religious, philosophical) which are both incompatible and reasonable. The inevitability of reasonable disagreement about moral, religious and philosophical issues flows from what Rawls dubs "the burdens of judgment", the differences in experience and limits on human thought and knowledge that lead different individuals through the free exercise of reason to arrive at different reasonable conclusions. In order to provide a form of liberalism that does not require the imposition of controversial moral, religious or philosophical views on citizens who reasonably disagree with them, Rawls rejects a view of liberalism grounded in comprehensive doctrine (such as he finds in Kant and John Stuart Mill) in favor of a "freestanding" political conception with its own sort of political justification. Unlike a comprehensive doctrine, this conception does not aspire to be true but rather to be acceptable to all reasonable citizens and endorsed by all reasonable comprehensive doctrines in an

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Politics: Themes from Kant and Arendt, Lanham, Rowman and Littlefield, 1982; A. Norval, "A Democratic Politics of Acknowledgement: Political Judgment, Imagination, and Exemplarity", *Diacritics*, 38 (2008), 4, pp. 59-76; L. Zerilli, "'We Feel Our Freedom': Imagination and Judgment in the Thought of Hannah Arendt", *Political Theory*, 33 (2005), pp. 155-88; Id., "Value Pluralism and the Problem of Judgment: Farewell to Public Reason", *Political Theory*, 40 (2012), pp. 6-31.

[5] B. Honig, *Political Theory and the Displacement of Politics*, Ithaca, Cornell University Press, 1993; L. Zerilli, "Value Pluralism and the Problem of Judgment", cit.

overlapping consensus. This can then form the basis of informed and willing agreement among citizens viewed as free and equal persons, for Rawls.

Rawls views this conception of liberalism as having a particular kind of normativity. As he puts in a well-known earlier formulation,

> what justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us.[6]

The normative standard of correctness for this conception is not truth but reasonableness. The burden that Ferrara takes up from Rawlsian political liberalism is to provide an account of this particular political conception of objectivity with the resources of the judgment paradigm. Ferrara's account of the sources of political normativity seeks to offer an alternative account of "the normative hold that the most reasonable argument in a public reason controversy exerts on us",[7] which opens up some different ways of thinking about the character and scope of political liberalism. As he puts it,

> the normativity that can bind us in a democratic horizon marked by pluralism is the normativity of what is *reasonable for us*, where what is reasonable for us cannot be determined independently of who we want to be […] without at that very moment collapsing the specificity of public reason into some form of theoretical or practical reason (*DH*, p. 219).

Ferrara eschews the justification of criteria for this with reference to pre-political principles. At the same time, the emphasis on what is "reasonable for us" is not intended to move political liberalism in a relativist direction, grounding it merely as the expression of a communal sense of identity: who "we" are and what such an identity consists in are not taken as fixed. Nor does Ferrara think we insouciantly dismiss the question of the sources of this political normativity as in any case irrelevant to, or fully addressed by, an assertion of what we choose to do around here, as in Richard Rorty's "ethnocentric"

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[6] J. Rawls, "Kantian Constructivism in Moral Theory", in his *Collected Papers*, ed. S. Freeman, Cambridge, MA, Harvard University Press, 1999, p. 306.

[7] A. Ferrara, "Public Reason and the Normativity of the Reasonable", cit., p. 588.

conception of political liberalism.[8] Instead, Ferrara draws on the Kantian concepts of reflective judgment and exemplarity in order to delineate the distinct normative character of our democratic horizon.

Reflective judgment involves the appraisal of a concrete particular as a particular, without subsuming it under a more general category. When I judge an object to be beautiful, on this account, I make a particular appraisal of this object, which is not a matter of subsuming it under the concept of beauty. However, this judgment also makes a claim to universal validity or communicability: the aesthetic judgment is "exemplary […] because everyone *ought* to give the object in question his approval and follow suit in finding it beautiful".[9] Judgments of taste exact agreement from everyone, and appeal to a common capacity to apprehend beauty ("*sensus communis*"). In claiming this kind of normativity for the Rawlsian category of the "most reasonable", Ferrara fleshes out the conception of exemplarity at work.

For Ferrara the normativity of the reasonable consists in the exemplary character of a policy, institution, statute, a judicial verdict, which is disclosed through the art of judgment.[10] Exemplarity in his sense has four important aspects. First, it consists in the congruence of the exemplar with the collective or shared identity of those for whom it has normative force. This claim to exemplarity is not a claim that this policy is congruent with just how we think we are now but with "our shared sense of who we could be at our best".[11] So, the exemplarity of political liberalism consists in its "congruence with a concrete modern identity premised on the notion of fairness and equal respect among free and equal citizens".[12] A claim to be the most reasonable is a claim that a policy or

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[8] R. Rorty, "The Priority of Democracy to Philosophy", in his *Objectivity, Relativism and Truth*, *Collected Philosophical Papers*, Vol. 1, Cambridge, Cambridge University Press, 1991. Cf. M. Festenstein, "Pragmatism, Social Democracy and Political Argument", in M. Festenstein, S. Thompson (eds.), *Richard Rorty: Critical Dialogues*, Cambridge, Polity Press, 2001, pp. 203-222.

[9] I. Kant, *Critique of the Power of Judgment*, cit., s. 19.

[10] "Given our shared commitment to *p*, we are shown by the most reasonable argument that we cannot but commit ourselves to *q* as well. [...] The nature of this new commitment is best highlighted not by normativity associated with the application of principles to facts of the matter, but rather the normativity of reflective judgment, understood as judgment in the service of the fulfillment of an identity" (A. Ferrara, *The Force of the Example*, cit., pp. 72-73).

[11] A. Ferrara, "Public Reason and the Normativity of the Reasonable", cit., p. 593.

[12] *Ibid.*

institution commands our consent because it fits in the most exemplary way with this shared sense of who we are at our best. Second, exemplarity also consists in a policy or institution's itself having what is referred to as "exceptional self-congruency", a "law unto itself", expressive of a particular moral tradition but not confined to it (*DH*, p. 64).[13] The normative force of an exemplary policy or institution follows from its being a part of and cohering with the "singular normativity of a symbolic whole" (*DH*, p. 65).[14] Third, exemplarity has an affective component and "sets the public imagination in motion".[15] Fourth, exemplarity is context-transcending. The claim for exemplarity derives its validity from an appeal to a *sensus communis* and a concept of the furtherance of life that should be viewed as a universal capacity to sense what promotes human flourishing. Exemplarity is linked with a Kantian feeling of the promotion or furtherance of life, which Ferrara glosses as the extension of the range of possibilities of our political life.

Just as reflective judgment is the capacity to understand beauty in the aesthetic realm, this exemplary normativity of the most reasonable for the political normativity is disclosed through the reflective workings of judgment. Exemplary normativity, then, is offered as a way of accounting for the distinctive normative force of the "most reasonable" institution, policy, constitution, constitutional amendment, statute, verdict, a Supreme Court opinion and so on. For the exemplary policy, institution, statute, a judicial verdict or conception of justice to possess exemplarity in this sense and so to exert this normative force requires that we possess and exercise a capacity of judgment that allows us to engage with exemplarity. The work of art can disclose new ways of experiencing the world, which our faculty of judgment can both grasp and project as shareable by others.

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[13] Cf. also A. Ferrara, *The Force of the Example*, cit., p. 78.

[14] Cf. also A. Ferrara, "Public Reason and the Normativity of the Reasonable", cit., p. 590.

[15] "Democracy cannot afford leaving political imagination theoretically unattended. The suggestion has been put forward to understand democratic politics at its best – that is, when it brings existing normative principles and practices on the ground into an exemplary congruence or when through exemplary practices it articulates new normative standards and political values – as a way of promoting the public priority of certain ends through good reasons that set the political imagination in motion" (*DH*, p. 212; cf. A. Ferrara, *The Force of the Example*, cit., p. 79).

Ferrara claims is that political liberalism is "uniquely open" to the dimension of exemplary normativity.[16] Of course, he cannot offer a derivation from higher-order principles of this claim without breaching his own methodological self-denying ordinance, violating his conception of the character of political validity. And he concedes that there are other ways of interpreting this notion of exemplarity for the political domain.[17] It does so because it uniquely expresses "the art of judgment" in a political context. The constraints of judgment make it a centrifugal for Rawls, pulling us in the direction of different irreconcilable reasonable conceptions of the good, but limits of time and capacity make it centripetal for Ferrara where we require "a solution within a temporal frame that it is not up to the deliberators to extend at their will":

> This gap is bridged by judgment not by way of limiting the pluralism of the alternative positions assessed in discourse, but by way of harnessing politics to the reasonable, namely, to the area of overlap where what is shared can be found. The art of judgment is the art of extending as far as possible this area of overlap while continuing to keep the normative relevance of what lies within the area of overlapping consensus still undiminishedly capable of exemplarily reflecting the superordinate identity, which includes the conflicting parties [...] This exemplary relation between what is shared and who we are, which constitutes the only source from which the reasonable draws its distinctive normative force once we distinguish public reason from practical reason, provides the basis for everyone – no matter whether concurring or dissenting, majority or minority – to accept the full legitimacy of a politically binding, yet nonunanimous, decision. Once again, the normative force of exemplarity presupposes the capacity of our imagination to represent what is not immediately in front of us and to foster an enlarged mentality (*DH*, pp. 33-34).

This views political argument as primarily organized around the search for the most exemplary resolution, in the form of shareable reasons. ("Primarily" because it is an important part of Ferrara's modification of Rawls that he wants to make space for a different mode of "conjectural" reasoning on the part of non-liberal views but I will not discuss this here.) This process is meant to have an ordering effect, ranking and prioritizing different values and to be binding on participants.

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[16] Cf. A. Ferrara, "Public Reason and the Normativity of the Reasonable", cit., p. 582.

[17] "The Rawlsian view of the reasonable is one of several possible ways of exporting this view of normativity into the political" (A. Ferrara, *The Force of the Example*, cit., p. 78).
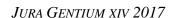
The concern I want to focus on is whether exemplary judgment understood in this way is able both to furnish the source of normativity that Ferrara attributes to it while sticking to the commitments of Rawlsian political liberalism. It would seem to be not just any judgment that can disclose the reasonableness of a policy but only the judgment of a reasonable person. In this context, it seems to mean someone who is in fact using her imagination to foster an enlarged mentality, reflecting on our superordinate identity, and seeking overlap with other citizens. Viewed this way, civic political judgment seems to require certain important conditions. These include, for example, trustworthy testimony in order to ensure a well-grounded basis for judgment and a space for challenge and to offer reasons.[18] More problematically, it seems to require certain civic virtues, including a commitment to enlarging one's imagination and affective instincts. What is potentially difficult about this for the Rawlsian political liberalism is not the bare fact that some civic virtues are required by this conception of judgment, since there is nothing in either conception that precludes it from being normatively demanding. Rather, it is the thought that the virtues required by this specific conception of judgment come trailing contentious philosophical and ethical commitments that are meant *ex ante* to be excluded from the domain of the political. The vision of exemplarity brings together emotion, imagination and reasons in a certain way, suggesting, for example, that our affective responses and imaginative projections are subject to scrutiny in the space of reasons.[19] However well justified this is, this seems to be the kind of controversial claim with respect to different reasonable conceptions of the good that Rawlsian public reason is meant to exclude.

Now Ferrara could respond to the effect that there is no commitment to simple-minded agreement on his conceptions of judgment and exemplarity. (Rawls in his late work recognized that the burdens of judgment make agreement on justice as fairness or any single set of liberal principles unrealistic.[20]) However, this does not seem to meet the challenge, which asks how his model of judgment and exemplarity could reasonably be accepted by free and equal persons while (for example) the Aristotelian conception of emotion cannot. To the extent that the model of judgment and exemplarity shares

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[18] Cf. M. Festenstein, "Truth and Trust in Democratic Epistemology", in R. Geenens, R. Tinnevelt (eds.), *Does Truth Matter? Democracy and Public Space*, New York, Springer, 2009, pp. 69-80.

[19] See *DH*, p. 213.

[20] J. Rawls, "The Idea of Public Reason Revisited", in his *Collected Papers*, cit., pp. 582-583.
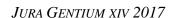
premises and arguments with comprehensive conceptions of the good, which are meant to be ruled out, it would seem to be in the same boat. Ferrara does not seem to have given us the material to show why a distinction should be drawn between his own model and the rejected comprehensive ideas.

This tension emerges in Ferrara's distinctive and important discussion of the idea of democratic openness. Exemplary normativity plays an important role in Ferrara's conception of democratic politics "at its best", particularly transformative politics, and his linked conception of a democratic ethos. Politics is capable of "disclosing a new political world for us", expanding our sense of the possibilities of political life.[21] Here Ferrara offers a general characterization of politics at its best – the prioritization of ends on the basis of good reasons that move our imagination. Political innovation, he argues, draws on a "fundamental source – exemplarity and its force, which proceeds from the radical self-congruence of an identity and appears to reconcile 'is' and 'ought', 'facts' and 'norms'" (*DH*, p. 38). Like the work of art, so the outstanding political deed arouses a sense of "enhancement of life", the enriching and enhancement of a life lived in common, and commands our consent by virtue of its exemplary ability to reconcile what exists and what we value.

This creative expansion of our identity is supported in democratic politics by a particular ethos that Ferrara calls a passion for openness: "we can understand 'openness' as the property of those elements that set the imagination in motion, create a space of possibilities, allow for the space of reasons (and of judgment) to work and constitute a standard of political desirability" (*DH*, p. 65). This is understood as an attitude of receptivity to the new, in favor of exploring new possibilities of political life, promoting

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[21] "All the important junctures where something new has emerged in politics and has transformed the world … were junctures where what is new never prevailed by virtue of its following logically from what already existed, but rather by virtue of its conveying a new vista on the world we share and highlighting some hitherto unnoticed potentialities of it. Like the work of art, so the outstanding political deed arouses a sense of 'enhancement of life', the enriching and enhancement of a life lived in common, and commands our consent by virtue of its exemplary ability to reconcile what exists and what we value" (*DH*, p. 38). "[A]ll truly transformative moments when new ideas have emerged in politics – from natural rights, through consensus of the governed as the ground of the government's legitimacy, through the abolition of slavery and later universal suffrage, all the way to social rights, gender equality and human rights – new forms never prevailed by virtue of their satisfying antecedently established principles, but rather by virtue of their disclosing new perspectives on the world shared in common" (*DH*, p. 64.).

a public culture that fosters unconventional solutions, and a condition of cognitive receptivity, the preparedness to be self-critical.[22] Although it cannot expected to be in operation all the time, democratic politics at its best is a standard for our normative understanding of democracy, equally distinct both from routine politics – politics as "the science and art of political government" and as "the conducting of political affairs" – that we experience during most of our political lives and from populist mobilization. This conception of openness is familiar from the kind of liberalism articulated by Mill and Dewey, who, as have seen, are usually viewed by political liberals as "comprehensive" liberals whose conception of political value rests on a particular controversial moral account and therefore falls beyond the pale of the freestanding political doctrine. We see this contrast in Ferrara's searching criticisms of other recent attempts to articulate a democratic ethos, particularly *agape* (as it appears in the work of Charles Taylor), hospitality (Jacques Derrida) and presumptive generosity (William Connolly and Stephen White). These approaches share with Ferrara the aim of cultivating a more generous and less anxious form of engagement with difference in a "hyperpluralist" milieu where differences are often perceived as alien and threatening. However, these are all said to be "comprehensive" moral notions as opposed to the "specifically political" disposition of openness (*DH*, p. 62).

For Ferrara, the link between democratic openness and political liberalism seems to be something like this. An ethos of openness is part of any reasonable conception of political value, and, in this sense, is part of a citizen's possessing and exercising the capacity of reflective judgment in a reasonable way. At the societal level, the ethos of openness allows and promotes any reasonable "great transformation" and so can be integrated in a modular way into a variety of reasonable comprehensive conceptions. Yet to say that any reasonable person *must* be moved by a passion for openness defines the scope of reasonableness in a rather peculiar way. On the face of it, the motivation for political liberalism is that there are reasonable citizens who are not moved by this passion and reasonable political doctrines that are not include it. But if the claim is only that reasonable doctrines must *tolerate* this passion in others that seems to fall short of

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[22] Cf. *DH*, pp. 14, 48, 214.

Ferrara's vision of a democratic society: it would allow for a society entirely composed of citizens who subscribe to mere tolerance of openness. But this is exactly what Ferrara wants to avoid, although it seems quite compatible with Rawlsian political liberalism.

Outlining these tensions between what Ferrara hopes to achieve with the judgment approach and his loyalty to Rawlsian political liberalism only throws a spotlight on a small aspect of Ferrara's wider study, of course, but it is an aspect with wider resonances. For driving the adherence to Rawls is a sense that only the principles of this political liberalism can minimize oppression in a hyperpluralist society. Yet it is this kind of theoretical guarantee on behalf of underpinning principles that the strong judgment model rejects.

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Inside the Rawlsian Horizon?

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Abstract: Alessandro Ferrara's attempt to interpret the "spirit of democracy" offers us a perspicuous insight into the issues at stake, on the background of contemporary "inhospitable" conditions for representative government. These issues are approached from new perspectives, offering original points of view. Nonetheless the deliberate choice to approach such issues "from the normative framework developed by Rawls in *Political Liberalism*" partially inhibits the possibility of actually engaging with the challenges Ferrara so vividly sketches in their full radical complexity.

[**Keywords:** Democracy, Politics, Political Liberalism, Pluralism, Globalization]

The risks of democracy

Mainstream political theory in the 20th Century could be described as a slippery slope on which democracy distanced itself from its normative foundations in a melancholic downsizing of expectations. Elitist political science negated the very possibility of democratic government at the beginning of the century, and was replied by the different versions of "democratic elitism". Joseph Schumpeter reduced democracy to a method for selecting governmental elites, whereas Robert Dahl reinterpreted it as a "poliarchy" of different groups capable of influencing the executive power. At that juncture, even such austere reformulations as these seemed too optimistic: we might recall Norberto Bobbio's reflections on the "broken promises" of democracy, the analysis of its perverse effects and "evolutive risks", or the condemnation of its sluggishness in making decisions, lack of efficiency and poor accountability. A series of successive surrenders that radical participative theories tried to counter by criticizing liberal(-bourgeois) representative democracy while other scholars wished for technocratic remedies.

Recent scholarship has partially modified this picture. Since the last decades of the last century, the different versions of deliberative theories have focused on the communicative dimension implicit in the democratic process of decision-making. In so doing, they re-opened a debate on democratic procedures that ended with suggesting new means of consulting the public, if not actual popular participation. From another point of view, processes of transnational and international integration require that we transcend

the domestic dimension. At the same time, however, global society displays a redistribution of functions and powers between public and private agencies, economic and political institutions that jeopardizes the very possibility of democratic government.

Faced with such a scenario, some authors have gone back to considering the profound issue of the very meaning of democracy, often returning to its ancient Greek origins,[1] and *The Democratic Horizon* can be understood in this framework.[2] While Max Weber investigated the "spirit of capitalism", Alessandro Ferrara's aim is to interpret the "spirit of democracy", that is, the "*democratic ethos* that underlies and enlivens the procedural aspects of democracy and that […] proves difficult to reproduce at will and to be 'trivially imitated'" (*DH*, p. 5). Democratic procedures are indeed compatible with their "trivializing emulation": they can be "formally satisfied yet substantively deprived of all meaning", whereas "elections without democracy" are possible and the "significance of electoral representation" is changing (*DH*, p. 4). In his farewell to the "procedural strategy," Ferrara revives the approach modelled by interpreters of the democratic ethos such as Alexis de Tocqueville and John Dewey and adopts a *longue durée* perspective: "Democracy is coeval with the philosophical conversation about politics initiated by Plato in *The Republic*" (*DH*, p. 3); however, after having represented *a* form of government (and a bad one, we might add, according to mainstream political thought) for almost two and half millennia, democracy has become "*the* quintessentially legitimate form of government" (*DH*, p. 4) and, eventually, a horizon.

Nevertheless, the terrain of democracy has become more and more inhospitable. Ferrara quotes four issues identified by Frank Michelman in 1997: "The immense extension of the electorate"; "The institutional complexity of contemporary societies" (*DH*, p. 6); "The increased cultural pluralism of constituencies"; and "The anonymous quality of the processes of political will-formation" (*DH*, p. 7); the main response to these conditions was democratic "dualist" constitutionalism which only refers the consent of

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[1] In recent Italian scholarship, examples are the books by Nadia Urbinati, *Democrazia in diretta*, Milano, Feltrinelli, 2013; Id., *Democracy Disfigured. Opinion, Truth, and the People*, Cambridge MA-London, Harvard University Press, 2014 and Geminello Preterossi, *Ciò che resta della democrazia*, Roma-Bari, Laterza, 2015.

[2] A. Ferrara, *The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism*, New York, Cambridge University Press, 2014, henceforth *DH*.

the governed to a higher level of law-making. At the beginning of the 3rd millennium, the situation has been exacerbated by the addition of further "inhospitable" conditions. Ferrara indicates the powerful influence migratory flows have on citizenship, creating a scenario that is increasingly similar to ancient polis with alien residents and even slaves. He adds "the prevailing of finance within the capitalist economy" that has in fact actually "revived traits of brutality typical of earlier stages, of capitalism at the onset of the Industrial Revolution", including "the terminal decline of employed labor *qua* generator of wealth and social prestige" (*DH*, p. 8). He notes that "the acceleration of societal time contributes to a verticalization of social and political relations" (*DH*, p. 9). Furthermore, financial globalization and global challenges fuel "tendencies towards supranational integration" (*DH*, p. 8). In addition, however, the public sphere is suffering a second "structural transformation". The new social media are generating an "incipient re-aggregation" of the traditional atomized audience with the rise of new opinion leaders and a crisis in the quality press. Finally, Ferrara stresses the widespread diffusion "of opinion polls and their influence on the perceived legitimacy of executive action" (*DH*, p. 8). Consequently, on the one side "democratic polities […] will have to develop new forms of adaptation to a social environment that is by and large more unfavorable" while on the other side "democracy constitutes a hope for vast regions of the world" (*DH*, p. 12).

With this diagnosis, Ferrara goes to the heart of the matter; he offers us a perspicuous insight into the issues at stake in every attempt to make sense of the democratic heritage in our epoch. Through the chapters of the book these issues are approached from new perspectives, offering original points of view. Ferrara declares that his aim is to take on contemporary challenges to democracy "from the normative framework developed by Rawls in *Political Liberalism*". The differences between this approach and that developed in *A Theory of Justice* are emphasized and the Rawlsian view is rounded out by the supplementary conceptual resources provided by the "aesthetic sources of normativity", i.e. exemplarity, judgment and the imagination, as Ferrara

himself investigated in his previous books.[3] In so doing, political liberalism is empowered to release "its full potential", and Ferrara's move to recover the democratic ethos can be seen as a way of updating – or upgrading – the Rawlsian paradigm. My thesis is that, unfortunately, this choice partially inhibits the possibility of actually engaging with the challenges Ferrara so vividly sketches in their full radical complexity due to certain intrinsic features of Rawlsian theory as well as the fact that it was formulated and developed before the contemporary wave of globalization.[4] Imprisoned within the Rawlsian horizon, Ferrara's text does not allow us to get the theoretical satisfaction we might have hoped for after reading his shrewd diagnoses.

Democracy between imagination, judgment and pluralism

This is apparent from the beginning, that is from the seminal definition of politics that opens the book. Ferrara takes care to emphasize not only the Machiavellian autonomy of politics from morality but also its autonomy from metaphysics, on a farewell to Plato's myth of the cave launched by Hannah Arendt and developed by Rawls himself. If standards "are to be found inside politics and not outside it" (*DH*, p. 28), in a global world we must adopt "methodological nationalism". Ferrara conducts a (reductive, in my view) reading of the Machiavellian autonomy of politics from morals as the statement of a "deontological difference" of rulers. However, as far as we approximate the ideal of a cosmopolitan rule of law, "all justification for the deontological difference collapses in light of the concrete actionability in international courts of the torts unjustly suffered by a single state" (*DH*, p. 30). One might question if – at least ideally – that is not already true in the framework of modern constitutionalism. At any rate Ferrara's definition of politics as

> the activity of promoting, with outcomes purportedly binding or at least influential for
> all, the priority of certain publicly relevant ends over others not simultaneously pursuable,

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[3] See A. Ferrara, *Reflective Authenticity. Rethinking the Project of Modernity*, London and New York, Routledge, 1998; Id., *Justice and Judgment. The Rise and the Prospect of the Judgment Model in Contemporary Political Philosophy*, London, Sage, 1999; Id., *The Force of the Example. Explorations in the Paradigm of Judgment*, New York, Columbia University Press, 2008.

[4] I approached this issue in my article "Rawls e le sfide della globalizzazione", in A. Punzi (ed.), *Omaggio a John Rawls (1921-2002). Giustizia, diritto, ordine internazionale*, *Quaderni della Rivista internazionale di filosofia del diritto*, Milano, Giuffrè, 2004, pp. 429-465.

or of promoting new ends and promoting them in full autonomy from both morals and
theory within a horizon no longer coextensive with the nation state (*DH*, p. 30)

implies "the exchange of reasons as a part and parcel of that more general attempt […] to promote the priority of certain public ends" (*DH*, p. 32).

This is not a mere re-visitation of deliberative democracy, however: Ferrara's originality lies in implying "a moment of *judgment*" in order to make decisions, the very dimension of *recognition* and "the moment of *gift giving*" (*DH*, p. 35) as constitutive elements of politics; the same originality is shown in the attempt to define politics *at its best* as "the weaving of *vision* into the texture of what is possible" (*DH*, p. 37), i.e. "*the prioritization of ends in the light of good reasons that can move our imagination*" (*DH*, p. 38). The latter is seen as the "potential for *disclosing a new political world* for us, in which we recognize the reflection of our freedom" (*DH*, p. 40). In my opinion, the author suggests promising directions here; and they seem to indicate paths for escaping from the repetition of the same normative themes that affected mainstream political philosophy in the last decades. Nevertheless, his definition of politics seems to remove the very question of power – seen simply as "an ineliminable fact of politics, just as crime is an ineliminable component of social action" (*DH*, pp. 36-37) – that is quite consistent with the Rawlsian approach.

