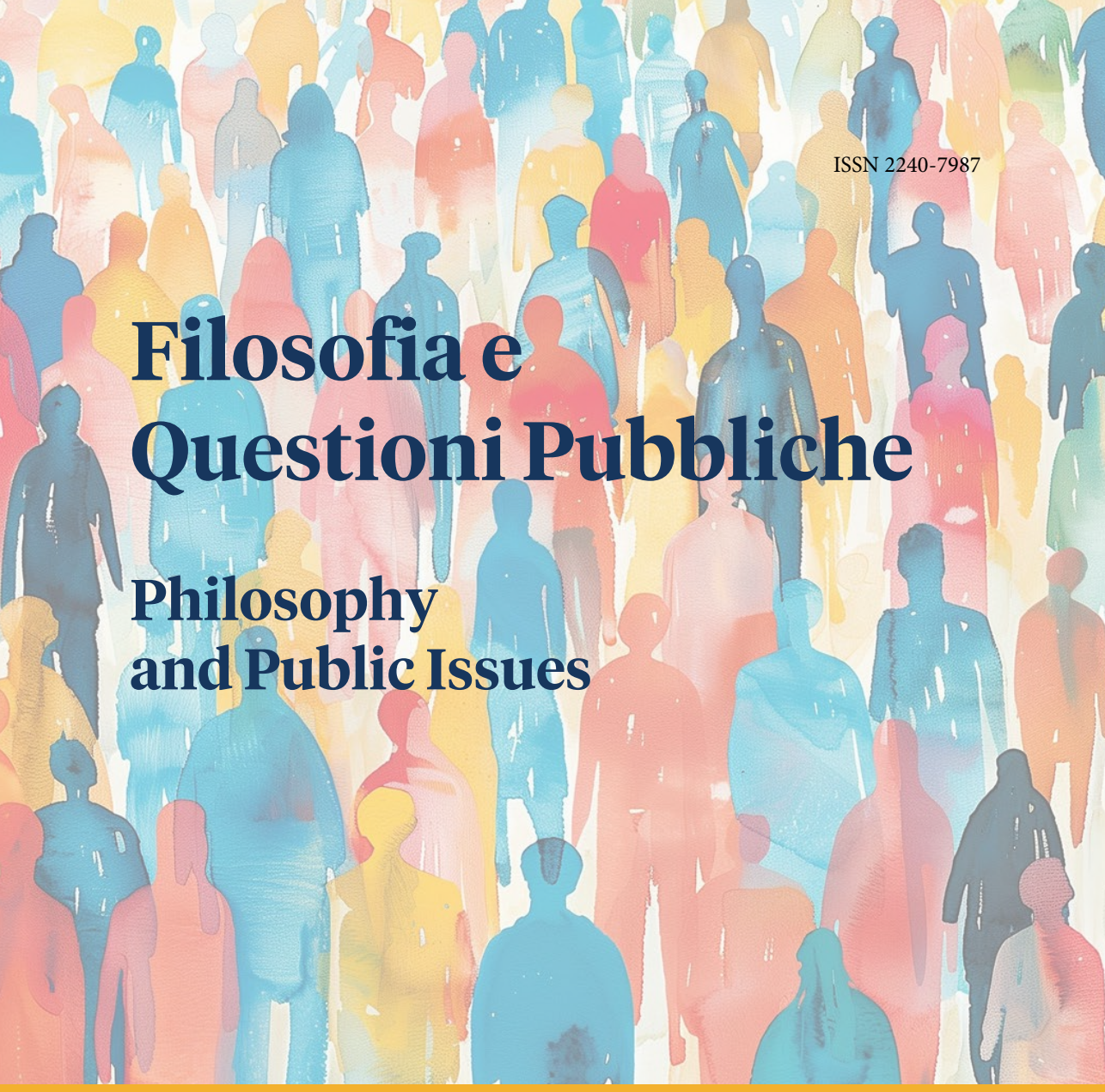
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Book Symposia

Symposium on Alessandro Ferrara's *Sovereignty Across Generations Constituent Power and Political Liberalism* (Oxford University Press 2023)

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Introduction

Gianfranco Pellegrino

Luiss Guido Carli University, Rome, Italy

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Abstract

Alessandro Ferrara's *Sovereignty Across Generations* (2023) is a major contribution to political liberalism that addresses the neglected question of how just democratic orders persist "over time.", thereby giving a novel theory of intergenerational democratic sovereignty. Ferrara proposes a theory of sequential sovereignty, where constituent power is exercised by a transgenerational people, constrained by principles of "vertical reciprocity." Rejecting serial sovereignty, which grants full power to each generation, Ferrara defends constitutional stability, continuity, and fairness across generations. His Rawlsian yet original account redefines the *demos*, distinguishes it from *ethnos* and electorate, and grounds legitimacy in the "most reasonable for us." In this introduction, I first list the main claims and contributions of the book, and then survey the papers of this special issue. Papers by Favara & Sala, Andina, Iser, and Pellegrino critically assess Ferrara's model, highlighting its strengths and raising concerns about democratic agency, representation, and generational equality.

Keywords: Intergenerational sovereignty, Constituent power, Political liberalism, Sequential sovereignty, Democratic legitimacy, Vertical reciprocity

This special issue is devoted to Alessandro Ferrara's *Sovereignty Across Generations: Constituent Power and Political Liberalism* (2023). In this ambitious and wide-ranging book, Ferrara fills a substantial gap in John Rawls' paradigm of political liberalism. As Ferrara reminds us at the very outset of his book, Rawls' main research question in his *Political Liberalism* (1993) was: "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 2005, 4) Everything in this question has been considered by Rawls himself and by his followers and critics – notions of justice and stability, freedom and equality, and pluralism. Everything has been considered, except for what Ferrara calls

an "inconspicuous phrase", i.e., "over time". That phrase invites to a clarification of the relation between two sets of peoples – i.e., the author of the constitution in force, understood as a transgenerational body, and the present, living segment of it, which in its turn has a dual capacity: the electorate, i.e., a constituted power, and a co-author of the constitution, i.e., a co-holder of the original constituent power (Ferrara 2023, 1).

Ferrara's book is a lucid, systematic and insightful attempt to fill this gap by providing a view of the constituent power across generations and of generational sovereignty and its limits. This attempt is conducted mainly within a Rawlsian framework, but with several original contributions.

Sovereignty Across Generations is an analytic and lengthy book. Thus, both a comprehensive discussion and a thorough summary would be impossible in the space of an introduction to a special issue. Here, I primarily outline the central claims of the book and its contributions to the future of democratic and constitutional theory[1].

Central to the book is the contrast between two conceptions of sovereignty. Sovereignty is the exercise of three kinds of power – the constituent power, i.e. the power to frame the constitution of a people, the constituted power of the government and the electorate, and the amending power to revise the constitution.

Ferrara follows Rawls in putting forward a non-foundationalist view of constituent power, as emanation of any objective notion of justice. However, this power is not unbounded. Instead, it conforms to the most reasonable conception of justice for a given people, i.e., the conception able to realize the best fit between free-standing principles and the historical, political and cultural features salient for the constituted people. To put it otherwise, people's constituent power is bounded by a context-sensitive normativity, as clearly said in chapter 1.

In chapter 4, Ferrara puts forward a political conception of a people, in close analogy to Rawls' political conception of a person. In this conception a people is a *demos*, i.e. a group with the capacity to act politically in accordance with self-posited constituted rules. The people as a *demos* is different from, and emerges out of, an *ethnos*, i.e. a group with non-political characteristic. *Sovereignty Across Generations* contains a nuanced and insightful view of the processes through which *demoi* emerge, via a political self-constitution based on a normative commitment concerning the purpose and term of the members'

[1] I mainly draw in the outline Ferrara develop in the introduction of *Sovereignty Across Generations*.

association. As Ferrara nicely says, “a constitution makes the people, no less than the people makes the constitution” (Ferrara 2023, 6).

The relations between constituent and amending power are established by what Ferrara calls ‘vertical reciprocity’, i.e., the existence of constitutionally defined terms of cooperation that all generations of the same people as free and equal can presumably accept. Vertical reciprocity establishes the limits of the amending power of specific segments of a transgenerational people. Amending power responds to the normativity of constitutional essentials already in force and willed by the whole transgenerational people. As a consequence, the constitutional essentials (aspects of the basic structure, general legal principles and general presuppositions of the rule of law, implicit principles of democracy, provisions rooted in binding international law and treatises, elements of global constitutionalism and regional supranational law, and aspects of the lifeworld, lifeform, or background necessary for the intelligibility of a people’s political practice) are implicitly unamendable.

The three powers respond to different principles of legitimacy, according to the view defended in *Sovereignty Across Generations*. Constituted power must be consistent with the whole of the constitution in force. Constituent power responds to the most reasonable conception of justice. Amending power is constrained by the past when exercised outside the founding conditions. Specifically, amending power should not alter the constitution in ways that make it less than reasonable for past and future generations of that people to be willing to live their political life within the new constitutional order. (Chapter 7 is devoted to the nature, source and limits of the amending power).

Vertical reciprocity marks the difference between two conceptions of sovereignty. According to *serial* sovereignty (a conception held by Rousseau and Jefferson, among others, and by contemporary populists), each living generation has full constituent power and can exercise it unconstrained. By contrast, *sequential* sovereignty is the idea that sovereignty is held by the whole transgenerational people, and not only by the living segments of it. A constitutional or supreme court represents the no-longer-alive generations and the not-yet-born generations, enhancing sequential sovereignty. (These matters are dealt with in chapters 5 and 6).

Serial sovereignty has three problematic consequences: i. it allows *wanton republics*, i.e. the fact that each new generation may change the basic structure in opposite, and anti-constitutional, directions; ii. it fails to give grounds to the living citizens to consider previous generations of their people as proper forerunners, and belonging to the same community, thereby cancelling the political identity of the polity; iii. it is unable to rule out the international curtailing of the freedom

and rights of future generations for the benefit of the present ones.

Ferrara's main aim in *Sovereignty Across Generations* is to defend sequential sovereignty by showing its grounds and virtues, the main one being the capacity to avoid the three problems afflicting serial sovereignty. This defence goes through a rich journey, containing many interesting gems of reflection on crucial issues in contemporary political theory. Two instances are chapter 1 and 2. In the former, Ferrara gives a convincing view of why a Rawlsian paradigm must be chosen and of its superiority over alternative frameworks (the main virtues being Rawls' legitimation by the constitution view of legitimacy and its non-foundationalist approach). In the latter, Ferrara considers contemporary populism, viewed as a main instance of serial sovereignty views, proposing a new definition and a rebuttal of it (populism conflates the democratic sovereign with the electorate, to whom full constituent power is attributed, and it licenses no opinions different from what the populist leaders posit as the general interest of the people).

Sovereignty Across Generations will give several distinctive contributions to the discussion in future. It will contribute to Rawls' scholarship, of course, by shedding light on hitherto neglected themes in Rawls' political liberalism. It will feed discussions on liberal constitutionalism and theories of popular sovereignty. However, its most significant contributions will be in two distinct areas: the debate on intergenerational democracy and institutions, and the discussion about the boundaries of the so-called democratic *demos*.

In the first area, the prevailing trend of the discussion has focussed on *intergenerational justice*, i.e., on how to implement a just distribution of losses and gains across generations (Gosseries 2023; Mulgan 2006; Parfit 1984, pt. 4; Scheffler 2018; Tremmel 2006). Even though the issue of how to account for the representation and democratic rights of future generations is not new (it traces back at least to Thomas Jefferson), it has been largely neglected, few contributions excepted (Boston 2014; González-Ricoy and Gosseries 2016). The merit of *Sovereignty Across Generations* is to give a novel and fully articulated view of generational sovereignty, within a comprehensive view of democratic sovereignty.

In the second area, especially in Chapter 4, Ferrara presents a novel view of another hitherto neglected option: the idea that a democratic *demos* can self-constitute, fixing its boundaries in terms of, and thanks to, a common normative commitment. This solution to the democratic boundary problem is generally refused (Arrhenius 2005; Miller 2009; 2020; Whelan 1983). Ferrara makes a brilliant attempt to revive this solution, along the lines of a constitutivist view of collective identities (Korsgaard 2009).

The richness and thought-provoking appeal of *Sovereignty Across Generations* finds evidence in the papers of this special issue, considering various angles of Ferrara's views. In their critical engagement with Ferrara's *Sovereignty Across Generations*, Favara and Sala explore the Rawlsian foundations of Ferrara's account of constitutional legitimacy and its intergenerational extension. They highlight how Ferrara's use of "reasonableness" – especially the notion of the "most reasonable for us" – aims to defend liberal democracy against populist threats by grounding constitutional authority in the ongoing endorsement of a people understood as transgenerational. However, they question whether Ferrara's contextualism is stretched too far by this intergenerational scope, resulting in a static and overly idealized view of constitutional essentials that risks distancing legitimacy from the democratic agency of current citizens. They also express concern that the attempt to counter populism may backfire, as the diminished role of the present electorate might reinforce, rather than alleviate, populist disaffection.

Tiziana Andina offers a philosophical reconstruction of Ferrara's ontology of the people, drawing analogies with aesthetics and social ontology. She argues that Ferrara's core contribution is the articulation of a transgenerational political subject through a process akin to the ontological transformation of objects into artworks – here, *ethnoi* become *demoi* via acts of political constitution. Andina supports Ferrara's distinction between *ethnos*, *demos*, and electorate, and emphasizes that only by acknowledging this layered ontology can liberal democracies resist presentist populism. In her view, Ferrara's account crucially demands that contemporary citizens represent and uphold the agency of both past and future generations, a task that redefines political legitimacy and raises new challenges of representation and justice, especially regarding the unborn. On the basis of the above, Andina raises two questions to Ferrara. The first concerns representation future segments of the transgenerational people. The second has to do with the identity of future generations, or better how to accurately imagine this identity.

Mattias Iser presents a sympathetic yet critical reading of Ferrara's concept of "sequential sovereignty," arguing that it grants excessive authority to the founding generation by insulating its constitutional choices as identity-defining and largely unamendable. While Ferrara's distinction between constituent and amending power is intended to safeguard political stability and intergenerational justice, Iser argues that this comes at the expense of democratic equality between generations. He proposes a thinner conception of authenticity, focused on maintaining just cooperation across time, which would allow later generations greater latitude in amending even core constitutional features – provided they

remain committed to fairness and mutual accountability. This reorientation, Iser suggests, better preserves political liberalism's commitment to pluralism and autonomy.

Gianfranco Pellegrino voices similar concerns. He argues that Ferrara's framework privileges the founding generation by allowing it to define the political identity and impose constraints that later generations must respect. Pellegrino contends this asymmetry undermines the equal sovereignty of future citizens and risks making the constitutional order less reasonable for them to accept. As an alternative, he proposes a libertarian version of serial sovereignty, in which each generation may legitimately reconstitute political arrangements as long as they preserve intergenerational equality of political agency. This view, while diverging from Ferrara's sequential model, aims to preserve the core liberal concern for freedom and justice across time.

