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# Sovereignty Across Generations: A Restatment

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## Abstract

This paper critically examines Alessandro Ferrara's concept of Sequential Sovereignty (SAG), which holds that constitutions are co-authored by past, present, and future generations, thereby limiting the constituent and amending powers of any single generation. The critique targets SAG's founders' privilege – the notion that founding generations alone possess full constituent power and can define political identity without being bound by the past, unlike later generations who are constrained by historical constitutional commitments. This asymmetry, the author argues, results in intergenerational inequality, diminishing the sovereignty and democratic agency of non-founder generations. Further, Ferrara's reliance on future validation for constitutional changes introduces contingent legitimacy, making later generations' political autonomy dependent on historical and future acceptance. The author contends that such a framework risks domination by the past and conflicts with liberal-democratic ideals of equal political agency. To address these issues, the paper proposes a revised principle of constitutional legitimacy grounded in intergenerational equality and reciprocity, allowing each generation full constituent power so long as it respects the freedom of future ones.

**Keywords**: Future generations, Sovereignty, People, Equality, Privilege

**Summary**: Introduction; I. Founder's privilege(s); II. Sovereignty Across Generations: Serial, Not Sequential; References.

## Introduction

In *Sovereignty Across Generations* (Ferrara 2023), Alessandro Ferrara develops and defends a view of sovereignty – *sovereignty across generations*, or *sequential* sovereignty (SAG, from now onwards). This kind of sovereignty contrasts with *serial* sovereignty (SS, from now on), which is the view that each living generation, or each temporal segment of a transgenerational people, has

*full constituent power*, i.e., both the *primary* constituent power and the *secondary* power to amend the constitution.

SS sees "the succeeding generations of a people" like "the subsequent owners of a piece of property", who "exert their entitlement to use and dispose of the property as they please, with no obligation whatsoever to have their use of the property fit or comport with the use to which the same piece of property was put by the previous owners" (209). [1] According to SS, each generation can exert its own full sovereign will, with no constraints from the past. Ferrara points out that this view can be traced back to Condorcet, Thomas Jefferson, Tom Paine (210).

By contrast, SAG sees succeeding generations as co-authors, and co-owners, of the constitution. In SAG, *vertical reciprocity* holds. This amounts to the requirement that "constitutionally defined terms of cooperation" can be accepted if "*all* generations of the same people as free and equal can presumably accept" them (13, 249, 273).

SAG presupposes a specific view of what a transgenerational people is. An intergenerational people includes past, present and future generations, but these three kinds of temporal parts are differentiated in at least two ways: first, only present generations have effective agency – they possess the two capacities of acting politically and establishing "self-posited *constitutive rules*" (6); second, while past generations' will concerns the holding constitution, and it can be interpreted, future generations have only a "virtually presumed will", which amounts to "a reasonable propensity to command the same autonomy as the previous generations" (282). To put it otherwise, past generations "manifest their agency as a normative legacy, deposited in documents of constitutional significance", whereas future generations have an "interest in exercising agency on an equal footing to that of the previous generations", that can be represented and protected (201, 276). Notice that past generations' will is rather 'thick', as it were, because it consists of the specific constitutional essentials contained in a particular constitutional project, whereas future generations' will is thin, as it is simply the generic willingness to keep freedom and equality in the exercise of political agency.

This view yields an account of the limits of voters' amending power. Constituent power, i.e., the power to set a new regime by setting new constitutional rules, is limited only by a conception of justice that is *most reasonable to their free and equal holders*, i.e., by joint commitments congruent

[1] From now onwards, I refer to (Ferrara 2023) by quoting page numbers in the main text.

with certain constraints posited in a sort of original position (assumed as a representative device), constraints that can be contextually calibrated, i.e., attuned with "our deeper understanding of ourselves and our aspirations", "our history and the traditions embedded in our public life", and a long historical practice (Rawls 1980, 519). What is 'most reasonable' is the conception of justice that "in the judgment of the subject of constituent power, realizes the best fit – as tested through reflective equilibrium – between its core principles and the historical and political cultural features salient for the *intended* constituted people" (133; see also 21, 31, 127, 134).

By contrast, amending power is limited by the will of the transgenerational people, i.e. by the will of the past generations, as registered in the holding constitution, and by the putative will of the future generations, which must accept the amendment in light of the reasonableness for them of willing to live within the resulting constitutional order (5, 7, 11-3, 250). The will of the transgenerational people (the will of the past and the future generations) has priority over the will of a specific temporal segment of it, namely, of a specific electorate (3, 13, 203, 276).