The imagination, inherent in politics at its best, re-emerges in Ferrara's characterization of the "spirit of democracy". Three components of "democratic culture" – the necessary condition for stabilizing democracy and making it flourish – are collected from the tradition of modern political thought: (a) the Montesquieuan "political sentiment of virtue […] that includes an orientation towards the common good" (*DH*, p. 45), revived in the "reciprocity" of Rawls and constitutive of democracy according the deliberative theory; (b) The Tocquevillean *passion for equality* which includes freedom and re-surfaces today in the theory of recognition elaborated by Axel Honneth, Charles Taylor, Avishai Margalit; and (c) *individualism*, interpreted in the peculiarly American version expressed by authors such as Thoreau, Emerson and Whitman.

Ferrara adds a fourth element: a *passion for openness* "that orients opinion in the public sphere in the direction of favoring unconventional solutions" (*DH*, p. 48) and is the opposite of a fear of the unknown. Conveniently, Ferrara takes a step back from "the

reductionism implicit in Popper's view of the so-called open society": "nothing appears as ambiguous and closed as the 'open society'" (*DH*, p. 52).[5]

Here is one of the main points on which the Rawlsian paradigm is fertilized by a reference to the aesthetic sources of normativity: exemplarity is seen as "an exceptional self-congruency that should not be understood […] along merely coherentistic lines". And Rawls's "notion of the 'reasonable' can be used for exporting this view of exemplary normativity into the realm of politics". Bearing a family resemblance with works of art and creative life courses, "openness" can be seen as "the property of those elements that set the imagination in motion, create a space of possibilities, allow for the space of reasons (and judgment) to work and constitute a standard of political desirability" (*DH*, p. 65).

What this work appears to re-open is political liberalism itself. While Rawls considers it suitable only in a liberal democratic political culture (and more or less explicitly in the Christian protestant heritage), chapter 3 provides a pioneering attempt to extend political liberalism to different experiences. This seems to be unavoidable given the radical appeal by political and religious pluralism among today's Western democracies. Traditional versions of pluralism seem "to admit pluralism in many areas except when it comes to the reasons why pluralism should be accepted". This kind of "liberal monopluralism" ends up leading to a "fundamentalization of tolerance and individual autonomy". The proposed alternative is the idea of a "reflexive pluralism". Ferrara argues that, on one side, a pragmatic approach – the idea that pluralism is useful "for protecting us from the evils of conflict" – "can at best help consolidate a *modus vivendi*", but "[i]t cannot fully legitimate a *democratic* order" (*DH*, p. 72). On the other side, "principled pluralism" based on the Kantian view of autonomy does not work with people "who do not share either the moral individualistic premise, the value of autonomy or the premise of the equality of citizens" (*DH*, p. 73). The third alternative is presented (with "epistemic humility") as "*one* among several possible ways of arguing for the acceptance of pluralism, and it rejects the very idea of one conclusive argument for pluralism as incurring in the risk of a performative contradiction" (*DH*, p. 73). The

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[5] "Where the planned society pivots around the state, open society pivots around the market" (*DH*, p. 51); in contrast, as authors such as Dewey, Keynes, Rawls and Habermas have shown, "market dynamics lead to oppressive results and the preservation of openness requires regulation, usually of a legislative and constitutional kind" (*DH*, p. 53).

reasonable instead of the rational constitutes the benchmark and the arguments are presented in the form of conjecture.

The author engages in proposing three conjectural arguments. According to the first, integralist Catholics and fundamentalist Protestants could accept pluralism as far as they consider the imposition of a single religious vision as running the risk of idolatry, e.g. the divinization of what is human, and acknowledge that "the Church constitutes the embodiment of 'Truth and Life' for the Christian, but also represents a concrete, contextual historical home in which the Christian *cannot be completely at home*" (*DH*, p. 79). This first argument is based on an essay by Robert Bellah, while Michael Walzer inspires the second one by differentiating between two prophetic currents in ancient Judaism. The first current, exemplified by Isaiah, emphasized the uniqueness of salvation and consequently of the good society, thereby posing the Jews as "a light for the Gentiles", but the second one is intrinsically pluralistic. According to Amos, the Israelites are not the only chosen people; their history has an exemplary significance, but other experiences of liberation are also possible. Finally, Andrew March suggests an argument for Islam that is actually based on Rawlsian political liberalism, which makes the most of studies by Muslim authors such as Tariq Ramadan and Abdullahi Ahmed An-Na'im: "The major normative force that can motivate the Muslim believer to a loyal adhesion to a democratic secular state is the duty to fulfil contractual obligations, strongly emphasized by both the text of the Qur'ân and in the mainstream interpretations of it over time" (*DH*, p. 83). Moreover, the *jihad* can be interpreted in a strictly defensive sense and the passages of Qur'ân which prohibit loyalty to non-believers have been contextualized as written in the Medina period of the Prophet's life. Similar exercises could be repeated for other comprehensive visions, and "the original program of Rawls 'political liberalism' will be expanded in the direction of a 'conjectural turn' that complements the original emphasis on public reason with a new emphasis on conjecture" (*DH*, p. 87).

In my opinion, these impressive efforts point in the right direction by rethinking the question of cultural pluralism. Ferrara opportunely stresses the tentative character of these arguments. When he reminds (Western) liberals and democrats that "their case for pluralism is but *one* among a 'plurality of pluralism', not the one doctrine of pluralism that other political cultures of the planet ignore at their peril" (*DH*, p. 87), he evokes

another central point. Intercultural dialogue requires participants to work hard: to engage themselves in a re-interpretation of their values, principles, paradigms and consuetudes; this is the endeavor that Boaventura De Sousa Santos has called "diatopic hermeneutics", i.e. calling into question the *topoi*, the cognitive and normative commonplaces of different cultural experiences. Moreover, mutual recognition does not happen in a vacuum, in an ideal discursive situation or under the veil of ignorance. Recognition presupposes struggles and social conflicts that are moral but not solely.

Accommodating hyperpluralism

These problems emerge in examining the phenomenon of *hyperpluralism*. How are we to confront a case in which even conjectural arguments fail? According to Ferrara, "the received view of political liberalism" has to be amended because of the "high degree of normative idealization that is still present" (*DH*, p. 89) in it and the "element of contingency that Rawls associated with normativity". In other words, Rawls sees overlapping consensus as the possibility of overcoming the conflict between Lockean and Rousseauian versions of liberal democratic political culture. The "fact of reasonable pluralism" was inspired by "a highly stylized picture" (*DH*, p. 90) of the United States, but the mere presence of Roman Catholic or Christian Orthodox religious cultures, or of political visions inspired by Marxism in Europe and elsewhere serves to blur this picture, and of course our contemporary experience is more and more complex when we consider the effects of massive immigration, the intrinsic dynamism of civil society and religious evolution. It might seem that our only options are, on one side, the imposition of liberal-democratic principles by force, misrecognition of the alternatives and propaganda ("stability for the wrong reasons"), and, on the other side, "just a *modus vivendi*". However, Ferrara maintains that we are not entrapped in such a dilemma: "Rawls's political philosophy is rich enough to offer us a less bleak alternative answer" (*DH*, p. 91). Indeed, he is unsatisfied by alternative proposals such as the "agonistic" interpretation of hyperpluralism.

The author criticizes the thesis developed by Chantal Mouffe in particular. According to Mouffe, the idea of pluralism without conflict is an illusion, and the exclusion of "unreasonable" views masks "what is really a political decision as a moral

exigency" (*DH*, p. 93), assimilating the reasonable into liberal doctrine. Ferrara contextualizes these theses, albeit in my view not all that persuasively: if it is true that Rawls distinguishes moral constructivism from political constructivism, his conception of what is "political" is quite different from what Mouffe appears to mean. More radically, Mouffe's critiques of the requisite of reasonableness are seen as implying an inability to distinguish between coercive and non-coercive forms of political order. In so doing, she

> loses the possibility of identifying any foothold on which a critique of existing hegemonic practices, existing grammars of the political, existing patterns of exclusion could rest its claim to constitute something other than an irrelevantly different (and possibly even more oppressive) form of hegemony (*DH*, p. 94).

Frankly, I do not understand why acknowledging the peculiarity of the political and the insurmountability of political conflict would mean losing all evaluative and normative arguments, even contextual or of an exemplary kind, not to mention immanent critique. At any rate, Ferrara makes use of some theses elaborated by other theories of agonistic pluralism. James Tully, he writes, "highlights and offers us a possibility of correcting a blind spot of Rawls's view" (*DH*, p. 96), namely the idea of a linear and one-directional transition from *modus vivendi* to overlapping consensus.

Through this discussion, Ferrara grasps one of the main problematic aspects of *Political Liberalism*. Overlapping consensus, seen as a moral agreement (neither a political compromise nor the acceptance of legal principles) imposes a heavy ethical burden on the parts involved, and the kind of "reasonableness" required by the comprehensive doctrines is quite demanding.[6] One might ask if such a consensus has ever been possible outside the Philadelphia Convention (and, I would add, without removing thorny issues such as slavery); In any case, the genesis of post-Second World War constitutions in Europe, Latin America, South Africa etc. cannot be reconstructed according to this framework.[7] Ferrara does not contest Rawls's view of overlapping

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[6] Cf. e.g. the section on the issue of abortion in Rawls's book, where the official moral doctrine of the Roman Catholic Church is considered unreasonable: J. Rawls, *Political Liberalism*, New York, Columbia University Press, 1993, pp. 242-243, n. 32.

[7] Note that the dynamics of the Italian *Assemblea Costituente* in 1946-47 – in which liberals, socialists, communists and Christian democrats debated not being able to forecast the results of the following elections – has been interpreted in light of the original position/veil of ignorance model.

consensus, however. Rather, he connects it with another model – in my opinion even more problematic – elaborated by Rawls in his last book, *The Law of Peoples*.

This book outlines a distinction in the global landscape between (a) liberal peoples and liberal societies; (b) decent peoples and well-ordered hierarchical societies; and (c) outlaw states. In this framework, the law of peoples is the law stated by liberal peoples, which tolerates decent peoples and admit them under the veil of ignorance. However, the "not ideal theory" concerning outlaw states is identified with the just war theory.[8] One can imagine three concentric circles, and there is something disturbing in the very idea of a club of liberal countries that establishes the principles of the law of peoples and tolerates only those countries that accept them. This approach is a regression in relation to existing international institutions, a network open to all peoples. Moreover, the main instrument for enforcing the law of peoples seems to be war; Rawls appears blind to the various forms of international and transnational jurisdiction, including the ICC, not to mention measures to de-potentiate geopolitical, economic-financial, social and anthropological factors of "political injustice".

I find the proposal that this framework be applied to hyperpluralist societies in a sort of reversal of the domestic analogy[9] even more disturbing. Opportunely, Ferrara wishes to overcome the "mental cramp" represented by the assumption that there is a "preordained sequence of stages": conflict   *modus vivendi*   constitutional consensus   overlapping consensus. In order to do so, however, he suggests we conceive of the "democratic polity as a *multivariate unity* that includes *both overlapping-consensus type and modus vivendi-type relations* between the citizens"; we thus have

> three kinds of citizens: (a) citizens who embrace *all* the constitutional essentials in the
> light of principles rooted in their comprehensive moral conceptions […] (b) citizens who
> embrace *some* of the constitutional essentials in the light of principles rooted in their
> comprehensive moral conceptions and *other* constitutional essentials (for example, the

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[8] Rawls adheres *sine glossa* to the version of the theory elaborated by Michael Walzer, including the doctrine of "supreme emergency". This renders problematic any move to exclude pre-emptive strikes, as Ferrara does with a surplus of charity (*DH*, p. 106).

[9] Cf. C. Bottici, *Men and States. Rethinking the Domestic Analogy in a Global Age*, London, Palgrave, 2009.

free exercise of religion) out of merely prudential reasons; and (c) citizens who embrace *all* of the constitutional essentials out of prudential reasons" (*DH*, p. 107).

Ferrara risks giving the impression that he proposes to exclude every form of mutual learning and cross-fertilization, but I do not think that is his intention. Nonetheless, this image of the multivariate polity appears consistent with the image of our societies that Ferrara clearly sketches when he writes that contemporary democracies "resemble more and more the ancient democracies, inhabited by citizens who would decide the fate of denizens of various kinds and of slaves". That is to say, "many who are not citizens at all: resident aliens, immigrants awaiting legal residency, illegal aliens who have no chance of becoming residents, refugees, people enslaved by human-trafficking rackets" (*DH*, p. 8).

The plural roots of democracy

Moreover, it seems to me that the *Law of Peoples* model is incompatible with the attempt to "disentangle the 'spirit of democracy' from its original roots in the culture of radical Protestantism and envisage a plurality of 'cultures of democracy' anchored to various civilizational bedrocks" (*DH*, p. 109). The points of reference here are Shmuel Eiseinstadt's vision of "multiple modernities" and Karl Jaspers's notion of "Axial Age". According to Ferrara, modernity represents the second Axial Age, and he hypothesizes that the linguistic turn has ushered in a third one, characterized by "a sense of the equal dignity of the frames of meaning which shape our understanding of the world, a sense rooted in the post-Linguistic Turn sensibility and totally unknown to the previous two Axial Ages" (*DH*, p. 124). The point is that this perspective can be extended to democracy: if democracy originated "*qua* self-government" during the first Axial Age, flourished during the second one and has become a general horizon today, one can conceive of a "program in political philosophy that directs our efforts toward understanding how the ingredients of the 'spirit of democracy' can originate from and flourish in civilizational contexts other than Christian and Protestant ones" (*DH*, p. 126), i.e. the idea of "multiple democracies" rooted in several democratic *ethoses*.

Ferrara locates a first moment of "*consonance* across diversity" in the idea of the common good (which reemerges in the Confucian vision of harmony, is emphasized by Muslim *ulema* and characterizes the Hindu tradition). He shows that the idea of consent

as the grounds of legitimacy is present in Judaism as well as Hinduism and Buddhism; in the Islamic concept of *shura* An-Na'im sees "institutionalized constitutional principles that includes the population at large". Several instances of convergence can also be found regarding the value of individuality and the more encompassing notion of person.

There are indeed persisting forms of dissonance that made the project of "provincilizing" (Chakrabarty) Western liberal-democratic polities necessary. On one side, "much more unpalatable to non-Western cultures appears to be the very idea of *subjective rights, qua* prerogatives of the single individual against authority and potentially against the whole political community", and the modern "priority of rights, *qua* subjective entitlements, over duties" (*DH*, p. 133). For instance, in Muslim tradition rights are invoked as restorative concepts, and "the idea of rights 'in general', as preordained to any legal action and as unconditional prerogative of individuals," is difficult to accept (*DH*, p. 134). However, "such views are well represented also within Western culture and they form the backbone of the indigenous Western resistance to Protestant modernity" (*DH*, p. 135). On the other side, the value that has been attributed – since Machiavelli's praise for *tumulti* in Ancient Rome – to agonism and conflict is hard to accept on the part of cultures that are "wary of the 'disharmony' implicit in conflict, […] suspicious of the divisive potential unleashed by a plurality of organizations, parties, associations, newspapers, media" (*DH*, p. 138): here it is more challenging to find non-Western equivalents. I suggest that a more promising approach would lie in considering the widespread adoption of rights speech by grassroots movements inside "non-Western" cultural contexts and initiatives. At any rate, Ferrara proposes a table of the "Multiple Democracies and Their Ethos" on this basis (*DH*, p. 141). Even if this specific typology is not wholly persuasive, one cannot but appreciate Ferrara's attempt to open a new, highly relevant and vital research field.

Governance and deliberative democracy

Ferrara's innovative mix of Rawlsian concepts, Wittgensteinan themes and reference to the aesthetic forms of normativity constitutes the foundation for convincing arguments in defense of multiculturalism (including one based on the value of freedom itself, for instance). If there is one critique to be made, it would be that the author gives the

impression of underestimating the transformation, contamination and cross-influence of cultures, and of the multiple forms of belonging that affect contemporary individuals, even though Ferrara does clarify the difference between the cognitive question and the practical one. The final chapter returns to examining Joshua Cohen's project of a "political not metaphysical" conception of truth. This vision is urgent because we need "a notion of truth that allows ultimate truths to share a common political space without causing such space to regress to a renewed state of nature within whose bounds only *force* or the threat of its use decides which political theology is to prevail" (*DH*, p. 187). Ferrara affirms that the Rawlsian vision of the reasonable has marked a conceptual revolution "in opposition only to a certain function that truth has played in perfectionist conceptions of politics" (*DH*, p. 190). He advances "a nonpartisan view of truth […] neutral *also* with respect to the 'truth versus justification'" (*DH*, p. 218).

What I find more problematic is the way the question of governance is considered, i.e. "*the coordination and regulation of political action in the absence of a capacity to impose sanctions for noncompliance*" (*DH*, p. 173). Connected to the widespread diffusion of soft law and standards like "best practices" and "benchmarking", Ferrara sees governance as based not on the monopoly of the force but rather on "a *softer* kind of monopoly […] on the *monopoly of the attribution of legitimacy*" (*DH*, p. 174). The question is whether this means a regression in democracy, and Ferrara suggests that this issue be approached from the point of view of deliberative theories. This approach aids in clarifying that democracy is not a synonym of majority rule, and the absence of coercion need not be seen as a problem. The thorny question of "the assumption of the legislative authorship of the *demos*" (*DH*, p. 177) can be solved in light of the dualistic constitutionalism that Rawls borrows from Ackerman and Michelman. Practices of governance do not depress the democratic quality of institutions if and only if "they take place within the boundaries of 'constitutional essentials' that meet with the consent of free and equal citizens as manifested in referenda or in more indirect but still recognizable ways" and "some recognizable form of accountability remains in place" (*DH*, p. 178). Focusing on the democratic deficit of the EU, Ferrara optimistically states that "what we witness is the burgeoning rise of a *new kind* of democratic authorship of the 'citizens of the world' within the cosmopolitan institution of a possible future" (*DH*, p. 181). More

than traditional competitive elitism, "Deliberative democracy is compatible not with the denial or disappearance of the legislative authorship of citizens, but with a more *indirect* reconfiguring of it" (*DH*, pp. 181-182). "No reason thus exists for supporters of deliberative democracy to experience anxiety *vis-à-vis* the rise and diffusion of processes of governance in the postnational context of contemporary politics" (*DH*, p. 184).

Unfortunately the anxiety remains, together with the feeling that Ferrara grants insufficient weight to the features of the contemporary metamorphosis of law and politics.[10] We are witnessing a re-dislocation of power from politics to the financial economy and from public to private agencies (indeed, against the background of a redistribution of income and wealth from the poorest to the richest). Global law is under construction through the progressive substitution of contract regulation, arbitrates and judge-made law for statutory law enacted by representative legislatives.[11] The very normativity of law is fading, while governance is not capable of governing today's huge concentrations of economic, geopolitical and symbolic power. If "a deliberative view of democracy can offer us a more adequate conceptual framework for grasping the nature and operation of that *moral suasion* that constitutes the best instrument for coordination within processes of governance" (*DH*, p. 183), one might ask how *moral* the moral suasion is, and if it is truly *suasion* and not *de facto* coercion.[12] Regarding the EU, what is at stake is precisely the move to substitute the principles – the constitutional essentials – of the common constitutional heritage (social rights and the welfare model *in primis*) with financial parameters and the unconstrained hegemony of the principle of market competition. Confronted with this scenario, the reference to deliberative democracy and its typical procedures runs the risk, albeit unintentionally, of providing ideological fuel to neoliberal programs.[13]

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[10] Cf. A. Catania, *Metamorfosi del diritto. Decisione e norma nell'età globale*, Roma-Bari, Laterza, 2008.

[11] Cf. the works by Maria Rosaria Ferrarese, such as *Le istituzioni della globalizzazione, Diritto e diritti nella società transnazionale*, Bologna, Il Mulino, 2000; *Prima lezione di diritto globale*, Roma-Bari, Laterza, 2012; "Governance: a Soft Revolution with Hard Political and Legal Effects", *Soft Power*, 1 (2014), pp. 35-56.

[12] Let us think e.g. to the 2011 letter by Jean-Claude Trichet and Mario Draghi to the Italian Government, which sketched a program of economic and institutional reforms actually implemented in the following years.

[13] Cf. e.g. G. Moini, "How Participation Has Become a Hegemonic Discursive Resource: Towards an Interpretivist Research Agenda", *Critical Policy Studies*, 5 (2011), p. 149-168.

The role of law and that of power

Let me conclude with some more general remarks. My impression is that the adoption of the Rawlsian paradigm results in a paradoxical undervaluation of the role and function of law and legal systems. After decades of denouncing the risks of "juridification", Jürgen Habermas in his late works acknowledged and investigated the space of the legal medium between morality, on one side, and the economy and administration on the other side. Only the legal system is able to act as a "transformer", downsizing the high voltage of moral principles in legal norms which can actually regulate the system whose media are money and power. One might add that, under the rule of law, the confrontation between different comprehensive doctrines is not aimed at obtaining a deep moral consensus but rather at implementing legal regulation (think for instance of apparently unsolvable cases such as abortion laws). At a lower voltage, the principles are no longer the gods who fight for life or death as in the Weberian picture. Moreover, in his severe critique of George W. Bush's "immediate moralization" of international politics, Habermas affirmed that, in the face of the plurality of the interpretations of principles – even universal principles – only a communicative process carried out inside a legal framework and according to legally defined procedures can be successful. It depends on "the logic of practical discourses; it is not a matter of good or bad will".[14] Only "inclusive legal procedures open to all of the parties involved that enjoin them to reciprocal perspective-taking" are able to "engage in the degree of decentering of interpretive perspectives demanded by the conceptual constraints of granting equal consideration to the interests of all".[15] I think that a closer consideration of these instances could help amend the notion of overlapping consensus in his Rawlsian version.

Secondly, I have the feeling that the question of the peculiarity of politics, or "the political", has been overcome too quickly in liquidating Mouffe's positions. While the author does consider the Machiavellian positive evaluation of some forms of political conflict in typifying the different forms of democratic ethos, the resources of the historical and theoretical nexus of democracy, rights, political conflicts and the action of social movements do not appear to have been exploited. For instance, reducing power to an evil

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[14] J. Habermas, *The Divided West*, Cambridge, Polity Press, 2006, p. 184.
[15] *Ibid.*, p. 103.

brackets an insightful analysis of its forms and complex function (from Arendt to Luhmann to Foucault) and of it also being a resource for politics and even democratic politics.

The paradigm of Political Liberalism was elaborated by "a Harvard professor reflecting on the political experience of his part of the world" but is considered capable of confronting "challenges like hyperpluralism and, more generally, the new inhospitable conditions of democracy, that differ from the ones which originally prompted its elaboration". According to Ferrara, this is possible by connecting the normativity of the reasonable "to its aesthetic sources – exemplarity, judgment, identity and the imagination" (*DH*, p. 219). And yet, is this actually so? Or is this a generous attempt to adapt to anomalies, more or less similar to the astronomers who added hemicycles to the Ptolemaic model as they waited for a new paradigm?

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Democracy as Horizon

Conjectural Argumentation and Public Reason Beyond the State

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Abstract: Alessandro Ferrara's conception of *Democratic Horizon* provides an innovative normative framework to address the challenge of hyperpluralism for an updated political liberalism. This project however, takes the fact of hyperpluralism as a given, disconnected from the global political context that leads to the emergence of this phenomenon. In particular, (1) the paper asks if liberal democracies have a duty to enlarge their polities through new constituent assembles and supranational organizations, or if accession of new polities should be conceived as a matter of national interest among interested parties. Paradoxically, (2) the paper defends the thesis that resort to conjectural argumentation that helps accommodate internal cultural diversity cannot justify supranational integration in normative terms or a transnational fusion of horizons. As an alternative, (3) the paper explores the notion of "conjectural space" for fair bargaining formation among interested parties. Additionally, (4) it also argues that the "ethos of openness" that supports the Democratic Horizon is unnecessarily constrained by a statist model of global governance. This model is still unjustifiably tied to the representation of national interests irrespective of population size or competing transnational interests.

[**Keywords:** Conjectural Argumentation, Bargaining, Supranational Organization, Hyperpluralism, International Legitimacy]

Introduction

Ferrara's *Democratic Horizon* (henceforth *DH*) is a political conception that mirrors and adapts the approach to peaceful coexistence in the international society and projects it into democratic communities. These contemporary polities however, are characterized by a degree of deep pluralism that defies containment within the canonical limits of Rawls's political liberalism.[1] This *DH* addresses this emerging hyperpluralism but does not question its roots and causes. The paper examines the validity and limits of Ferrara's conjectural approach for the creation of hyperpluralist communities through accession, and deep integration in international organizations.

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[1] A. Ferrara, *The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism*, Cambridge, Cambridge University Press, 2014.

In particular, the paper focuses on the practice of conjectural argumentation as an auxiliary tool in this transition for the incorporation of outsiders and internal dissenters. This argumentative approach represents an interesting alternative to regimes of "liberal domination," where the hegemonic conception of secular toleration is imposed on incorporated minorities. There are however, some important questions regarding the incorporation of conjectural argumentation in an expanded conception of a *DH*.

On the one hand, this bold reconceptualization of political liberalism is presented as a response to the new scenarios of hyperpluralism that exceed the traditional conception of the liberal democratic polity. On the other hand, this deep pluralism is taken for granted, as "homegrown dissent." Regular migrants using official channels are supposed to "vote with their feet," so it is their duty to develop the cultural accommodations within the overlapping consensus. Subnational groups are the subject of a very sophisticated and differentiated literature of minority rights and multicultural citizenship. Who is then the new subject of conjectural argumentation? In my view, Ferrara's conception of a *DH* would benefit from some social theory explaining the process behind the emergence of this new hyperpluralism. My conjecture, if I may, is that this is better explained through a stronger connection with chapter seven ("Beyond the Nation: Governance and Deliberative Democracy"). In its internal architecture, it seems as if this reflection on global and transnational governance institutions is disconnected from the main proposal on multivariate democracies. This seems to me a missed opportunity to give the ethos of democratic openness the proper horizon for our global times. Additionally, connecting hyperpluralism with global governance provides an explanatory account of the evolving supranational framework of our political world and its effects on the increasing pluralization of national democracies; and adds a normative account of the terms of the incorporation into a shared institutional order. For instance, we need to specify if there is a universal imperative of integration based on the ethos of openness, or a duty of assistance to incorporate new members into the society of well-ordered peoples, or a pragmatic political agreement to join a cooperative enterprise, or accession terms based on mutual benefit.

Conversely, these functional supranational institutions and normative regimes also frame the terms in which the other is incorporated in the realm of public reason, and

the constitutive rules that apply in each case: Is she owed recognition as refugee, as guest-worker, as cooperative partner, as fellow European citizen, as co-national?