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Notes on contributor. Gianfranco Pellegrino is Full Professor in Political Philosophy at Luiss Guido Carli. He has recently edited the *Handbook of the Philosophy of Climate Change* (Springer 2023), and *Canned heat: ethics and politics of global climate change* (Routledge 2014). His work has appeared in several journals including *Ethical Theory and Moral Practice* and *Philosophical Writings*.

Contact. gpellegino@luiss.it

ORCID. Gianfranco Pellegrino https://orcid.org/0000-0002-8029-3936

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Ferrara's Principles of Constitutional Legitimacy: From Plato to Rawls, and Backwards?

Greta Favara and Roberta Sala

Vita-Salute San Raffaele University, Milan, Italy

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Abstract

In his latest book, Sovereignty Across Generations: Constituent Power and Political Liberalism, Alessandro Ferrara explores the grounds, norms and scope of liberal constitutions' legitimacy. Specifically, Ferrara develops Rawls's political liberalism by exploring liberal legitimacy in a constitutional direction. Indeed, while the grounds of constitutions' legitimacy were not the primary focus of Rawls's own investigations, Ferrara believes that political liberalism must now be extended in this direction – for both theoretical and political reasons. In this review, we examine Ferrara's proposal, bearing in mind his project's Rawlsian roots. Specifically, we examine the relationship between reasonableness and constitutional legitimacy; we suggest that some of Ferrara's conclusions – especially his intergenerational conception of the people as sovereign – might stand in tension with the Rawlsian framework within which he has drawn them.

Keywords: Alessandro Ferrara, Political liberalism, Sovereignty, Constitutional Legitimacy, John Rawls

In his latest book, *Sovereignty Across Generations: Constituent Power and Political Liberalism*, Alessandro Ferrara explores the grounds, norms and scope of liberal constitutions' legitimacy. As he explains, the book's aims are twofold. As a contribution to normative theory, it develops Rawls's political liberalism by exploring liberal legitimacy in a constitutional direction. Indeed, while the grounds of constitutions' legitimacy were not the primary focus of Rawls's own investigations, Ferrara believes that political liberalism must now be extended in this direction. Such a purpose, however, has no merely theoretical origin. A second aim that justifies *Sovereignty Across Generations* is essentially political: Ferrara expresses concerns about the spread of populist movements and

pressures in contemporary politics, writing that "the widespread appeal of populism [is] fueled by populists' recourse to deep-seated tropes of our political tradition: the omnipotence of the living segment of the people, serial sovereignty, the absolute as limitless nature of constituent power […] the state apparatus as being in the service of a hegemonic bloc" (2023, 90-1). Ferrara therefore considers an inquiry into constitutional sovereignty to be urgent: are 'the people' – taken as the set of living individuals living within the same electoral body – the *sovereign* in a liberal-democratic regime? In other words, are the voters entitled to have the last word when constitutional essentials are considered? The fragile equilibrium between democracy and liberalism is at stake: if, as populists claim, voters are entitled to have a say on constitutional essentials, who is going to safeguard the rights which the liberal tradition holds to be inviolable? So, the two purposes giving rise to *Sovereignty Across Generations* are fundamentally related: Ferrara believes that political theory should address the populist challenge, and that Rawls's political liberalism is the best theoretical framework for this task that philosophers possess.

In this review, we examine Ferrara's proposal, bearing in mind his project's Rawlsian roots. Specifically, we examine the relationship between reasonableness and constitutional legitimacy; we suggest that some of Ferrara's conclusions – especially his intergenerational conception of the people as sovereign – might stand in tension with the Rawlsian framework within which he has drawn them.

Ferrara deems Rawls's political liberalism so innovative that it is "the paradigm of political philosophy that carries most promise for understanding and allaying, if not reconciling, democracy's inherent tension between popular sovereignty and rights" (2023, 19). Ferrara lists three major strengths of Rawls's analysis of political legitimacy; however, we are interested in one in particular: "the revolution of the 'most reasonable'" (2023, 25).

Reasonableness is the key conceptual and normative tool that allows Rawls to explain how some principles of political legitimacy can simultaneously qualify as *normative* yet *non-foundational*. Rawls's notion of reasonableness is twofold. Its first aspect involves recognizing the burdens of judgment: rational individuals can arrive at different conclusions about moral, philosophical and political issues, even when presented with the same sound arguments. This recognition forms the basis for understanding and accepting reasonable disagreement within a society. The second aspect focuses on citizens' readiness to collaborate with others on mutually acceptable terms; this willingness to cooperate is crucial for maintaining social cohesion and achieving political consensus in diverse societies. In a nutshell, Rawls's idea of reasonableness

suggests that citizens can hold differing views of what constitutes a good life or the best societal arrangements, without compromising the stability of their political system, and that they can reach agreement on matters of political justice, despite their divergent beliefs. To achieve this consensus, citizens are expected to engage in public discourse by giving reasons that others can understand and potentially accept, regardless of their comprehensive doctrines. This picture corresponds to 'reasonable pluralism'. By theorizing and acting reasonably, citizens can discover principles of political legitimacy which guarantee political stability while avoiding the coercive imposition of divisive rules, despite the fact of pluralism, or – Ferrara would say – despite the fact of *hyperpluralism*, namely the persisting, deep, and crisis-ridden moral and political disagreement that characterizes contemporary liberal-democracies.

Ferrara illustrates this point, as he did in *The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism* (2014), by revising Plato's allegory of the cave. In *Sovereignty Across Generations*, it shows how reasonableness promises to justify principles of constitutional legitimacy. The allegory presents a cave within which prisoners are bound in chains, facing a blank wall. Behind them, a fire casts light; between the fire and the prisoners, objects are moved about, projecting shadows onto the wall. These shadows constitute the entirety of the prisoners' visual experience, leading them to mistake these projections for reality itself. Ferrara invites his readers to imagine that several philosophers have ventured outside the cave; on returning, they exhibit reasonable disagreements about what they saw outside. On what will they agree when they re-enter the cave and begin to rule other people? The normativity of such rule, enhanced by coercion, must rest on what Rawls would call the *most reasonable* principle of conduct for ruling the cave – a principle that the philosophers do not discover as given and as intrinsically binding on them, but reach by exercising a common public reason.

According to this allegory, a few philosophers have made their way up to the outside world. On their return, their accounts of what they saw outside *partly overlap and partly differ*, not because of any specific cognitive impairment or prejudice, but simply because they are finite beings facing a complex reality. When identifying the relevant aspects of reality, these philosophers' views are likely to converge, but on the balance of these aspects they may differ, due to their varied experiences, different points of view and individual characteristics. To rule the people inside the cave, the 'team of philosophers' must find a solution to the problem of how power is to be exercised despite their disagreement. During their conversation at the entrance of the cave, the philosophers ground their endorsement of pluralism neither on *doxa* nor on

episteme; endorsing a pro-pluralist stance is simply *the most reasonable thing for them* to do. This act is an expression of *deliberative* or *public reason*, along with its standard of reasonability.

Ferrara's reformulation of the allegory is thus *non-epistocratic*; it implies a distancing from both *episteme* and *doxa*. It differs from any epistemic approach to normative political philosophy, like Rawls's *justice as fairness*, with its unrealistic belief that everybody in the cave will eventually recognize it and that it will prevail over all the rival accounts of what is outside the cave. What validates the philosophers' argument, however, is not any factual consensus among those inside the cave.

Using this allegory, Ferrara attempts to shift from an abstract version of legitimacy, backed by social contract theory, to a normative reconstruction of liberal democracies' history and institutions. He envisages a polity in which a significant number are not fully on board with a liberal 'normative vision' of justice as fairness. He elaborates a notion of legitimacy by extending Rawls's principle of liberal legitimacy to accommodate hyperpluralism. While Ferrara does not think that coercive reasons can confer legitimacy, he does insist that we have to translate Rawls's idealized notions of liberal legitimacy into something we can regard as a real possibility, anticipated by actual institutions in the present, and not as something destined to be perpetual. This move, however, might create problems, were it to imply that legitimacy derives from the fact that people consciously or unconsciously accept an extant legal order. Acceptance does not, in itself, imply acceptability, assuming that acceptability corresponds to legitimacy in a normative perspective. Ferrara is aware of this remark, of course; indeed, he recalls the idea of 'the most reasonable for us' by quoting Rawls:

> 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 (Rawls 1980, 519).

This means that 'the most reasonable for us' is related to what we are and intend to be, given our history and the traditions embedded in our public life. 'The most reasonable for us' is an idea of justice, consistent with our own understanding of ourselves; the normativity of constituent power emanates from justice, but not from justice as the original position depicts it, the most rational view for all. Conversely, 'the most reasonable for us' is what we are ready to share and defend on the basis of our image of ourselves, backed by our tradition.

Following Ferrara's philosophical agenda, centered on an 'exemplary normativity', the 'most reasonable for us' is an expression of who we are and want to be politically, or rather, of what we cannot refuse without having to change what we understand ourselves to be. This explains why Ferrara (2023, Ch. 1) deems Rawls's account of liberal legitimacy the most persuasive and forceful one available. In his interpretation, Rawlsian political legitimacy derives its normativity from an appraisal of what is 'most reasonable for us' as a political solution to our otherwise conflictual relationships; this lets it reconcile political stability and autonomy, since it neither evokes contested notions of the truth nor relies on a merely prudential agreement.

Therefore, Ferrara's favored strategy to ground political legitimacy within a liberal theoretical framework relies on a *contextual* form of normativity:

> If we want to spell out what 'most-reasonableness' means, we find the intuition […] that most reasonable for us is the political conception of justice which best comports with the historical plurality of reasonable comprehensive conceptions found in our context and best enables everyone to abide by the common normativity without betraying their own comprehensive intuitions. What makes a political conception of justice most reasonable is not responsiveness to something beyond us, but its superior ability – relative to its competitors – for allowing each of us to remain in alignment or resonance with ourselves while abiding by its intimations (2023, 55).

In *Sovereignty Across Generations*, Ferrara extends his interpretation of liberal political legitimacy to constitutional essentials: what grounds the normativity of liberal-democratic constitutions? And, crucially: how is the normativity of the 'most reasonable' supposed to apply to constitutional essentials?

Answering this fundamental question requires clarification of both the subject (the relevant holder of constituent power) and the object (the content) of constitutional legitimacy. If principles of legitimacy are *constructed* through deliberative reasoning rather than discovered, *who* is supposed to construct *what*? Let us start with the subject. One of Ferrara's most provocative and innovative theses defines the subject of constitutional legitimacy – the holder of constituent power – in intergenerational terms. On Ferrara's account, the holder of constituent power is a People, but characterized in two ways, depending on the function that it is supposed to play: the People at the origin of the constitutional essentials, fully endowed with constituent power, is the sum of all the generations that have lived or will live within the same body politic

since its creation, whereas the People with amending power is a subset of it, the living electorate. In other words, popular sovereignty is *sequential*, not serial: constitutional essentials must be derived from the most reasonable conception of justice for the People, understood as an intergenerational entity. The constitutional essentials are somewhat stable over time, since a generation – as one part of a larger People – does not possess full constituent power. According to Ferrara, this twofold characterization has the merit of countering populism by showing that the electorate does not hold full power to amend the constitution; therefore, when populists claim that courts or parliaments are 'stealing sovereignty' by going against the will that voters allegedly express in present circumstances, they misunderstand the meaning and scope of 'popular sovereignty'.

Besides its efficacy in countering populism, Ferrara has conceptual reasons for adopting this intergenerational characterization of the People as the holder of constituent power. Drawing on Michelman's 'Always Under Law?' (1995), he explains that the People must be conceived of as an intergenerational entity, otherwise 'popular sovereignty' could not be affirmed. If we did not presuppose 'continuous identity', we would implicitly claim that whichever generation first wrote the constitution, including the rules for its revision, holds sovereign power over the following generations. To overcome such paradoxes, 'continuous identity' is necessary: if each generation is part of one and the same People, constitutional rules that apply to the first generation, and then retain their legal force through time, originate from the will of one and the same People: "The idea of *self-sameness*, of sharing in one common political identity, […] allows us to continue to think – as required by a common definition of democracy – that the people who make higher law are the same as the people whose life will be regulated by that law" (2023, 128–9).

As for the object of constitutional legitimacy, how should the relationship between the People and the higher law be understood? If the project aims to be consistent with a Rawlsian interpretation of liberal legitimacy, the People can neither *discover* the constitutional essentials, as if they were universally and transcendentally valid (as in Plato's original version of the allegory of the cave), nor merely *posit* them through an act of will[1]. Otherwise, constitutional legitimacy would fall back to foundationalist or contingent justifications, such as a modus vivendi, that Rawls's political liberalism rejects. So, constitutional normativity gives rise to a puzzle: "What law can the democratic sovereign be

[1] On this point see Ferrara's discussion of a Rawlsian-inspired theory of constitutionalism through a comparison with Kelsen and Schmitt in Ch. 3.

under that leaves it undiminished as a sovereign?" (2023, 131) A third kind of justification must be found, and Ferrara argues that it involves relying, once again, on *reasonableness* or – better – on what can be regarded as *most reasonable for us*.

As we have seen, principles or values can be considered reasonable for us when they fall within the subset of normative beliefs that citizens share, despite the fact of pluralism; they gain their normative strength through our recognition of our mutual epistemic imperfection (due to the burdens of judgement), and through a shared commitment to avoiding the coercive and conflictual imposition of any partisan point of view. However, as Ferrara emphasizes, not every reasonable conception of justice will aptly ground constitutional legitimacy; we must look for the most reasonable conception of justice for us, namely the conception of justice that best reflects 'who we are' as a people, in virtue of our history, institutions, practices and beliefs. Otherwise, we would accept an institutional arrangement which advantaged some citizens over others, thereby incentivizing some form of oppression (2023, 130-4). Since constitutional legitimacy is grounded on the most reasonable conception of justice for us, Ferrara thinks, the grounds of constitutional normativity arise from a situated historical development, albeit no merely contingent one. In his view, constitutional legitimacy is both partly contextual and partly ideal, since it is the result of a discursive process through which a normative identity takes shape as we wonder what justice might mean for us; we neither posit nor discover such a normative identity, but choose it as the set of principles best reflecting our conception of who we are as a People:

> The normativity that constituent power is under is then neither derived from transcendental models, nor resting on the local normativity of existing cultures and traditions. It is the normativity of a judgment concerning the best fit of one of the 'merely reasonable' political conceptions of justice or political right with who we are historically, politically, and culturally. It is neither a purely speculative normativity of moral justification, nor a hermeneutics of self-understanding, but the normativity of the reflective judgement that brings the two into optimal equilibrium (2023, 134).