A constitution articulates a project that a people endorses, and this endorsement is, according to Ferrara, an act of self-constitution of the people itself. Peoples are constituted by a constitution, i.e., by a "set of normative commitments concerning the purpose and terms" of their association, embedding the "most reasonable terms of cooperation" for their members. As Ferrara often says, the people make a constitution, and the constitution makes the people (6 and chap. 4). Once a constitution is set, and the people constituted, later segments of the same people have no right to "alter the design of the constitution in such a way that it becomes *incompatible* with the original one," as this would not be consistent with the "overall general commitments already inscribed in the constitution", which expresses the will of the transgenerational people (260). More precisely, amending power cannot go in "any way that would make it *less reasonable* for the other generations, past or future, of the people to be imagined as willing to live their political lives which that newly generated constitutional order" (273). To put it otherwise, there is "an implicit unamendable core of the constitution, anchored in a long historical democratic practice, the suppression of which cannot be accepted as valid law." (22) The amending power can "modify even important aspects of the original constitution," but "it cannot alter its basic design, core values, and commitments" (123). The liberal principle of amending legitimacy derived from the above is as follows: "Amending power is justifiably exercised when it modifies the constitution in full respect of the (explicitly or implicitly) unamendable essentials and of ideals and principles

acceptable to present citizens as rational and reasonable, as well as compatible with vertical reciprocity among all the generations of the people" (281)[2].

This principle contrasts with SS, which according to Ferrara, has undesirable consequences. First, it fails to prevent a 'wanton republic', i.e., a regime where each new generation changes the basic structure "in opposite direction" and in contrast with the enduring constitution. Second, it fails to prevent the 'indistinct republic', i.e., a condition in which the status of previous generations of a people as proper forerunners of the living citizens is obscured, thereby nullifying the individuation along political lines of a continuing polity, or people. Third, it fails to rule out an 'undermined republic', where intentional encroachments of the freedom and rights of future generations for the benefit of the present ones are possible (211-6). Finally, SS prevents the very possibility of long-term political, institutional and economic projects, when they require multi-generational stability (216).

SAG can avoid these consequences. In general, it avoids the 'tyranny of the momentary political sentiment' and the dissolution of an enduring constitution as higher law, superior to ordinary law and regulating it, as well as the fragmentation and dissolving of political identities (212-3).

Notwithstanding the intrinsic appeal of SAG, I have doubts about it. In this paper, I will voice them. Specifically, I will defend two claims. First, at least as Ferrara understood it, SAG gives a privilege to the founders' generation. Second, this privilege is objectionable, as it implies inequality among generations.

These doubts may require a re-statement of SAG. I present it in the concluding section. Interestingly, the distance between SAG and SS will be reduced in this re-statement.

## I. Founder's privilege(s)

SAG implies and allows what we can call 'founders' privilege'. In general, this is the fact that founders, or charterers, may exercise full constituent power, i.e., they may set *new* constitutive rules from scratch, being constrained only by reasonableness (by the 'most reasonable' conception of justice for them) and the

[2] Ferrara's treatment of amending power is crucial and sophisticated; see particularly chap. 7. For instance, Ferrara devotes ample space to various alternative views concerning what cannot be amended and why. I will not consider its complexities, here. No part of my arguments in what follows hinges on this, however.

putative thin will of future generations, but not by the thick will of forerunners.

In order to see why this is problematic, we should interpret the general idea of a founders' privilege in a more precise way. The following three specifications can be offered:

1. *Founders' identity-making privilege*: as Ferrara clarifies in chap. 4 of *Sovereignty Across Generations*, setting a constitution is an act of self-constitution. A people emerge out of an ethnic group (a *demos* arises from one or more *ethnoi*) when, on the basis of a commitment to take joint commitments, a specific set of normative commitments concerning the purpose and terms of their association, embedding the most reasonable terms of cooperation for its members, is proposed and accepted. This act of constitution makes the people, i.e., it gives the people its distinctive political identity. Since self-constitution needs setting a constitution, founders, and only they, may legitimately be identity-makers. Later generations may legitimately continue the identity set by charterers (like closer continuers) by meeting the requirement of vertical reciprocity, i.e., in conformity with the thick will of previous generations and the thin will of future generations. Breaking this continuity with the past amounts to starting a new political identity, after the old one died. It is not clear whether this move is legitimate.