Conjecturing convergence

The standard mode of political justification of public authority in contexts of reasonable doctrinal pluralism is a common pool of shared, constitutive principles. This overlapping consensus is a weak form of agreement because the shared set of principles is not supported by the same reasons, premises and arguments. This reasonable consensus is affirmed by the right reasons, that is, they all belong to the same type of reasons –that is, the moral subset. In contrast to other cognitivist models of strong consensus, political liberalism gives up with the hope of reaching a single chain of arguments that could be affirmed univocally by all reasonable citizens. A public conception of justice is affirmed from different belief-systems that share a common core of principles. This common core is supported by all reasonable doctrines but it does not depend on any singular one for its validation. Therefore, it is perceived as consistent with any particular reasonable perspective while it is seen as an independent and freestanding conception from a general point of view.

Conjecture on the other hand, differs from public reason in that it does not start from supported premises. Here one party approaches the other from an alternative reconstruction of the other's belief-system but this new articulation is not supported by this external agent. The structure of the process can be summarized the following way:

(1) You believe in X, I believe in Y and we agree that X is incompatible with Y. (2) I do not believe in X but I believe that Xb is a reasonable interpretation of X that is compatible with Y. (3) I believe that it is consistent with X to support Xb and to embrace Y, although I do not believe in X or Xb.

This stage of deliberation does not occur within the boundaries of shared public reasons. It operates only within the grounds of a not-fully-reasonable comprehensive doctrine. The other party is addressed through the subset of familiar interpretations within the conceptual space of her belief-system. Therefore, this process takes place entirely in a domain of non-public reasons. The point of the exchange is, however, the incorporation of the outsider into the realm of reasonability that makes possible reciprocal and public

justification of public authority. As Rawls says, it strengthens the ideal of public reason although it is important to have in mind that conjecture itself is not public reason. It is an important accessory tool for the inclusion of the other in an institutional setting where disputes are to be resolved and political authority justified by appeal to shared political values that have priority over non-political doctrines.

The arrival to this convergence is a historical process of constitutional agreement through which citizens learn to modify their comprehensive doctrines in a way that is compatible with the priority of the impartial view of the shared political conception, and incorporate this primacy in their own views. This process of political decentering is not fully explained by Rawls. It is presented as an aspiration and a particular experience of historical learning of a transition from a *modus vivendi* of coexistence to the discovery of the moral value of a political regime of liberal toleration. The case for the Democratic Peace can also be read as the product of historical learning. According to this thesis, democratic citizens are fully aware that military conflicts are against their individual interests and the commercial and collaborative practices established across borders. Therefore, once they have learnt about the value of peaceful coexistence, they promote any political means of conflict resolution and leave military action as a desperate last resort. As a consequence, they learn to value truly representative regimes, institutional transparency and accountability.

Engaging in conjecture

The expectation of impartiality in a conjectural approach leads to two main difficulties regarding its legitimacy in practice. First, Rawls stipulates that the motives of the incorporation must be made explicit in order to avoid any manipulation, and this precondition seems to exclude non-moral reasons to engage into conjectural approach. Second, a belief-system may contain different subsets of plausible interpretations compatible with the conception of public reason. Each one has different integration costs for both parties. Favoring one over the others may reflect a selection bias and conflict with the impartiality of public reason.

In the Rawlsian model of political integration through affirmation of the political conception of justice, we only need one comprehensive doctrine to be true to grant that

all the overlapping rest converge on a right political conception of justice. But the problem with the selection bias is not whether the favored version adulterates the content of the resulting overlapping consensus (in a contextual, empirical reading). The problem is whether the selection influences a self-interpretation of the doctrine in terms more convenient to the adhesion process without due respect for the integrity of the belief-system.

Therefore, we have two interrelated problems. On the one hand, we need to establish what counts as a valid motive to seek the accommodation of an outsider within a shared regime. On the other hand, we need to determine what are the moral limits to the re-interpretation of a belief-system and what acceptable trade-offs between expediency and the integrity of a culture.

In the first case, the motivation for accommodating accession can spring from a duty of justice, from pragmatic considerations or from exploitative interests. If we examine the topic under the Rawlsian framework we find that Rawls explicitly forbids manipulative or strategic considerations from the conjectural approach.[2] Explicitly, in *The Law of Peoples* Rawls condemns intrusive or pressing conditionalities from liberal peoples and international organizations to promote liberalizing changes in decent but non liberal societies.[3] That would violate the value of liberal toleration towards others in foreign policy. There is however a deeper degree of engagement in the cases of burdened societies. This implies a commitment to institutional change in order to create the social conditions for political autonomy and self-government, which, in Rawls's view, relies on the domestic political culture. The motivation, however, is intrinsically moral, based on a duty of justice, the duty of assistance, the promotion of the value of political independence, and the goal of expanding the number of bona-fide candidates to join the society of well-ordered societies. These are all intrinsic goods. It may very well be that the promotion of these goals through the international community clashes with the short term commercial interests of some liberal nations that may prefer benevolent absolutisms or other totalitarian regimes as commercial partners. Liberal democracies however, have

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[2] J. Rawls, *The Law of Peoples with "The Idea of Public Reason Revisited"*, Cambridge, MA, Harvard University Press, 1999, p. 155-156.

[3] *Ibid*. p. 122-123.

the duty to point to conjectural reinterpretations of the other's political culture that are conducive to greater representativeness and political independence.

Conjecture, accession and transnational integration

One may consider that, if Rawlsian liberal internationalism defends a duty to engage in conjectural argumentation to provide assistance to reform foreign institutions and political culture, and if the conception of the *DH* promotes an ethos of openness regarding internal hyperpluralism, then liberal citizens should develop a positive disposition to accept foreign proposals of transnational integration, and to engage in conjectural argumentation to facilitate convergence.

In contrast, if the EU is a club with a sovereign right of admission and no duty to incorporate neighboring countries, then there is no need to discuss conjectural strategies to facilitate the accession of Islamist regimes that may differ regarding the Copenhagen criteria of democratic governance, free markets and human rights observance. Members may think that theirs is a private club and that internal regulations are non-public reasons for outsiders. Members may think that their duty to facilitate integration is limited to their already internal minorities and that the duty to engage in conjectural interpretations is justified by imperatives of political stability, promoting the transition from a *modus vivendi* acceptance to a fully moral integration.

Between these two poles, we can consider intermediate cases where the EU may have pragmatic reasons to extend membership to their neighbors. In fact, the European project is an example of normative transition from a common market and economic community to a more ambitious – and admittedly problematic, political project. Let's imagine that the EU needs to access a promising Turkish market and to attract its young and highly skilled workforce. This time Turkey is reluctant to accept the invitation because some EU regulations would conflict with the prevailing Islamist conception. The EU expert committee may suggest some Islamist democratic reforms that would be in line with the EU public reason. Even if the real motivation of the EU is manifest and sincere in its pragmatic interest, we may hold doubts regarding the reasonability of the accession.

The Rawlsian paradigm is at crossroads here. One the one hand we have to admit that here conjecture goes hand in hand with conditionality, and that even if the changes are accepted, the Turkish population would accept the European policies as a commercial partner, with a larger degree of disaffection and a growing sense of self-alienation. That would still count as accession for non-public reasons. On the other hand, we have to admit that this is frequently the engine that moves realistic utopias in history, as the European example testifies. Therefore, rational pragmatic reasons could open the way to reasonable transformations in the long run. Rawls faces the internal problem in his theory that, in order to keep the doctrine independent from comprehensive commitments, the process of arrival to a political overlapping consensus cannot be developed as part of the theory. The commitment to the fact of pluralisms means that every reasonable doctrine has to walk its own path, back and forth to the consensus. There is no single argumentative way to be replicated in all heads with identical results. We are left with the hope that a Hegelian *cunning of reason* could keep hand in hand rational interests and reasonable accommodations.

An additional problem that Rawls faces in these scenarios is that his model assumes an explicit circularity. The Overlapping Consensus is freestanding because it can be affirmed simultaneously and independently by all reasonable doctrines, while the doctrines that compromise the support of the public conception of justice had already been considered unreasonable and excluded from the process. In the case of the EU, for instance, the EU members themselves define the content of the very vague and general Copenhagen criteria. Who counts as a sufficiently democratic people is defined by a club of mostly Christian and secular western societies. Rawls himself assumes that liberal democratic societies depend on and reflect particular elements from their background culture. With these premises in mind, it is difficult to imagine that the political consensus would not carry some of these ethical particularities and that the criteria for normalizing accession would not replicate some of these particular histories. If we analyze again the hypothetical dialogue over the admission of Turkey through conjecture we may find that the accommodation of "Islamic democracy" depends in part on the interpretation of secular and Christian democracy, although the terms of accession are presented in a formally freestanding way.

A Habermasian reading of the process demands stronger conditions for consensus on all parties, through arguments that are equally compelling to all sides. The resulting conception is impartial but not freestanding in the Rawlsian way. In fact, the final product presents a heavier doctrinal commitment. On the other side, and contrary to Rawls, the conception is more flexible and reflexive, and more equally demanding on all parties. There is no a priori exclusion of unreasonable doctrines because there is no pre-judgment of the competence of the parties prior to the deliberative procedure. Linguistic competence itself is a presupposition of communicative rationality. This same rationality and the expectative of consensus through the force of the strongest argument suffice for the reflective determination of the democratic credentials of all parties. This means that conjecture may work both ways, because EU member states may realize that their democracies are very partial realizations of an ideal, that are exposed to Turkish criticisms, and that they should also reflexively revise their credentials.

Conjectural space

Following a Habermasian framework, however, we should exclude strategic approaches to accession. If with Rawls we had to rely on the cunning of reason to reconcile the realistic and utopian poles of the project, with Habermas we seem to admit an implicit duty of integration towards any interested party. However, the Habermasian approach does not always provide enough resources to bridge the gap between interested parties that lack enough common ground in shared values. For instance, the stark distinction between strategic and communicative reason constitutes a severe limitation in the complex scenarios of real world hyperpluralism. This deep reluctance towards the language of interests and bargain leads Habermas to dismiss the logic of *fair compromise formation* as a second best alternative to the demanding normativity of communicative reason.[4]

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[4] See for instance Habermas's discussion of Jon Elster's work on Constituent Assemblies in *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, Cambridge, MA, MIT Press, 1998, pp. 165-168, 337-339.

Joseph Heath develops a very interesting criticism to Habermas, raising and exploring this particular line of reasoning.[5] In particular, Heath argues that Habermas fails to identify the normative grounds in the original rational choice project. In this reconstruction, bargaining can be added as a possible way to overcome scenarios where there is less than enough common ground for agreement. Importantly, Heath still differentiates between bargaining and strategic action, banning manipulative approaches that subsume other agents into a means-end relation, but accepting bargaining as a method to identify points of equilibrium and of justified satisfaction of individual expectancies where communicative deliberation failed to bridge intractable gaps in value and interest interpretation. The original conception of rational choice bargaining the Heath rescues is a normative one, which rests on some axiomatic characterization of the actors and their rule abiding behavior.[6] It is therefore a description of rational players that is operate in a frame of reasonability but that provides some rational fall-back rules in case of strategic breach of agreements.[7] This approach is interesting because it makes explicit that discourse modes like conjecture cannot be thought just as deliberative alternatives to bargaining. The resort to conjecture from interested parties may carry forms of strategic reasoning if the intentionality motivating the agreement is not made explicit, or if the intentional approach is limited to a single option within a larger set of candidates. Andrew March, for instance, clarifies that his approach to conjectural accommodation does not aim to demonstrate the correct solution to a doctrinal accommodation problem. He explicitly declares that his reconstructive project is limited to show that there are "plausible" alternatives that could satisfy both parties' standards.[8]

We should add that in order to satisfy the condition of sincerity, the approaching party should also reveal the full set of alternative interpretations that she thinks are compatible with the other's doctrine, even if some of them lead even further from the

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[5] J. Heath, *Communicative Action and Rational Choice*, Cambridge, MA, MIT Press, 2001, pp. 219-253.

[6] *Ibid.*, pp. 248-249.

[7] "Furthermore, agents who disagree over which specific norm should regulate their interactions may nevertheless agree on a default norm that should apply in case they fail. In this case, the disagreement point is normatively fixed, and so would be insensitive to changes in the relative strength of the parties" (*Ibid.*, p. 250).

[8] A. March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*, Oxford, Oxford University Press, 2009, pp. 71-73.

point of agreement. This reconstructive exercise is also more consistent with the declaration that the approaching party still does not share or support the set of alternative interpretations. For instance, Ferrara presents different exercises of conjecture that illustrate how the approach could be developed when applied to different religious and cultural traditions. They, of course, are not presented as the only valid reconstruction, which leaves us with the difficult task of elaborating criteria for ranking alternatives.

Heath's critique makes sense in this case because it points out that conjecture in practice could be closer to strategic reasoning than bargaining. If negotiations could be translated into bargaining terms where motivations and benefits for both parties are fully disclosed (sincerity rule) and agreements are being represented as points of multiple equilibria, then we could find a *modus vivendi* on a higher moral ground. Therefore, I think that to avoid illegitimate persuasive and rhetorical intentions we should avoid talking about "conjectural argumentation" and instead of "conjectural space". By conjectural space, I understand the conceptual space internal to a doctrine that allows alternative interpretations of its own value constellation, in different degrees of proximity to the ideal of public reason affirmed by the approaching party.

Conjecture and representation

The definition of a conjectural space for integration leads us to two related problems. First, we need to determine how to assess the degree of legitimacy and support of different value-constellations in a single conjectural space. Outsiders rarely have the epistemic authority to determine the degree of congruence and fidelity that divergent traditions have, or even if there is a factual divorce between orthodoxy and popular belief and practice.[9] This is the very question that Seyla Benhabib examines in her defense of a human right to democracy.[10] Benhabib discusses this question in relation to the proposals for minimalism about human rights and their translation into local membership rights.

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[9] M. Schwartzman, "The Ethics of Reasoning from Conjecture", *Journal of Moral Philosophy*, 9 (2012), 4, pp. 521-544. Notice that March analysis is focused in the case of the Islamic community and its concrete doctrinal and textualist traditions. The view that I defend assumes the individual right to re-appropriate the tradition and privileges and privileges the final view of the individual over other expert bodies in the discursive community. See A. March, *Islam and Liberal Citizenship*, cit., pp. 73-74.

[10] S. Benhabib, "Is there a Human Right to Democracy? Beyond Interventionism and Indifference", in his *Dignity in Adversity. Human Rights in Troubled Times*, Cambridge, Polity Press, 2011.

Objectors to a human right to democracy argue that this would be a maximalist standard that would violate the integrity of many cultural traditions that are decent enough to be protected from external disruptive demands. Minimalism about human rights defends that many normative traditions content meaningful cultural resources that express ideals of respect and recognition to basic demands from their members. Therefore, external pressure should be limited to promote the kind of "creative adaptations" necessary to secure that the basic interests of all individuals are taken into account, even if not all members are given equal consideration. The language of conjectural argumentation may overlap with this recourse to cultural "creative adaptations" when the ideal of public reason comprises human rights standards. But lacking any internal assessment and validation, we do not have any guarantee of the legitimacy of all the different adaptations of a basic list of human rights. The only way to validate that a range of creative adaptations is consistent with the ideal of basic respect to all members of the political community is through an entitlement to equal political participation in the contextual elaboration of the list. Therefore, understood as democratic iterations, the concept of human rights becomes a local realization of a moral principle.

Lacking proper democratic representation or legitimate consultation, we cannot estimate the legitimacy or support of the different alternatives within the conjectural space. Additionally, even when we have a reliable estimation of popular support we would also need a criterion to establish our preferences regarding the range of conjectural alternatives. At this point is where conjectural deliberation should prevent illegitimate selection bias. For instance, let's imagine that we are discussing the accession of a Confucian society, with a firm traditional adhesion to communal values and responsibilities and a paternalistic and meritocratic political system.

Jiang Qing's *Confucian Constitutionalism* promotes the rule of law against the unchecked and arbitrary abuses of a single party system.[11] This reform proposal combines three deliberative chambers that represent the *demos* (House of the People), the national peoples (House of the Nation), and a senate of Confucian and other recognized scholars (House of the Scholars). The system is designed to guarantee stability and continuity with

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[11] J. Qing, *A Confucian Constitutional Order. How China's Ancient Past Can Shape Its Political Future*, Princeton, Princeton University Press, 2013.

the ideal of a historical civilization through time. It emphasizes the value of harmony through a dialogue between popular demands, recognition of internal diversity, and unity through the reinterpretation of a traditional and comprehensive system of values. In certain way, this reform tracks the British system, with a Parliament elected by universal suffrage, an hereditary chamber rooted in the different cultural belongings, and a symbolic monarchy that in this case emerges from a senate of spiritual leaders and that embodies the Confucian spirit.

Joseph Chan reconstructs a conception of *Confucian Political Perfectionism* that presents Confucianism as a form of moderate perfectionism.[12] In this proposal the purpose of the political system is not to implement a comprehensive doctrine but to create the institutional environment in which the specific goods and values that constitute the Confucian view of the good life (Dao) can be facilitated and promoted so all citizens can incorporate them in their different comprehensive views. Confucian perfectionist judgments about the good life are presented as independent and multipurpose primary goods (arts, knowledge, family life, social relationships; and virtues like benevolence, courage and practical wisdom), and the liberal democratic system as the best instrumental regime in non-ideal conditions for the meritocratic selection of public authorities. Chan nevertheless supplements these liberal democratic institutions with a second chamber, a senate of non-elected exemplary civil servants that monitors the ethos of public service of elected politicians. He however admits that the language of human rights and claim-rights in general needs to be limited to some basic civil and political rights, more explicitly, those necessary to point to situations of insufficient public concern.

Sungmoon Kim, for instance, defends the compatibility of democracy and Confucian culture.[13] *Confucian Democracy* is deeply embedded in the background culture and this in turn generates a particular Confucian public reason, articulated in the arguments and values expressed by ordinary citizens when discussing political issues. This variety of public reason also motivates citizens to extend the affective familial moral

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[12] J. Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times*, Princeton, Princeton University Press, 2013.

[13] S. Kim, *Confucian Democracy in East Asia. Theory and Practice*, Cambridge, Cambridge University Press, 2014.

sentimentalist of Confucian citizens to a receptive attitude towards the plight of minorities in an increasingly pluralistic society.

We have three candidates in the Confucian conjectural space. One possible transformation would emphasize the constitutionalization of the political system. A second alternative would adopt most of the institutions of the liberal democratic state as instrumental means for the provision of Confucian goods without an official comprehensive doctrine. A third alternative would strengthen the role of a vibrant Confucian background culture and an active civil society that would substantiate its values through a democratic state. The initiating party should make explicit not only its intention but also the reasons to favor one option over the others *as* bona-fide neighbor, cooperative party, etc. Some of the options may be more consistent with the political expression of their social and cultural creativity while other would facilitate an easier international integration.

When the terms of integration in the global order are conditioned on conjectural interpretations, only some degree of democratic ratification can protect the population from internal self-alienation.

A horizon of global governance

Ferrara's discussion of global governance focuses on justifying its legitimacy through the lenses of deliberative democracy. In contrast to democratic government, a regime of institutional governance does not rely on a legitimate account of coercive power. Governance institutions lack strong enforcing capabilities and therefore depend on reaching wider consensus through more persuasive reasons. Functional global and transnational institutions play an important role in providing the kinds of goods and services that no single actor could achieve on its own in comparable conditions. Their place in the global architecture is justified through expert knowledge and technical reasons that optimize common goals. It is therefore a common criticism to identify global governance institutions with the rise of technocratic structures that exhibit a democratic deficit and lack proper political legitimacy. It is experts who are the authors of the rules and not the citizens that are subjected to them. According to Ferrara, a conception of deliberative democracy helps us understand that this is a category mistake. When we
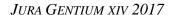
project the standards of authorial legitimacy to complex and partial coordinating institutions we are replicating the same argument that questions the legitimacy of modern representative democracies in comparison to Athenian direct participation. The transnational coordinating agency lacks any monopoly of coercive power, instead it only retains the monopoly of attribution of legitimacy to the actions of the coordinated actors, backed by the consensual agreement of the parties. In Ferrara's view, the perception of a deficit in legitimacy is produced by the projection of a statist standard that is inadequate for the nature of the political entity at hand. In contrast, a system of global non-coercive governance, supplemented with strengthened accountability and solid consensus about constitutional essentials, may produce richer democratic conditions at all levels.[14] In my view, this deliberative account of global governance is still unnecessarily conservative. We could say that it betrays the innovative ethos of openness of the *DH* because, at the end, it justifies the global regime in functional terms relative to domestic conditions. The standard of legitimacy is still a statist one, although merely supplemented by an institutional environment that provides better enabling conditions. As presented, global governance is a part of the constitutive framework of state government. One may argue that this account replicates the same category mistake that fails to capture the very distinctive nature of the emerging global order in its own terms.

What is problematic in the emerging order is that even if the growing constellation of functional transnational organizations embed human rights standards in their mandate or implement greater accountability, these are still very specific and partial areas of regulation. We still lack an overarching deliberative space in which the competing partial discourses can be reinterpreted and prioritized according to a view that is coextensive to the scope of the *demos* subjected to its regulatory power, and which exceeds the national terms of representation.

The conception of a state-based *DH* is a remarkable reformulation of the ideal of political liberalism before the challenge of a growing hyperplurality. Unfortunately, it does not adequately address the sources of this emerging problem in the current conditions of our global institutional order. A more realistic understanding of the *DH*

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[14] A. Ferrara, *The Democratic Horizon*, cit., ch. 7.

would connect the main sources of hyperpluralism in democratic communities with a foreign origin, through porous borders, supranational integration, accession, etc. This larger institutional horizon helps explain the conditions of wealth inequality, health inequity, migration flows, persistent poverty, religious persecution, child labor, environmental degradation, and human rights violation that drive the pluralization of modern democracies. Conversely, the deeply asymmetric terms in which different peoples are integrated in the institutions of global governance also determine the categories in which hyperplurality is recognized in our *DH*s.

Conclusion

The paper defends the need to connect the problem of hyperpluralism in multivariate democracies with the larger horizon of global governance. Conjectural argumentation emerges as a promising resource for the incorporation, integration and accession of different peoples into shared orders of public reason. The paper argues however, that the conjectural approach implies an asymmetrically situated intentional actor that operates against a larger background of conjectural alternatives. Therefore, proper respect to the agency and integrity of the approached party demands the articulation of guarantees that the selected cultural reinterpretation is sufficiently representative; and that the pragmatic balance of interest in play have been made explicit in the conjectural space. In the first case, we defend de compatibility of the conjectural approach with a defense of a human right to democracy that grants the participation of the affected parties in their collective self-understanding. In the second case, we defend the rehabilitation of normative bargaining as a more realistic approach to processes of integration among interested parties. This approach is especially relevant to make sense of the balance of cooperative reasons in our global system, where a party joins an order of public reason under some specific terms: as a cooperative partner, as the subject of human rights, as an equal citizen, etc. Therefore, the paper stresses the need to connect this external dimension of global governance within a more tightly unified and open conception of the *DH*.

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Democratic Ethos, Imagination and Emotions

Marco Solinas

Abstract: The paper is focused on Alessandro Ferrara's attempt to overcome the limits of proceduralism through a reconsideration of some normative sources able to mobilize and to motivate people on the double level of ethos and of political imagination. In particular, on the subject of the thematization of imagination as a political force able to mobilize the people, the author tries to show that a deeper consideration of the emotional dimension might even prove to be useful for the basic aims pursued by Ferrara on the methodological level. The same can be said for the thematization of the democratic ethos proposed by Ferrara: this ethos is in fact first of all based on specific "passions", and represents in general the "affective basis of a democracy". The author attempts then to test whether some possible lines of research into a theoretical development of these topics related to the emotions would be productive.

[**Keywords:** Alessandro Ferrara, Political Emotions, Martha Nussbaum, Democratic Ethos, Imagination]

> Democracy is a *personal* way of individual life […] it signifies the possession and continual use of certain attitudes, forming personal character and determining desire and purpose in all the relations of life. Instead of thinking of our own dispositions and habits as accommodated to certain institutions we have to learn to think of the latter as expressions, projections and extensions of habitually dominant personal attitudes.[1]

This quote from John Dewey, which Alessandro Ferrara has placed at the beginning of his *Democratic Horizon*, shows one of the basic aims pursued in this latest work: to go beyond the limits of proceduralism, in order to "make the definition of democracy hinge on the idea of a democratic ethos that underlies and enlivens the procedural aspects of democracy" (*DH*, p. 13). If this point of view does not radically overturn (as in Dewey) the relation between the ethical dimension (dispositions, habits and so on) and democratic institutions, does firmly anchor democratic procedures to an ethical basis:

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[1] A. Ferrara, *The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism*, New York, Cambridge University Press, 2014, henceforth *DH*, p. 1.

Democracy is then an ethos on whose basis certain procedures are adopted and followed, not simply the format of these procedures. Dewey's fragment […] forcefully and concisely expresses this idea. At the center of this book is the attempt, among other things, to identify the contours of this democratic ethos and to highlight one aspect of it, which thus far has remained out of the limelight: democracy's intrinsic relation to openness as a public value (*DH*, p. 5).

This basic aim that seeks to overcome the limits of proceduralism is also reflected in the task of devising the normative sources able not only to find "good reasons", but also to motivate and to mobilize the people. From this, two fundamental arguments proposed several times by Ferrara follow: a) "good reasons convince, but only good reasons that move the imagination mobilize people" (*DH*, p. 42); b) "Politics at its best is the prioritization of ends in the light of good reasons that can move our imagination" (*DH*, p. 38). More concretely: "No transformative democratic and progressive politics can exist that does not draw on the imagination's capacity to motivate and harnesses it to good reasons" (*DH*, p. 13). It is also evident as in *Democratic Horizon* that Ferrara draws on and carries on his already long ongoing research, which aims to analyze specific normative sources that are not limited to the general framework of rational discussion and democratic procedures and institutions. I mean first of all those "aesthetic sources of normativity" that Ferrara has already examined especially in the fields of exemplarity, judgment and imagination.[2]

It is precisely this attempt to overcome the limits of proceduralism through a reconsideration of the *normative forces* able to mobilize people's ethos and motivate their imagination that I would like to consider in these pages. I will concentrate solely on this line of research, leaving the very many issues and topics discussed in the book aside, as well as the articulation of these normative sources in the general framework of Rawls's liberalism. More precisely, I will try to shed light on the dimensions distinctive of the role that Ferrara ascribes to the emotional level in relation to ethos and political imagination, and I will also attempt to test if some possible lines of research into a theoretical development of these topics related to the emotions would be productive, and how. In

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[2] A. Ferrara, *The Force of the Example: Explorations in the Paradigm of Judgment*, New York, Columbia University Press, 2008.

more detail: 1) On the subject of the thematization of imagination as a political force able to mobilize the people, I will try to show that a deeper consideration of the emotional dimension might even prove to be useful for the basic aims pursued by Ferrara on the methodological level, as well as for certain aspects that occur in Martha Nussbaum's latest work on "political emotions". 2) This attempt to look at the bigger picture seems to me after all called for by the thematization of the democratic ethos proposed by Ferrara: this ethos is in fact first of all based on specific "passions" (the passion for the common good, the passion for openness and so on), and represents in general the "affective basis of a democracy", even if these two element are not intended as "emotions" in the narrowest sense.