Constitutional legitimacy can gain its normative source and strength by reflecting and safeguarding the most reasonable conception of constitutional political legitimacy the People can recognize as such. This is clearly stated in Ferrara's *liberal principle of constitutional legitimacy*: "Constituent power is justifiably exercised when it is exercised in accordance with a political

conception of justice most reasonable for its free and equal holders" (2023, 134). Here 'holders' must be interpreted as the People, conceived of in intergenerational terms.

Such an interpretation of the liberal principle of constitutional legitimacy gives rise to a further puzzle: what is the relationship between the sovereign power of the People and its living segment? Indeed, as a part of the People, conceptualized in intergenerational terms, the living segment of the People cannot claim full constituent power by itself. This is why Ferrara needs to uphold two different principles of constitutional legitimacy at once: the liberal principle of constitutional legitimacy (mentioned above) and the *liberal principle of amending legitimacy*: "Amending power is justifiably exercised when it modifies the constitution in full respect of the (explicitly and implicitly) unamendable essentials and of ideals and principles acceptable to present citizens as rational and reasonable, as well as compatible with vertical reciprocity among all the generations of the people." (2023, 281)

Ferrara argues that the living segment of the People can have only a limited say on the constitution that regulates their fundamental political institutions: the normativity of the constitutional essentials is rooted in the People's historical identity and in vertical reciprocity between generations[2].

In light of such an account of the liberal principles of constitutional legitimacy and amending legitimacy, we wonder whether Ferrara's theory of sovereignty is able to fulfil its own purposes. In fact, in the following, we argue that Ferrara's account of constitutional legitimacy might be in tension with its intended aims.

Ferrara understands his account of constitutional legitimacy to be contextual, and contextualism is crucial in a Rawls-inspired theory of liberal legitimacy. Political liberalism becomes contextualist as soon as it seeks the legitimacy of a theory of justice neither by searching for abstract universal ideals nor by understanding this legitimacy as a contingent act of will. Ferrara claims that the 'revolution of the most reasonable' rethinks liberal legitimacy as the fruit of *contextual discursive reasoning*, through which citizens adopt as normative the conception of justice they find most reciprocally acceptable. However, by grounding constitutional legitimacy on an intergenerational interpretation of what is most reasonable for us as a People, Ferrara's account of liberal legitimacy takes a turn towards decontextualization.

Recall that the intergenerational scope of reasonableness grounds constitutional

[2] The details of such a relationship are discussed in chapters 5 and 7.

essentials on principles and values that could be acceptable for every generation – both *past* and *future* generations. Such a requirement has implications for the meaning of 'contextualism' in Ferrara's theory. As we have seen, the liberal principle of amending legitimacy strictly limits the acceptable extent and scope of amendments: some constitutional essentials are 'unamendable', and amendments must be 'compatible with vertical reciprocity among all the generations of the people'. This means that the relevant 'context' in Ferrara's theory assumes a scope dramatically wider than the one Rawls originally considered in *Political Liberalism*: who we are as a People depends on our whole history as that People, not merely on what we factually are in a determined and circumstantiated situation. Furthermore, reciprocity towards future generations requires us to extend the normatively relevant context, looking forward in an imaginative exercise to figure out what constitutional essentials might be acceptable for future generations.

Such enlargement of the normatively relevant context makes the constitutional essentials quite *static*, amendable only according to strict constraints; *formal*, being abstract enough to appear acceptable to every generation through time; and *hypothetical*, the product of an imaginative exercise. As a result, in Ferrara's account both contextualism and autonomy seem to go through gradual semantic transformations. 'Contextualism' looks less and less like a methodological approach anchored to a specific context: from the context of Plato's cave, a metaphor for a closed society, in Ferrara's theory the relevant context instead becomes the cultural and institutional history of an entire People. Consequently, it is hard to see how the constitutional essentials result from a non-oppressive normativity, at least if we stick to reasonableness and its relation to overlapping consensus as a basis for non-oppression; such normativity requires an actual correspondence between political principles and the plurality of comprehensive doctrines. Once the relevant holder of constituent power has been enlarged, the justification and amendment of constitutional essentials recalls a kind of justification closer to the hypothetical consent device that underpins Rawls's *Theory of Justice* than to the contextualist turn he embraced in *Political Liberalism*.

Furthermore, to avoid asymmetries of power between generations, Ferrara makes his project's normative scope intergenerational, but we doubt that this can achieve its purpose. After all, the generations that follow the founding one are, to some extent, required to respect the will of someone else, the founding generation. Ferrara's account seems to advantage the founding generation[3]. In

[3] On this point see also Pasquali 2024.

addition, Ferrara's attempt to circumvent this shortcoming might look excessively idealized: as long as constitutional essentials are justified through reasoning that recalls the hypothetical consent device, reciprocity between generations is achieved theoretically, not actually. That is to say, 'autonomy' is gained as the conformity of our practices to a theoretically devised standard, not in the exercise of actual will. Yet, we saw that by relying on Plato's cave scenario, Ferrara describes the 'most reasonable for us' as an example of *discursive* normativity. We wonder, then, whether the intergenerational scope of justification of the constitutional essentials can be compatible with an interpretation of reasonableness as a discursive form of normativity. 'Autonomy' gradually becomes an abstract ideal rather than a faculty to be exercised through political practice.

These considerations bring us to another concern. As we explained, Ferrara sees his theory of constitutional legitimacy as a convincing argument against current populist tendencies, since it differentiates between the People and the electorate, and between their respective political powers. However, by conceiving the constitutional essentials in such a formal, static and hypothetically grounded way, the argument could backfire. While Ferrara's analysis does explain why the electorate would not be entitled to claim sovereign power within a liberal institutional framework, this interpretation of constitutional legitimacy distances the fundamental norms grounding political institutions from the lives of actual citizens. We wonder whether such a distance might be *too wide*: populists could grant the consistency of Ferrara's argument and, precisely in virtue of this consistency, be inclined to reject political liberalism as the best normative account of legitimacy, repudiating the theoretical framework within which Ferrara's considerations are built. Indeed, Ferrara's account of constitutional legitimacy puts living, past and future, citizens on the same level with regard to their entitlement to 'have a say' on constitutional essentials. In this way, Ferrara's theory of constitutional legitimacy effectively restricts the political agency and autonomy of the living segment of the people and may further foster disaffection with liberal political theory [4]. While this is not an argument against Ferrara's analysis of constitutional legitimacy, it is a consideration that should be taken into account if one of its stated purposes is to counter populism.

[4] Galeotti (2024) discusses the relationship between generations within Ferrara's account and proposes to restrict the normatively relevant generations to the overlapping ones.

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Notes on contributor. Greta Favara is a researcher in political philosophy at the Faculty of Philosophy of Vita-Salute San Raffaele University in Milan, where she teaches "Global Justice" and "Political philosophy". Prior to this position, she held teaching and research roles at New York University (Shanghai) and was a post-doc researcher at the Faculty of Philosophy at San Raffaele University. Her research focuses on methodology in political philosophy and political realism. Her work has appeared in journals such as Critical Review of International Social and Political Philosophy, Constellations, European Journal of Philosophy, Ethical Theory and Moral Practice, and Philosophy and Social Criticism. She is also the author of the monograph *Prendere la politica sul serio. Il realismo nella filosofia politica contemporanea* (AlboVersorio 2023).

Roberta Sala is Full Professor of Political Philosophy at the Faculty of Philosophy of the Vita-Salute San Raffaele University in Milan, and President of the Bachelor's Degree Program in Philosophy. Her areas of research include normative political philosophy, ethics, and public bioethics.

Contact. favara.greta@unisr.it; sala.roberta@unisr.it

ORCID. Greta Favara https://orcid.org/0000-0002-0424-2635;

Roberta Sala https://orcid.org/0000-0002-3558-542X

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Demos
The People

Tiziana Andina

University of Turin, Turin, Italy

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Abstract

This paper explores Alessandro Ferrara's concept of transgenerational sovereignty within liberal political theory. It argues that "the people" must be understood ontologically as a political subject that includes past, present, and future generations. Drawing on social ontology and aesthetic theory, it examines how representation and constituent power form the basis of enduring democratic legitimacy. The essay highlights the role of institutions, such as constitutional courts, in ensuring justice across generations and challenges presentist conceptions of political agency.

Keywords: Representation, Future generations, Sovereignty, Art, Transgenerationality

Summary: Introduction; I. The Potential Contributions of Social Ontology to the Field of Political Philosophy; II. Constructing "The People".

Introduction

Alessandro Ferrara's volume, published by Oxford University Press (2023) and now available in Italian translation by Mimesis, focuses on two questions in particular: the first concerns the constitution of states, i.e. the nature of constituent power, and the second its duration, which largely coincides with the possibility of keeping the exercise of this power active. Finally, it is a question of reflecting on the nature of transgenerational sovereignty.

The perspective adopted by the author is that of Rawlsian liberalism, within which he attempts to address certain problems, namely those arising from the

observations of Jean-Jacques Rousseau (1984): "before, therefore, examining the act by which the people elect a king, it would be well to examine the act by virtue of which a people is a people". That is, before we begin to examine the nature and means that enable the exercise of constituent power, it would be necessary to address the underlying ontology, i.e., to answer the question: "What are we referring to when we use the concept of the people?". And indeed, if it is true that the exercise of sovereignty in a democracy depends on the will of the people, a conceptual clarification in this regard is essential: above all, it must be made clear what ontological commitment we want to make with this concept.

Ferrara's proposal on this point is to design an ontology that can serve as a support for political philosophy, i.e. an interweaving of ontology and political philosophy. He starts from a very topical issue, namely the idea that the populisms corroding Western democracies are largely due to an epistemological-ontological confusion, i.e. the idea that "the people" is usually confused with one of its segments, especially that which constitutes the active electorate. The nature of this error will not be examined in detail herein; however, it should be noted that the error is fundamentally attributable to two factors. Primarily, the challenge of comprehending the transformation that occurs when a relatively homogeneous group of individuals evolves into a political entity. Secondly, it is imperative to acknowledge the significance of the electorate within the context of democratic politics. The electorate, as a constituent element of a democracy, wields the power to influence the decisions that are made on their behalf. This right to representation is bestowed upon them through the act of voting, thereby ensuring their inclusion in the political process. Thus, Rousseau's question can be broken down into two further questions; the first is: when or under what conditions does a collection of people become a people? The second is: when we speak of a people, how do we compose the multitude to which we refer?

The answer to these two questions is fundamental to understanding what this form of government is and how it works, in which citizens exercise power through forms of representation.

I. The Potential Contributions of Social Ontology

The concept of "the people" articulates a notion of ontological complexity, within which the time functions as a foundational element. This complexity stems from the observation that, at some point after a transformation that

remains somewhat enigmatic, a heterogeneous group of human beings undergoes a *change in status*. It is evident that these individuals do not congregate randomly; rather, they coalesce based on cultural, value, and historical elements they share in common.

To elucidate this transformation, it is instructive to draw upon an example from a wholly distinct context. During the second half of the 20th century, Arthur Danto (1981) noticed the Brillo Box, a piece by the young Andy Warhol displayed at the Stable Gallery in New York. He thought about the possibility that an everyday object – a box designed for storing things like pot washers – could be shown as a work of art in spaces meant for displaying art. Danto's inquiry pertains to the notion of how commercial objects can be regarded as artistic creations without undergoing substantial modification. [1] The *Brillos* that departed from Warhol's manufacturing facility exhibited only minor dimensional differences and were composed of a distinct material compared to those intended for commercial distribution and designed by James Harvey. The result was that the Brillos signed by Harvey and the Brillos signed by Warhol were almost impossible to tell apart. However, they were not classified as the same kind of thing. Harvey's Brillo was a material object, while Warhol's Brillo was a piece of art.

Danto's (1981) explanation challenges the concept of transfiguration, which posits that the particular interaction between subjects and objects, when guided by a particular theory, brings about such a far-reaching change in the way the object is viewed that the object ends up belonging to a different class, that of artworks. Danto's employment of the English term "transfiguration" is intended to encapsulate the notion of ontological change. One might ask how these thoughts on the philosophy of art can help us better understand Ferrara's ideas about sovereignty across generations. The solution to this issue can be found in the manner in which the philosophy of art utilizes a specific methodology to address its ontological dilemmas.

Arthur Danto proposes a theory that synthesizes several factors, asserting that the process of transfiguration is attributable to three distinct entities: the users of art, the art world, the subjects themselves and their capacity to interpret. He elucidates the process by which a material object (e.g., a bicycle wheel) can align with its artistic counterpart (a bicycle wheel). In summary, the author expounds on the transformation in status. John Searle (1995) employs a similar line of reasoning in the domain of social ontology. In this situation, he shows

[1] For a thorough examination of Danto's argument, refer to the following sources: (Danto 1981). For an articulate discussion on this point, I refer to (Andina 2011).

how a wall can become a border, a piece of paper can become a banknote, and a graduate who has specialized in a field can become a professor. In all these cases, as is also the case in Danto's, the philosophically salient aspect is to understand the peculiar steps by which this transformation is possible. In other words, it is a matter of understanding the characteristics of a procedure that allows a specific function to be assigned to an object in collectively shared ways. What Searle calls imposition of function.

Just as it is possible to turn a piece of dear into money, we can assume that in a similar vein, it can be posited that one or more cohorts of individuals (a "demos") may undergo a transformation into a political entity, that is "the people". As is widely recognized, Searle (1995; 2010) has expounded on this point, elucidating the renowned law concerning the construction of social reality: The assertion posits that "X counts as Y in a context C". The transformation of "something" (X) into "something ontologically different" (Y) occurs within a specific context, governed by a set of rules and practices.

The philosophy of art concerns itself with material objects that are transformed into works, while social ontology, following a similar line of reasoning, seeks to explain the mechanisms governing social reality. The imposition of function to a material object or an artefact that has been crafted with a particular purpose in mind is the predominant method by which the majority of these mechanisms can be elucidated. The approach employed by Searle to elucidate the structure of social reality has the potential to bolster Ferrara's claims that a group of individuals who adhere to a common set of practices and values can coalesce into a political community within a specific context.

In this case, the explanation could be as follows: A group of people inhabiting a specific physical space, following a set of common rules, and sharing at least some values is considered a people within the cultural context that has produced a certain Constitution. In this context, the Constitution functions as a mechanism through which the constituent group establishes a political unity.

Searle's procedural approach seems to solve several problems, but when it comes to the question of the identity of the people and intergenerational sovereignty, I will just point out one important issue. We are basing this on two ideas: that people are a group of people who have lived, are living, and will live, and that this group is a stable entity that will last over time. How can we apply the constitutive rule in this context? It could be: X (i.e., the living generations) counts as Y (as the people, i.e., the set of past and future generations) in a context C (i.e., the constitutional context that allows it).

As Searle points out, the constitutive rule works as long as X intends it to work. That is, as long as X intends to include present, past, and future generations in Y, leaving the constitutional and regulatory context that allows it unchanged. Y's dependence on X's intention makes the entity "people" subject to significant changes. This is a point that needs to be carefully considered, as it could have significant consequences in terms of concrete political practice.