2. *Founders' constitutive power-privilege*: in virtue of the above, only founders may legitimately exercise constituent power. Any new attempt to set a new constitution, on the part of a later generation of an already constituted people, cannot be legitimate, as it should necessarily violate the will of the founders and of past generations.

3. *Founders' freedom from the past*: founders are unconstrained by the past. In exercising constituent power, they should respond to what is most reasonable for them and what will be most reasonable for future generations. By contrast, later segments of the transgenerational people should respond to the founders' project as it was historically unfolded, i.e., to the founders' will relating to the constitutional essentials (what *was* most reasonable for them), and to the reasonableness for future generations.

These three privileges can face two problems. First, they are politically objectionable since they are violations of equality. Non-founder generations stand on an unequal footing with respect to founders. They cannot set a new constitution, or at least not legitimately. Any regime change is an identity change [3]. There is no legitimate identity change, or at least admissible

[3] Ferrara considers regime change at 157-63. I think he implicitly acknowledges my point. Any regime change is a new start.

transformations of the constitutional identity of a people are constrained – as certain elements are unamendable. Later, or non-founder, generations can never exercise primary constituent power, understood as the power to "establish a new regime", i.e., to set a constitution framing its political ideal of self-government (Rawls 1993, 231).

Moreover, non-founder generations have a decreased degree of sovereignty. Sovereignty amounts to two capacities – immunity from external interference and self-mastery, i.e. the power to decide and implement certain lines of conduct (Ronzoni 2012). It is evident from the above that non-founder generations have a less robust sovereignty than the founders, as they are constrained by the former's will and historical practice (they are subject to an interference from the past), and this amounts to having less room for self-mastery. Ferrara seems aware of this, as he writes: "the electorate, as distinct from the people, can never be fully sovereign", even though it "must be entitled to *transform* the constitutive rules of the polity. […] The living proponents of constitutional transformation are not sovereign, in that it does not lie with their power *alone* to bring about *legitimate* constitutional transformations" (250).

However, the view presented in *Sovereignty Across Generations seems to allow* non-founder generations to exercise full sovereignty in certain cases. Ferrara clarifies that later generations can get fuller sovereignty only when, and if, "their constitutional will really become 'the will of the people'." This happens when "the amending will of the electorate, over and beyond being validated as consistent with the will of the people inscribed in the constitution and represented by its highest judicial interpreter, is explicitly or tacitly *accepted* by subsequent generations of the people." When this condition is met, the electorate's "will that has modified the constitutive rules can be legitimately attributed to a subject larger than the electorate." If we face a "recurrent will of the electorate" in favor of a given amending, then this amendment is legitimate, even if departs from the will of the founders' and previous generations (250, 251; see also 276-7).

This view amounts to the following idea. Founder generations can exercise their constitutive power from scratch, as it were, thereby constituting themselves as a people and giving rise to a chain of generations living under the same constitutional project and keeping the same identity. Non-founder generations can exercise a quasi-constituent power when they set forth a new constitutional proposal, and this proposal gets enduring consent from later generations. Assuming that this new proposal meets the two requirements of amending legitimacy (compatibility both with the thick will of the past generations and the thin will of the later generations), it seems that this view amounts to imposing a

sort of *factual success* requirement to the non-founding exercises of constituent power. Non-founder generations may exercise constituent power, provided later generations validate their attempt. Considering non-overlapping generations, things are as follows. Non-founder generation 1 cannot know whether its exercise of constituent power is legitimate, as the latter's legitimacy depends on the behavior of generation 2, 3, … n. This means that each non-founder generation's exercise of constituent power is *epistemically*, *temporarily* and *contingently* illegitimate. In contrast, founder generations' exercise of constituent power is legitimate *by default*, at least if meeting the 'most reasonable' requirement.

This view of non-founder generations' constituent power has two problems. First, arbitrary inequality between founders and non-founder generations persists. Second, non-founder generations' exercise of constituent power displays a mere *de facto* legitimacy, a weaker form of legitimacy. As Ferrara remarks,

> the will of the people is an open-ended (re)-construction, but ultimately it remains anchored to historical realities. […] Only time can let the uncontested will of one generation be accepted by the subsequent ones […] The will of the electorate, once cleared from the suspicion of contradicting the constitution, becomes the will of the people only by lack of rejection 'over time' (277, 279).

Ferrara seems to find this upshot not so unsatisfactory. Be it as it may, this factual condition imposed to the successful exercise of constituent power of non-founder generations puts them on an unequal footing with respect to founders.