Imagination and political emotions

In the thematization of the imagination as motivational force that is reintroduced and developed in *DH*, Ferrara again takes the aesthetic model of a work of art by virtue of the fact that the exemplarity may be able "to reconcile 'is' and 'ought', 'facts' and 'norms'": also to reconcile the normative dimension with the descriptive dimension (*DH*, p. 38). This political function of imagination is fulfilled essentially thanks to its capacity to disclose new *visions* that mobilize the people:

> All the important junctures where something new has emerged in politics and has transformed the world – the idea of natural rights, the idea of the legitimacy of government resting on the "consensus of the governed", the inalienable right to the "pursuit of happiness", "liberté, égalité, fraternité", the abolition of slavery, universal suffrage, human rights, the Welfare State, gender equality, the idea of sustainability, the idea of the rights of the future generations – were junctures where what is new never prevailed by virtue of its following logically from what already existed, but rather by virtue of its conveying a new vista on the world we share in common and highlighting some hitherto unnoticed potentialities of it. Like the work of art, so the outstanding political deed arouses a sense of "enhancement of life", the enriching and enhancement of a life lived in common, and commands our consent by virtue of its exemplary ability to reconcile what exists and what we value (*DH*, p. 38).

This capacity of the imagination to "disclose a new political world for us" also turns on the force that is ascribed to the dimension of "vision"; in this regard, the reference to Thomas Kuhn's theoretical model, in which the role of vision is indeed at the center,

also corroborates that point (see *DH*, pp. 39-40). However, in so doing, the overall thematization of the imagination's political role seems to me in some ways biased towards the cognitive side rather than the emotional side. I mean that if Ferrara insists that the political dimension must be anchored to the imagination's ability to mobilize and to motivate the people, this ability is however disjoined from the capacity to trigger and to elicit emotions in the narrowest sense, as seems to be so in the case of enthusiasm and progressive politics:

> Democratic politics at its best will be argued to be one in which the priority of certain ends over others is established consensually on the basis of good reasons that move the imagination. The domestic and international political scenes abound with imaginary projections that elicit enthusiasm while being supported by no good reasons whatsoever or, conversely, with uninspiring good reasons that mobilize no one – a contrast in which often the clash between the right and the left is reflected. To understand is the first step toward changing the world. Even Marx's Eleventh Thesis on Feuerbach does not exclude, but presupposes, that in order to change the world we must begin by understanding it differently. No transformative democratic and progressive politics can exist that does not draw on the imagination's capacity to motivate and harnesses it to good reasons. When this exemplary combination is missed, we are left either with the uninspiring reasons of routine administrative action that mobilize no one or with the delusional enthusiasm of the populist imagination (*DH*, p. 13).

But if we now take into account that one of the basic aims of Ferrara's theoretical proposal is to overcome the proceduralistic approach through the enlargement of those normative sources that are able to give political force to "good reasons", even the emotional dimension may also prove important. In this regard we can think for example of the recent work *Political Emotions*,[3] in which Martha Nussbaum, on the methodological level, pursues a basic aim very similar to that pursued by Ferrara: to enlarge the normative dimension in order to give motivational force to the "right reasons". And to this end Nussbaum seeks to expand and to complete Rawls's theory exposed in *Political Liberalism* through a theory of "political emotions":

> Rawls imagines how emotions arising initially within the family can ultimately develop
> into emotions directed at the principles of the just society. His compelling and insightful

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[3] M. Nussbaum, *Political Emotions*, Cambridge, MA, Harvard University Press, 2013.

account, in this respect ahead of its time, employs a sophisticated conception of emotions similar to the one I shall be using here, according to which emotions involve cognitive appraisals. Rawls later bracketed this section of the book for rethinking, along with other material in *A Theory of Justice* that he thought too closely linked to his own particular (Kantian) comprehensive ethical doctrine. In *Political Liberalism*, he no longer seems to endorse all the details of that particular account. But he insists that he is leaving a space for a needed account of a "reasonable moral psychology". In effect, the present book aims to fill that space, with reference to an account of a decent society that differs from Rawls's in philosophical detail, but not in underlying spirit – although its focus is on societies aspiring to justice, rather than on the achieved well-ordered society.[4]

By so doing, Nussbaum reconsiders the political role of many single emotions, and also enthusiasm, amongst other emotions: "if society is to be stable for the right reasons, its basic principles must somehow be embraced with enthusiasm. More generally, the political enlargement of the normative dimension is achieved by means of a direct recourse to moral sentiments and emotions: Nussbaum ascribes to these factors "an essential motivational role".[5] In fact, when the emotions are reconnected to specific symbols, even through the use of imagination, "the symbols may acquire a motivational power that bare abstractions could not possess".[6]

In conclusion, here on the methodological level, there arises a partial but meaningful overlap between Nussbaum and the line of research reintroduced in *Democratic Horizon*. Also in this latter case indeed, supposing that "John Rawls's Political Liberalism has here been assumed as the framework most promising for rethinking democracy" (*DH*, p. 211), Ferrara aims to enlarge the normative sources turning to the fact that without the intervention of imagination politics remains ineffective. More precisely: "if disjoined from the force of imagination nourished by exemplarity, good reasons are only mere accountancy or scorekeeping of what should be. Thus politics at its best is the prioritization of ends in the light of good reasons that can move our imagination" (*DH*, p. 38, see also p. 212). Furthermore, the affinity between Nussbaum and Ferrara emerges, and I might say especially, because the "democratic

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[4] M. Nussbaum, *Political Emotions*, cit., p. 9.
[5] *Ibid.*, p. 10.
[6] *Ibid.* See also e.g. pp. 85 ff., 189 ff.

ethos" is based first of all on constitutive elements defined literally as "passions" and an "affective basis".

Democratic ethos between passions and indignation

The ethos that Ferrara considers necessary for the possibility of democracy to flourish, in many respects overlaps with the notion of the "spirit of democracy" or more simply with the notion of the "culture of democracy". In fact, the author follows the pattern laid down by Weber's notion of *Geist* (and not of Hegel's *Sittlichkeit*). More precisely, the specific points that mark out the profile of this ethos – and which are developed starting from the traditional thematization of the "political sentiment of virtue" – are interpretable in terms of "passions" (see *DH*, pp. 6, 14, 44 ff.). These passions however, although they are set within the general anthropological and cultural framework of the "dispositional or affective roots" of the democratic spirit, are in fact intended above all in the sense of moral attitudes, inclinations and orientations; in a word: as "political virtues" (see also *DH*, pp. 62 ff., 213). These virtues are of course able to motivate the people; however, they operate above all, although not exclusively, on the *cognitive level*, as emerges for example where Ferrara writes:

> the first "democratic passion" that historically begins to be understood as a condition of the stabilization of a "democracy *cum* democratic spirit" is the cognitive and motivational orientation to the common good – the kind of deliberative mood that contemporary deliberative democracy turns into a definitional moment of democracy (*DH*, p. 45).

Along the same lines, there are also Ferrara's references to the "characteristic spirit or sentiment" of which Stephen White speaks in *The Ethos of a Late-Modern Citizen*,[7] as well as the "cognitive capacities and political virtues" described by Rainer Forst in *The Right to Justification*,[8] and certainly the "list of political virtues" outlined by Rawls in *Political Liberalism* (see especially *DH*, pp. 213-214). In brief, the passions at stake, starting from the fundamental passions for the common good, for equality, for individuality and for a public culture of openness are intended in terms of "passion", "sentiment" and "affective basis" in the broadest sense: *here the cognitive dimension has*

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[7] S. White, *The Ethos of a Late-Modern Citizen*, Cambridge, MA, Harvard University Press, 2009.
[8] R. Forst, *The Right to Justification*, New York, Columbia University Press, 2012.

priority over the emotional in the narrowest sense; the former is a dimension that in many respects is even spiritual and ideal, although certainly embedded in individual attitudes of clear moral value. It also seems to me that what emerges here, even if in an attenuated form, is the priority ascribed to the cognitive dimension that we have already seen, in an ever more radical form, with regard to the analysis of the political role of imagination.

Nevertheless, Ferrara sometimes seems to refer to the emotional character of the passion in the narrowest sense, for example where he writes:

> But the point that Tocqueville emphasizes is that whereas a passion for freedom is a more general political sentiment, to be found "elsewhere than in democracies", the passion for equality identifies the ethos of democratic peoples most distinctively: such passion is called by him "ardent, insatiable, eternal and invincible" (*DH*, p. 46).

Having said that, he moves on to what we could call the negative emotional reaction to injustice:

> In contemporary views of democracy Tocqueville's insight lives on not just in the liberal ideal notion of "free and equal citizens", but also in a certain "recognitional" twist that the passion for equality has received. Authors such as Axel Honneth, Avishai Margalit and Charles Taylor always connect their notion of recognition with an implicit "equality" of recognition […]. The passion for equality has shed off its possible materialistic connotations and has now become a "passion for (equal) recognition" or, to put it in the fallibilistic vein advocated from different perspectives by Margalit and Rorty, an "aversion to humiliation" and an "aversion to cruelty". No democracy can flourish if citizens do not react with indignation to humiliation and cruelty (*DH*, p. 46).

This brief mention of the political role of indignation as a reaction to injustice, which also occurs in two other passages of the book (see *DH*, pp. 43, 65), opens up a path that – it seems to me – could lead to a better appreciation of the forms and meanings of "political emotions" within the framework of the thematization of democratic ethos. It should also insist on the comparison with Honneth's theoretical framework, briefly quoted by Ferrara, in which negative emotional reactions to the form of disrespect (*Missachtung*) can trigger a specific struggle for recognition. Let me recall briefly that disrespect is for Honneth a moral experience that usually triggers negative emotional reactions, and these reactions have a clear "motivational" role: "the negative emotional reactions accompanying the experience of disrespect could represent the affective

motivational basis in which the struggled-for-recognition is anchored", that is: "experiencing social disrespect can motivate a subject to enter a practical struggle or conflict". Honneth has also defended the thesis that the functions that

> lead from mere suffering to action by cognitively informing the person in question of his or her social situation [...] can be performed by negative emotional reactions, such has being ashamed or enraged, feeling hurt or indignant. These comprise the psychological symptoms on the basis of which one can come to realize that one is being illegitimately denied social recognition.[9]

The experience of disrespect also leads to

> negative emotional reactions such as shame or rage [...] the experience of disrespect is always accompanied by affective sensations that are, in principle, capable of revealing to individuals the fact that certain forms of recognition are being withheld from them. In order to give this complex thesis some plausibility, at least in outline, it would be advisable to connect it to a conception of human emotions of the sort developed by John Dewey in his pragmatist psychology.[10]

In short, Honneth's thesis is that Dewey devises "an action-theoretical conception of human emotions" according to which "negative feelings such as anger, indignation, and sorrow constitute the affective side of the shift of attention towards one's own expectations that inevitably occurs as soon as one has difficulty making the step one planned to make upon completing action".[11]

Furthermore, Ferrara's mention of the fact that "the rise of media of mass communication that stimulate the growth of a global public sphere sometimes activated in terms of indignation, other times in terms of compassion or other emotions" (*DH*, p. 29), it seems to me, signals the necessity or at least the opportunity, also from this last point of view, to consider at greater length the political role of these emotions. In short, if the analysis of the democratic ethos carried out in *Democratic Horizon* aims basically "to reconstruct genealogically the sources of cognitive, existential and finally public-culture versions of the 'passion for openness' component of a democratic ethos" (*DH*, p.

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[9] A. Honneth *The Struggle for Recognition*, Cambridge, MA, MIT Press, 1995, pp. 135-136.
[10] *Ibid.*, p. 136.
[11] *Ibid.* On this topic see also S. Thompson, "Anger and the Struggle for Justice", in S. Clarke, P. Hoggett, S. Thompson (eds.), *Emotions, Politics and Society*, Basingstoke, Palgrave Macmillan, 2006.

54), I believe that it could also be useful in considering the emotional dimension in the narrowest sense.

Pursuing this theoretical direction, one could return to the political role of imagination, also from the perspective of the sentiments of horror and the empathic dynamics which arise for example where Ferrara writes:

> Nazism horrifies us because it occurred in the very midst of one of the most developed and civilized parts of Europe. Ethnic cleansing in former Yugoslavia elicited moral sentiments of horror also in relation to the fact that it took place after we all thought that the lesson of Auschwitz had been thoroughly metabolized. This fact of our moral life suggests that perhaps our perspective ought to change. […] Crucial is then the role of the imagination in enabling a moral community to take distance from a conception of the good which now appears "perverse" and from the actions performed in its name [...] Without the work of the imagination no "enlarged mentality" is possible, but only a cognitive group solipsism. Without an "enlarged mentality", or the ability to see things with the eyes of another, different from us, nothing can pierce the immunizing armor of our collective representations (*DH*, p. 40-1).

If we then pay increased attention to the emotional dimension, we could perhaps better combine the "ability to *see* things with the eyes of another" with the ability to *feel* things as others do. More generally, an interpretation of the "passions" and the "affective structure" from this "emotional point of view" in the narrowest sense, could make a theoretical contribution to the development of an analysis of the political mode of operation of imagination and of the democratic ethos understood as normative sources, or better as normative forces that are able to motivate and mobilize people.

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Conjecture and Recognition

Leonardo Marchettoni

Abstract: In this essay I try to shed some light on the role that conjectural reasoning plays within Ferrara's strategy to deal with pluralism. In the first section, I will attempt to determine which contexts prompt the recourse to conjecture and which problems it is called upon to solve. In the second section, I will try to offer a detailed reconstruction of the structure of conjectural reasoning. Finally, in the last section, I will put forth some critical remarks on the way Ferrara makes recourse to conjectural reasoning within *The Democratic Horizon*. The upshot will be that the recourse to conjecture may properly work only in those cases in which individuals already exhibit some relevant common traits that make them capable of recognizing each other as members of the same community.

[**Keywords:** Alessandro Ferrara, John Rawls, Conjecture, Public Reason, Recognition]

Alessandro Ferrara's *The Democratic Horizon* is a terrific book: it is full of provocative and ingenious ideas, which would certainly deserve a close and accurate scrutiny. Here I do not even dare to do justice to such richness and cannot but confine myself to debating a single issue. This issue, however, is probably one of the most fundamental for the success of the overall project: the role of conjectural reasoning within Ferrara's strategy to deal with pluralism.

The plan of the essay is as follows. In the first section, I will try to investigate the strategic role Ferrara assigns to conjectural reasoning. Particularly, I will attempt to determine which contexts prompt the recourse to it and which problems it is called upon to solve. In the second section, I will attempt to offer a detailed reconstruction of the structure of conjectural reasoning. Finally, in the last section, I will put forth some critical remarks on the way Ferrara makes recourse to conjectural reasoning within *DH*. The upshot will be that the recourse to conjecture may properly work only in those cases in which individuals already exhibit some relevant common traits that make them capable of recognizing each other as members of the same community.

The problem

In the conclusions of *DH*, Ferrara describes clearly the project of the entire book.[1] The aim is that of enriching the democratic vocabulary, making democratic politics capable of sustaining the challenges of the XXI century. This project is pursued through different stages that introduce different remedies to the maladies of contemporary democracies. First, Ferrara introduces the role of imagination, then the virtues of openness. Conjectural reasoning comes as a third step, designed to handle with otherwise intractable forms of pluralism. At the same time, this move implies also a shift towards public reason. Indeed, echoing Rawls's *Political Liberalism*, the adoption of a liberal stance requires the acceptance of other reasonable conceptions and the commitment to employ public reason within public political forum. Thus, the recourse to conjecture becomes the answer to the problem of "making the unreasonable reasonable".

In the third and fourth chapter, Ferrara characterizes the kind of pluralism that requires conjectural reasoning. The main target is religious pluralism. The compresence of several religious faiths represents a distinctive trait of modernity since the end of the religious wars. Liberal thought developed the notion of toleration in order to deal with religious diversity.[2] Nonetheless, religion still constitutes a problem for political theory.[3] This is most true for contemporary political theorists. What is distinctive of our time is that we need to answer the question: Why be pluralist in the first instance? Ferrara reviews two standard responses to this question – *pragmatic pluralism*, that is, the idea that we must accept pluralism in order to protect us from the evils of conflict, and *principled pluralism*, that is, the view according to which accepting pluralism is required by respect for moral autonomy and equality between individuals – finding both wanting, before introducing the notion of *reflexive pluralism*. Reflexive pluralists maintain that the endeavor to establish a conclusive argument for pluralism involves a kind of performative

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[1] A. Ferrara, *The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism*, New York, Cambridge University Press, 2014, henceforth *DH*, pp. 210-20.

[2] See R. Forst, *Toleration in Conflict: Past and Present*, Cambridge, Cambridge University Press, 2013.

[3] See Ch. Eberle and T. Cuneo, "Religion and Political Theory", in E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, 2015 edn., available at the URL: http://plato.stanford.edu/archives/spr2015/entries/religion-politics/.

contradiction. Rather, "we should aim at a pluralistic defense of the grounds for accepting pluralism" (*DH*, p. 73).

It is at this point that conjectural reasoning comes on stage. Ferrara draws the notion of conjecture from Rawls's "The Idea of Public Reason Revisited". According to Rawls, the ideal form of this kind of argument is as follows:

> we argue from what we believe, or conjecture, are other people's basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis for public reasons.[4]

In other words, conjectural reasoning seems to boil down to a kind of argument *ex hypothesi*: we assume as a starting point certain premises, which we do not assert, pertaining to some comprehensive conception, and try to derive an argument for pluralism. Therefore, it requires sincere and not manipulative attitudes: we must state at the outset that we do not share the relevant assumptions but we advance them only in order to provide a comprehensive understanding of the conception to which they belong.

Ferrara assigns conjectural reasoning a strategic role within his project. Indeed, in the ensuing sections, the model of conjectural reasoning is assumed as a blueprint for carrying on a reinterpretation of the contents of the main religious traditions capable of conciliating them with pluralism. Following such theorist as Robert Bellah (Christianity), Michael Walzer (Judaism) and Andrew March (Islam), Ferrara aims to show that, if properly interpreted, major religious traditions prove to be compatible with liberal pluralism and commitment to public reason.[5]

However, as Ferrara contends in the fourth chapter, our societies feature a level of pluralism even higher than that envisaged by Rawls. Our societies deserve to be called *hyperpluralistic* since massive immigration from all regions of the world has extended

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[4] J. Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review*, 64 (1997), 3, pp. 765-807, p. 786. For a survey on the notion of public reason, see J. Quong, "Public Reason", in E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, 2013 edn., available at the URL: http://plato.stanford.edu/archives/sum2013/entries/public-reason/.

[5] See R.N. Bellah, "At Home and Not at Home: Religious Pluralism and Religious Truth", *Christian Century*, April 19 (1995), pp. 423-28; M. Walzer, "Two Kinds of Universalism", in his *Nation and Universe*, Tanner Lectures on Human Values, Salt Lake City, University of Utah Press, 1990; A. March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*, Oxford, Oxford University Press, 2009.

pluralism from the religious to the ethnic dimension, while, at the same time, mainstream democratic culture has turned from assimilationist politics to a more flexible pattern of integration. Such a predicament may be assuaged by an extensive application of conjectural arguments, differentiated according to each religious tradition, which focus on the main building blocks of the liberal democratic order. This approach differs both from *agonistic pluralism* – that is, the view, attributed to Chantal Mouffe, William Connolly, James Tully, Ed Wingenbach among others,[6] which centers on the aim to safeguard spaces for the emergence of dissent within political community – and from what Ferrara calls "passepartout-conjectural" and "original position" strategies – followed, respectively, by Lucas Swaine and Mark Rosen,[7] according to which hyperpluralism can be faced up by devising general arguments without addressing the specific traits that mark each culture or religious tradition (See *DH*, pp. 92-104).

However, even conjectural reasoning may prove incapable of taming hyperpluralism. Indeed, conjectural arguments require that others be disposed to learn from their interlocutors and to revise their views. Therefore, they must be at least partially reasonable. When such attitudes are absent, the only safe option is to resort to

> conceiving of the democratic polity as a multivariate unity that includes both overlapping-consensus–type and *modus vivendi*–type relations between the citizens participating in the overlapping consensus over the political conception of justice and over the constitutional essentials, as well as other groups of citizens embracing partially reasonable comprehensive conception (*DH*, p. 107).

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[6] See. Ch. Mouffe, *The Democratic Paradox*, London, Verso, 2000; W. Connolly, *The Ethos of Pluralization*, Minneapolis, University of Minnesota Press, 1995; J. Tully, *Public Philosophy in a New Key*, vol. 1: *Democracy and Civic Freedom*, Cambridge, Cambridge University Press, 2008; E. Wingenbach, *Institutionalizing Agonistic Democracy: Post-Foundationalism and Political Liberalism*, Farnham, Ashgate, 2011.

[7] L. Swaine, *The Liberal Conscience: Politics and Principle in a World of Religious Pluralism*, New York, Columbia University Press, 2006; M.D. Rosen, "The Educational Autonomy of Perfectionist Religious Groups in a Liberal State", *Journal of Law, Religion & State* (2012), 1, pp. 10-29.

Two kinds of conjectures?

In the previous section, I have attempted to reconstruct the landscape within which Ferrara places his recourse to conjectural argumentation. Now, it is time to say something more about the origin, structure and requisites of conjectural reasoning.

As I said, conjectural reasoning was introduced by Rawls in *Political Liberalism* as a means of extending the range of public reason. Micah Schwartzman has subsequently clarified this point.[8] According to his reconstruction, conjectural reasoning constitutes a form of *non*-public reason, which can be mobilized in order to weigh conflicting values. In conjectural arguments, those who share a commitment to public reason assume the point of view of the other and try to reason on the basis of a sincere reconstruction of her doctrine. They adopt the point of view of their interlocutors, even if they do not share their views because they recognize the fact of reasonable pluralism. This move may permit us to discover that an apparent conflict between what public reason demands and what one's comprehensive view dictates is in fact neutralized by a proper understanding of what the comprehensive view involves.

It is important to notice that conjectural reasoning is not a kind of rhetorical persuasion. Conjecture is indeed distinct from any kind of manipulation. It aims at generating rational agreement and giving good reasons to accept public reason *from within* the perspective of the others. Moreover, conjecturers must be fully sincere, in the sense that they must disclose that they do not believe the premises from which they argue and whether they believe their arguments are justifiable from within the others' comprehensive views.[9]

Schwartzman draws also another distinction, which is more contentious. It is the distinction between *conjecturer* and *social critic*. The conjecturer is someone who employs conjectural reasoning in order to find good reasons that support a given policy from within one's comprehensive view. The social critic, instead, is someone who is committed to the success of a particular culture, has an intimate knowledge of it and

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[8] See M. Schwartzman, "The Ethics of Reasoning from Conjecture", *Journal of Moral Philosophy*, 9 (2012), 4, pp. 521-544.

[9] *Ibid.*, pp. 529-534.

advances some internal criticisms to the effect that her particular culture is, in fact, compatible with liberal values.[10] The position of social critics has this advantage over mere conjecturers: that the former – but not the latter – can be deemed to possess a special epistemic authority, due to her internal knowledge of the tradition, which enables her to claim that her interpretation of the doctrine is the right one. As Schwartzman says it is much more difficult for conjecturers, who declare not even to believe the assumptions they make, to exhibit such a self-confidence.[11]

At this point, we could be tempted to distinguish between two forms of conjectural reasoning. The first form – which we could name *true conjectural reasoning* – consists of a kind of argument directed to supporting the choice in favor of a given policy by pointing out certain considerations drawn from a particular comprehensive view. The other form – that, following Schwartzman, we could name *social criticism* – aims instead at providing an interpretation and transformation of a certain doctrine. This last enterprise may be attempted both by someone who belongs to the doctrine which is to be reinterpreted and by someone external to it. In the first case, we have *internal social criticism* as in Schwartzman's example. In the second case, we can speak of *external social criticism*.

Schwartzman maintains that social criticism – at least internal social criticism – is different from conjectural reasoning. But is this opinion tenable? And can we assess external social criticism? The entire matter is somewhat complicated by Rawls himself. Indeed, in "The Idea of Public Reason Revisited", Rawls seems to conceive of conjectural reasoning as a method to mobilize considerations not pertaining to public reason. He writes: "In endorsing a constitutional democratic regime, a religious doctrine may say that such are the limits God sets to our liberty; a nonreligious doctrine will express itself otherwise". [12] However, this sentence ends with a lengthy footnote in which Rawls cites the work of Abdullahi Ahmed An-Naʻim as an example of a re-interpretation of Islamic

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[10] *Ibid.*, p. 535.

[11] *Ibid.*, p. 540.

[12] J. Rawls, "The Idea of Public Reason Revisited", cit., p. 782. Note that for Rawls the aim of the conjectural reasoning is not that of supporting a certain policy but that of establishing liberalism and public reason.

law. Now, it is fair to say, following again Schwartzman,[13] that An-Na'im is more an internal social critic than a mere conjecturer. Therefore, it is not completely clear which model of conjectural reasoning Rawls has in mind.

On the other hand, there are strong reasons, in my opinion, for accepting a broader notion of conjecture. Indeed, if we stick to a narrow concept – something like what I called true conjectural reasoning – the usefulness of the whole procedure becomes doubtful. The role performed by the conjecturer would be that of pointing out some consequences of a certain comprehensive doctrine that would otherwise be neglected. To begin with, this activity seems in no way controversial since it boils down to helping someone in forming a better image of the corpus of values to which she already adheres. Moreover, its worth seems questionable, too: indeed, if the consequence supported by the conjectural reasoning is already in line with what the comprehensive doctrine recommends the conjecture becomes irrelevant.