At this juncture, the philosophy of art can provide a valuable perspective on another front that constitutes an element of convergence with political philosophy. This is exemplified by the notion of representation.

It is important to reiterate the assertion that the philosophy of art is concerned with the manner in which the public utilizes representations to interpret artistic works. Conversely, political philosophy addresses the relationship between the representative and the represented, that is to say, the manner in which the will of the people manifests itself in the political sphere. In both cases, the process of emergence involves a substantial change in ontological status.

In his analysis, Ferrara (2023) builds on Hans Lindahl's work, distinguishing between the concept of ethnos, understood as a rudimentary social unit, and that of *Volk*, which signifies a more profound and dynamic social entity. According to Ferrara, the distinction between these two terms is pivotal in understanding the shift in status of the social aggregate, which is precipitated by the act of constituent exercise and, consequently, the establishment of a state. In essence, the transformation of a social aggregate into a people is contingent upon the capacity, exclusive to certain aggregates, to articulate a profound consensus on a framework of moral and political values, and to imbue this consensus with a normative essence. This act is best articulated through the drafting of the Constitutional Charter. This approach, in my estimation, represents a divergent formulation of the imposition of function as described by Searle.

It is noteworthy that this act possesses at least two distinctive characteristics. Primarily, it is implemented by an ethos that, while not yet embodied by the populace, is capable of engendering the actionist drive to conceptualize the ideal and, concomitantly, the normative subject that is the populace. In a manner analogous to the transformation of a blank canvas into a work of art through the creative hand of an artist, an ethos can metamorphose into a unifying force for a people when it aligns itself with a leadership that orchestrates its transformation. This leadership possesses the ability to congregate the ideals and values that resonate with the collective, inspiring individuals to relinquish their individual wills, at least in part, in service of a greater purpose.

Furthermore, the act is not entirely inclusive, suggesting that not all components of the ethnos are integrated into the people, but rather, a portion of it persists on the periphery, adopting a dialectical stance. Therefore, the people are associated with a specific component of a particular ethnos, yet it remains unclear with which ethnos they are affiliated. Herein lies the crux of the ontological question.

Ferrara's interpretation of the people is noteworthy for the implications it entails. It is imperative to distinguish the people, as posited by the premises, from both the ethos and the electorate. This final point, while particularly pertinent, especially within democratic contexts, is often overlooked. The underlying rationales are evident and can be attributed to the propensity of democracies to adopt a presentist perspective (Menga 2021). This phenomenon is reinforced by the strategic employment of *ad personam* arguments in public discourse, which are employed with a certain nonchalance (Condello and Andina 2019). The following text is intended to provide a comprehensive overview of the subject matter. The adoption of practices by governments and parliaments that result in the failure to distinguish between the populace and the electorate can be primarily attributed to the tendency of such practices to prioritize the interests of the electorate. Consequently, this results in the prioritization of the interests of the political parties that participate in elections and seek to gain consent from their constituents.

An essential component of Ferrara's argument in this regard involves demonstrating, from an ontological perspective, a non-trivial choice that contradicts the prevailing belief held by the majority. The people, as delineated in the foundational act, do not align with the ethos that initiated the constituent process. This discrepancy extends beyond the electorate, as the people do not coincide with the constituents, who are defined as the individuals who established and subsequently initiated the constituent act. Now, if we admit that the people coincide with the unity of present, past, and future generations, the problem of representing future generations, i.e., those who do not yet exist, becomes particularly urgent.

At this juncture in the argument, Ferrara puts forward the concept of *transgenerational sovereignty*, which is consonant with the numerous extant works of theoretical and moral philosophy that are developing an alternative vision of society. This alternative vision is characterized by the integration of the liberal perspective into a broader vision that takes due account of the phenomenological and historical time that social ontology deals with.

II. Constructing "The People"

To reiterate the inquiry regarding the definition of "the people", the initial response is as follows: The term "people" is understood to denote the totality of individuals who have voluntarily entered into a political agreement. This encompasses not only those who have already existed, but also those who currently exist and those who will yet exist and agree to participate in the pact. That is to say, the ancestors, the contemporaries, and the unborn are all included. In essence, the collective entity in question exhibits a marked superiority over its constituent elements, specifically the electorate. Furthermore, all constituent elements possess an equal entitlement to representation, as well as the capacity to exercise their political agency and sovereignty in its entirety.

The question that must be posed is the following: is it worthwhile to introduce this over-extended idea of the people into an ontology of the political? The rationale underpinning this approach is rooted in the conceptual framework of the political community that we seek to support, as well as the manner in which it is structured. In this particular context, there is one evident and pivotal element that warrants attention. Political communities endeavor to demonstrate durability, that is, to persist for as long as possible. In summary, the legitimacy of a political community's pursuit of self-preservation is contingent upon its ability to withstand external challenges and maintain the support of the majority of its constituents. The foundational principle posits that the continuity of a political community is contingent upon its capacity to maintain the *consent of its citizens*. While the monarchical political form was considered to guarantee this continuity through the person of the sovereign (Hobbes 1881), this continuity is more problematic in modern democracies because the person who embodies and represents it is absent; parliaments are re-elected at regular intervals, as are governments, which generally have a fairly short lifespan. Nevertheless, at least two entities persist over time, despite the potential alteration of their component parts: the Constitutional Charter and "the people".

The Constitutional Charter is defined as the aggregate of the principles and values that a nation acknowledges, is motivated by, and endeavors to actualize. The application of appropriate forms facilitates the modification, transformation, and alteration of the object. However, it is important to note that this process can only occur gradually and affect specific parts intermittently. This is due to the fact that distortion would result in a rupture of the founding pact and a disruption in the continuity of the generations that comprise the demos. Conversely, this cohesion is further ensured by the implementation of a political ontology that aligns with the concept of the people. The people is then constituted by the

totality of people, present, past, and future, who become part of the political pact. Ferrara's primary emphasis, which constitutes the crux of sovereignty, is that the segment of the populace that is represented must assume responsibility for the segment that is either nonexistent or not yet extant, yet is inextricably part of the populace.

The notion has been posited that the domain of politics ought to concern itself with the living and not with beings that do not yet exist or that no longer exist in some other capacity. Nevertheless, presentist theories are predicated on a fallacy of perspective.

The notion of sovereignty necessitates a consideration of the manner in which all individuals (both past, present, and future) can be endowed with a certain degree of political agency in conjunction with the exercise of fundamental rights. This approach enables us to inquire not only about the means to enhance justice among contemporary citizens in democratic societies, a task that is inherently complex, but also to explore the available resources and the necessary refinements or innovations to ensure the representation of those segments of the population that currently lack or have previously lacked political agency.

If we consider the latter, specifically those who are no longer capable of political action – the ancestors, to be precise – it becomes evident that the institution of European marriage (Goody 1983) has effectively fulfilled this role for centuries. Given the evolution of this institution to a more diversified social function, and its subsequent displacement as the primary instrument for safeguarding family wealth through patrilineal lineage protection, the will and its associated legal instruments (Cantaluppi and Raviola 2023) persist in performing the task of safeguarding the legacy of our ancestors with notable efficacy. Conversely, the issue becomes considerably more intricate when we turn our attention to the segment of the population that is not extant, at least in terms of space and time: the *unborn*. The question of how to fairly represent these groups is a more complicated issue that needs to be carefully thought about. In essence, the issue at hand concerns the representation of contemporary generations and, consequently, the question of diachronic justice. The representation of the people, given its ontological articulation that encompasses future generations, gives rise to at least two issues.

The first of these aspects pertains to the modalities of representation (Pitkin 1969). The notion of representation, in and of itself, is not readily discernible. Intuitively, the representation of a landscape and the representation of the interests of a particular group of people appear to be two distinct activities. The

landscape exists for our perception, while future generations are merely the result of an imaginary act; that is to say, they are conceptual artifacts that have no properties other than that of future existence. However, an alternative hypothesis posits that the representation of a landscape does not entail an exact replication of a landscape as a model (Danto 1981). Rather, it signifies the reproduction of specific characteristic features of a typical landscape or the class of representations that are commonly recognized as "landscapes". The notion of future generations, which itself constitutes a form of representation, pertains to an act of imagination that delineates the potential characteristics and needs of future generations. This description is based on experience. Therefore, it can be posited that the representation in question captures features that serve to identify the thing to be represented, or, in some cases, a subset of its particular needs, and reproduces its form (in the case of artistic representation) or identifies its needs. It is evident that imagination plays a more critical role in the context of future generations than in the context of landscapes.

The second challenge pertains to the transfer of property rights to subsequent generations. There is a legitimate resistance to the treatment of landscapes in the same way as future generations. This resistance stems from the fact that, while it does not seem unreasonable to depict landscapes that have no equivalent in reality – for example, depicting a Martian landscape would have little consequence if it did not exist on Mars – depicting future humans seems to be an act that carries more than a few risks for the very future we wish to depict (Parfit 1982), since we ignore the properties they will have as well as their needs. The question, then, is how to adequately represent individuals in their totality and complexity. How can we exercise intergenerational sovereignty?

The response provided by Ferrara warrants further examination. It is reasonable to hypothesize that future generations are merely an extension of our own imagination. In this case, the imaginative act, which is inherently representative, can be interpreted as an endeavor to bestow form, norm, and identity upon future individuals. In this sense, representing the people concretely means creating a horizon of meaning and a boundary that includes and playfully influences future individuals. Consequently, the author proposes the concept that transgenerational communities can be represented by a supreme or constitutional court, entrusted with the authority to adjudicate, interpret, and potentially amend the supreme law that is collectively created by the people it serves. To this end, it is necessary to allocate space not only to the constituent power, as has traditionally been the case, but also to the amending power, that is, to the exercise of the kind of power that allows each constituent of the

electoral body to exercise its sovereignty and to stipulate the conditions so that the other constituents are equally free to exercise it. For those who perceive the Constitution as a compendium of dogmas, this passage is of particular significance. However, achieving this balance necessitates a nuanced approach that acknowledges the necessity of both preserving the core values that were central to the constitutional act and facilitating the evolution of values and objectives that are less identity-oriented.

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Notes on contributor. Tiziana Andina is a full professor of theoretical philosophy at the University of Turin. She has studied Nietzsche's thought, philosophy of art, social ontology and transgenerationality. Her recent publications include: *An Ontology for Social Reality* (Palgrave-Macmillan 2016), *What is Art? The Question of Definition Reloaded* (Brill 2017), and *A Philosophy for Future Generations* (Bloomsbury Academic 2022).

Contact. tiziana.andina@unito.it

ORCID. Tiziana Andina https://orcid.org/0000-0002-3473-573X

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Sequential Sovereignty between Authenticity and Justice

Mattias Iser

Binghamton University, New York, USA

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Abstract

In this paper I argue that in his otherwise important theory of sequential sovereignty accorded to an intergenerational people Alessandro Ferrara unduly privileges the founding generation. For him this first generation is the only one to have the constituent power to create a *demos* by accepting specific identity-defining commitments in light of an already given ethnic identity. With regard to the amending power of future generations these constitutional essentials determine what can and cannot count as authentic expressions of this *demos* going forward in time. However, Ferrara goes wrong when he includes specific institutional designs in these identity-defining commitments. Rather, I maintain that the idea of intergenerational justice requires that the founding generation restricts itself to a much narrower set of constitutional essentials. Fundamental commitments that are hard to amend or cannot be amended at all should only include those features that form the necessary normative core of the liberal political project: namely to cooperatively share a political order on fair terms no one can reasonably reject. This institutionally more open-ended proposal is better in line with what non-overlapping generations owe to each other as equals with regard to their joint cooperative project.

Keywords: John Rawls, Liberalism, Constituent power, Constitutionalism, Democracy, Intergenerational justice

Summary: Introduction; I. Ferrara's conception of sequential sovereignty; II. A more deontological understanding of constitutional constancy; References.

Introduction

In his intriguing new book *Sovereignty Across Generations* Alessandro Ferrara argues that, in multigenerational societies, no single generation is able

to claim full sovereignty. Rather, all generations should be viewed as the "entire people" who co-author the political commitments enshrined within the essentials of a constitution. Thus, any attempt to amend the constitution must be answerable to all generations, past, present and future. With this notion of sequential, as opposed to serial, sovereignty Ferrara wants to elucidate John Rawls's notion of intergenerational justice as cooperatively establishing and maintaining a shared set of just political (and democratic) institutions (Rawls 1971), that is, as "a project for jointly living a political life over an open-ended time span" (260)[1].

In this paper I argue that despite his many important insights, Ferrara unduly privileges the founding generation. It is the one bringing the *demos* into being via the acceptance of identity-defining commitments, which determine what can and cannot count as authentic expressions of a *demos* going forward in time. Thus, Ferrara grants only the founding generation "first-order constituent power" (109). All further generations are merely assigned amending or second-order constituent power since any proposal for change has to remain consistent with the already posited "authentic identity" determined by the founders. The main problem of Ferrara's proposal is not that he posits two powers, constituent and amending power, but that he constructs the former as too far-reaching. His notion of authenticity entails very specific – I think too specific – institutional arrangements. I maintain that, instead, the idea of intergenerational justice requires the founding generation to restrict the constitutional essentials that are hard to amend or cannot be amended at all to those features that form the necessary normative core of the very project of cooperatively sharing a political order on fair terms no one can reasonably reject.

My paper proceeds in two steps. I start (I.) by presenting the main contours of Ferrara's view on the relationship between the founding generation's constituent power and the amending power of later generations. I then (II) argue that, *pace* Ferrara's emphasis on authenticity, sequential sovereignty requires a more formal focus on cooperation over time in pursuit of just institutions, in line with the ideals of political liberalism. According to my proposal all institutional change motivated by this core commitment, even intra-regime change, that is, the replacement of an old with a new constitution, should be within the purview of later generations, even if this entails more radical changes by future generations than Ferrara seems to be comfortable with.

[1] All references with mere page numbers refer to Ferrara (2023).

I. Ferrara's conception of sequential sovereignty

Ferrara's theory crucially relies on a differentiation between constituent and amending power. Whereas the founding generation calls a people into being, later generations of *this* people can only amend the already existing constitution to overcome deficiencies in light of the already posited identity. Such deficiencies might arise if, for instance, the constitutional court, as the most suited representative of the people across time, comes to unacceptable results, or if new challenges arise that the founders did not anticipate.

However, "[w]e are never told how a people comes into existence as a people" (139). This problem haunts any account of constituent power. Ferrara's own solution to this problem relies on a bifurcation of the notion of the people into an *ethnos* and a *demos*. Ferrara defines an *ethnos* "on the basis of non-political characteristics: for instance, but not exclusively, the use of a language, patterns of conduct, lifestyles […]" (147). A *demos*, by contrast, is mainly politically defined – via its constitution – but still retains its reference to an ethnos since it "is […] an ethnos […] that at a certain juncture […] has taken the form of […] of a political order" (ibid.). Ferrara here introduces authenticity as the crucial criterion for an *ethnos* (or several *ethnoi*) satisfyingly transforming into the unified will of a political *demos*.