This leads to the second objection to founders' privilege. This privilege might make unreasonable for future generations to join a constitutional order that is both rigid and set by default in the past. One thing is to claim that any exercise of constituent power, or any regime change, should not impose on *later* generations arbitrary restrictions of their political agency. Another is to claim that non-founder generations should not only avoid arbitrary restrictions of later generations' political agency, but also conform to the specific political project of the founders and the previous generations. It is not clear that this second stricture is reasonable for later generations. Indeed, the two requirements – conformity with the will of previous generations and respect for the will of later generations – can be in contradiction. Imagine the reasoning of a generational part in the original position. It is perfectly reasonable to want to avoid arbitrary imposition from previous generations, which amounts to preventing each

generation's exercise of the constituent and amending power from restricting later generations' agency. But if this requirement is reasonable, it cannot be also reasonable to accept that the specific constitutional project of the founders and previous generations imposes constraints over and beyond the preservation of a reasonable space of political agency. The historical constitutional project of the founders cannot constitute a constraint. Any exercise of constituent and amending power compatible with the agency of later generations is legitimate.

To have the broadest constituent power, i.e. the power to restart the story of a new people, thereby ending the story of the old people, can be part of later generations' interest in exercising political agency on an equal footing with previous generations, including the founder one. It is unreasonable to accept a constitutional order where one is devoid of a legitimate exit option, which in this case is a right to the widest possible set of regime-changing options.

If this power is not granted to non-founder generations, the founders would have the normative power to crystallize their future generations within a pre-defined people, which seems a kind of domination of the past, and a lack of democratic quality: a "normative grip of the dead over the living generations", as Ferrara admits (248). Ferrara acknowledges that "the exercise of amending power on the part of voters […] constitutes a fundamental aspect of the democratic quality of a regime" (247). Here, the thought is that to guarantee full democracy, each segment of the people should have full primary constituent power. A constrained amending power is not enough.

The bulk of my objection here may remind of Jurgen Habermas' claim that, in Rawls' view, "the act of founding the democratic constitution cannot be repeated under the institutional conditions of an already constituted just society […]". Citizens, Habermas remarks, "cannot reignite the radical democratic embers of the original position in the civic life of their society, for from their perspective all of the essentials discourses of legitimation have already taken place within the theory, and they find the results of the theory already sedimented in the constitution" (Habermas 1995, 128).

To this objection, Rawls answers that the condition of non-founder citizens, as described by Habermas, is not a diminution of *political* autonomy. Indeed, Rawls points out,

> citizens gain full political autonomy when they live under a reasonably just constitution securing their liberty and equality, with all of the appropriate subordinate laws and precepts regulating the basic structure, and when they also fully comprehend and endorse this constitution and its laws, as well as adjust and revise them as changing social circumstances require, always suitably moved by

> their sense of justice and other political virtues. […] Not every generation is called upon to carry through to a reasonable conclusion all the essential discourses of legitimation and then successfully to give itself a new and just constitution. Whether a generation can do this is determined not by itself alone but by a society's history: that the founders of 1787-91 could be the founders was not determined solely by them but by the course of history up until that time. In this sense, those already living in a just constitutional regime cannot found a just constitution; but they can fully reflect on it, endorse it, and so freely execute it in all ways necessary (Rawls 1995, 155, 156).

The view presented above implicitly suggests that establishing a novel constitution is not different in kind, or at least not different regarding political autonomy, from endorsing and living under an existing constitution. This may be a successful answer to Habermas' objection. However, it is not successful when Ferrara's view is at stake. Ferrara claims that establishing a constitution is an identity-fixing act and acknowledges that non-founding generations have less sovereignty. This amounts to (albeit implicitly) allowing that founding acts are the higher exercise of sovereignty as well as the origin of political identities. It is not clear that Rawls would endorse these two claims. Moreover, as already seen, in Ferrara's view, regime change amounts to a new start, i.e., the emergence of a new political identity. It is unclear that Rawls would have subscribed to this self-constitution view applied to political identities and constitution-making. Consequently, Rawls' answer to Habermas cannot be employed to rebut my objections to Ferrara's view. The latter has distinctive features, separating it from its Rawlsian sources.

## II. Sovereignty Across Generations: Serial, not Sequential

To eliminate the founders' privilege(s), we can state a different principle of amending legitimacy, to be put as follows:

> Amending power is legitimately exercised when it modifies the constitution in full respect of ideals and principles that each generation can reasonably accept, assuming each generation's willingness to keep the greatest capacity of political agency compatible with the same degree of political agency for any other generation.