The only hypothesis in which it can make a difference is when the consequences of the conjectural argumentation are in conflict with other values drawn from the same doctrine. For example, consider arguing in favor of the birth control on the basis of the meaning that life detains within catholic religious tradition. The upshot of the conjectural reasoning is the discovery of a conflict between values, principles, and rules. Such a conflict may be resolved only through an overall hermeneutic enterprise that redefines the structure of the whole doctrine. For these reasons, I think that the distinction between true conjectural reasoning and external social criticism is not acceptable since the first kind of argument tends to shift into the second one. In other words, conjectural arguments, in so far are philosophically interesting, as they are productive of an overall reinterpretation of some comprehensive view. In turn, such a reinterpretation may be conducted by an internal critic or by an external observer. The latter case is that that better fits with the model conjectural reasoning as described by Rawls, which requires that the conjecturer reason on the basis of an assumption he does not share. In sum, conjectural reasoning is a form of external social criticism.

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[13] See M. Schwartzman, "The Ethics of Reasoning from Conjecture", cit., pp. 535 ff.

The limits of conjectures

In the previous section, I have argued that the model of conjectural reasoning involves a comprehensive explanation of a given doctrine and cannot be reduced to a mere piece of reasoning *ex hypothesi*. This conclusion is perfectly aligned with the way in which Ferrara resorts to conjectural reasoning in *DH*. Take, for example, the case of March's reinterpretation of Islam, which Ferrara portrays as a paramount instance of conjectural argumentation: the worth of March's endeavor rests precisely in his attempt to reread the basic tenets of Islam in a way that accords with liberal pluralism. Therefore, it can be understood as an overall reinterpretation of some basic religious notions driven by a liberal attitude.

Such an attempt cannot draw its authority from the force of some argumentative chain. As Ferrara himself says:

> the form of each conjecture does not rest on deriving consequences from a principle (so that a person who accepts the premises, but rejects the conclusion, could be labeled "irrational"). Rather, it rests on highlighting what would bring to exemplary realization a value core from which we start the conjecture (*DH*, p. 75).

The idea is that the force of the conjecture derives from the exemplary character of the reinterpretation it recommends. Here, Ferrara refers to his previous work, *The Force of the Example*, in order to develop a kind of intersubjective justification based on exceptional self-congruency. [14]

The circumstance that the force of the conjecture is based on the exemplarity of the reinterpretation allows sidestepping a prominent qualm advanced by Anthony Laden, that is, the risk that the model envisaged by Ferrara is not able to secure the desired result because it falls on a "paternalistic" paradigm, one centered on the relationship between a teacher, who provides an authoritative interpretation, and a pupil, who must learn the lesson given by the former. [15] Indeed, the activation of the exemplary validity model

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[14] See A. Ferrara, *The Force of the Example: Explorations in the Paradigm of Judgment*, New York, Columbia University Press, 2008, especially pp. 22 ff. See also my "On the Very Idea of the Universality of Political Judgement", *Jura Gentium*, 6 (2009), s.v.: *Validità esemplare, estetica e politica. Discutendo* La forza dell'esempio. Il paradigma del giudizio *di Alessandro Ferrara*, pp. 38-46.

[15] See A.S. Laden, "On Democratic Justification: On Alessandro Ferrara's *Democratic Horizon*", *Philosophy & Social Criticism*, 42 (2016), pp. 673-680.

requires the presence of some common ground between different subjects: this point clearly emerges from *The Force of the Example*, where Ferrara says that there are no irreducibly alternative perspectives because each two subjects define a new perspective common to both of them.

> The key idea of a judgment view of justice is to identify that locus of intersection in order to have it play the role of a vantage point from which we can counterfactually envisage an identity encompassing the conflicting ones. Then this counterfactual identity can be treated like an identity in its own right whose own exemplary fulfillment [...] does all the work that traditional views of justice are supposed to do.[16]

My point here is that conjectural reasoning, drawing its force from the exemplary character of the reinterpretation it proposes, requires that the interlocutors share some common identity, which grants the cogency of the argument. One interesting way to think of such phenomena is by comparing them to Robert Brandom's *Vernunft* model of concept determination. According to Brandom, who credits Hegel with this conception, conceptual contents evolve over time through a process of recollective reconstruction of a tradition that projects itself into the future, setting the forthcoming standards of correctness.[17] Now, we can say, the overall reinterpretation of a certain doctrine is not so different from the process through which a set of concepts gets reconstructed in light of a tradition and thus is projected into the future. Moreover, such a process is made possible by the interplay between the authority of the concept developers and their responsibility towards past uses.

We can try to express this predicament through the notion of recognition. Ferrara links openness and recognition in the second chapter of *DH*. Brandom, on his part, describes the process of never ending concept determination as a kind of recognition, which involves different traditions, rather than different individuals.[18] In a more general vein, the idea behind the relation between conjecture and recognition is that the exemplarity of the reinterpretation from which the conjectural argumentation draws its

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[16] A. Ferrara, *The Force of the Example*, cit., pp. 39-40.

[17] R.B. Brandom, *Reason in Philosophy: Animating Ideas*, Cambridge, MA, Harvard University Press, 2009. On the application of Brandom's conception to political philosophy, see also my "Inferentialism, Culture, and Public Deliberation", *Philosophy & Social Criticism*, 40 (2014), 1, pp. 25-42

[18] R.B. Brandom, *Reason in Philosophy*, cit., pp. 103-4.

force may exert its virtue only within contexts in which the authority of the conjecturer is already recognized. Without such a tie, the exemplary character of the reinterpretation proposed would remain unexpressed and the whole reasoning would be ineffective.

At this stage, however, one should ask what exactly recognition involves. As it is widely known, the notion of recognition has been firstly elaborated in the context of idealistic philosophy by Fichte and, especially, Hegel. Since then, it has been employed by an array of different authors, like Axel Honneth and Charles Taylor. If we follow again the lead of Brandom in order to acquire some hints towards its basic content, we find that the relationship of recognition obtains whenever an agent is disposed to conform her behavior to the standards set up by another agent that is said to be endowed with authority. Brandom infers that a "*community* is implicitly constituted by one's own recognitions, and actually achieved insofar as they are reciprocated".[19]

The basic issue that we must confront is then the following: conjectural arguments derive their force from the exemplary character of the reinterpretation they recommend. In turn, exemplarity can be perceived only by those who already recognize the authority of the conjecturer's reading. Recognition of someone's authority, finally, defines the contour of a new community that comes to light with the exemplary reinterpretation. From this simple train of thought, we could conclude that the main limit that hampers Ferrara's resort to conjectural reasoning is that conjectural arguments can work only within the context of a recognitive community, where the addressees can perceive the authority of the conjecturer. This is obviously different from mere paternalism because the conjecturer's efforts to persuade her opponent cannot be seen – not even from an external observer – as an attempt to take advantage of her position in order to make her views prevail: after all, the authority of the conjecturer's reading is grounded in the activation of a common attitude to recognize the marks of exemplarity.

To such a qualm, Ferrara could probably reply that conjectural arguments can shape the boundary of a new community by reason of the exemplary character of the

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[19] Cf. R.B. Brandom, "The Structure of Desire and Recognition: Self-Consciousness and Self-Constitution", *Philosophy & Social Criticism*, 33 (2007), pp. 127-50, p. 148. See also R.B. Brandom, *Reason in Philosophy*, cit., pp. 70-1. It is noteworthy that Brandom elaborates on the Hegelian conception of recognition. However, it is fair to say that his theory is quite different from that of other Neo-hegelians, as Honneth.

reading they offer. This answer is acceptable, yet it cannot but confirm the limits of conjecture. Conjectural reasoning is not designed to move the fundamentalists, who are not able to look at their tradition as one among others – this point, however, is explicitly acknowledged in the text. It can give good reasons to those who are already persuaded by liberal values and are looking inside their comprehensive view for a route to support them. Its proper role is then that of a diagnostic tool, which reveals when a new community, built up around an exemplary reinterpretation of a given tradition, is actually achieved by virtue of the mutual recognition of their members.

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Is Hyperpluralism Compatible with Dualist Constitutionalism?

On Alessandro Ferrara's Conception of Multivariate Democratic Polity

Italo Testa

Abstract: In this essay I first set out the advantages the "multivariate democratic polity" framework proposed by Ferrara offers in comparison to other more consensus-based notions of democratic legitimacy. Secondly, I highlight some ambiguities concerning the meta-theoretical status of this frame, since it is not clear whether it consists of an adaptive realistic description, or otherwise is a normative argument. Thirdly, I cast some doubts on the compatibility between the multivariate frame and the "dualist conception of democratic constitutionalism" adopted by Ferrara, since the latter seems too indebted to the domestic analogy, and to a consensus-based model of legitimacy. Finally, I argue that the dualist approach does not seem a convenient way to include citizenship in deliberative processes, and the question of the emergence of a transnational *demos* should rather be reconsidered as crucial for this purpose.

[**Keywords:** Democratic Legitimacy, Overlapping Consensus, Pluralism, Deliberation, *Demos*]

The Democratic Horizon is a conceptually rich, creative and thought-provoking book, which exhibits an example of political philosophy at its best, exploring crucial issues for contemporary social thought and proposing a number of innovative conceptual tools to deal with ongoing transformations of democratic legitimacy. In this essay I will concentrate on what I assume to be one of the most promising conceptual frameworks developed by Alessandro Ferrara, that is his notion of "multivariate democratic polity". I will first set out the advantages the multivariate framework offers in comparison to other more consensus-based notions of democratic legitimacy. Secondly, I will highlight some ambiguities concerning the meta-theoretical status of this model, since it is not clear whether it consists of an adaptive realistic description of the present state of multicultural democratic polities, or otherwise is a normative argument on how their political legitimacy should be better conceived. In a third step, I will cast some doubts on the
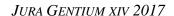
compatibility between the multivariate frame and the "dualist conception of democratic constitutionalism" Ferrara adopts in order to rethink democratic legitimacy in a transnational context. In particular, I will argue that whereas the multivariate framework is a promising point of departure in order to capture the transnational transformation of democratic polities, the dualist conception is still too indebted to the domestic analogy, and to a consensus-based model of legitimacy, and as such cannot capture multilevel processes of postnational constitutionalization and governance adequately. Finally, I will analyze the governance-based notion of transnational democratic authorship which Ferrara proposes and try to clarify its normative criteria. I will argue that once we adopt a deliberative model of democracy as Ferrara does, then it should be the deliberative process which establishes the criteria for the evaluation of the legitimacy of governance practices. But if this is the case, then again the dualist approach does not seem a convenient way to include citizenship in deliberative processes, and the question of the emergence of a transnational *demos* should rather be reconsidered as crucial for this purpose.

Hyperpluralism and multivariate democratic polity

The whole project of *The Democratic Horizon* strives towards a non-procedural definition of democracy based on a pluralized notion of democratic ethos – understood as "passion for openness"[1] – and on a pluralistic model of its political justification. Accordingly, "reflexive pluralism" (see *DH*, pp. 67 ff.) is meant to be a strategy that should allow for a plurality of arguments for the acceptance of liberal democratic pluralism, thus avoiding the *petitio principii* – and subsequent performative contradiction – of monist accounts based from scratch on the liberal notion of autonomy. The idea is that pluralism could be justified proceeding from a variety of premises which could be legitimately interpreted as immanent to the respective central categories of different religious, metaphysical and moral comprehensive conceptions. These arguments would have the form of what Rawls labelled as conjectural arguments, that is arguments where we "argue from what we

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[1] A. Ferrara, *The Democratic Horizon. Hyperpluralism and the Renewal of Political Liberalism*, New York, Cambridge University Press, 2014, henceforth *DH*, pp. 48-51.

believe, or conjecture, are other people's basic doctrines".[2] As such, conjectural arguments are arguments that do not presuppose shared premises.

So far, Ferrara's model is an extension of the model of overlapping consensus to the problem of the justification of ethical pluralism, which should allow us to address the question, neglected by both Rawls and Habermas, "Why be pluralist in the first place?" (*DH*, pp. 71-72). A theoretical change happens when Ferrara, in chapter four of *DH,* introduces the notion of "hyperpluralism" (*DH*, pp. 91 ff.). This is at first negatively characterized as a situation where immanent conjectural arguments for the endorsement of pluralism do not work. "What happens when conjectural arguments fail to convince minorities to endorse the "political values", to accept pluralism and to join in the existing constitutional consensus?" (*DH*, p. 15). According to Ferrara, hyperpluralism is a notion that describes the actual conditions in which contemporary democracy operates and then represents a major challenge that cannot be solved within the limits of classical political liberalism, forcing us to adopt new vocabularies and conceptual tools. As such, hyperpluralism is understood as the condition in which some comprehensive conception endorsed by a majority of people, or even a sizeable minority, can reach an overlapping consensus on the basic structure and all the constitutional essentials. Whereas some other comprehensive conceptions endorsed by minorities – or even by a majority of minorities – cannot reach an overlapping consensus on the basic structure of society on *all* the constitutional essentials – perhaps they endorse some constitutional essentials on the basis of conjectural arguments and some others on the basis of prudential arguments, or even *none* on the basis of conjectural arguments and *all* of them only on the basis of prudential arguments (*DH*, pp. 105-107).

Hyperpluralism is then conceived as a situation where a widespread overlapping consensus based on conjectural arguments cannot be attained. The "multivariate democratic polity" is here proposed by Ferrara as the best answer to the phenomenon of hyperpluralism. But what kind of answer is this? In the first instance, the notion of multivariate democratic polity seems to be a restatement of the problem it should answer: just another term to refer to the fact of hyperpluralism in a democratic political society.

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[2] J. Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review*, 64 (1997), 3, pp. 765-807, p. 786.

The notion of multivariate democratic polity is introduced then to refer to the fact that in contemporary democratic societies there is a coexistence of multiple and variable orders of relations between groups and their respective comprehensive conceptions – overlapping consensus and *modus vivendi* would be not exclusive, but would coexist alongside variable geometries.

On closer inspection, the notion of the multivariate democratic polity, rather than being a bare restatement of the fact of hyperpluralism, could be interpreted as a model that re-describes the way political liberalism captures the fact of pluralism. In this sense, the multivariate democratic polity is a second order notion introduced as an amendment of the received interpretation of the scheme of *Political Liberalism*, understood as involving a sort of linear, homogeneous and preordained progression of polities from religious conflict, up to *modus vivendi*, constitutional consensus, and finally overlapping consensus (*DH*, p. 105). I would say that the notion of multivariate democratic polity is firstly a diagnostic tool, which is useful insofar as it can help us to detect and to bring into question the underlying consensualist teleological scheme of standard interpretations of political liberalism, where some kind of (overlapping) consensus is understood as the final stage of a process of historical and logical completion. Consequently, such a notion is to my mind useful insofar as it leads us to reconceive of the relation between consensus and dissent and the role they play in political legitimacy. According to Ferrara himself, the multivariate democratic polity conception

> constitutes the best response to the tenuousness of consensus and the ubiquity of dissent
> that political liberalism can offer, in line with the premise (often neglected or contradicted
> by most of its agonistic interpreters) of an enduring relevance of the distinction between
> legitimate coercion and arbitrary oppression (*DH*, p. 108).

Still, as I will argue, this is a point where Ferrara is not radical enough and does not draw all the conclusions that to my mind should follow also at the normative level from the endorsement of such an understanding of the relation between consensus and dissent.

Meta-theoretical arguments

As we have seen, the multivariate democratic polity is first presented as a "last resort way to remedy the shortcomings of public reason" (*DH*, p. 107) – a remedy for the failure of

conjectural arguments. And secondly as a (second order) answer to the tenuousness of consensus and the ubiquity of dissent. But how does this work exactly? In dealing with this problem, I will now consider some meta-theoretical ambiguities of such a notion. The first thing to note is that it is not clear whether such a conception amounts to an argument and to whom it is addressed. When conjectural arguments fail to convince those who follow some comprehensive conceptions, what is the multivariate democratic polity conception supposed to do? First, it does not seem to consist of a last resort argument, which should convince those who did not accept conjectural ones. If those arguments, which did not involve any shared premises, could not work, one cannot see what argument could now work for convincing the skeptics. Moreover, the multivariate democratic polity conception does not seem to have, prima facie, the form of an argument. At first sight, as we have seen, it seems to be just a restatement, or a re-description, of the fact of hyperpluralism. Now, important as it may be to get this fact of contemporary democratic societies right, this move is not *per se* an argument that could be used to convince anyone to be a pluralist. I cannot convince anyone to endorse pluralism just by stating that hyperpluralism is a fact of contemporary democratic societies (nor by saying that it works because the consent it provides, though not universally widespread, is enough to establish a multivariate polity).

But as we have seen, the notion of multivariate democratic polity could rather be interpreted as a meta-theoretical device, a notion introduced to amend the received interpretation of the scheme of political liberalism. If we assume this, then it is again clear that its addressees cannot be those minorities who fail to be convinced by conjectural arguments. Still, this allows us to reconstruct the multivariate democratic polity conception as being a part of some kind of meta-theoretical argument. This would be an argument addressed on the one hand to political liberalist theories – a sort of self-reflexive argument where political liberalism aims to prove to itself to have enough resources to cope with the fact of hyperpluralism if only it manages to modify some of its conceptual tools on how to understand the relation between consent and dissent. On the other hand, this argument would be aimed at those agonistic political theories, such as Mouffe's,

Tully's and Wingenbach's,[3] which deny that political liberalism can treat dissent and conflict in an adequate way.

Now that we have specified the intended target of the argument we can better reconstruct its form. This argument seems to firstly involve a descriptive appeal to a fact – "hey look, in hyperpluralist societies overlapping consensus and *modus vivendi* are variously intertwined and are not mutually exclusive". And secondly it involves the proposal of a theoretical model (the multivariate one) that can describe this fact adequately and that is consistent with political liberalism. The argument would then be that political liberalism can still be a convincing model since there can be an overlapping consensus robust enough to sustain and legitimate the basic structure and the constitutional essentials even when some minorities or a majority of minorities are only partially reasonable, that is, even when dissent is widespread – as happens to be the case today. If reconstructed this way, the multivariate conception could be interpreted as a realist adaptive argument – a "last resort" to adapt political liberalism to a situation which is not considered the best possible and is rather quite inhospitable for it. The linear progression from religious conflict up to overlapping consensus would continue to be the first choice, but now we can be reassured that political liberalism can survive and function also within factual conditions where this does not occur. If so, then the multivariate conception would not really modify the viewpoint of political liberalism on consent and dissent, because the burden of political legitimation would still be based exclusively on the former and on its teleological deployment.

But there is another way to interpret the descriptive component of the argument. This may involve not only a sort of realistic acceptance of de facto hyperpluralism, but also a constitutive component. On this stronger reading, the varying intertwinement between overlapping consensus, constitutional consensus, *modus vivendi* and conflict, would not just be a contingent fact of societies nowadays, but a constitutive fact of political legitimacy. Democratic political legitimacy is *constituted* by an interplay of consensus and dissent, and not just a matter of legitimate consent but also of legitimate

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[3] See Ch. Mouffe, *The Democratic Paradox*, London, Verso, 2000; J. Tully, *Public Philosophy in a New Key*, vol. 1: *Democracy and Civic Freedom*, Cambridge, Cambridge University Press, 2008; E. Wingenbach, *Institutionalizing Agonistic Democracy: Post-Foundationalism and Political Liberalism*, Farnham, Ashgate, 2011.

dissent: and a multivariate democratic polity would represent in this sense an increase in the quality of political legitimation, because it would better embody its normative architecture. If it were based on such a constitutive description of democratic polity, then Ferrara's conception could give rise to a normative argument. Whereas the reconstruction of the realist argument tells us that political legitimation can function also within hyperpluralism, the normative argument reconstruction would say that political legitimation at its best should be conceived in multivariate terms and would work better this way. To my mind, it is not clear which of these alternatives is followed by Ferrara in the book and a certain amount of oscillation between the realist descriptive argument and the normative argument is to be detected. I take the second option to be more promising, because it points toward a deeper transformation of the notion of democratic political legitimacy, which in my opinion, if we take hyperpluralism seriously, needs to embody dissent within itself as a constitutive fact.[4]

Transnational democratic legitimacy and dualist constitutionalism

In chapter 7 of *DH*, "Beyond the Nation: Governance and Deliberative Democracy", Ferrara addresses the question of democratic legitimacy from a transnational perspective. The multivariate framework is here an advantageous point of departure, since it can offer a theoretical model to account for contexts characterized by a low degree of initial convergence and a variable geometry of dissent and consent, and as such can be extended very well to emerging transnational dynamics. And I find also extremely fruitful the vaguely pragmatic and Deweyan methodological approach adopted by Ferrara, according to whom it would be a fallacy to apply old standards of democraticness, modeled on domestic regimes and state-like polities, to the new context of the worldly society (*DH*, pp. 19, 167). When it comes to the evaluation of the democratic legitimacy of transnational contexts, we rather need to elaborate new standards which adapt themselves to current problems rather than to apply received standards, which were solutions to old problems posed by previous contexts. Such an approach furnishes us with an interesting

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[4] For a notion of legitimacy based on the interplay of dissent and consent, and for a model of reconstruction of democracy as progressive institutionalization of legitimate dissent, see I. Testa, "Dissenso e legittimità democratica"*, in P. Costa (ed.), *Tolleranza e riconoscimento,* Bologna, EDB, 2014, pp. 143-159.

tool, which allows us to see that many contemporary diagnoses concerning the alleged crisis of democracy are wholly based on disputable methodological assumptions and tend to overlook the dynamic transformative character of political concepts.

In this spirit, Ferrara argues that practices of supranational global governance seem to necessarily involve a democratic deficit only if we apply to them standards modeled on domestic democratic contests. And he defends the thesis that on the contrary practices of global governance can be shown to be compatible with democratic legitimacy (*DH*, pp. 19-20), provided that we adopt a deliberative approach to democracy on the one hand, and that we conceive of governance as a method of ruling which would differ from state-like government insofar as it would not involve the threat of sanction but would rather be based on soft-law, best practices, benchmarking and moral suasion.

Now there is really a lot that is not democratic in contemporary practices of supranational governance based on technocratic, expert-guided negotiations, vertical processes of decision making, and, as is unfortunately increasingly the case with the EU, prevailing intergovernmental power relations. However, Ferrara does not want to legitimate this lamentable situation but aims rather at giving us some novel normative standards to evaluate and possibly democratically improve the legitimacy of transnational governance. In what follows I will analyze some conceptual tools, which Ferrara adopts in order to rethink democratic legitimacy in this new context. In particular, I will concentrate on the bridging role which the dualist conception of democratic constitutionalism plays within Ferrara's model in order to rethink the democratic legitimacy of transnational governance and I will argue that this move is not wholly consistent with the multivariate framework.

The dualist conception is introduced by Ferrara as a means to overcome the problem that, if we are to judge governance on the basis of the classical criterion of the legislative authority of the *demos* – the idea that citizens obey laws of which they are themselves the authors, or in other terms the normative criterion of the consent by the governed (*DH*, p. 177) – then processes of governance may seem massively deficient as regards democratic legitimacy. Ferrara proposes overcoming this problem by adopting here, on the transnational level, the sort of bipartition between two levels of the authorial function that is posited by the dualist conception of democratic constitutionalism.

According to the latter model, elaborated by Ackerman, and adopted also by Michelman and by Rawls's "principle of liberal legitimacy"[5], we are to distinguish between two levels of political legitimacy and two respective forms of authorial function (*DH*, pp. 177-178). We would place here at the upper, "constitutional" level the institutional framework concerning constitutional law making, and the correlative constitutional essentials. And at the lower, "subconstitutional" or "ordinary" level, would be legislative, administrative, and judicial acts. Democratic authorship as specified by the principle of the consent of the governed would apply directly only to the upper level. Whereas the lower level may follow different paths (including technocratic and expert-like forms of regulation), not involving the full authorship of the *demos*, and would be legitimated indirectly by its consistency with the principles assented to at the upper level.

The first thing to note here is that the dualist model is clearly not only a case of a political conception of legitimacy which has been originally elaborated on the domestic scale, as Ferrara himself is aware of, but is also to my mind heavily indebted to the architecture of national political spaces. It seems to presuppose a state-like structure, and an established constitutional tradition, where a level of constitutional law and connected political procedures is clearly identifiable and distinguishable from ordinary law. This may engender from the very beginning the risk of falling back to the domestic fallacy. Hence, I think here Ferrara would have the burden of proving that the dualist model can be adapted to a transnational context in a way that escapes this problem. Unfortunately, there are a number of difficulties here that are pretty hard to overcome and that are connected to the multivariate structure of transnational spaces.

Let's use here as a guiding thread the EU, the example of transnational democratic legitimacy most frequently cited by Ferrara as an emblematic one. Let's first leave aside the (not unreasonable) position according to which there is no properly identifiable constitutional level in the architecture of the EU, but what we have at the moment is rather an intergovernmental treaty – the Lisbon Treaty – that has been adopted as a last resort remedy after the failure of the European Constitutional Treaty, which had not been

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[5] See B. Ackerman, *We the People*, Vol. 1, *Foundations*, Cambridge, MA, Harvard University Press, 1991; F.I. Michelman, "How Can the People Ever Make the Laws? A Critique of Deliberative Democracy", in J. Bohman, W. Rehg (eds.), *Deliberative Democracy*, Cambridge, MA, MIT Press, 1997; J. Rawls, *Political Liberalism*, New York, Columbia University Press, 2005, p. 137.

consented to by the French and the Dutch people, and which was in any event not a constitutional text, but rather an intergovernmental treaty aimed at having constitutional effects. Ferrara clearly is not a supporter of this skeptical attitude towards the treaties and, along with post-national and pluralist constitutional theories of the so-called new constitutionalism,[6] assumes rather that the Constitutional Treaty, The Lisbon Treaty, together with the pronouncements of the European Court of Justice (such as the judgment "Les Verts", April 23, 1986), already represent a *sui generis* European process of constitutionalization, which may be said to be legitimate even in the absence of a European *demos* acting as a constituent power. The problem here arises because this model of constitutionalization as an emerging process is clearly based on a multileveled and composited architecture which is hard to combine with the clear-cut distinction between a higher and a lower level that the dualist conception presupposes. Whereas the latter architecture is a hierarchical and top-down one, where legitimation is transmitted from the upper to the lower level, the multileveled process of constitutional emergence – if it is not just another neoliberal strategy to give a decisive power to judicial authority and technocratic elites and to limit popular accountability, as some of his critics assume[7] – *should* be meant to be the composited result of a horizontal, netlike process plus both top-down and bottom-up dynamics. The question is not only, as some may argue, that here what the constitutional essentials to which we are supposed to consent to is not very clear – free and equal consent of the citizens to what exactly? – or at least are subject to a never-ending process of transformation. More importantly, even if we suppose that, at some given point, some constitutional essentials are specifiable, these are to a great extent to be conceived as something which also emerges from processes that, from the perspective of the dualist conception, are very often conceived of as emerging from the "ordinary" level of legislative, administrative and judicial acts. Hence, the dualism between constitutional and subconstitutional level, which was modelled on a more

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[6] See for instance G. Amato, "L'originalità istituzionale dell'Unione europea", in G. Preterossi (ed.), *Un passato che passa?*, Roma, Fahrenheit 451, 2000, pp. 81-91; I. Pernice, "Multilevel Constitutionalism in the European Union", *European Law Review*, 27 (2002), 5, pp. ; J.H.H. Weiler, M. Wind, (eds.), *European Constitutionalism Beyond the State*, Cambridge, Cambridge University Press, 2003.