Note that authenticity here is at least partly backward-looking. The question is whether the commitments that are expressed in the institutional design of the *demos* fit the non-political, that is, broadly cultural, identity of the founders' *ethnos*. This fit thus explains at least to a certain extent why the institutional design is chosen, namely as a powerful expression of such ethnic identity. In this vein, Ferrara argues that the residents of Northern Italy did not embrace the fascist proposals of the Northern League in the 1990s. They could not see themselves in such a proposal, that is, it did not resonate with their given collective identity (154).

Ferrara also and correctly emphasizes that an authentic identity is in important respects forward-looking. He mainly defines it via the acceptance of practical commitments, namely as projecting a certain idea of who we want to be (and not so much of who we descriptively already are). But the question who this "we" wants to be, is still very much asked from the standpoint of the founding generation (perhaps in light of past traditions that it has inherited) and not from the virtual perspective of the entire intergenerational people that Ferrara later contrasts with the merely partial living segment in order to justify limits on amending power.

Ferrara's main theoretical foe are theories of serial sovereignty. They grant

every generation the power to start from scratch, to create a new constitution und thus express their preferences as a new *demos* (even though the *ethnos* might remain the same). Ferrara here refers to Thomas Jefferson's famous remarks comparing different generations to independent nations (Jefferson 1999, 596). Ferrara sees three problems with such an understanding and exemplifies them with a fictional republic. In the following I will briefly elaborate on its three aspects, which Ferrara labels "wanton", "indistinct" and "underdetermined."

Ferrara's example of a "wanton" republic highlights the main deficit of a serial understanding of sovereignty. Because every generation can "autonomously" make new commitments unimpeded by former choices, the result is a chaotic oscillation between constitutional commitments. This blurs the important distinction between constitutional (higher-order) and ordinary (first-order) law. In the same way the individual wanton, as famously described by Harry Frankfurt (1971, 11-4), is not really a person since she does not commit to anything and is, instead, driven by her first-order desires, here each generation is driven by its immediate preferences but not by an intergenerational identity and no higher-order commitments that would guide the polity. Ferrara imagines six generations spanning 200 years that start roughly as the current USA. In an arbitrary order the respective "reigning" generation "abolishes the presidency in order to create a Westminster-style parliamentary system," "abolishes the Senate while retaining a now monocameral parliamentary system," "establishes a plurality of Christian churches," "constitutionaliz[es] social rights within the basic structure" (all 211-2) – only to be reversed by different generations.

This leads to the second danger of the "indistinct" republic (214). If there is no intergenerational identity, Ferrara wonders, why should later generations see themselves more strongly bound by the proposals of their predecessors than by the differing commitments of other republics? The indistinct republic does not provide us with bonds that could tie us to the past and the future of our own people.

Finally, maintaining an authentic identity over several generations is supposed to solve the third danger of the "underdetermined" republic (215). If we do not properly distinguish between intergenerational constitutional and intragenerational ordinary law, constitutional amendments within a serial understanding could impose unjust burdens on future generations since it regards the current electorate as fully sovereign. Once one accepts a conception of sequential sovereignty, by contrast, future generations must be included in our deliberations today as co-authors of one continuous constitutional project.

II. A more deontological understanding of constitutional constancy

Ferrara is certainly correct that (intra-)regime change should not be taken lightly and especially not, as Jefferson proposed, routinely pursued every 19 years as an expression of a spurious autonomy of whoever is currently alive. I also agree that the first, founding, generation cannot but have a special standing vis-à-vis all following generations since it must determine the procedures according to which we can speak of a unified will of the people in the first place. It thereby also has to create a pathway for this specific people to change not only its will within regular lawmaking but also, via constitutional amendments, to alter the way in which the unified will of the people is reached.

Where I disagree with Ferrara is how extensive we should conceptualize the identity-defining commitments that the first generation has the power to commit all future generations to. The question for constituent power should, analogously to Ferrara's description of amending power, be: *How can the constitutive rules of politics be created by a less than fully sovereign subject?*

Ferrara's portrayal of the wanton republic, for instance, entails several commitments, all of which he considers to be identity-defining. But if looked at closely, it becomes apparent that only the first truly meets this description. First, he refers to constitutional essentials that are necessary for political liberalism, such as the guarantee of subjective rights that secure private and public autonomy (neutrality of the state from a specific religion). But he also, secondly, strongly emphasizes changes with regard to more procedural commitments (presidential or parliamentary system, mono- or bicameral system). Finally, and harder to categorize, are substantive ideas such as the (de)constitutionalization of social rights. He prominently refers to the case of the post-war Italian constitution that, as a compromise between communist and conservative forces, included "the idea of a democratic republic 'founded on labour' (Article 1) whose duty is 'to remove those obstacles of an economic or social nature which constrain the full development of the human person' (Article 3)" (262). Article 3 seems to provide a general perspective rather than a guarantee of specific rights. However, social rights are frequently either interpreted as necessary preconditions for the guarantee of private and public autonomy to be effective (Habermas 1996, 123) or they are viewed as an acknowledgment that social integration via cooperative work is effectively prior to the integration via law and democratic politics (Honneth 2019, ch. 9). On both interpretations the granting (if not the exact shape) of social rights could be subsumed under the first category of genuinely necessary identity-defining commitments.

Alternatively, if the contestability of such social rights is emphasized (since Rawls accepts a whole array of different political conceptions as reasonable, including libertarianism), such a commitment might go against the very idea of recognizing the reasonable pluralism of modern societies and should then not be included as identity-defining for the entire *demos* that may extend centuries into the future. Ferrara does not take a stand on this last issue, presumably because he counts all the three levels above as equally identity-defining commitments.

But especially with regard to the procedural commitments, they seem far less identity-defining and thus unamendable than those of the first level that Ferrara himself, in a discussion of Frank Michelman, describes as a "distinct regulative idea of political justice and right" (129). There are a variety of prudential and indirectly normative arguments for choosing specific constitutional designs because they will make it more likely to realize the core commitments of political liberalism in a given historical situation. But these constitutional designs do not amount to identity-defining commitments. John Rawls himself distinguishes between two kinds of constitutional essentials, the first of which is procedural and the second of which defines certain basic rights.

> Essentials of the first kind can be specified in various ways. […] But once settled it is vital that the structure of government be changed only as experience shows it to be required by political justice or the general good, and not as prompted by the political advantage of one party or group that may at the moment have the upper hand (Rawls 1993, 228).

The procedural framework should remain fixed unless weighty reasons demand a change. But even change is grounded in the core commitment to realize and improve just conditions of living together. The institutional means to achieve this are normatively far from essential and should not be exaggerated as identity-defining commitments whose violation will somehow destroy or irrevocably change one's identity (see for this idea of a categorical imperative of identity preservation Korsgaard 1996, 102). Rather, such procedural decisions are first and foremost pragmatically oriented towards best securing the normative core ideas, for instance, by being more likely to prevent democratic backsliding. In contrast, the granting of rights that belong to the core of political liberalism "can be specified in but one way, modulo relatively small variations" (ibid.).

In Ferrara's example of the wanton republic all generations might act carelessly by arbitrarily changing the institutional design or even more sinister,

if the majority acts to perpetuate its superior power (see Kolodny 2014, 329, Kolodny 2023, ch. 30). But on my reading only generation 4 and, depending on how we categorize the constitutionalization of social rights, perhaps generation 6, do something that can never be justified. "Generation 4 […] establishes a plurality of Christian churches," thereby violating the neutrality of the state by establishing an official – though pluralistic – Christian church (on why this is problematic, see Forst 2013, esp. ch. 12). Generation 6 "de-constitutionalizes social rights" (211-2). This might undermine the first principle of justice, which demands equal rights, by making them ineffective.

All the other changes effected by generations 4 and 6, as well as by the various other generations, have to be checked for the underlying reasons: were they to improve political justice or rather to gain power? Ferrara frequently stresses the latter concern – and rightly so – but the notion of identity-defining commitment does not only prove unhelpful here but is seriously misleading: it applies a category of authenticity that is not at the core of an intergenerational project to generate fair terms of social and political cooperation preventing domination of one party by another (see Pettit 1997, Forst 2024). To worry about such changes is primarily to worry about whether they express or facilitate an abuse of power.

Thus, in his wanton republic Ferrara fails to sufficiently distinguish between these levels and, more importantly, does not pay attention to why a living segment of the people might want to change procedural constitutional essentials. Ferrara rightly emphasizes the difference in perspective that a sequential understanding involves, namely of answerability to the preceding and the coming generations of *one* shared political project. But he goes wrong in that this must usher in an institutional identity that is more or less fixed by the first generation. It is certainly true, as Rawls points out, that the non-necessary particulars should only be changed for good reasons. But the core identity of a demos should normatively express very abstract commitments to promote democratic justice as intergenerational cooperation. Whereas both conceptions of serial and sequential sovereignty must normatively adhere to basic principles of right, a sequential understanding additionally entails obligations that are internal to the cooperative nature of an intergenerational quest to establish, maintain and improve just conditions: namely of mutual responsiveness. These arise because one sees those in the past and in the future as contributing, however deficiently, to some common purpose and thus owes them special accountability (see Karnein 2022, esp. 282). This approach also allows for a different response to the challenge of the indistinct and indeterminate republic. It is not necessarily a shared substantial identity defined

by a specific constitution that generations of one people share. What generations of one political order share is, rather, a responsibility for a common project over time, such as establishing the best form of just institutions on the territory of the respective state (such as the United States) and its people. If citizens of another country (such as the British) were engaged in maintaining and promoting just institutions on their territory and insofar as the British proposals can be productively applied to the project of improving the US polity, a similar but distinct project, we do not have to find it problematic if the American electorate turns to ideas and concepts developed in Great Britain. But they would still owe special justificatory requirements to the past and future generations of the US – and not to those of Great Britain – since they share with their co-citizens not necessarily a very specific identity bound up with a specific institutional design but a more abstractly defined cooperative project over time.

This more deontological understanding finally also provides a better response to the challenge of the "indeterminate" republic: We owe duties of respect and concern to every future person of the planet, thereby rendering wrongful policies that undermine their autonomous choices. What is added in the case of the joint work towards one fair system of cooperation is that we influence the options of our future co-citizens in a more thoroughgoing way and crucially also the political framework in which they will find themselves. Moreover, we owe them special obligations as cooperators.

As indicated above, this broader vision of building, maintaining and promoting democracy over generations will sometimes also have to see intra-regime changes (such as from the fourth French republic to the fifth) as steps within that cooperative venture. In that sense, sequential sovereignty goes beyond particular constitutions. If that is plausible, it elicits the important question of how to determine the beginning and the end of the cooperative project or the beginning and the end of one politically defined people, that is, a *demos* – potentially spanning several constitutional forms. This introduces the possibility for a genuinely political alternative that goes beyond Ferrara's concept of a *demos* as defined via one constitution. At the same time this modified account would still adequately respond to his reasonable fear that a serial understanding of sovereignty would lead to an "ethnicization of collective identity" (215).

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Notes on contributor. Mattias Iser is Associate Professor of Philosophy at Binghamton University, State University of New York. His research focuses on political, social and moral philosophy. His book *Empörung und Fortschritt* (Campus 2008) received the Best First Book Award from the German Political Science Association, and is currently forthcoming in English as *Indignation and Progress* (Oxford University Press). He is currently completing a book in which he develops a recognitional account of legitimate violence.

Contact. iser@binghamton.edu

ORCID. Mattias Iser https://orcid.org/0009-0008-1368-0347

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Sovereignty Across Generations: A Restatment

Gianfranco Pellegrino

Luiss Guido Carli University, Rome, Italy

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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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Contact. gpellegino@luiss.it

ORCID. Gianfranco Pellegrino https://orcid.org/0000-0002-8029-3936

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The Challenges of Vertical Reciprocity Among Generations: A Reply

Alessandro Ferrara

University of Tor Vergata, Rome, Italy

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Abstract

This paper responds to critical comments offered by G. Favara and R. Sala, T. Andina, M. Iser, and G. Pellegrino on Sovereignty Across Generations. Constituent Power and Political Liberalism. The response is structured around four main themes: a) the relation of the sovereign transgenerational people to its living segments, and whether the normativity that constrains the transgenerational people's constituent power and its single segments' amending power remain equally responsive to context (Favara and Sala); b) the appropriate way of representing the no-longer and the not-yet present segments of "the people" and especially the appropriate way of imagining the profile of future generations (Andina); c) the normativity, more contextual and authenticity-based or instead more "deontological" and context-independent, to which the legitimacy of constitutions is responsive (Iser); and d) an alleged threefold "privilege" of the founding generation vis-à-vis the subsequent ones, to be possibly remedied by rescuing serial democratic sovereignty while mitigating its consequences via vertical reciprocity (Pellegrino).

Keywords: Intergenerational justice, Vertical reciprocity, Rawls, Political liberalism, Constituent power

Summary: Introduction; I. The normative ground of the constitutional essentials: at the founding and "across generations"; II. Imagining Future Generations; III. Further thoughts on the founding generation and the normativity of constitutions; IV. A serial version of vertical reciprocity? The trouble with constitutional libertarianism; References.

Introduction

Sovereignty Across Generations (Ferrara 2023, hereafter abbreviated as *SAG*) battles on several fronts. As the subtitle indicates, the book aims to

strengthen the paradigm of political liberalism, by better enabling Rawls' notion of constituent power to counter the populist views responsible for so much democratic backsliding. Stemming from a sustained dialogue with Frank Michelman on political liberalism (Ferrara and Michelman 2021), *SAG* also aims to refine Rawls's innovative conception of constituent power and to highlight its originality through a comparison with the constitutional paradigms of Hans Kelsen and Carl Schmitt. Furthermore, *SAG* supplements Rawls's liberal principle of legitimacy with two additional principles – one designed to account for the legitimacy of exercises of constitution-making, the other for the legitimacy of exercises of constitution-amending – and reformulates Rawls's defense of the implicit unamendability of constitutional essentials on the more robust foundation offered by a principle of "vertical reciprocity".

A book's vitality, however, lies in the conversations it sparks. I express my gratitude to Valentina Gentile, editor of *Filosofia e Questioni Pubbliche – Philosophy and Public Issues* for accepting to host a discussion on my book in the journal and to Gianfranco Pellegrino for curating this *book symposium*, which features contributions from invited scholars and from participants to a panel on *SAG,* that took place earlier in 2024 at the University of Turin, at the kind initiative of Tiziana Andina. Gianfranco and Tiziana also deserve wholehearted thanks, together with the other participants in this discussion – Greta Favara, Mattias Iser, and Roberta Sala – for having invested time, energy, and their critical wits in engaging my arguments. All my commentators have offered me invaluable incentives for revisiting some of the ideas that I defend in the book, and their objections and reflections are engaged in the responses that follow.