This principle is a liberal principle, as it is grounded in the value of freedom and equality, and it conforms to vertical reciprocity, understood as reciprocity

among generations. However, it differs from Ferrara's liberal principle of amending legitimacy in various respects. First of all, it does not set to amending power any constraint drawn from the will of founders and the historical practice that they established. In virtue of this, this view entails a wider scope for amending power. This scope is so wide that sometimes an exercise of amending power can amount to an exercise of constituent power. Moreover, this principle eliminates the founders' privilege.

Arguably, this new principle of amending legitimacy push SAG closer to SS than Ferrara's principle. According to the new principle, each generation can implement a complete regime change, in any direction compatible with an equal capacity of political agency for future generations. This prevents an undesirable consequence of SS, i.e., the undermined republic, where previous generations are allowed to encroach freedom and rights of later generations. This is not permissible according to the view stated here, because these encroachments would violate the requirements of guaranteeing to each generation equal capacity of political agency.

However, the revised conception of sovereignty deriving from this new principle of amending legitimacy would allow something similar to a wanton republic and to an indistinct republic. Each generation can permissibly change its identity, giving rise to a new people, thereby both neutralizing the impact of an enduring constitution and breaking the continuity and recognizability of forerunners.

However, if the cost of keeping the grip of an enduring constitution and a sense of political forerunners is a loss in terms of intergenerational equality, this is too high a price to pay. Reasonableness does not block the option for each generation to start again from scratch, provided that the new start is compatible with the equal capacity of political agency for the remaining generations. Keeping a political identity or continuing the story initiated by our forerunners cannot be an intrinsic value. Or at least, there is nothing in the ideals of intergenerational equality and freedom and vertical reciprocity that can ground the value of a persistent political identity.

There is nothing wrong in the idea of a series of independently sovereign generations, provided that no generation can encroach other generations' freedoms and rights. Serial sovereignty, if tempered with intergenerational reciprocity, is a plausible conception. By contrast, sequential sovereignty, when it entails a privilege for a given generation, or for all the generations performing a given role (the role of the founders), is objectionable.

Ferrara's project was to shed further light on Rawls' famous question: "How is it possible for there to exist over time a just and stable society of free and

equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?" (Rawls 1993, 4), by considering the meaning of "over time", i.e., "the proper relation of 'the people', understood as the transgenerational author of the constitution in force in the polity, to its pro-tempore living segment in its dual capacity as electorate – a constituted power – and as co-author of the constitution" (1).

Ferrara attempts to accomplish this project by extending across generations his interpretation of Rawls' view applied to a single generation. In this interpretation, a constitution is made legitimate by conformity to the most reasonable conception of justice for the framers, and this conception can be linked to historical and contextual factors. Moreover, in this interpretation a people constitute its identity when framing a constitution.

However, there might be a greater difference between the intra-generational and the intergenerational case. On one hand, what is most reasonable for all the generations can be less historical and contextual than what is most reasonable for a single generation. As a consequence, the requirements of vertical reciprocity can be thinner than the requirements of intragenerational reciprocity among persons. On the other hand, vertical reciprocity can require full equality among generations, with no generations being privileged. This is still a conception of sovereignty across generations, as the ownership and co-authorship of the constitution remains shared among generations. Or better, generations share a commitment to equal freedom for all, even though they may not share specific implementation of this thin, common ideal. This is a sort of serial conception of sovereignty, as each generation can act on its own, as a founder. However, it does not license encroachments of the freedom and rights of any generation in the generational chain. This makes it an acceptable liberal view of sovereignty across generations.

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## References

Ferrara, Alessandro. 2023. *Sovereignty Across Generations: Constituent Power and Political Liberalism*. Oxford: Oxford University Press.

Habermas, Jurgen. 1995. "Reconciliation Through the Public use of Reason: Remarks on John Rawls's Political Liberalism". *The Journal of Philosophy* 92 (3): 109-31.

Rawls, John. 1980. "Kantian Constructivism in Moral Theory". *Journal of Philosophy* 77 (9): 515-72.

Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press.

Rawls, John. 1995. "Political Liberalism: Reply to Habermas". *The Journal of Philosophy* 92 (3): 132-80.

Ronzoni, Miriam. 2012. "Two Conceptions of State Sovereignty and Their Implications for Global Institutional Design". *Critical Review of International Social and Political Philosophy* 15 (5): 573-91.