[7] See for example L. Hilbink, "Assessing the New Constitutionalism", *Comparative Politics*, 40 (2008), 2, pp. 227-245.

traditional and state like form of constitutionalism – where the bounds of constitutional law-making are at least sufficiently clear cut – does not seem to be wholly compatible with the multilevel model of transnational constitutional process, which Ferrara is keen to adopt.

Furthermore, the dualist conception seems to be deeply indebted to a consent model of political legitimacy, where the source of legitimacy is established at the upper level by some form of consent (be it some sort of original position or else of overlapping consensus), whereas dissent does not play a constitutive role and is rather understood as a residuum or a local perturbation manifested at the lower level. But if we take the multilevel dynamics of constitutionalization seriously, and we conceive of it in terms of a multivariate transnational polity, then we should assume that there cannot be a clear-cut bipartition between consensus and dissent and the allocation of these to two different levels, but rather that they are intertwined as constitutive elements of legitimacy. Furthermore, the multileveled process of transnational constitutionalization is combined with what Rosanvallon has analyzed as an ongoing process of pluralization and differentiation of forms of legitimacy – including not only consent-based "electoral" legitimacy but also "impartial", "reflexive" and "proximity" legitimacy[8] – which again is hardly compatible with the dualist bipartition of authorship. And this also affects the way we are to conceive forms of transnational governance, since, if we assume this description, then also Ferrara's definition of governance as a "monopoly on the attribution of legitimacy" (*DH*, p. 174) may seem in need of being reformulated: the current phenomenon of differentiation of forms of legitimacy seems rather to bring into question the idea that a monopoly of it can be effective.

Citizenship authorship, deliberation, and transnational *demos*

I would now like to have a closer look at the governance-based notion of democratic authorship proposed by Ferrara. What are the normative criteria that specify it? The definition of governance as a method of "ruling without compelling" cannot of course suffice to specify normative criteria of democratic legitimacy, since there can be forms

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[8] P. Rosanvallon, *Democratic Legitimacy: Impartiality, Reflexivity, Proximity*, Princeton and Oxford, Princeton University Press, 2011.
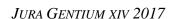
of governance – for instance in financial capitalism – which do rule by imposing sanctions for non compliance but that are still not democratic. Ruling without compelling could be a necessary but not sufficient standard for postnational democratic authorship, which means that the notion of governance itself needs to undergo further normative criteria. A clue is offered by Ferrara when he writes that methods of governance do not necessarily represent a burden for democracy

> *if and only if* they (a) take place within the boundaries of "constitutional essentials" that meet with the consent of free and equal citizens as manifested in referenda or in more indirect but still recognizable ways and (b) some recognizable form of accountability remains in place (*DH*, p. 178).

Here, the dualist conception of constitutionalism seems to offer in clause (a) the first normative criterion needed to distinguish between legitimate and non legitimate forms of governance. But a problem immediately arises because, as we have seen, in the multilevel process of constitutionalization of Europe, for instance, the boundaries of what are to be considered the "constitutional essentials" are rather contested and may not be so determined in themselves. Moreover, even the subjects of this process of constitutionalization are rather variable. As Ferrara himself writes, if we are keen to say that there is here some form of "citizenship authorship", then we must accept that it is "much more *indirect* than the authorship to which we are used in the domestic framework" (*DH*, p. 181). It is some kind of authorship not in the hands of a single identifiable subject, but rather "located at the crossroads of the European Parliament, the European Commission, and intergovernmental bodies such as the European Council" (*DH*, p. 181). Here it is clear that we would need at least some further criteria to evaluate, in light of democratic authorship, the balance between these components. Otherwise, everything would go, and we would be left with the unsatisfactory outcome, which is what is happening nowadays. Intergovernmental bodies are overly dominant and depriving the other components of decisional power – look at what is happening as regards to who is going to conduct the negotiations over the UK's exit from the EU – and this would be wholly legitimate within Ferrara's framework. Hence, even if we were keen to accept the dualist conception of authorship as being adequate in a transnational context and not affected by a domestic analogy fallacy, I do not think this could alone offer the

alleged kind of top-down legitimacy for governance practices. It is certainly the case that dualist approaches to national constitutional democracy are, as we know, already challenged by those who find this "legal" model of constitutionalism, which revolves around judicial review and tends to "juridify" political confrontation, to be inherently paternalist and depoliticizing.[9] But at least at the domestic level the boundaries of legal constitutionalism are identifiable, and their relation to representative democracy is established by a constitutional tradition and/or procedures. However, when we step to the transnational level and the fluid process of its constitutionalization, all this remains much more undetermined and permeable to vertical and non-transparent dynamics that are more worrying and risk remaining unchecked.

Even if we leave aside these questions connected with the dualist conception, and come back to clause (a) of the formulation of democratic legitimacy offered above – "if and only if they (a) take place within the boundaries of constitutional essentials that meet with the consent of free and equal citizens" – we can realize that at the very end the stronger normative standard is that of the free and equal consent of the citizens. Important as consent may be, I think that a renewed notion of democratic authorship should also incorporate within it dissent as a source of legitimacy – democracy is a process that progressively institutionalizes dissent (individual rights, majority vote, social rights, rights to strike, rights to conscientious objections are in many aspects also institutionalized forms of dissent) – and for this reason I would prefer the clause to instead be "if and only if they (a) take place within the boundaries of constitutional essentials that meet with the consent of free and equal citizens *and allow for legitimate dissent*".

Now let's leave aside the previous point, which would need a longer discourse than we have time for here, and consider the fact that in his book Ferrara proposes adopting a deliberative paradigm in order to rethink democratic authorship. I think we should read in this light the normative constraint that Ferrara poses when writing that methods of governance are not a burden for democracy if and only if the free and equal consent by the citizens is "manifested in referenda or in more indirect but still

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[9] See R. Bellamy, *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy*, Cambridge, Cambridge University Press, 2007; J. Waldron, *Law and Disagreement*, Oxford, Oxford University Press, 1999; M. Tushnet, *Taking the Constitution Away from the Courts*, Princeton, Princeton University, Press, 1999.

recognizable ways and (b) some recognizable form of accountability remains in place". Accountability, important as it may be, is here a criterion (b) subordinated to clause (a) and as such is clearly not enough to specify normative criteria for the democraticness of governance. Hence, the normative priority is to be assigned to the specification of clause (a), that is to the criterion that the free and equal consent of citizens be somehow manifested "in referenda or in more indirect but still recognizable ways". A strong, deliberative reading of this specification requires that the formation of consent (and dissent) be part of some sort of deliberative process (of which referenda are an instance). This offers us then a clue as to the question of the normative criteria that should distinguish between democratic and non-democratic forms of governance. It is in the end some notion of deliberation that should offer us a stronger standard for democratic legitimacy.

For methods of governance, it is not enough to take place within the boundaries of constitutional essentials – whatever they may be – nor to meet with the formal consent of free and equal citizens, nor to be somehow accountable. They need in the end to comply with standards of public deliberation. They have to be rooted in deliberative processes and somehow contribute to enhancing the quality of them. But this is a point which is to my mind required by Ferrara's strategy, but that remains rather underdetermined. Here it is not enough to appeal to the fact that in transnational contexts such as the EU, citizenship authorship is "much more indirect than the authorship which is located at the domestic framework" (*DH*, p. 181). Because this fact is part of the problem we are faced with, that is, the problem that at the fluid crossroads between European Parliament, the European Commission, and dominating intergovernmental bodies such as the European Council and other more informal and restricted bilateral or trilateral meetings, it is not at all clear in what sort of deliberative process – indirect as it may be – citizenship authorship is taking place. The problem is that these crossroads – which by the way include processes that could be classified both at the alleged constitutional higher level, and the alleged subconstitutional, ordinary level – are not governed by enlarged deliberative processes in the proper sense, but are rather mainly being reshaped by interstate power relations and technocratic dynamics molded by them. Now this may be a factual circumstance that Ferrara's framework could help us to denounce as not legitimate – or not fully legitimate

– if it could better specify how and where deliberative bodies of citizenship could be located here. If forms of governance are not rooted in deliberative processes, they cannot be said to have a full democratic legitimacy.

Of course democracy is not necessarily based on majority vote, and we have apprehended from the deliberative paradigm, as Ferrara notes, that majority vote is not the only, and maybe not the best method of deliberation (*DH*, pp. 176-177). Still, can we really frame in terms of processes of democratic deliberation what is happening at the mentioned crossroads? I think this is more than simply a factual problem concerning the current state of the EU, but instead is also connected with constitutional theory. As Ferrara notes, the deliberative democracy paradigm requires both an object of deliberation, a deliberating process, and a deliberating body, a subject of deliberation (*DH*, pp. 168-169). On the other hand, while confronting himself with the *no demos thesis*, Ferrara assumes together with new constitutionalism that the EU represents a novel and peculiar situation where the relation between constitutional treaty and state apparatus is weakened. Here we would have to deal with a higher law of a supranational polity of citizens rather than with the higher law of a state, for which a national demos would be needed as a legitimating source (*DH*, p. 181). But here the problem is that in this new situation there is either no deliberative subject, or else, if there is one, it is not at all clear if and how citizens are included within it even in an indirect way. And we cannot be satisfied with the fact that members of the EU parliament are democratically elected by EU citizens, and that national governments that operate in the EU council are democratically elected at the national level. What happens at the crossroads between these institutions is hardly to be represented as a process of deliberation – what sort? – of democratically elected representatives and seems to follow a pretty different logic, increasingly modelled by interstate power relations.

For the above mentioned reasons I think that even those who are keen to abandon a strong notion of democratic authorship, and a strong connection between constitution, state apparatus and nation, should reconsider the question of the *demos*. If both transnational constitutional practices and practices of governance do not include citizens in a deliberative process, we cannot be satisfied as to their democratic legitimacy. But for this to happen, the supranational polity of citizens must be engaged in supranational

practices of democratic citizenship. Now, it is certainly the case that democracy, as Ferrara assumes, is better understood as an ethos, and the latter can be understood as an individual attitude, a passion for openness to which, as in the nice quote from Dewey that opens the book, institutions should conform rather than the other way round.[10] Still, individual attitudes, to be such, have to be developed through and within shared practices. For individuals to have standing, stable democratic attitudes, there must be a democratic life-form of practices they embody and sustain. And this cannot just consist of a spurious mix of constitutional judicial reviews, top-down methods of governance, intergovernmental power relations, plus some indirect deliberation provided by the democratically elected representative in the EU parliament: if not also supported by practices of political subjectivation, there cannot be any supranational polity of citizens. Here the question of the *demos* strikes back. We do not necessarily need to think it as a substantive, already given entity at the national level. In fact, the question of the emergence and consolidation of a transnational *demos* as a legitimating source and scope is still the crucial question for contemporary democracy, since in its absence legitimizing deliberation, even in its indirect forms, cannot succeed.

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[10] "Democracy is a personal way of individual life […] it signifies the possession and continual use of certain attitudes, forming personal character and determining desire and purpose in all the relations of life. Instead of thinking of our own dispositions and habits as accommodated to certain institutions we have to learn to think of the latter as expressions, projections and extensions of habitually dominant personal attitudes" (J. Dewey, "Creative Democracy. The Task Before Us", in *John Dewey and the Promise of America*, *Progressive Education Booklet No. 14*, Columbus, Ohio, American Education Press, 1939).

The Legacy of Rawls's Political Liberalism and Its Future

Alessandro Ferrara

It is always a pleasure and a privilege to see one's work becoming the object of critical consideration on the part of fellow travelers along the road of philosophical reflection. The philosopher's paradise – if it exists somewhere – must be one in which others engage in earnest, not necessarily agree, with the thoughts one has only tentatively ventured to make public. For this pleasure and privilege, I am very thankful to David Owen, Matthew Festenstein, Luca Baccelli, David Álvarez, Marco Solinas, Italo Testa and especially to Leonardo Marchettoni for also having shouldered the burden of editing and of organizing of a seminar at which some of these contributions were presented. I owe a debt of gratitude to all these colleagues for having generously invested time and attention in unraveling all the argumentative threads that are intertwined in *The Democratic Horizon*. The result is a challenging set of objections and critical remarks, all quite on the mark and difficult to do full justice to. Undergirding them is an unfailing grasp of the general thrust of my attempt to rethink and expand the paradigm of "political liberalism" – which I take (for reasons elucidated in my response to Baccelli) as the most innovative and promising framework available for understanding contemporary constitutional democracy – in order to improve its potential for meeting the new challenge of hyperpluralism, not really confronted by Rawls in the 1990's.

Some of the contributors, mainly Owen and Festenstein, probe my general strategy of grafting notions like exemplarity and judgment onto political liberalism's greater openness, relative to other competing frameworks, to "the aesthetic sources of normativity". They probe the internal consistency and the compatibility of the use I make of such notions with the central aspects of the Rawlsian paradigm. Others, like Baccelli, invite me to reflect on the overall import of my endeavor: does it really add new substance to the promise of political liberalism or does it amount to a kind of immunization? Other contributors focus on more specific but very significant junctures of *The Democratic Horizon. Conjecture* – a form of public argument that in hyperpluralist contexts, where public reason ends up idling, may generate convergence by hermeneutically engaging the

other's comprehensive conception – is at the center of Álvarez's and Marchettoni's comments. While Álvarez explores how conjecture could play a fruitful role also beyond that domestic realm to which I have mainly confined its significance, Marchettoni calls for a more adequate account of the nexus of conjecture and recognition than I have provided. Solinas critically engages the view of affects and emotions underlying my account of the democratic ethos, takes issue with my preponderant cognitive emphasis, but also charitably unearths countervailing considerations in my text, where the texture and immediacy of emotional response receive priority. Finally, the *multivariate democratic polity* – the last resort, when conjectures fail to generate consensus, for avoiding "liberal oppression" or the imposition of constitutional essentials that fail to be endorsed by *all* the citizens – is put to test by Testa in terms of its normative credentials as well as of its applicability beyond the domestic context. Like Álvarez argued about conjecture, so Testa finds that the dualistic approach underlying the multivariate polity incurs important difficulties if we try to apply it to supranational structures of governance, best exemplified by the European Union's current arrangements.

Taken together these contributions shed a new critical light on the four adjustments to the Rawlsian paradigm that in my book are meant to enable political liberalism to meet the challenge of hyperpluralism – namely, a new emphasis on conjecture as a supplement to public reason, an expanded reconstruction of the democratic ethos, its pluralization in the guise of a typology of equally legitimate forms of ethos, and the multivariate democratic polity. The reservations expressed by Owen, Festenstein, Baccelli, Álvarez, Solinas, Marchettoni and Testa, on the other hand, will be a stimulus for my future research and at the same time testify how vital and thought-provoking the Rawlsian legacy still is, especially in the new troubled times that now confront *liberal*-democracy. The challenge posed by hyperpluralism in a world where instability and rampant inequality fuel unprecedented migratory tides may indeed pale when compared with the *indigenous unreasonability* underlying the response of nativist majorities to these phenomena. But that will be a discussion for a future occasion.

Patterns of exemplarity in battle for the soul of "the normal"

To David Owen I am grateful for having correctly identified the nexus of democratic politics at its best and *exemplary normativity* as the center of my political philosophy. Like the work of art that creates a new style, innovative politics on the scale of the "large picture" – the consent of the governed as the standard for legitimacy, democratic self-government, the abolition of slavery and the equal dignity of all citizens, universal suffrage, human rights – discloses new possibilities for our living politically together and this disclosure, in turn, arouses the perception of an enrichment of our life. The appeal of "politics at its best" rests on nothing else – be it continuity with tradition or some transcendental Archimedean points. Owen likens my attempt to Rancière's and credits me for at least partially avoiding Rancière's mistake of equating "politics at its best" only with *emancipatory politics* that breaks "with the existing political grammar of liberal democratic societies" (p. 13)[1] and pushes us "beyond our current political order to a less unjust political condition" (p. 13). Why only partially?

On Owen's view, my drawing on Kuhn's distinction of "normal" science and science at the time of a paradigm revolution – call it "revolutionary science" – commits me to a softer version of the same mistake. While acknowledging that for me "politics at its best need not necessarily be transformative at the constitutional level" and "can amount to the exemplary realization of norms and principles that are long established but rarely put into practice",[2] Owen contends that somehow I continue to identify politics at its best with the *exceptional*, even if it is not the transformative-exceptional but what I will call the "applicationally"-exceptional. More generally, Owen suggests that excellence in a practice comes in two versions: in accordance with the "grammar of a practice" or in subversion of it. Mozart, Haydn and Beethoven all represent "exemplars of 'music at its best' that move our imaginations" (p. 15). However, while Mozart and Haydn composed in accordance with the expressive resources of the so-called "classical style", adding different nuances respectively of "sensuality" and "cheerfulness" to it, Beethoven transformed that style in order to express a Romantic sensibility attuned to another way

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[1] Numbers in brackets with no further indication refer to the pages of this issue.
[2] A. Ferrara, *The Democratic Horizon. Hyperpluralism and the Renewal of Political Liberalism*, New York, Cambridge University Press, 2014, hereinafter abbreviated as *DH*, p. 40.

of seeing the world (see p. 14). When we transpose this teaching to the realm of politics, Owen suggests, we may well imagine exemplars of politics at its best that "disclose with particular force and salience" the importance of political values that are part of practices so familiar as to often escape our attention: "a legal judgment, a political debate, a piece of legislation, a popular protest" that do cast in relief valuable political practices that we often take for granted, such as "respect for the rule of law, [...] electoral participation, [...] solidarity in times of crisis" (p. 15).

What in my opinion is at stake in this desirable reconciliation of politics at its best with familiar, non-innovative practices is the "pluralization of exemplars" in a hyperpluralist context. As Owen aptly points out, "a political act may serve as an exemplar for those who have reached an overlapping consensus on a political conception of justice but not for those who stand in *modus vivendi* relations to the state": the same political act may count as exemplary in "normal" mode for the insiders to the overlapping consensus and as "revolutionary" for those in the *modus vivendi* mode. Consequently, the same act may exert the twofold function of *reminding* outsiders of shared political values and of *recruiting* those who support those values only prudentially (see p. 16).

I fully agree with the substance of Owen's intimation and do not see where the divergence lies. The key phrase, in his account of "normal" political exemplars, is that disclosure, when it reveals political values that are part of practices so familiar as to make them almost unnoticed, does so "with particular force and salience". Thus, these "legal judgments, political debates, pieces of legislation, etc." are far from *average*: they stand out, in fact, "with particular force and salience". In Owen's example from music, it is Mozart and Haydn whom he picks out as exemplary of excellence within the classical tradition, not Pietro Nardini and Ignazio Fiorillo, also quite respectable composers. Thus "normal" and "within the canon of a tradition" mean something different than "average". This is all I need in my argument. In sum, there is no way around construing the non-revolutionary exemplary as "applicationally"-exceptional (as opposed to the "creatively" or "innovatively" exceptional).

Having said this, one could observe that the exemplarity of application has a larger role in politics than in art. The reason is that political and legal exemplarity are forms of exemplarity that suffer less from iteration, certainly much less than exemplarity in the

artistic realm, which quickly wears out by imitative repetition. Nothing kills the provocative punch of the avant-guard installation more than its becoming what the average visitor expects and pays her entrance fee for. On the contrary, if one recalls the vivid emotions aroused a few years ago by the Arab Spring, the perceived opening up of political life in an entire region hitherto run by semi-dictatorial rulers or elective oligarchies, then it becomes apparent how the *n-th* process of democratization that in contextually unique forms promises to bring about the *n-th* instantiation of the "government by the governed", to use Lincoln's phrase, is no less capable of arousing the response typically associated with witnessing exemplarity – namely, the Kantian sense of a "furtherance of life", in this case *political* life. The same occurred with the fall of the Berlin Wall, the fall of the apartheid regime in South Africa, or the demise of the Latin American dictatorships of the 1970's and 1980's. One of the tasks that awaits completion and to which I hope to contribute in the near future is the charting of a typology of forms of exemplarity in the public realm: within that framework "non-revolutionary", "normal"-exemplarity (if one can use such an oxymoronic expression), could best be addressed.

Concerning the "pluralization of exemplars" – i.e. exemplary acts appearing under a different light to citizens within the overlapping consensus and to those who support the constitutional essentials only out of prudence, and exerting a dual function of *reminding* and *recruiting* – it would have been desirable to discuss the issue in the light of specific and concrete instances. Articulated in such general terms, I find the suggestion quite reasonable and worth integrating within the picture of the democratic multivariate polity. It is easy to imagine that exemplary practices of gender equality may count as *reminders* for one group of citizens and carry *recruiting* appeal for others, just like perhaps lifeworld practices of solidarity with the elderly may work as *reminders* of a moral habitus to some and exert *recruiting* appeal on those who are less influenced by those traditions.

Furthermore, Owen points out that the actual recognition of an exemplary act as such depends on constructions of meaning that in turn are affected by the working of media of communication, old and "new". This dependency on media has produced a beneficial enlargement of the potential audience and addressees of a political act to the global public but also, conversely, a segmentation and polarization of such audiences "in ways that fail to support and plausibly undermine the modest forms of 'enlarged

mentality' and the 'common world' that democratic politics at its best requires" (p. 17): symptoms of such fragmentation is the frequent "demonization of political opponents" and "negative affective register" that distinguishes politics in the 21st century. Owen concludes urging that reflection on democracy include also reflection on the need to publicly fund trustworthy quality media and to foster a kind of citizens' "media education" as part of a broader "civic education".

While I have briefly addressed the erosion of quality media as one of the inhospitable conditions (*DH*, p. 11) and I find the idea of including a sort of "media education" within a larger project of "civic education" an excellent suggestion for future discussions of the democratic ethos, Owen's point about the segmentation and polarization of the audiences – due, among other factors, also to the contribution that social media, and generally the Internet, give to licensing what in other venues would be labelled hate-speech and to insulating micro-publics of like-minded zealots from any open confrontation across divides – signals a lacuna in need of urgent filling. Not only there cannot be any recognition of exemplarity without an "enlarged mentality", but even the public sphere is in jeopardy. When it stops being the locus of the exchange of reasons it deteriorates into a mere "public space" (on the model of the stadium) where opposed cheering crowds exchange invectives, not reasons, and exit the event just of the same mind as they were before. The most dangerous threat represented by populism is not so much the prospect of its carrying the electoral day – risky and disquieting though this may be – but the prospect of its permanently infecting the democratic public sphere with a demonization of all that is politically adversarial to one's own parochial viewpoint. It is one of the challenges for democracy in our century – the four Berlusconi governments in Italy and the Trump campaign in the US testify to this imminent danger – which I think could be addressed through a rethinking of the separation of powers. One of the ideas to put to test is that because the integrity of the public sphere is vital to the survival of a democratic polity, then its safeguarding constitutes a function specific enough (and yet differentiated in a number of distinct areas, such as the equitable assignment of frequency bands, the regulation of the market of advertising, ensuring the survival of quality media,

ensuring media-pluralism, etc.) to warrant the creation of a separate branch of power, alongside the traditional ones.[3]

Is political liberalism really hospitable to exemplarity and openness?

Also Matthew Festenstein centers his thoughtful comments on my attempt to rethink the normativity of political liberalism, indeed of politics as such, along exemplary lines and probes the overall consistency of such project in an interesting and challenging way. He ascribes me the merit of coming some way toward bridging the yawning gap between Rawls's political liberalism and the judgment paradigm. According to Festenstein, while political liberalism is committed to offering "theoretical constraints on legitimate political action which must be applied to political practice", the judgment paradigm instead "seems to reject a priori theoretical constraints in favor of the primacy of practice in determining how we orient ourselves to particular concrete situations" (p. 19). Much as I am pleased to receive such recognition, I must protest that it is somewhat undeserved, because the gap between political liberalism and judgment is much less than "ominous" and my task has been accordingly simpler. The break of political liberalism from the lingering foundationalism of *A Theory of Justice* consists precisely of the rejection of "theoretical constraints". On the one hand, the normative credentials of "justice as fairness" qua political conception of justice of a well-ordered society do not rest on the free-standing cogency of the argument in the original position – now demoted to an "expository device" – but on the contingent materialization of at least a constitutional consensus, if not a full-fledged overlapping one, on its merit on the part of a majority of the citizenry. On the other hand, the newly introduced concepts of public reason and of reasonability can only be made sense in terms of the normativity of judgment and exemplarity, especially when we consider that peculiar predicate, never fully elucidated by Rawls – namely, "most reasonable for us" as applied to justice as fairness or to some other ideal object. In fact, if "most reasonable for us" is conservatively equated with "what is mandated by practical

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[3] On the general point of rethinking the separation of powers and introducing new ones, see B. Ackerman, "The New Separation of Powers", *Harvard Law Review*, 113 (2000), 3, pp. 634-729. On the specific argument for a branch of power in charge of regulating the whole sphere of *communication* (from the physical frequencies for broadcasting, to ensuring "media pluralism", to regulating hate speech and political propaganda), see A. Ferrara, *Democrazia e apertura*, Milano, Bruno Mondadori, 2011, pp. 94-95.

reason" (as Habermas in his famous exchange with Rawls suggests) then "the reasonable" forfeits its specificity relative to the moral, and "public reason" forfeits its ground-breaking originality, to become a somewhat uninspiring mouthpiece of practical reason in the public realm. If instead "the reasonable" is understood, like Rorty suggests, as synonymous with the "awareness of the partiality of one's position", the very possibility of grasping what it could possibly mean for one conception of justice, one political position, or one interpretation of the constitution to be "*most reasonable* for us" vanishes.