The debate is structured around four main themes: a) the relation of the sovereign transgenerational people to its living segments, and whether the normativity that constrains the transgenerational people's *constituent* power and its single segments' *amending* power remain equally responsive to context (Favara and Sala); b) the appropriate way of representing the no-longer and the not-yet present segments of "the people" and especially the appropriate way of imagining the profile of future generations (Andina); c) the normativity, more contextual and authenticity-based or instead more "deontological" and context-independent, to which the legitimacy of constitutions is responsive (Iser); and d) an alleged threefold "privilege" of the founding generation vis-à-vis the subsequent ones, to be possibly remedied by rescuing serial democratic sovereignty while mitigating its consequences via vertical reciprocity (Pellegrino).

While my responses may not fully resolve these objections and challenges, I hope this reply will clarify some of the points and advance our ongoing dialogue on the merits and promise of political liberalism.

I. The normative ground of the constitutional essentials: at the founding and "across generations"

In their thoughtful commentary "Ferrara's principles of constitutional legitimacy: From Plato to Rawls, and backwards?", Greta Favara and Roberta Sala impeccably illustrate the dual intent, underlying *Sovereignty Across Generations,* on the one hand, to reconstruct and expand Rawls's account of constituent power, elaborated within the framework of his constitutional theory, and, on the other hand, to sharpen our arguments against the populist reduction of democracy to the rule of the electorate, just one tiny step from a mob-rule vaunting the mantle of "the will of the people". I especially credit them for engaging my two principles of *constitutional legitimacy* and of *amending legitimacy,* designed to synthetically capture the normativity that respectively constrains constituent and amending power.

Favara and Sala raise a very challenging concern. They suggest – as reflected in the second part of their title – that the contextual, exemplary normativity of the "most reasonable for us", which supposedly both grounds the cogency of justice as fairness (in *Political Liberalism*) and constrains the exercise of constituent power, might in the end, when the legitimacy of constitutional amendments comes under assessment, yield to a "kind of justification closer to the hypothetical consent device that underpins Rawls's *Theory of Justice* than to the contextualist turn he embraced in *Political Liberalism*" (Favara and Sala 2025, 19). As a corollary, the authors wonder whether this unfortunate twist – "conceiving the constitutional essentials in such a *formal*, *static* and *hypothetically* grounded way" (Favara and Sala 2025, 20 emphasis added) – might not lead my argument to interpose an ever greater distance between the justification of political institutions and "the lives of actual citizens", in one word might not "backfire" and prove even more unpalatable and "disaffection-inducive" for populist constituencies. However, before addressing their concern one preliminary clarification is due.

After reconstructing my notion of sequential sovereignty as vested in a transgenerational people that since its first generation authors a constitution in compliance with the context-sensitive, exemplary normativity of the political conception of justice "most reasonable" for it[1], Favara and Sala solicit an

[1] In the "Introduction to the Paperback Edition" of *Political Liberalism* (2005, xlvi-xlvii) and in *Justice as Fairness: A Restatement* (2001, 90), Rawls extends reasonable pluralism to encompass now "a family of reasonable liberal political conceptions of justice". This enlargement of pluralism requires that the above formulation be adjusted in ways (e.g., by contrasting the different normative implications of the "merely reasonable" conceptions of justice and the "most

account, on my part, of "the relationship between the sovereign power of the People and its living segment" (Favara and Sala 2025, 18). The metaphor of an edited volume will serve our purposes. Who is the author of the book? Not the editor, otherwise the book would be a monograph. Like an edited book's author is not the editor, but the set of all its contributors, so the author of a constitution (inclusive of all its amendments) is the set of the generations of a people. Single contributors or generations of a people are certainly free to express their minds as they see fit, but within certain guidelines that make of the given book or constitution that book or constitution. Who sets these guidelines? The editor(s) who formulated a book proposal and the founding generations that inscribed in a constitution "the political ideal of a people to govern itself in a certain way" (Rawls 2005, 232) do. Contributors and subsequent generations may slightly alter, but certainly not subvert them through their interventions, lest the volume or the constitutional order should become a nonsensical hodge-podge of unrelated or even contradictory elements. The metaphor serves our purpose also in other respects: equality and reciprocity should permeate relations among the contributors and among generations, none of which ideally should be "more equal than any other". What about the editor(s) or the founding generation then? Do they enjoy extra degrees of freedom, by having the privilege of setting the guidelines to which contributors or subsequent generations should conform? Aren't after all the generations that follow the founding one, just as the contributors to an edited volume, "to some extent required to respect the will of someone else" (Favara and Sala 2025, 19)?

My answer is that conformity to that will is *conditional*: it depends on one's own voluntary adherence to a project, constitutional or editorial as the case may be. In other words, *if* we want to share with our predecessors and successors a project for self-governance – e.g., in the case of Italy, one that prioritizes labor, entrusts "the republic" with removing the obstacles to the full development of the human person, and is premised on the rejection of war[2] – *then* living citizens must understand their power to amend the constitution is limited and not allowed to subvert these constitutional essentials. The editorial project and guidelines become cogent only *if* I decide to join in or respond to a call. If for some reason we don't or no longer care about sharing an ongoing political

reasonable" one) that cannot be addressed here. For accounts that understand these adjustments as relatively unproblematic, see Michelman (2022, 58-60) and Weithman (2024); on the difficulties that the notion of a family of liberal conceptions of justice raises for Rawls's liberal principle of legitimacy, see Ferrara (2024, 2-4).

[2] See Articles 1, 3, and 11 of the Constitution of the Republic of Italy.

project with our predecessors and successors, then still our autonomy allows us to create a new regime. Instead, what seems incoherent to me is to treat the constitution as entirely at our disposal and at the same time to pretend that it is "a constitution", i.e. a legal construct that regulates, rather than merely reflecting, the changing political will of those who operate under it. One is free to alter the defining core of a political project, just as co-authors are always free to throw away the original book project and restart from scratch. But then we are in a revolution or regime change. What logic prevents us from doing, it seems to me, is to alter the defining core of a project, constitutional or editorial, and still claim to be affirming it.

Having clarified the relation of the transgenerational people to its living segments, let me now address the central objection raised by Favara and Sala, which I'll sum up as follows. With the transition from *A Theory of Justice* to *Political Liberalism,* the normative credentials of justice as fairness become more and more context-sensitive. From being grounded in an argument that in the original position establishes it as the most rational view of justice for each and every human being, now the normative credentials of justice as fairness come to rest on its being the most reasonable political conception of justice for a subset of all human beings: "us". According to Favara and Sala, however, a "turn towards decontextualization" (Favara and Sala 2025, 18) occurs when my argument moves from a) a reconstruction of the "most reasonable for us" as the ground for selecting justice as fairness as the normativity that constrains constituent power to b) an assessment of the legitimacy of exercises of amending power in light of an "intergenerational interpretation of what is most reasonable for us as a People" (Ibid.). Why?

Because the constitutional essentials must be acceptable for *every* generation, and the amendments must comply with the principle of vertical reciprocity among *all* generations, the "context" in relation to which something counts as "most reasonable", Favara and Sala continue, "assumes a scope dramatically wider than the one Rawls originally considered in *Political Liberalism*" (Favara and Sala 2025, 19). The "us", for whom a political conception of justice and the constitutional essentials must count as "most reasonable", now encompasses "our whole history as that People" (Ibid.), including an imaginative exercise addressed at the future generations, and is no longer circumscribed to our "deeper understanding of ourselves and our aspirations" (Rawls 1980, 519) as photographed at the founding of the polity. As a consequence of this enlargement of the context, the constitutional essentials become 1) more "*static*, amendable only according to strict constraints"; 2) more "*formal*" and abstract given that they must be acceptable to every generation; and 3) more "*hypothetical",* i.e.

based on an "imaginative exercise", a construction. For this reason, then, when the legitimacy of constitutional essentials or amendments is under evaluation, the "most reasonable for us" seems to lose its context-sensitive quality and revert to being the product of a mode of reasoning as thin, as formal, and as hypothetical as that undergirding *A Theory of Justice.* According to Favara and Sala, this tension runs through and vitiates my sequential account of democratic sovereignty and of the exercise of amending power.

I am grateful to them for this objection that goes at the heart of my understanding of sequential sovereignty and prompts me to finetune it. My response comprises two steps: a) revisiting the context-sensitive quality of the normativity that binds constituent power at the time of constitution-making; b) examining more closely the alleged gap between the constitutional essentials at their initial moment and over time or "across generations".

First, concerning the normativity of the most reasonable, it can never be overemphasized that Rawls's formulation includes *two* aspects, one of which is especially relevant to our discussion. What makes a political conception of justice – "justice as fairness", to Rawls's mind – most reasonable for us, and transfers this quality to the constitutional essentials undergirded by it, is its unsurpassed congruence "with our deeper understanding of ourselves *and our aspirations*" (Rawls 1980, 519). "Aspirations" safeguard Rawls's formulation from falling into some complacent hermeneutic or "contextualist" trap, that would equate justice with congruence with who we happen to be, or history has led us to be. Aspirations are future-oriented and they may be theory-driven, transformative, as opposed to reflective of a status quo. Thus, when it spells out the "political ideal of a people to govern itself in a certain way" (Rawls 2005, 232), the founding generation infuses in the constitutional essentials the aspiration that all future generations will want to share that project – for example, one premised, to quote again the case of the Italian republic, on the priority of labor over property, the concern for the flourishing of the person, the rejection of war. Aspirations to equality of opportunity, social rights, and the like may be grounded in the second principle of justice as fairness, thus in "theory" as derived from the original position and not in hermeneutic appraisals of who we are. In fact, "what we factually are in a determined and circumstantiated situation" never played an exclusive role in determining what "most reasonable for us" means for Rawls, and the anticipated acceptance by future generations throughout the open-ended extension of a people is always there, in the minds of the framers of the constitution, via "aspirations".

Second, the quality of the constitutional essentials cannot defensibly be alleged to change when we move from the founding context to the cross-

generational span of the whole people. The rigidity or *static* quality of the constitutional essentials is such by definition: for Rawls, they would not be constitutional essentials if they were amendable at will. Neither can their degree of *formality* be claimed to be different at the founding and after several generations: in fact, already in 1948 the Italian essentials of the priority of labor, the concern for the flourishing of the person, and the rejection of war were "abstract enough to appear acceptable to every generation", no differently than they appear now and presumably will in the next century. Furthermore, it is unclear in what sense such thick, deeply substantive essentials would be "formal" in the sense that majority rule, the separation of powers, the *laicité* of the State, or the features of the rule of law, on which *any* liberal-democratic polity is premised, are formal. Finally, regardless of whether considered at the initial moment of their formulation or over the entire intergenerational lifespan of a people, these constitutional essentials seem equally to rest on an "imaginative exercise": neither had the framers of the Italian Constitution any idea, other than via imagination, of the response that those three essentials would receive in their lifetime and afterward nor are we in a different position with regard to future generations of Italians, though we benefit from hindsight in knowing that they have in fact been accepted earlier and now.

Thus, let me end by reassuring the reader that I fathom no way back from the exercise of public reason [3] at the entrance of the cave – as in my rendition of Rawls's normativity of the most reasonable against the backdrop of that classical allegory – to Plato's dream of having the normativity of justice rest ultimately on the truth of something.

II. Imagining the future generations

I am especially grateful to Tiziana Andina for having centered her commentary "Demos: The People" on one of the most elusive notions not only in political liberalism, but in the entire landscape of political philosophy. While she prefers to address the question "What are we referring to when we use the

[3] This exercise of public reason certainly takes place in a conversation among the fugitive philosophers returning to the cave, but not as an instance of "*discursive* normativity", if Favara and Sala have the Habermasian "Diskurs" in mind. While the "most reasonable" offers guidance, through the related notion of exemplarity and judgment, to the search for postfoundational normativity, the discursive procedure appears to posit four distinct and unranked criteria of validity that could generate different results. On this point, see Ferrara 2022, 324-5.

concept of the people?" from an "ontological" angle, my post-metaphysical inclination makes me prefer a Rawlsian approach to the same question in terms instead of a "political conception of a people". However, we are on the same page in assuming that what makes any grouping of human beings "a people" is not an observable property but an impalpable, "convention-based" change in our perception of the object – as when the mundane Brillo box is transformed into Warhol's "Brillo Box" artwork, or a green rectangular sheet of paper, with the effigies of Washington, turns into a one dollar banknote.

While in the former two cases the conventional understanding of the museum as a place where artistic manufacts of value are collected and exhibited and of money as a universal medium of exchange are the catalysts that cause our perception to be transformed in the ways described by Danto and Searle, in the case of "the people", the catalyst is the making, on the part of the participants in the human group, of joint commitments about how to live politically together and to govern themselves – commitments specified in a constitution which fixes a basic structure, basic liberties and rights and articulates "political" values. A people is distinct from a population by virtue of the adopting, on the part of its participants, of such a scheme of communal commitments, which implies – as Andina correctly emphasizes – that some members of the population may not, willingly or unwillingly, be included in "the people" as *demos*, and also that the participants in the pact include not only those who have already existed, but also those who currently exist and those who will yet exist and agree to participate in the pact (Andina 2025, 29). The reason why I adopt this idea of the people, qualified by Andina as "over-extended", concerns the need to avoid the three nefarious consequences of equating a people, instead, solely with the living citizens. First, a "wanton republic", prone to changing the basic structure and its essentials at each generation, becomes a possibility, deprives the constitution of all regulatory functions, and reduces it to a projection of the will of the living citizens. Second, insofar as the people's project for self-government fails to stabilize over time, the people's identity, uncoupled from a "perpetual" constitution, becomes *indistinct* or may recede along ethno-cultural lines. Third, if we take a serial perspective, the generations of a people may fail to treat each other as equals and leave their successors "enough and as good" democratic sovereignty as they enjoy[4].

Andina concurs with my approach but finds that two questions remain

[4] For a more detailed account of these three likely consequences of conflating "the people" with its presently living segment – as in all serial conceptions of democratic sovereignty – see Ferrara 2023, 210-6.

unanswered. The first concerns the appropriate way in which the no longer or not yet present segments of "the people" should be duly represented. She correctly notes that the problem concerns mainly the representation of future generations "which are merely the result of an imaginary act" (Andina 2025, 30), whereas the existent constitution and the ratified amendments testify to the will of the previous ones. In *Sovereignty Across Generations,* I argue that non-living generations are best represented by an institution – historically, but not necessarily, taking the semblance of a judicial high court – entrusted with representing that entire transgenerational people. As to the meaning of "representing", I believe that Pitkin has definitively discredited all forms of formalistic, descriptive, and symbolic representation as incapable of allowing a much-needed evaluation of the quality of the "representing" on the part of the representative (Pitkin 1967, 38-111). Only "substantive" representation allows for such evaluation, and given that the unborn are included among the represented, I believe substantive representation must come in the "trustee" rather than the "delegate" variety. A trustee represents the interests or, in a more capacious inflection, safeguards the wellbeing or the flourishing of the represented (Pitkin 1967, 114-67, Ferrara 2023, 186-8; 201-6).

The second question concerns the profile of future generations: "it is reasonable to hypothesize that future generations are merely an extension of our own imagination", then this act of imagination "can be interpreted as an endeavor to bestow form, norm, and identity upon future individuals" (Andina 2025, 31). But how can we represent them "in their true wholeness and complexity?" My response is that we cannot and should not attempt to represent future generations in such a detailed way, lest we fall into the trap of paternalism. I believe that we political liberals need instead to engage in a demanding balancing act that avoids the two pitfalls of either attributing to future generations a too-thin formal interest in merely enjoying the same degree of political autonomy as previous segments of the people, or paternalistically attributing them thick, substantive interests and preferences that are little more than our projections. A justifiable middle-of-the-road solution is to attribute to future generations propensities that are as substantive as the constitutional essentials that detail the transgenerational project supposedly shared "across generations". With reference to the context of the Italian Republic, once again, it can be justifiably anticipated – without erring on the paternalistic side – that future generations will want to continue to prioritize labor, include the flourishing of the person among the republic's aims, and reject war, but not that they will continue to eat undiminished quantities of pasta or will continue to prefer sweet over salty pastries at breakfast. This is just another way of restating

that we can count on not crossing the line of paternalism as long as we, in venturing beyond a merely formal view of autonomy, attribute to future generations substantive propensities that remain rooted in their *political,* not ethnic or cultural, identity. I believe that such a solution attains the goal, shared by Andina and me, of striking a sensible balance between the attribution of an identity too thin or too thick to future generations (Andina 2025, 32), i.e. one responsive to an identifiable core, yet not as rigid as to prevent subsequent adaptations and improvements.

III. Further thoughts on the founding generation and the normativity of constitutions

Mattias Iser's contribution "Sequential Sovereignty between Authenticity and Justice" insightfully engages my argument in favor of a sequential understanding of democratic sovereignty and offers me a chance to better spell out three of its main aspects: a) once again, the alleged privilege of the founding generation, b) the woes of serial sovereignty, and c) the possibility of a "more deontological" understanding of constitutional constancy.

Iser's initial claim, echoed also by Pellegrino – "Ferrara's framework privileges the founding generation" (Pellegrino 2025a, 8), presumably because it is the only one endowed with full constituent power and because it sets the parameters of constitutional authenticity in too specific terms – can be met in two steps. On the alleged privilege of the founding generation no one better than Rawls, in debating Habermas, has clarified the issue:

> Not every generation is called upon […] 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 […] 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 2005, 402-3).

In an ironic vein, Rawls asks:

> Are the citizens of Rousseau's society in *The Social Contract* never fully autonomous because the Legislator originally gave them their just constitution under which they have grown up? […] Does Kant's *Groundwork* deprive us of our achieving the insights of the moral law by reflecting on that work? Surely not. Why is understanding the justice of a constitution any different? (Rawls 2005, 402).

It is incorrect, furthermore, to claim that subsequent generations, after the founding one, are possessed of amending power only. As specified in my response to Favara and Sala, their constituent power is limited to the "amending" variety and constrained by the constitutional essentials, *if and only if* these living citizens want to stay within and carry on the project, the "political ideal of a people to govern itself in a certain way" (Rawls 2005, 232), that they have inherited from the earlier generations. Nothing bars them from exercising full constituent power, if they so wish, in the form of *regime change,* as it happened in Italy and Germany after 1945, or of *secession* (the latest one leading to the creation of South Sudan out of former Sudan) or of *merger* or *unification* (as the reunification of Germany attests) (Ferrara 2023, 157-74).

Second, Iser focuses also on my argument by exclusion in support of sequential sovereignty. Of the three woes of serial sovereignty that I elucidate – condensed in the formulas of the "wanton", the "indistinct", and the "undetermined" polity – he focuses especially on the "wanton" republic and wonders whether all the six transformations of the basic structure mentioned in my example are equally illegitimate[5]. He finds that "only generation 4 and, depending on how we categorize the constitutionalization of social rights, perhaps generation 6, do something that can never be justified" (Iser 2025, 41). For all the others, it remains to be seen whether their reforming the essentials was motivated by a desire to legitimately "improve political justice" or to illegitimately "gain power" (Ibid.). What Iser's objection misses is that the trouble with the "wanton republic" does not consist in one particular modification or other – some of them may even be blessed by some degree of legitimacy – but in the overall, holistic hollowing out of the constitutional valence of the constitution: the "constitution" becomes a pompous synonym for the current political will of the living citizens and remains in place just nominally. Having said this, however, I thank Mattias Iser for having pointed to an aspect of the theory that needs further elaboration. To what extent should

[5] My example described a polity in which "Generation 1, as a founding generation, ratifies a constitution that establishes a basic structure similar to that of the United States. Generation 2 then abolishes the presidency in order to create a Westminster style parliamentary system, with a cabinet and a prime minister voted by Congress. Generation 3 abolishes the Senate while retaining a now monocameral parliamentary system. Generation 4 returns to bicameralism and establishes a plurality of Christian churches. Generation 5 restores the presidency but abolishes again the Senate and disestablishes religion while constitutionalizing social rights within the basic structure. Generation 6, finally, returns to bicameralism but abolishes once again the presidency in favor of a parliamentary regime and de-constitutionalizes social rights but instead constitutionalizes proportional representation" (Ferrara 2023, 211-2).

the institutional structure of a polity be deemed unamendable? Is the transition from bicameralism to monocameralism a regime change? Does the possible abolition of the Electoral College amount to constitutional subversion? What about the transition from a parliamentary to a presidential democratic regime, and vice versa? These questions are definitively worth closer scrutiny. Similarly, as far as the "indistinct republic" is concerned, I certainly concur with Iser's suggestion that "we do not have to find it problematic if the American electorate turns to ideas and concepts developed in Great Britain" (Iser 2025, 42) or vice versa. In fact, we always learn from the experience of other polities. Ackerman's plea for constrained parliamentarism, for example, is based on a detailed appraisal of the woes of presidential regimes, especially in the Latin American context (Ackerman 2000).

Finally, Iser takes issue with my "authenticity-based" understanding of the correct exercise of constituent and amending power. Duly and meritoriously acknowledging that the authenticity of a constitutional project is both backward- and forward-looking, in the final section of his contribution Iser expresses reservations over how extensively we should "conceptualize the identity-defining commitments that the first generation has the power to commit all future generations to" (Iser 2025, 39). In lieu of my emphasis on "authenticity", Iser propounds to anchor sequential sovereignty in "cooperation over time in pursuit of just institutions" (Iser 2025, 36). For him, "intergenerational justice requires the founding generation to restrict the constitutional essentials that are hard to amend or cannot be amended at all to those features that form the necessary normative core of the very project of cooperatively sharing a political order on fair terms no one can reasonably reject" (Ibid.). Iser concludes his paper by advocating a more "deontological" model of sequential sovereignty, premised on the intimation that "the core identity of a *demos* should normatively express *very abstract commitments to promote democratic justice as intergenerational cooperation*" (Iser 2025, 41, emphasis added). I find these formulations highly dubious on two grounds.

First, Iser seems to treat my approach as a somewhat idiosyncratic "authenticity-based" view of the legitimate use of constituent power, with less normative traction and more ontological superfluous baggage than his formal deontological view, premised on the abstract commitment to "cooperation over time in pursuit of just institutions" (Iser 2025, 36) It always surprises me how easily the teaching of Rousseau's legislator is forgotten. Rousseau entrusts his legislator with the task not "of drafting laws good in themselves", i.e. that respond to some ideal universal normative core, but of first considering "whether the people for whom they are intended is capable of receiving them"

(Rousseau 1994, 79-80). I'm also struck by the widespread unawareness that the later Rawls rested the normativity of justice as fairness – *qua* possible basis for a just constitution – on the standard of the "most reasonable *for us*" (Rawls 1980, 519; 2025, 28), and not on the standard of what counts as most rational *for all human beings*, insofar as it stems from some reasoning in the original position. No less surprising is to me Iser's neglect of the work of Dieter Grimm, Jack Balkin, and Bruce Ackerman on the authenticity of constitutions. Grimm points to the "integrative function" of a constitution in unifying a society, a function that constitutions may fail to achieve despite their flawless legal efficacy and unfailing exercise of a regulatory function: "A constitution will have an integrative effect if it embodies a society's value system and aspirations, and if a society perceives that its constitution reflects precisely those values with which it identifies *and which are the sources of its specific character*" (Grimm 2016, 148, emphasis added). Similarly, for Jack Balkin a constitution's function of providing a "framework of government that promotes political stability and allocates rights, duties, powers, and responsibilities" is significantly enhanced if the constitution also functions as "our law", an achievement "which involves a collective identification with those who came before us and with those who will come after us" (Balkin 2011, 59). Finally, Bruce Ackerman, in his recent analysis of three distinct pathways to constitution-making, has offered important reflections on how the perception of authenticity or lack thereof plays a role in a constitution's potential for exercising its other functions (Ackerman 2019, 18-21).

Second, even more dubious I find one implication, that ensues from Iser's *desideratum* that the core identity of a people, inscribed in its constitution, should rest on *abstract commitments to promote democratic justice as intergenerational cooperation.* Presumably, then, the core recipe would be one and the same for all the 195 peoples in the world, if they all chose democracy as their form of government. While certainly a common core – the rule of law, the separation of powers, majority rule, party pluralism, certain basic rights and liberties – should recur in all democratic polities, to reduce "the core identity" of each democratic people to this *universal* core, and to leave all the particularities ("founded on labor", "rejecting war", "equal protection of the laws", the French dedication to government "of the people, by the people and for the people") to folkloric minutiae that just embellish that constitutive core for the benefit of local constituencies, seems to me a conceptual move perfectly at home in a metaphysical or religious comprehensive worldview. But as the basis for a *liberal* understanding of constitutional democracy premised on reasonable pluralism? Good luck.

IV. A serial version of vertical reciprocity? The trouble with constitutional libertarianism

In his ingenious contribution "Sovereignty Across Generations: A Restatement", Gianfranco Pellegrino impresses an original twist to the objection, voiced also by other commentators, concerning the founding generation's unequal position of privilege, within my sequential conception of democratic sovereignty. He spells out three distinct privileges that, according to his interpretation, would unfairly apply to the founding generation and then offers a solution that creatively combines serial sovereignty with full respect for the principle of vertical reciprocity. My response consists of closely examining the three alleged privileges and then probing the peculiar "constitutional libertarianism" proposed by him as a solution.

According to Pellegrino, the notion of a transgenerational people composed of free and equal generations is plainly contradicted by three privileges that distinguish the founding generation from all the subsequent ones: a) the privilege of creating a political identity; b) the privilege of being the only one endowed with full constituent power; and, c) the privilege of acting without constraints from the past. At closer scrutiny, however, none of these privileges appears to be accurately or uniquely imputable to the constitution-making generation.

Concerning the privilege of inscribing a political identity into the constitution, I will not repeat here Rawls's incisive criticism, quoted above in response to Iser, of the idea that transgenerational maintenance and repair work, as well as ameliorative interventions on a constitution, require less political autonomy than framing it. I also find questionable the idea that a constitutional text is exhausted by its formulation at enactment time, as though its subsequent evolution over decades and sometimes centuries was not also part of "the constitution". The project inscribed in the initial constitution can indeed undergo significant changes, though it is true that it cannot be legitimately repealed by subsequent generations while remaining within the same legal order. This leads us to the second privilege.

Are the founders the sole possessors of full constituent power and the only ones who can exercise it legitimately? Pellegrino interprets my view of sequential sovereignty as though it implies that "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" (Pellegrino 2025b, 49). I must concede that perhaps it wasn't clarified with enough emphasis, in the book, that the relation of constituent and amending power, founding and subsequent generations is

examined against the assumed *continuity* of a liberal-democratic regime. I set out to elucidate the meaning of the phrase "over time" in Rawls's initial 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 2005, 4) – and my intention sort of confined out of the limelight and to the margins other contingencies that historically are always all too present: i.e., the exercise of full constituent power by "subsequent generations" in order to *change a regime* into which a liberal republic has fallen (fascism did not abrogate or formally amend the liberal constitutional frame within which it grew, the Albertine Statute), or to *secede* or to *merge* the polity with another one and create a new legal order. All these exercises of full constituent power – obviously within the reach of "subsequent generations" and unfolding all the time before our eyes – cast a different light on the alleged "privilege" of the founding generation, which appears a unique prerogative only if these other manifestations, bracketed because my book focuses on constituent power as conceived within political liberalism and not in general, are unduly ignored. Then the question of legitimacy arises. Consistently with the intent of the book, I formulated principles of legitimacy only for the constitution-making variety of full constituent power and for amending power, but the complete reconstruction of a political-liberal constitutional theory should, perhaps in the future, include principles of *legitimate regime change*, *legitimate secession*, and *legitimate merging*. Their absence, and also my failure to highlight this lack, has misled Pellegrino into attributing to me the view that no generation other than the founding one possesses full constituent power. Furthermore, the fact that also *omitting* to use constituent power counts as action sheds new light on the point, emphasized above in response to Favara and Sala, that the imperative of abiding by the constitutional essentials received from one's ancestors is a conditional one: *if* no regime-change, secession or merging is (more or less legitimately) intended, *then* a living generation is under the obligation to use its amending power in ways that do not disfigure the constitutional essentials. What if a generation fails to use amending power within those limits? No transcendental duty, of the sort advocated by Iser, is infringed. Remember the guiding question of political liberalism, just quoted above? All that would happen, if a living generation were to use its amending power in disrespect of the constitutional essentials, is a breach of continuity: simply, "over time" that polity will prove *unable* to persist as a "just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines" (Rawls 2005, 4).

Finally, Pellegrino's suggestion that in my view the "founders are unconstrained by the past" is not accurate. In Michelman's footsteps (Michelman 1995) I take distance from the idea, associated with Schmitt, of a sovereign will that creates law while itself being above law, acting as a self-authorizing constituent power. So does Rawls, who enlists Locke as an inspiring source for a political-liberal theory of constituent power. Now, here is the rub. While for Locke the normativity that authorizes and legitimizes the exercise of full constituent power emanates from the a-historical, natural rights to life, liberty, and property, for Rawls, for Michelman, and in my humble opinion the normativity that constituent power is under needs to keep its anchoring at least partially in the historical context, the political culture, the *ethos* of the *ethnos* out of which the *demos* springs. I say "at least partially" because that normativity, condensed in the phrase "most reasonable for us", must reflect – as highlighted, above, in my response to Favara and Sala – also our "theory-driven" aspirations. Leaving now this specific aspect aside, constituent power, in so far as it responds to a normativity rooted in "our deepest understanding of ourselves", must take an *interpretive* perspective. And it can get its interpretation right or wrong. Thus, founders who get it wrong, when interpreting the "deepest understanding" of themselves and their people, get nowhere, and need to use force and oppression, but their failure shows that they were far from starting from a clean slate.