Furthermore, Festenstein correctly points out the convergence of Rawls and Arendt on envisaging a kind of politics freed not just from the spell of moralism but also from the lure of "epistocracy", or the priority of truth over the standard of political "rightness". Their view of politics is inextricably bound up with the acceptance of pluralism. He credits me for opening up an original path to the appropriation of the Arendtian legacy within the framework of political liberalism, distinct from the radical contextualism of Geuss and from the agonistic emphases of Honig and Zerilli.

Finally, he very concisely recaps my view of the exemplary normativity presupposed by "the reasonable" as consisting of four main aspects. First, exemplarity

> consists in the congruence of the exemplar with the collective or shared identity of those for whom it has normative force. This claim to exemplarity is not a claim that this policy is congruent with just how we think we are now but with "our shared sense of who we could be at our best".[4] [...] A claim to be the most reasonable is a claim that a policy or institution commands our consent because it fits in the most exemplary way with this shared sense of who we are at our best. Second, exemplarity also consists in a policy or institution's itself having what is referred to as "exceptional self-congruency", a "law unto itself", expressive of a particular moral tradition but not confined to it (*DH*, p. 64).[5] The normative force of an exemplary policy or institution follows from its being a part of and cohering with the "singular normativity of a symbolic whole" (*DH*, p. 65).[6] Third,

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[4] A. Ferrara, "Public Reason and the Normativity of the Reasonable", *Philosophy & Social Criticism*, 30 (2004), p. 593.

[5] A. Ferrara, *The Force of the Example: Explorations in the Paradigm of Judgment*, New York, Columbia University Press, 2008, p. 78.

[6] Ferrara, "Public Reason and the Normativity of the Reasonable", cit., p. 590.

exemplarity has an affective component and "sets the public imagination in motion".[7] Fourth, exemplarity is context-transcending. The claim for exemplarity derives its validity from an appeal to a *sensus communis* and a [Kantian] concept of the furtherance of life that should be viewed as a universal capacity to sense what promotes human flourishing. (pp. 22-23)

Judgment is the human ability that tracks exemplarity and, consequently, "most-reasonableness". Festenstein in the final section questions whether judgment so conceived can indeed function as the source of normativity that I claim it to be and, at the same time, be consistent with the premises of political liberalism. Festenstein's doubt comes from the difficulty of reconciling the quality of personal reasonableness required of the subject of judgment, the developmental-psychological rootedness of this required reasonableness in the possession of specific civic virtues, "including a commitment to enlarging one's imagination and affective instincts", with the premises of political liberalism. The required possession of these civic virtues (tolerance, the acceptance of pluralism or epistemic humility, civility) is not *per se* problematic. What is problematic, in Festenstein's opinion, "is the thought that the virtues required by this specific conception of judgment come trailing contentious philosophical and ethical commitments that are meant *ex ante* to be excluded from the domain of the political" (p. 25) – for example, the commitment to submit "our affective responses and imaginative projections [...] to scrutiny in the space of reasons" (p. 25) or a preclusion against "the Aristotelian conception of emotion" which could instead be part and parcel of a model of judgment and exemplary normativity.

Be that as it may, Festenstein detects this kind of inner tension in my discussion of openness as a democratic virtue. On the one hand, my conception of openness draws on the comprehensive views of liberals like Mill and Dewey; on the other hand, in articulating my notion of openness, I strive to stay clear of the comprehensiveness of

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[7] "Democracy cannot afford leaving political imagination theoretically unattended. The suggestion has been put forward to understand democratic politics at its best – that is, when it brings existing normative principles and practices on the ground into an exemplary congruence or when through exemplary practices it articulates new normative standards and political values – as a way of promoting the public priority of certain ends through good reasons that set the political imagination in motion" (*DH*, p. 212). See A. Ferrara, *The Force of the Example*, cit., p. 79.

Taylor's *agape* and Derrida's *hospitality*[8]. The tension, however, is more general and deep-seated. In Festenstein's words,

> An ethos of openness is part of any reasonable conception of political value, and, in this sense, is part of a citizen's possessing and exercising the capacity of reflective judgment in a reasonable way. At the societal level, the ethos of openness allows and promotes any reasonable "great transformation" and so can be integrated in a modular way into a variety of reasonable comprehensive conceptions. Yet to say that any reasonable person *must* be moved by a passion for openness defines the scope of reasonableness in a rather peculiar way. On the face of it, the motivation for political liberalism is that there are reasonable citizens who are not moved by this passion and reasonable political doctrines that are not include it. But if the claim is only that reasonable doctrines must *tolerate* this passion in others that seems to fall short of Ferrara's vision of a democratic society: it would allow for a society entirely composed of citizens who subscribe to mere tolerance of openness. But this is exactly what Ferrara wants to avoid, although it seems quite compatible with Rawlsian political liberalism. (p. 28)

In response, I must clarify that for me openness is not coextensive with the democratic ethos but only a very specific ingredient of it, which came into being in response to certain historical challenges – indeed a composite aggregate of inauspicious conditions – faced by democracy in the second half of the 20th century. Thus, I would wish neither to claim that openness is a constitutive ingredient of the democratic ethos on a par with the orientation toward the common good, the passion for equality and that for individuality, nor to claim that "any reasonable person *must* be moved by a passion for openness". The democratic polities of the first half of the 20th century could very well do without it, indeed openness was only a disposition of certain segments of the democratic elites, not quite a mainstream disposition. It makes little sense, in my opinion, to think of the democratic ethos as a fixed constellation that remains the same in the fledgling democracies of the 19th century and in those immersed in the globalized world, in those with a relatively simple social structure and in the complex societies of the 21st century, in those with burgeoning national markets and in those immersed in a global economy

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[8] Festenstein attributes me a critique of the "comprehensiveness" of White's *presumptive generosity*, which is not entirely accurate. I do acknowledge the "political" quality of presumptive generosity, see *DH*, pp. 61-63, and my exchange with White, in "Democracy in the Age of Hyperpluralism. Special Section on Alessandro Ferrara's *The Democratic Horizon: Hyperpluralism and the renewal of political liberalism*", in *Philosophy & Social Criticism*, 42 (2016), pp. 657-664 and 693-697.

dominated by disembedded financial markets, in those coalescing around one nation and in those characterized by multiethnic constituencies and hyperpluralist societal cultures Openness came into being as a disposition included in the democratic ethos only when democracy turned into a horizon – the one and only one fully legitimate form of government – much in the same way as "reasonability" can be understood as having become a democratic virtue only after the limitations of comprehensive liberalisms have become evident.

However, one side of Festenstein's question remains in need of an answer. Can openness disappear from the picture just as it once entered it, in the wake of momentous historical transformations? While the philosophical answer cannot but be positive – who needs yet another iteration of the *geschichtsphilosophisch* narrative of irreversible progress, this time harnessed to the enrichment of the democratic ethos? – the *zeitdiagnostische* dimension of the question still remains undetermined for me at the moment. Brexit and especially the election of Trump send to us powerful reminders of the "fragility of openness": even powerful democratic societies with an imperial past and present ambitions of global influence can react with a spirit of backward-looking *closure* to the upcoming challenges of globalization. Only the reaction of surprise on the part of the pro-tempore winners and that of gloomy dispiritedness within the progressive constituencies indicate the extent to which a public culture of openness has thus far become integral to the democratic ethos. Whether these important episodes will coalesce in a new enduring trend – as the elections of Thatcher and Reagan did almost four decades ago – or will turn out to be ephemeral flashes in the electoral pan is too early to say, though prudence suggests to prepare for the former.

Enriching or immunizing political liberalism?

Luca Baccelli's very articulate comments raise a radical question. Does the expansion of political liberalism pursued in *DH* represent an innovative reworking of the Rawlsian paradigm or should it rather be considered an attempt at immunizing the paradigm against several anomalies, in the footsteps of those "astronomers who added hemicycles to the Ptolemaic model as they waited for a new paradigm" (p. 44)? Before addressing such

question, however, let me respond to the more detailed objections formulated by Baccelli in his highly detailed reconstruction of my argument.

Baccelli credits me for offering a picture of the inhospitable conditions for the functioning of democracy in the 21st century that "goes to the heart of the matter" (a picture drawn before Brexit and the election of Trump, to wit). However, he attributes me a "farewell to the 'procedural strategy'" as my intended remedy for those conditions – a phrase that prompts me to emphasize once again that my pointing to the democratic ethos as the key to the difference between real democracy and the elective oligarchies that usurp its name is meant as an *addition* to the reflection on the procedural traits of democracy, not as a *substitute*. My argument is that proceduralist considerations about the rule of law, party pluralism, majority rule, regularity of elections, freedom of the press, the separation of powers *only reach to a point* in helping us distinguishing democracy from its imitations, not that they are to be cast aside as irrelevant.

Furthermore, throughout his commentary Baccelli manifests a wholehearted appreciation of my attempt to graft references to the aesthetic sources of normativity (exemplarity, judgment, authenticity) onto the Rawlsian paradigm of political liberalism (especially when it comes to the definition of reasonableness and the normative predicate "most reasonable for us"), correctly identifies (and reasonably disagrees with) my deflationary consideration of power as "political noise", as it were, but in the end attributes me a hasty and unjustified dismissal of Chantal Mouffe's twofold intimation that "the political" pierces through the illusory veil of an overlapping consensus designed to rid us of all but trivial conflict and that Rawls "moralizes" the rejection of radical dissenters by labelling them "unreasonable".

In fact, I see no problem in "acknowledging the peculiarity of the political", except perhaps a kind of superfluity of such emphasis. Rawls never succumbed to the fascination with the formal and the procedural that from Kant through Kelsen and up to Habermas permeates German thought about the rule of law and legitimacy. Therefore the Schmittian mantra of the political – the political as antidote against the veil of the false neutrality of liberal proceduralism – only applies to Kant, Kelsen and Habermas, but entirely misses its target with Rawls. The contents of the overlapping consensus, and of the constitutional essentials inspired by them, never raise a claim to pure formality: they *are* "the political",
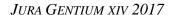
recast as what is *most reasonable for us.* Rawls even uses the term himself, in an article entitled "The Domain of the Political and Overlapping Consensus".[9] As to my claim that Mouffe forfeits all possibility of adopting a normative stance and confines political reflection to the *description* of empirical conflicts and their outcomes, it is actually she who denounces "the very possibility of a non-exclusive public sphere of rational argument where a non-coercive consensus could be attained".[10] Given her presuming the impossibility of a public sphere of rational argument, where conflicts are settled – or regulated if not solvable in principle – according to reasons accessible to all, how should we imagine conflicts to end, if not by the empirical exercise of force, or the threat of its use, by the pro-tempore strongest party? There is no awareness, in Mouffe's theorizing, of the difference between a) claiming that all consensus is imperfect – but then again, which human accomplishment is ever perfect? – and b) claiming that because every actual consensus is imperfect, consensus should be renounced as a normative lodestar. The second claim, if embraced, reduces political theory to a mere explanation of why the more powerful contender came to prevail without ever questioning the merit of that domination.

While Baccelli praises the program of charting "multiple democracies" (discussed in chapter 5 of *DH),* as opening "a new, highly relevant and vital research field" (p. 40) and formulates the welcome suggestion to look at the priority of rights over duties not just as a point of friction, but also as a vocabulary embraced by many grassroots movements of the global South, he finds my account of the democratic legitimacy of structures of supra-national governance by and large unconvincing – a theme which recurs also in Testa's comments. Citing the work of Italian jurist Maria Rosaria Ferrarese, he points to the fact that "global law is under construction through the progressive substitution of contract regulation, arbitrates and judge-made law to statutory law" (p. 42). Consequently, according to Baccelli, "the normativity of law is fading, while governance is not capable of governing today's huge concentrations of economic, geopolitical and symbolic power" (p. 42) and the tools of soft-law used by governance

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[9] J. Rawls, "The Domain of the Political and Overlapping Consensus", *New York University Law Review*, 64 (1989), pp. 233-255.

[10] Ch. Mouffe, *The Democratic Paradox*, London, Verso, 2000, p. 33.

may perhaps mask a reality different than appearances: "one might ask how *moral* the moral suasion is, and if it is truly moral *suasion* and not *de facto* coercion" (p. 42).

My response is that the normativity of law, by which Baccelli actually means *statutory law*, is fading because the authority of nation-states is fading, and that of national parliaments is fading even faster. The strong normativity of law cannot be reinstated as such because there is hardly a way of restoring the authority of nation-states and lots of doubts are raised by the proposition of thinking of the EU's or of a cosmopolitan authority's in the guise of a nation-state writ large, if anything because no supranational *demos* can be easily assumed to play an equivalent role as the nation. Thus, we are stuck with the notion of coordinating action in concert at the supra-national level not through "statutory law", and the attendant state-enforced sanctions, but in some other way, for which no better name than "governance" has been found. The task confronting political theorists in the 21st century is not to wish away governance but to spell out what *democratic* governance means and how it differs from *technocratic* or *authoritarian* governance. A first step toward articulating that notion seems to me to consist of rethinking the steering capacity of governance structures in terms of a monopoly on the "attribution of legitimacy" to the participants' actions and then of qualifying that monopoly as subject to criteria of accountability and transparency (which mark the difference from non-democratic governance). The fact that suasion often masks coercion is no different from the fact that domestic electoral suasion often masks the power of money and media: an unfortunate and deplorable predicament, but no reason to wish away elections. After all, Brexit and the election of Trump are there to show that big money and electoral consensus do not always join hands.

Finally, I am surprised that Baccelli suspects that my "adoption of the Rawlsian paradigm results in a paradoxical undervaluation of the role and function of law and legal systems" (p. 43), when in fact Rawls is portrayed by Bellamy, Waldron, and Tushnet as one of the main representatives of so-called "legal constitutionalism". In "legal constitutionalism" judicial review and the role of constitutional courts are foregrounded – for Rawls public reason is exemplarily embodied by the Supreme Court, not by Congress – to the detriment of the role of legislatures, emphasized instead by Bellamy and the other authors of "political constitutionalism".

To return to the initial question, I believe that political liberalism is still today the best normative paradigm on offer for accommodating pluralism or difference within a democratic polity. It can be freed from the context-bound parameters reflected in it and is certainly not burdened by the drawbacks that clip the wings of competing normative paradigms such as Dworkin's, Habermas's or Sen's. The Dworkinian approach, just like Sen's, is burdened by "comprehensive" assumptions about rights (like Sen's is by assumptions about "capabilities") that are *highly controversial* – controversial not just cross-culturally, but also intra-culturally. The priority of rights is contentious matter for any utilitarian-minded Western philosopher. Furthermore, the Dworkinian approach has the drawback of reviving a divide between liberalism and democracy (democracy is attributed a merely instrumental role, as the best institutional framework for realizing the supreme virtue of equality) which it has been the great merit of Rawls and Habermas to bridge. The Habermasian approach – highly original though the theory of the public sphere and the co-originality thesis might be – is fatally flawed at two crucial junctures. First, the notion of "rational consensus", which relates to "compromise" pretty much in the same way as Rawls's "overlapping consensus" relates to "*modus vivendi*", is burdened by the basically unfulfillable requirement that consensus proceed *from the same reasons* even in the conditions of hyperpluralism that affect late-modern societies. Second, Habermas never metabolized "democratic dualism" within his framework. Consequently, his demanding idealized presuppositions of discourse must be satisfied even by the most banal administrative act, instead of merely applying to the approval of constitutional essentials. The consent of "all the affected ones" within a discursive exchange free of coercion is required even in order to *legitimately* turn a street into a one-way street. Needless to say, this places his normative model, when contrasted with the Rawlsian principle of liberal legitimacy, beyond the number of models that can seriously claim to capture what democratic legitimacy in a complex society means.

Thus, in response to the allegation of trying to immunize the Rawlsian-Ptolemaic paradigm, I would say that unless one is prepared to abandon a normative perspective and embrace one of various forms of "political realism", the Rawlsian framework is still by far the best game in town and my attempt, in *DH,* is to show that it can be productively enriched in order to make it applicable to contexts different than the original one.

Conjectures beyond the nation and how to avoid the domestic fallacy

David Álvarez focuses his comments on my plea for a conjectural turn within political liberalism. He praises the promise, found in *DH*, of making the liberal-democratic polity more inclusive towards "outside and internal dissenters" and freeing it from "liberal domination" or the imposition of "secular toleration on incorporated minorities" (p. 46). However, Álvarez contends that such potential remains underfulfilled because my discussion of conjectural arguments and the multivariate polity remains centered on the domestic level instead of addressing the possible use and function of both at the level of supranational governance.

He begins by recalling the ethical pre-requisites of a valid conjectural argument, namely the status of its underlying motives and the exclusion of non-moral, strategic reasons from their number. Then he proceeds to outline a dilemma that has hitherto not received enough attention: any comprehensive doctrine is open to multiple interpretations, and different interpretations are on the one hand differently conducive to the sought convergence with some "political values", yet on the other hand also differently conducive to preserving, or even enhancing, "the integrity of the belief-system". We need "to determine what are the moral limits to the re-interpretation of a belief-system and what acceptable trade-offs between expediency and the integrity of a culture" are (p. 49). Obviously, by stretching thin its central tenets, nearly *any* comprehensive conception could be made compatible with the constitutional essentials of a liberal-democratic polity. On the other hand, if we follow an "originalist" path without flexibility, no moral outlook other than secular liberalism *à la Voltaire* would prove compatible with a political conception of justice. It seems to me that oriented reflective judgment – where orientation is provided by a principle of equal respect [11] – is the kind of competence of choice, much more than rational choice or sheer hermeneutic ability.

Álvarez then applies this framework to the international scene. Between the two extremes of a "duty to engage in conjectural argumentation to provide assistance to reform foreign institutions and political culture" and, on the other hand, understanding

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[11] On "oriented reflective judgment", see A. Ferrara, *Justice and Judgment. The Rise and the Prospect of the Judgment Model in Contemporary Political Philosophy*, London, Sage, 1999, pp. 193-194 and 222.

regional regimes, like the EU, as clubs "with a sovereign right of admission and no duty to incorporate neighboring countries", he argues that an intermediate terrain extends, where principled and pragmatic reasons concur in motivating actors such as the EU "to extend membership to their neighbors" (p. 50). Reasoning on a scenario clearly antedating the failed coup of 15 July, 2016 in Turkey and the successful ensuing repression, Álvarez invites us to imagine a EU that "needs to access a promising Turkish market and to attract its young and highly skilled workforce" and a Turkey

> reluctant to accept the invitation because some EU regulations would conflict with the prevailing Islamist conception. The EU expert committee may suggest some Islamist democratic reforms that would be in line with the EU public reason. Even if the real motivation of the EU is manifest and sincere in its pragmatic interest, we may hold doubts regarding the reasonability of the accession (p. 50).

This example shows, according to Álvarez, that when discussing conjecture at the supranational level we have to allow for partially strategic motivations: on the one hand, this strategic component detracts from the quality of the hermeneutic dialogue set in motion by conjecture, on the other hand often strategic interest is "the engine that moves realistic utopias in history" (p. 51). The successful formation of consensus cannot be forecast in time and mode, rightly points out Álvarez, lest we fall back into a philosophy of history.

In corroboration to this point, and also drawing on Heath's critique of Habermas, Álvarez puts forward an interesting suggestion: we should not hastily equate strategic action and bargaining and should accept "bargaining as a method to identify points of equilibrium and of justified satisfaction of individual expectancies where communicative deliberation failed to bridge intractable gaps in value and interest interpretation" (p. 53). In other words, bargaining could supplement hermeneutic conjectures when it comes to "elaborating criteria for ranking alternatives", i.e. for ranking on a scale of acceptability interpretations of broad religious-moral conceptions that generate diverse consequences as far as political convergence and cultural integrity are concerned. At the juncture where I would incline to insert *oriented reflective judgment* (oriented both by the standard of equal respect and by the guidelines for the fulfillment of a cultural identity) Álvarez suggests to insert a moment of "bargaining": consequently, *in lieu* of conjectural *arguments*, we should speak of a "conjectural space" where competing interpretations

and a bargaining process between mainstream interlocutors and members of the culture occurs. The result of the bargaining of cultural interpreters, external and internal to a culture, will then be "a *modus vivendi* on a higher moral ground" (p. 54).

I find this suggestion interesting – and Álvarez must be credited for providing a specific example about a Confucian conjectural space – but in my opinion it does not clarify *in what sense bargaining still responds to a normative standard*. Much as Álvarez tries to distinguish bargaining and strategic interaction, both have as common denominator the fact that the resulting equilibrium is legitimated solely by the empirical wills of the participants: there is no "right price" of something on the market, except as a metaphor for the statistic average of what *in normal conditions* large numbers of buyers are willing to pay for something. Furthermore, it is unclear how Álvarez's alternative model can respond to the Rawlsian objection concerning the intrinsic instability of all *modus vivendi* arrangements, including the one of higher moral standing that he envisages. As soon as an interpretive equilibrium is reached, which pressures me to give up some aspects of my favorite interpretation of my religious culture for the sake of a closer integration, I have the incentive to use the newly acquired inclusion within the overlapping political culture to accredit further and revive the interpretation that I just had to abandon.

Finally, Álvarez criticizes my account of governance, in Chapter 7, for focusing almost exclusively on issues of legitimacy. He correctly reconstructs my claim that complaints as to the democratic deficit inherent in the tortuous and tenuous relation of the citizens' democratic will to the regulations of supra-national (whether regional or global) governance often are ungrounded: they are based on the dubious assumption that standards of supranational legitimacy should mirror the ones operating at the national level. Then he accuses me of replicating the same mistake. My account of democratic governance in the end "justifies the global regime in functional terms relative to domestic conditions" (p. 58). In other words, it still embeds a statist standard of legitimacy, according to Álvarez: my account of governance, if projected at the global level, remains (somewhat mysteriously to me) "part of the constitutive framework of state government" (p. 58). This criticism is further substantiated by the observation that we
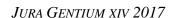
still lack an overarching deliberative space in which the competing partial discourses can be reinterpreted and prioritized according to a view that is coextensive to the scope of the *demos* subjected to its regulatory power, and which exceeds the national terms of representation (p. 58).

In response, I would reject the idea that conceiving of structures of global governance as an egalitarian association of states, on the model of a deeply reformed and democratized UN, freed from the anachronistic veto prerogative and with an effective set of checks and balances among truly separated global powers, amounts to a conservative vision premised on the untranscendable model of the nation-state. To the contrary, the very idea that the global order will be missing in democratic quality until a *demos* "which exceeds the national terms of representation" comes into being, far from embedding any new vision, except in the scale of the process, in my opinion epitomizes "the domestic fallacy": a projection on the global stage of the same old narrative of a nation that at some point constitutes itself as a *demos* and grounds institutions that will give legal form, will realize and will assess the proper interpretation of its own will. I remain very skeptical of the idea that there can be a *demos* "which exceeds the national terms of representation" and I think that the burden of proof of showing us its feasibility is on those who invite us to think along these lines. The only version of this idea that I find attractive is the Habermas-derived idea of a *dual sovereignty* and *dual constituent power* wielded simultaneously by human beings *qua* citizens of their state and *qua* members of humanity: this imaginary, however, still corroborates the idea that central structures of governance coordinate, not replace, local governments.

On the passionate side of the political passions

Marco Solinas' comments, like Owen's and Festenstein's, focus on my attempt to integrate a reflection on the aesthetic sources of normativity, on the imagination and the passions within political theory, and more specifically within a discussion of the affective infrastructure of democracy and the democratic ethos. Solinas reconstructs my view of the democratic ethos very thoughtfully and compares it with Nussbaum's view of "political emotions". Both aim at overcoming the limitations of a merely proceduralist understanding of democracy and political legitimacy and at retrieving "those normative sources that are able to give political force to 'good reasons'". In fact, good reasons, if

uncoupled from the emotional aspect of human life, remain a mere "score-keeping of the ought" with no potential for motivating people to political action. Nussbaum brings into focus an interesting emphasis on enthusiasm as an emotional modality, which, if directed at the core principles and values of democracy, adds to the stability of the polity. One could easily imagine how the lack of enthusiasm, and an emotional tone of resigned acquiescence, may place us just one tiny step away from all sorts of anti-democratic contagion.

However, Solinas criticizes my account of the affective dispositions undergirding the democratic ethos – the orientation toward the common good, the passion for equality, the passion for individuality and the passion for openness – for operating "above all, although not exclusively, on the *cognitive* level". This reductionist view of the emotional infrastructure of democratic politics is not just my own idiosyncratic problem – I find myself in the company of Stephen K. White, Rainer Forst, and Rawls. According to Solinas, for these authors and for myself "the cognitive dimension has priority over the emotional in the narrowest sense; the first one is a dimension that in many respects is even spiritual and ideal, although certainly embedded in individual attitudes of clear moral value" (p. 66).

His close reading of my text enables Solinas to quote passages where the emphasis on the cognitive dimension of the emotions is counterbalanced by political emotions that instead bring to the fore more passionate nuances. One of such passages is my favorable citation of Tocqueville's characterization of the democratic peoples' "passion for equality" as "ardent, insatiable, eternal and invincible" (quoted in *DH*, p. 46). In another passage I mention the spontaneous indignation aroused by exposure to injustice and humiliation. Solinas's point could be strengthened by likening these two passions, especially the indignation aroused by humiliation and injustice, to a point famously made by Gadamer in his reconstruction of the Kantian doctrine of taste. Sometimes taste, understood as a talent to assess the aesthetic quality of artificial or natural objects, makes us react instinctively with admiration or revulsion to an object to which we are exposed, and only later reflection will give us an articulate account of why we reacted that way.[12]

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[12] See H.G. Gadamer, *Truth and Method*, New York, Continuum, 1975, p. 35.

Similarly, democratic citizens possessed of the democratic ethos immediately react with indignation when confronted with the humiliation of themselves or of third parties, or when they perceive the perpetration of gravely unjust acts and only subsequently, upon due reflection, are able to offer an account of their passionate reaction.

Solinas also connects this *individual* reaction of indignation in front of humiliation and injustice with the *non-individual* reaction of indignation on the part of global publics when confronted with powerful images of injustice. More often there is cause for concern about the lack of indignation, and much needs to be done in the way of empirically studying the mechanisms that trigger indignation in one case – as in the case of Aylan, the Syrian toddler drowned on a Turkish beach in the shipwreck of a boat of migrants – and fail to arouse comparable emotions in other cases.
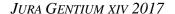
A similar analysis should focus on the emotion of *horror* – as Solinas suggests – in response to occurrences of radical political evil and, one could add drawing on the work of Adriana Cavarero, in response to the indiscriminate killing caused by terrorist acts on the scale of 9/11, for which she has suggested the notion of "horrorism".[13]

In the end, I cannot but share Solinas's suggestion that by focusing on the emotional, and not just on the cognitive, aspects of the democratic passions, more light can be shed on "the political mode of operation of the imagination and of the democratic ethos" (p. 66), and a more complete understanding of the "enlarged mentality" be generated, that might enable us not only learn to *see* things as they look at others' end, but also learn to *feel* as other people feel when exposed to what concerns us.

Conjecture and the role of recognition

Leonardo Marchettoni focuses his comments on the notion of conjecture, central for my argument in *DH*. He painstakingly reconstructs the sections of my book where conjectural arguments are discussed and rightly contends, against Micah Schwartzman's distinction of *conjectural reasoning* and *social criticism*, that the former is a variety of the latter. To his point that conjectural reasoning tends to shift into social criticism in that it is conducive to an "overall reinterpretation of some comprehensive view" (p. 75), I would

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[13] See A. Cavarero, *Horrorism: Naming Contemporary Violence*, New York, Columbia University Press, 2009.

add that the whole pragmatic point of a conjectural reasoning would vanish, or in any event remain confined to mere academic speculation, if we did not assume that the conjecturer is interested in producing a change of the addressee's attitudes concerning some political values or some issue of public concern.

Marchettoni credits me with harnessing exemplary normativity to the workings of conjecture: the chances of conjecture to convince the addressee do not depend on inferential cogency, but on the promise, embedded in the offered reconstruction, to bring to exemplary fulfillment the values inherent in the view conjecturally reinterpreted. That is the basis of the appeal of conjecture. Marchettoni points out how my normative model – imported from *The Force of the Example* – converges with Brandom's "*Vernunft* model of concept determination", which in turn Brandom attributed to Hegel: "conceptual contents evolve over time through a process of recollective reconstruction of a tradition that projects itself *into the future*, setting the future standards of correctness" (p. 77, my emphasis). For reasons that will become clearer below, this benchmark of "future promise", as opposed to "past record" – a future-orientedness which is also at the center of holistic discussions on scientific paradigms according to Kuhn – possesses a fundamental relevance.

In the closing section, Marchettoni criticizes my model of conjectural argument for its failing to adequately account for the moment of recognition inherent in each and every conjectural dialogue. As Marchettoni puts it, "the exemplarity of the reinterpretation from which the conjectural argumentation draws its force may exert its virtue only within contexts in which the authority of the conjecturer is *already recognized*" (p. 78). For this reason, Marchettoni continues, a dialogue in which conjectural arguments are offered and assessed somehow reshapes the relation among the interlocutors: "recognition of someone's authority, finally, defines the contour a new community that comes to light with the exemplary reinterpretation" (p. 78). If so, then one must wonder how fundamentalists, being the least reasonable among all citizens and at the same time those who are *not* prepared to see their tradition as open to critical rethinking, can ever be influenced by conjectural arguments. Thus, Marchettoni concludes, conjectural reasoning of the sort I envisage "can give good reasons [only] to

those who are already persuaded by liberal values and are looking inside their comprehensive view for a route to support them" (p. 79).

In response to this line of criticism, I suggest that we start from the "future oriented" quality of the pragmatic context wherein conjectural arguments are exchanged and assessed. Given that a certain comprehensive conception has thus far not really endorsed certain "political values", e.g. gender equality, is it worth rethinking some of its constitutive elements along lines thus far supported only by marginal inside voices, which if adopted will lead such conception to be fully compatible with the endorsement of such political values? Will the newly reformed conception induce in the insider a sense of "enhancement" of her religious and moral life, of the tradition to which she belongs, a sense that "from now on" she will be in a better position to live as a citizen and a Christian, a Jew, a Muslim, a Hindu, a Buddhist, a Confucian (to name only a few of the religious conceptions, but the same applies to secular conceptions) that has learnt to "make the most", to use a Dworkinian phrase, of the way of being in the world that her conception is all about? Has the new interpretation contributed to make the insider perceive his way of being in the world as more coherent, in the threefold sense of being more unified and consistent, more continuous over time in the sense a living organism changes and grows while remaining in some sense the same, more recognizably demarcated or different from other known ways of being in the world? Has the new interpretation contributed to the insider's sense that the way of being in the world handed over by her tradition has acquired a new glitter of self-evident worth in which she can take pride and which commands her reverence? Has the new interpretation contributed to the insider's sense that the way of being in the world handed over by her tradition has acquired a new degree of reflexivity, e.g. by providing her with internal reasons for self-reform and cognitive resources for making sense of why it has come to this crossroads? Has the new interpretation contributed to the insider's sense that the way of being in the world handed over by her tradition has acquired an enhanced ability to come to terms with the changing

reality of the world within which it must orient human conduct and provide moral guidance?[14]

If the quality of a conjectural argument is understood along these lines, proper relevance can then be assigned to the aspect to which Marchettoni calls out attention, namely the recognition of the outsider's authority as an interpreter. It seems to me that recognition of the authority of the interpreter can plausibly only *follow* from the insider's positive answer to the evaluative questions outlined above. Such authority could not possibly be fathomed to exist *independently of* such positive answer or, worse, *in spite of its impossibility.* As outsiders, we may be recognized insofar as the interpretations we offer have the potential for eliciting positive answers to those questions on the insiders' minds. The kind of *previous* recognition referred to by Marchettoni, instead, seems directed to the role of calling the insiders' attention to some juncture of their comprehensive conception susceptible of being interpreted differently than in the mainstream version, by drawing on sources internal but somewhat more peripheral in their tradition. In that sense, the more authoritative the external interpreter, the greater gravitation pull will be exerted by his call to consider a conjectural argument about a certain specific tenet of the tradition considered. However, his authority is in no position to generate a positive answer to the above questions by *fiat*, before due consideration is given to the substance of the conjecture. And from a normative point of view, we could not imagine a liberal-democratic conception of the legitimate polity such that a sizeable number of citizens accepts the constitutional essentials in deference to an authority "previously recognized" as such, namely before and independently of having passed the test of a reflective judgment on the quality of its superior interpretive ability. Furthermore, we often undergo the sobering experience of seeing "previously recognized authorities" – respected politicians, spiritual leaders, or just famous intellectual figures – totally missing the point in their interpretation of a comprehensive conception, defending outdated views, failing to grasp the significance of new phenomena and trends, underestimating them, downplaying publicly their importance, ridiculing them instead of

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[14] These questions reflect the conditions that operate as guidelines orienting our judgment as to the authenticity of an identity, psychological in the first place, but derivatively and *mutatis mutandis* applicable to other sorts of identities, concrete and symbolic. They are discussed in A. Ferrara, *Reflective Authenticity. Rethinking the Project of Modernity*, London and New York, Routledge, 1998.

considering the teaching contained in them, sticking to a severely reductive and conventional understanding of the tradition. "Already recognized" carries no guarantee that the interpretive authority will necessary be in the right concerning the new that needs assessment.

Finally, one word of comment is in order, concerning fundamentalism and the limits of conjecture. While in *DH* I conceded that conjectural arguments may prove ineffective with those who are not open-minded enough to be willing to reconsider significant aspects of their tradition – that's why the next step is to allow them to endorse the constitution out of prudential reasons in *Fairburg,*[15] the multivariate democratic polity – I would resist the idea that an expanded and enriched "political liberalism" can only engage "those who are already persuaded by liberal values". On the contrary, its unparalleled force, relative to other conceptions of liberal-democracy, consists of the fact that its central concepts – public reason, conjecture, reasonability, the political conception of justice, overlapping consensus, the principle of liberal legitimacy, political values, reflexive pluralism, and the like – potentially can engage the much broader constituency of those who in another vocabulary are identified as "men and women of good will". Being reasonable is equivalent to being liberal only in the vocabulary of *comprehensive* liberals.

This is not to say that dialogue has to stop when one is not open to reconsider important aspects of one's comprehensive conception. It means that then conjectural dialogue has to work by raising questions that elicit reflection, rather than by offering answers to already raised questions. To a Christian deeply unwilling to even consider the permissibility of abortion, we can address the question: if fetuses are real persons possessed of rights, why are they not given funeral services, why are they not baptized,

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[15] Fairburg is the name that, in my reply to comments by Seyla Benhabib, I gave to a fictitious liberal-democratic Western polity – a conceptual counterpart to Rawls's famous fictitious decent Muslim-majority society called Kazanistan. In hyperpluralism-affected Fairburg, the last clause of Rawls's principle of liberal legitimacy, requiring that the endorsement of the constitutional essentials proceed out of "reasons of principle", is so modified as to accept also prudential reasons on the part of some of the citizens, for the sake of preserving the acceptability of the constitution by all citizens. See, "Special section on Alessandro Ferrara's The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism", with comments by F. Michelman, S. Benhabib, S.K. White, W. Scheuerman, A. Laden and a reply by A. Ferrara, *Philosophy & Social Criticism*, 42 (2016), pp. 635-706. Specifically, see S. Benhabib, "The multivariate polity or democratic fragmentation", pp. 649-656 and A. Ferrara, "Political liberalism revisited. A paradigm for liberal democracy in the 21st century", pp. 681-706.

why do they not resurrect in the day of Last Judgment? To a Muslim who sympathizes for jihad and who considers suicide bombers heroes to be honored, we can always address the question: if offering one's life in sacrifice in a suicide attack is one of the highest honor-deserving deeds a human being can commit himself to, why do members of the government elite never teach their children to act likewise?

What is *Fairburg* really a model of? And is "democratic dualism" applicable to supranational governance?

With Italo Testa's comments, my notion of the *multivariate democratic polity* comes under more direct scrutiny. It is put to test a) from the standpoint of its being a merely adaptive response to changed historical circumstances or having a fully normative status and b) in terms of its compatibility with my attempt to rethink the legitimacy of supranational governance along the lines of democratic dualism. At the end of his contribution, Testa probes in depth the alleged tension between my deliberative understanding of supranational democratic authorship on the part of the citizens and my dualist approach to constitutionalism. I am very grateful to him for these objections, which prompt me to clarify a number of points that in *DH* may not come off as clearly as it could be desirable.

First, Testa invites me to clarify whether the response offered by the multivariate democratic polity to a ubiquitous and increasing hyperpluralism is best understood as a kind of factual adaptation or rather as a normative, prescriptive model for what *Fairburg,* the hyperpluralist liberal-democratic polity free of oppression, should look like. According to Testa, my multivariate model of democracy addresses not so much the dissenting minorities who have remained unconvinced by conjectural arguments – when conjectural arguments failed to win the minorities' consensus to the constitutional essentials, moving towards a multivariate polity cannot do the miracle of generating such concurrence – as the fellow political liberals and the competing theorists of agonism (see pp. 82-83). His reconstruction, however, is only partially accurate. In fact, I do think that the adoption of the multivariate model of democratic polity, if incorporated as the guiding normative script underlying the operation of democratic institutions, also sends an important message to dissenting minorities: in *Fairburg* we, the majority of citizens who endorse the constitution in accordance with which authority supposedly free of

oppression is exercised, do not respect you fellow citizens, who for the time being cannot agree with all of its essential elements on the basis of principles, any less because of your abiding by these essentials for the sake of a peaceful and reciprocally respectful political life in common. Testa, however, correctly deciphers the two messages conveyed by the multivariate model a) to fellow political liberals (i.e., under conditions of pronounced hyperpluralism we can still hold on to Rawls's principle of liberal legitimacy demanding requirement that the constitutional essentials be endorsable by *all* the citizens, if and only if we are prepared to loosen the binary distinction of overlapping consensus and *modus vivendi* in order to allow some citizens to endorse them out of prudence) and b) to the competing camp of the agonists (i.e., in no way political liberalism is thrown off balance by the persistence of dissent even on constitutional essentials: it can still accommodate hyperpluralism without renouncing the key element of its normative principle of legitimacy). He then proceeds to identify a crossroads at which his and my approach would differ.

> When considered from my perspective, the multivariate conception sounds like
>
> a realist adaptive argument – a "last resort" to adapt political liberalism to a situation which is not considered the best possible and is rather quite inhospitable for it. The linear progression from religious conflict up to overlapping consensus would continue to be the first choice, but now we can be reassured that political liberalism can survive and function also within factual conditions where this does not occur. If so, then the multivariate conception would not really modify the viewpoint of political liberalism on consent and dissent, because the burden of political legitimation would still be based exclusively on the former and on its teleological deployment (p. 85).

When considered from the perspective that Testa urges us to adopt, instead, "the varying intertwinement between overlapping consensus, constitutional consensus, *modus vivendi* and conflict, would not just be a contingent fact of societies nowadays, but a constitutive fact of political legitimacy" (p. 85). The difference lies in the *normative* import of the admixture of principled and prudential consent in *Fairburg,* the multivariate polity. Whereas according to my version of the case for *Fairburg* the central point is that political legitimation can function also under conditions of hyperpluralism, according to Testa political legitimation *at its best,* not just under such unfavorable conditions, "should be conceived in multivariate terms" (p. 86). Testa attributes me "a certain amount of

oscillation between the realist descriptive argument and the normative argument" but considers "the second option to be more promising, because it points toward a deeper transformation of the notion of democratic political legitimacy, which [...] if we take hyperpluralism seriously needs to embody dissent within itself as a constitutive fact" (p. 86).

Much as I appreciate the charity involved in Testa's attributing me "an oscillation" between a better and a reductive view of the multivariate polity, I regret having to disappoint him and to confess that I side with the "adaptive-normative" interpretation *and,* at the same time, deny that it is reductive. It is not reductive because it goes without saying that a democratic polity whose citizens share a political conception of justice across their diverse reasonable comprehensive conceptions, and on such principled basis come to endorse the constitutional essentials, including rights and their implications, is a polity in which political power is exercised on a more legitimate basis. In fact, if democracy in the end means that we as citizens can somehow, no matter how complex our societies have turned to be in the 21st century, still recognize our authorship not in each and every single legislative, judicial and administrative decision but in the constitutional tracks with which such decisions must be consistent, then there is little doubt that the broader and deeper the consensus on the constitution, the less oppressive and more legitimate the exercise of authority in that society. This is the closest we can get to the Lincolnian ideal of "government by the governed" within our historical context. While obviously contestation has its legitimate place in a democracy – the heart of liberalism is the ineradicability of dissent and pluralism – and while the implications of rights, or even their exact scope and definition, may well be the subject of endless contestation, the yardstick for measuring legitimacy cannot but be the *convergence for reasons of principle* on the central elements of a constitution understood as the law of law-making. Convergence for normative reasons cannot but take precedence over convergence for reasons of expediency or prudence. Why? Because consensus proceeding from normative reasons – a shared view of justice, shared political values and a shared bill of rights – is less exposed to the instability of the matrix of utility undergirding prudential consensus and better safeguards all the participants from exposure to illegitimate forms of power. Thus, there can be no doubt that a multivariate

polity where some groups of citizens endorse the central core of the constitution only out of prudential considerations is still better than a polity where that normative core is imposed onto them against their will through the coercive force of the law, but is definitively a second best relative to the ideal case of a generalized overlapping consensus. We can accommodate – which is far from obvious for the mainstream of the Rawlsian tradition after Rawls – but certainly not welcome dissent over the central aspects of the constitution. There is nothing reductive in this view, because the alternative – treating consensus and dissent over the constitutional essentials not as merely co-existent, but as equally positive – is as nonsensical to me as affirming "A" and "not A" at the same time.

Moving on to the second set of objections raised by Testa, he considers the multivariate framework an advantageous starting point and endorses my rejection of accusations of "democratic deficit" leveled against instances of regional or global governance when these accusations result from the undue projection of domestic standards of democracy onto a supranational level. In his discussion of my thesis on the legitimacy of supranational governance, Testa focuses on my use of the dualist conception of democratic constitutionalism for disentangling the assessment of the democratic credentials of governance from the domestic standard of responsiveness to the will of the *demos*. My idea in a nutshell is that, drawing on the dualist paradigm, we can state that structures and methods of supranational governance can be considered democratic, as opposed to authoritarian or technocratic,

> if and only if a) they take place within the boundaries of "constitutional essentials" that meet with the consent of free and equal citizens as manifested in referenda or in more indirect but still recognizable ways and b) some recognizable form of accountability remains in place (*DH*, p. 178).

Testa objects that a number of difficulties stand in the way of using this dualistic model to account for the democratic quality of governance. To begin with, the model of constitutionalization at work in the European Union, from the initial treaties to the Lisbon Treaty and including the pronouncements of the European courts, "is clearly based on a multileveled and composited architecture which is hard to combine with the clear-cut

distinction between a higher and a lower level that the dualist conception presupposes"
(p. 89). And then, Testa continues, whilst the dualist picture

> is a hierarchical and top-down one, where legitimation is transmitted from the upper to
> the lower level, the multileveled process of constitutional emergence [...] *should* be meant
> to be the composited result of a horizontal, netlike process plus both top-down and
> bottom-up dynamics. The question is not only, as some may argue, that here what the
> constitutional essentials to which we are supposed to consent to is not very clear – free
> and equal consent of the citizens to what exactly? – or at least are subject to a never-
> ending process of transformation. More importantly, even if we suppose that, at some
> given point, some constitutional essentials are specifiable, these are to a great extent to
> be conceived as something which also emerges from processes that, from the perspective
> of the dualist conception, are very often conceived of as emerging from the "ordinary"
> level of legislative, administrative and judicial acts (p. 89).

Several issues are here combined in one objection, but I would like to clarify two
main points.

First, the dualistic model need not be equated with a rigid top-down distinction of
the constitutional and the ordinary level of law-making. The recent work of Ackerman,
the original founder of this paradigm, illustrates how since at least the mid-1930's, in the
domestic context of the United States constitutional reform no longer follows the
canonical track of Article Five amendments, for historical reasons that it would be too
long to sum up here. Instead, it follows the alternative track of the enactment of "landmark
statutes", of exemplary super-precedents or landmark cases adjudicated by the Supreme
Court, and of the politics of presidential nomination for Justices of the Supreme Court.[16]
Conversely, one could notice that a number of provisions formally of constitutional rank
– e.g. the Eighteenth Amendment on Prohibitionism of 1919 – indeed resemble under
many aspect ordinary laws, not in the least for their having subsequently been repealed
without much ado (in 1933).[17] Given these developments of constitutionalism – ordinary
statutes such as the Voting Rights Act (1965), the Civil Rights Act (1964) and the Fair
Housing Act (1968) may possess constitutional "landmarkness", and formal

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[16] B. Ackerman, *The Civil Rights Revolution*, Cambridge, MA, Harvard University Press, 2014, p. 40.

[17] See A. Ferrara, "Constitution and Context: Reflections on Ackerman's *The Civil Rights Revolution*",
Jerusalem Review of Legal Studies, 7 (2016), pp. 19-30.

constitutional amendments such as the one on prohibitionism may lack it – I do not see why the peculiarities surrounding the emergence of a constitutional layer of legislation in the EU should be considered so atypical as to discourage the applicability of the dualist framework.

The second point concerns the alleged vagueness of the constitutional essentials at the EU level. I vigorously reject that notion. Of course, all constitutional orders are subject to a modicum of interpretive leeway – they are no axiomatic models – and the EU represents no exception in this regard. However, there is nothing particularly vague about the constitution of the EU. In each of the four distinct senses in which we can understand a constitution, Europe does have a constitution of its own. If by "constitution" we mean – along with Plato and Aristotle – a *politeia*, i.e., an explicit specification of the main institutions of a polity and of their reciprocal relations, Europe clearly has one. If by "constitution" we mean – ever since the Magna Charta – the above plus provisions for the protection of the rights of individuals against the authorities and especially the executive, Europe clearly has one. It consists of the rights mentioned in the Charter of Fundamental Rights, previously part of the Treaty of Nice and now included within the Lisbon Treaty. If by a "constitution" we mean all of the above plus a criterion or standard, explicit or implicit, for assessing the legitimacy of the exercise of political power, then Europe clearly has one such standard embedded in the Lisbon Treaty – a standard more tortuous and complicated than domestic ones, but it has one such standard in the so-called *acquis communautaire.* And finally, if our constitutional culture happens to incline us to demand something more substantive of a constitution – something closer to a set of political values that tell the rest of the world who we are and wish to be, politically – then also in this fourth and more demanding sense Europe has a number of constitutional essentials. They are buried below radar level because of the obtuse short-sightedness of the European national elites and the factual prevalence of national constitutional cultures that incline towards proceduralism, but there, in the Lisbon treaty, there is enough substance to build *a sense of difference* that EU citizens can be proud of. The following seven constitutional essentials, found in the Lisbon Treaty version of the *Charter of Fundamental Rights of the European Union,* jointly express the distinctive *political* identity of the EU as resulting from the combination of:

1. The explicit prohibition against including the death penalty into penal law, in that the death penalty is understood as a violation of the right to life (Article 2.2) – an obvious term of contrastive comparison with current U.S. and Chinese legislation.

2. The innovative way in which the right to bodily integrity is understood, through the explicit prohibition, within medical science and biology, of "making the human body and its parts as such a source of financial gain" (Article 3.2c).

3. The constitutionalization of the right to privacy in Article 7.

4. The new right to "freedom of information" alongside the more traditional right to "freedom of expression" or "free speech." This freedom of information consists no longer simply of a right of the individual to express her own thoughts without censorship but also of an obligation to respect "the freedom and pluralism" of the media (Article 11.2), where the "pluralism" of the media calls for legislation that affects the concentration of media property.

5. The constitutionalization of equality between men and women "in all areas" (Art. 23).

6. The constitutionalization (Art. 38) of "a high level of consumer protection", in order to bridge the gap between the influence of the great market players and that of the single consumer without falling back into the regressive utopia of the abolition of the market.

7. Finally, the "right of the elderly to lead a life of dignity and independence and to participate in social and cultural life" (Art. 25)

These seven constitutional essentials, taken together, express the European Union's commitment to be the political space where under no condition can the state take the life of one of its citizens, residents, or temporary aliens; where the genetic infrastructure of the human being cannot be a source of profit; where no one should be left alone to face illness, where no one should suffer exclusion and indifference, along with the inevitable decline associated with the last stages of life, where no one should be left alone to fend for him or herself as a single individual against the economic powers that produce the goods that we consume and the information that we need in order to make our choices. This *is* by all means a constitutional core that ranks above the level of

ordinary legislation. In Brussels there can be wheeling and dealing over the milk quotas and the quotas of refugees and migrants that each member state is required to admit, over exceptions to the 3% public debt threshold, but there cannot be wheeling and dealing over death penalty, gender equality, genetic research for profit and a number of other areas. That is what it means to have a constitution. Thus, the dualist model is perfectly applicable to the case of the EU, in spite of the fact that we do not yet have, and like the UK perhaps never will have, a legal document called "the Constitution of the European Union". [18]

Similarly, I am very skeptical of the idea that

if we take the multilevel dynamics of constitutionalization seriously, and we conceive of it in terms of a multivariate transnational polity, then we should assume that there cannot be a clear-cut bipartition between consensus and dissent and the allocation of these to two different levels, but rather that they are intertwined as constitutive elements of legitimacy (pp. 90-90).

How could there not be a clear-cut bipartition between consensus and dissent? Well-deserved consensus, which proceeds from justified reasons, contributes to the legitimacy of institutions and of the exercise of power. Dissent detracts from it. If some member state began to voice a dissent on a constitutional essential and proposed to re-instate the death penalty, how would that contribute to the legitimacy of the EU?

Finally, on the relation of governance to deliberative democracy I would agree with Testa that much needs to be done in the way of articulating a new sense of what the democratic authorship of the citizens might mean in a supranational context, where no unified *demos* can be presumed to exist. I have just tried to take a first tentative step by evoking the idea of consent on the constitutional framework within which governance operates as a requisite the legitimacy of governance, but this is just a beginning. No reason prevents us from starting from this step: certainly not an alleged indistinctiveness of the constitutional level at the supranational level and certainly not the weak accusation of "juridification" and "depoliticization of the democratic process" that comes from so-

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[18] The reasons why we may never have such a document are too complex to be discussed here, but for one illuminating introduction to the diversity of constitutional cultures co-existing in the EU in an unstable equilibrium, see B. Ackerman, "Three Paths to Constitutionalism – and the Crisis of the European Union", *British Journal of Political Science*, 45 (2015), 4, pp. 705-714.

called "political constitutionalism" – a conception of constitutionalism premised on one of the most counter-intuitive ideas that can be imagined. Underlying the accusation of "juridifying" the democratic process, especially through judicial review, we not only find the dubious assumption that no clear distinction can be drawn between the rules of the game and the game being played, but also the idea that the rules of the game, to the extent that they can still be kept distinct from the way players actually play, are to be placed at the disposal of the players while they play the game. The idea that parliaments elected in ordinary electoral competitions could have final say – as opposed to *just proposing* an amendment – on the constitution is as far from being self-evident as the idea that soccer players could have a final say on the rules of soccer while they are playing.

I also cannot imagine how anyone could disagree with Testa's reformulation of my criterion for the legitimacy of supranational governance: structures and methods of supranational governance can be considered democratic "if and only if they take place within the boundaries of constitutional essentials that meet with the consent of free and equal citizens *and allow for legitimate dissent*" (p. 92). What kind of democratic process worth its name, whether inflected as government or governance, could not allow for legitimate dissent? That goes without saying. What instead certainly calls for further exploration is Testa's claim that my drawing on deliberative democracy, in order to make sense of how soft law and the mere "attribution of legitimacy" typical of governance could ever succeed in coordinating the actions of a plurality of actors, commits me to presuppose a "deliberative subject" and to clarify "if and how citizens are included within it even in an indirect way" (p. 94). Here the *demos* looms large at the horizon once again. In Testa's words, a democratic life-form

> cannot just consist of a spurious mix of constitutional judicial reviews, top-down methods of governance, intergovernmental power relations, plus some indirect deliberation provided by the democratically elected representative in the EU parliament: if not also supported by practices of political subjectivation, there cannot be any supranational polity of citizens (p. 95).

My inclination is to think that political subjectivation is nowadays difficult enough on the domestic scale, because of the social fragmentation that neoliberal financial capitalism has generated, and is going to meet even more prohibitive obstacles at the supranational level if by that term we mean active participation in face-to-face

engagements or actual mobilization for protracted periods of time, especially across cultural and linguistic divides, and in the absence of a supranational real public sphere nourished by genuine supranational media. So, I take, in the end, Testa's remark about the necessity of new forms of democratic subjectivation as a challenge for future reflection, simply adding that such subjectivation cannot take the form of a *demos* without thereby entangling us into the "domestic fallacy" once again.

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