My favorite example concerns Article 1 of the Constitution of Italy, which states "Italy is a democratic republic, founded on labor". A sovereign Constitutional Assembly made of 556 members, elected in 1946 with the mandate to frame and enact a new Constitution, in 1947 approved that article (as included in a vote on the whole Constitution) with a 453 to 62 majority. The formulation "founded on labor", proposed by Christian-Democratic assembly member Amintore Fanfani in order to mediate between those (on the left) who advocated "a democratic republic of workers" and those (the liberal moderates and conservatives) who preferred that "democratic republic" remained unqualified, was meant to convey the idea of a priority of labor over property and of a fully inclusive thrust of republican institutions. Imagine alternatives. One could imagine that Italian assembly members could have approved a formulation like "Italy is a democratic republic founded on solidarity". Solidarity, just like "labor", would also convey an idea of inclusiveness, rejection of atomistic individualism, and the republican institutions' special care for the weak, but without evoking the labor/property polarity. One could not imagine, however, that the same majority could have approved a formulation like "Italy is a democratic republic founded on leisure". Why not? If majority

rule is respected and full constituent power owes nothing to past generations, but starts from a clean slate, not bound by anything external to its will – as Pellegrino interprets my view – why not a republic founded on leisure? The very ludicrousness of the idea shows the untenability of the notion of constituent power as above normativity and operating "from scratch" (Pellegrino 2025b, 50). There goes the alleged third privilege of the founding generation. The framers of the constitution can also make (interpretive) mistakes.

To remedy these "privileges" Pellegrino proposes an innovative "liberal view of sovereignty across generations", that keeps loyalty to the principle of vertical reciprocity but rejects sequentiality and deference to the will of the framers. This serial view of democratic sovereignty eliminates the alleged "founders' privilege" by resting on a modified liberal principle of amending legitimacy, captured by the following formulation:

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 (Pellegrino 2025b, 54).

This new principle, "grounded in the values of freedom and equality" and consistent with "vertical reciprocity", offers three advantages, relative to the homologous principle introduced in *Sovereignty Across Generations* (Ferrara 2023, 281):

> It does not set to amending power any constraint drawn from the will of founders and the historical practice that they established […] [it] entails a wider scope for amending power […] so wide that sometimes an exercise of amending power can amount to an exercise of constituent power […] [it] eliminates the founders' privilege (Ibid.).

While it decidedly reconceives democratic sovereignty along serial lines, Pellegrino's reformulated principle of amending legitimacy, however, avoids some of the costs of such views. By constraining amending power through the principle of vertical reciprocity, it eliminates the republic's risk of becoming "underdetermined". To be sure, Pellegrino's version of the principle cannot protect the polity from the risks of becoming a "wanton" or an "indistinct" republic but – and this claim is central to Pellegrino's defense of such principle – these residual unabated risks are well compensated by the gain on the dimension of freedom. Each generation is now free "to start again from scratch, provided that the new start is compatible with the equal capacity of political agency for

the remaining generations" (Ibid.). In the end, the more far-reaching message conveyed by Pellegrino's "constitutional libertarianism" – very different from the glorification of the living generation typical of "political constitutionalism" and of populism – intimates that "keeping a political identity or continuing the story initiated by our forerunners cannot be an intrinsic value" and consequently "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" (Pellegrino 2025b, 54-5).

While the clarity and concision of Pellegrino's suggestion certainly deserves full credit, the net balance of the advantages and disadvantages connected with his view appears under a quite different light if calculated on the basis of the considerations outlined above. All too simply, the three alleged "founders' privileges" that his reformulated principle is supposed to remedy were shown to evaporate, at closer scrutiny, and therefore only the costs remain – albeit reduced to two out of three – that are intrinsic to all serial views of democratic sovereignty. In sum, Pellegrino's constitutional libertarianism "solves" inexistent problems at real costs, which makes it a reasonable view of democratic sovereignty – after all "ownership and co-authorship of the constitution remains shared among generations" (Pellegrino 2025b, 55) – that falls short, in my opinion, of being "most reasonable". In the footsteps of Rawls's acknowledgment of the co-presence, in a liberal society, of a family of reasonable liberal conceptions of justice, one could then conclude that a homologous family likewise exists of reasonable liberal conceptions of the constituent power vested in the people and its segments. This plurality testifies to the unabated vitality and fecundity of the paradigm of political liberalism and, at the same time, does not preempt the meaningfulness of debating which among the reasonable views of democratic sovereignty across generations deserves the qualification of "most reasonable".

To conclude, I would like to reiterate my sincere appreciation for the incisive and thought-provoking observations and comments articulated by Favara, Sala, Andina, Iser, and Pellegrino, as well as for the care they have devoted to analyzing my work. I hope that my responses have contributed, even modestly, to advancing the dialogue around these complex questions.

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Notes on contributor. Alessandro Ferrara Professor Emeritus of Political Philosophy at the University of Rome Tor Vergata and Adjunct Professor of Legal Theory at Luiss Guido Carli University in Rome, is currently Sir Percy Spender Visiting Professor at the University of Sydney. His *Sovereignty Across Generations. Constituent Power and Political Liberalism* (Oxford University Press 2023) was awarded the "Best 2023 Book" prize by ICON-S (Int. Soc. of Public Law). With F. Michelman, he has recently co-authored *Legitimation by Constitution. A Dialogue on Political Liberalism* (Oxford University Press 2021).

Contact. alessandro.ferrara53@gmail.com

ORCID. Alessandro Ferrara https://orcid.org/0000-0002-5821-5245

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Book Symposia

Symposium on Valeria Ottonelli & Tiziana Torresi's *The Right Not to Stay: Justice in Migration, the Liberal Democratic State, and the Case of Temporary Migration Projects* (Oxford University Press 2022)

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Introduction

Domenico Melidoro and Gloria Zuccarelli

Universitas Mercatorum, Rome, Italy and University of Eastern Piedmont, Vercelli, Italy

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Abstract

This short text discusses the main aspects of Ottonelli and Torresi's book *The Right Not to Stay: Justice in Migration, the Liberal Democratic State, and the Case of Temporary Migration Projects*, focusing on their argument for recognizing temporary migration as a legitimate life plan. It also presents a series of objections raised by David Owen, Mario Cunningham, Ingrid Salvatore, and Dimitrios E. Efthymiou, who critically engage with the book's normative foundations, methodological choices, and proposed policy implications.

Keywords: Temporary migration projects, Liberal egalitarianism, Right not to stay, Principle of accomodation

The relationship between migrants' life plans and states' obligations towards migrants remains a central concern in the political philosophy of migration. However, a question that has received comparatively little attention, yet is of equal importance, is that of the obligations of liberal democratic states towards temporary migrants who deliberately choose to migrate with the genuine intention of returning. This issue has frequently been marginalized due to a pervasive sedentary bias in prevailing debates. This bias is characterized by the assumption that migration is intended to be permanent, and that temporary migration is a suboptimal compromise imposed on migrants – who would remain in the new state, if only they had the means to do so. This assumption is accompanied by negative connotations attached to mobility[1].

Consequently, scholarly attention has been directed towards issues of integration and citizenship. The ethics of migration have frequently been

[1] See, also: Bakewell (2008), who refers to this bias to explain how historical and colonial ties have been employed to construct the notion of migration as a negative phenomenon.

discussed in terms of the imperative to avoid permanent exclusion[2] and to fully incorporate migrants into the host society once they have been admitted. This standpoint reinforces the widely recognized 'rights versus numbers' dilemma, which proposes a trade-off between a state's openness to migration and the rights it can feasibly extend to migrants (Ruhs and Martin 2008). A significant aspect of this literature is the underlying assumption that access to citizenship, permanent residency, and long-term integration pathways is universally desirable and essential for migrants' well-being. It is a common tendency among philosophers, politicians, jurists and the general public to perceive migration as a direct line, extending from a point of departure to a point of arrival. Nonetheless, the migratory patterns of individuals do not invariably follow a direct trajectory: In certain instances, individuals who undertake migratory movements are aware of their desire to return to their place of origin within a relatively short timeframe, or they have the intention of repeating this journey on multiple occasions[3].

In this context, Ottonelli and Torresi's *The Right Not to Stay: The publication Justice in Migration, the Liberal Democratic State, and the Case of Temporary Migration Projects* (2022) provides a valuable and conceptually nuanced intervention on the subject of migration and argue that such a framework frequently fails to acknowledge the specific needs, aspirations, and agency of those engaged in temporary or circular migration. The sedentary bias approach risk to marginalize individuals who have deliberately planned their migratory journeys to be time-bound, with the aim of achieving specific objectives in their country of origin. Originally, they argue that "liberal-democratic receiving states should also grant migrants a right *not* to stay" (1).

The book challenges the prevailing narrative by asserting that temporary migrants should not be regarded as passive beneficiaries of rights. Instead, it contends that these individuals are autonomous agents with legitimate life plans that should be recognized and institutionally supported. Ottonelli and Torresi (2022) propose the term 'temporary migration projects' to denote life plans that are specifically aimed at return. These projects are defined by personal aims in the society of origin and the purpose of collecting resources to invest back home. The book foregrounds temporary migration projects as legitimate expressions of self-authored life trajectories. By focusing on these migrants' life plans and recognizing their project as worthy of being accommodated by

[2] Cf. Miller (2005): "What is unacceptable is the emergence of a permanent class of non-citizens, whether these are guest workers, illegal immigrants, or asylum seekers waiting to have their applications adjudicated" (374). See, also, Miller (2016) and Walzer (2008).

[3] Cf. Ottonelli and Torresi (2022) and Rigo (2022).

the liberal state, the authors propose a theoretical approach that is centered on migrants – de-essentializing and de-victimizing them – and that takes the primacy of migration discussion away from non-ideal theory.

> Confining migration to non-ideal theory not only serves to downplay the challenges that migration poses to the liberal egalitarian theory of the just state; it also implies that the claims and life plans of migrants can be discounted and not taken into account in thinking about the fundamental principles and institutions of liberal egalitarian justice (44).

On the contrary, the authors deem the life plans of temporary migrants as normatively weighty also in ideal theory. Indeed, their perspective reframes return migration not as a sign of failure, but as a successful realization of the migrant's goals. In this account, migrants are considered to be the architect of life plans that merit recognition and accommodation by liberal institutions. Building on this, the book also issues a powerful normative injunction against the use of double standards in evaluating temporary migration choices. It is imperative that such plans are given due consideration, in the same manner as any other voluntary decision, rather than being summarily dismissed on the basis that they may be indicative of background injustices. As the authors astutely observe, all individuals make life choices within imperfect, and often unjust, social contexts[4]. Nevertheless, there is an expectation that institutions of liberal democracies will not only deem these choices as valid, but also and foremost provide adequate protections from the vulnerability, subalternity, and marginality that could result from these life plans. [5] Ottonelli and Torresi suggest that special rights should be introduced to address these problems, to accommodate the goals and plans of temporary migrants and understood as a remedy to "their unequal status by recognizing their special position within the receiving society, rather than by making their equality conditional on full inclusion" (12).

[4] For instance, the authors consider women's life plans, which are often viewed through the lens of double standards, as they are frequently assessed and dismissed as lacking authenticity and rationality due to their historical status as a marginalized group: "[t]hink for instance of some women's decision to get on a part-time schedule or to quit their job in order to take care of their children" (73). It is perceived that these phenomena are the result of adaptive preferences that have been shaped by historical oppression, and, as such, are considered to be invalid.

[5] The authors importantly note that those involved in temporary migration projects interact with the host society in a unique way in many areas, working longer hours and accepting lower paying jobs, accepting cheap housing to maximize savings, investing little time in social interaction and in building stable and meaningful relationships.

The Right not to Stay has provoked a series of thoughtful responses, each highlighting a distinct line of critique. The commentaries we publish in this issue – by David Owen, Mario Cunningham, Ingrid Salvatore, and Dimitrios E. Efthymiou – engage with the theoretical and normative foundations of Ottonelli and Torresi's approach, questioning its methodology, internal consistency, and broader implications.

Owen's central and most fundamental criticism is methodological, as he targets the national framing of justice adopted by the authors. While Ottonelli and Torresi focus primarily on the obligations of receiving states (State B) towards TMP migrants, Owen argues that this "methodological nationalism" is inadequate for addressing the normative issues TMPs raise. Instead, he insists that the proper context of justice is transnational, not national.

Owen contends that TMPs are transnational phenomena – involving migrants who live across national boundaries and whose life plans are shaped by both sending (State A) and receiving (State B) countries. Accordingly, the duties of justice toward these individuals are joint duties shared by both states, and thus, must be conceptualized within a transnational frame. This means that one cannot determine the duties of State B in isolation from those of State A, or vice versa. Instead, justice must be specified at the level of a shared institutional structure – what he calls the "A-and-B" context.

By neglecting this transnational specification of justice, Ottonelli and Torresi's otherwise rich normative account risks missing key dimensions of moral responsibility and institutional design in migration governance. Their argument, Owen claims, presumes that duties can be specified within national boundaries first, and only then coordinated – an assumption he identifies as a conceptual error with practical consequences.

Mario Cunningham offers a critical reassessment of Ottonelli and Torresi's argument in favor of special rights for temporary migrant workers, particularly focusing on their use of the principle of accommodation. He argues that their approach fails to deliver a truly immanent critique of liberal inclusivism because it ultimately departs from its core normative commitments. Ottonelli and Torresi, according to Cunningham, challenge the liberal inclusivist view that equal rights for all workers suffice to ensure justice for temporary migrants. They claim that this approach overlooks the unique vulnerabilities of these migrants, whose life plans are rooted in eventual return to their home countries. Accordingly, they propose granting special rights – such as flexible work arrangements, tailored social benefits, and mobility rights – based on the idea that liberal states must accommodate individuals' life plans.

Cunningham identifies a conceptual problem: Ottonelli and Torresi inflate the

principle of accommodation beyond what liberal theory supports, applying the principle not only to temporary migrant workers currently within the state, but also to prospective migrants and former migrants. This inflated version, Cunningham contends, exceeds the bounds of liberal inclusivism, which still upholds the state's discretionary authority over immigration and limits moral obligations primarily to current members (whether permanent or temporary). By expanding accommodation beyond membership, Ottonelli and Torresi effectively shift from a liberal to a cosmopolitan framework – thereby undermining their own stated goal of offering an internal critique of liberal theory.

Ingrid Salvatore offers a thoughtful and philosophically rich critique of *The Right Not to Stay*, particularly questioning how the authors conceptualize agency in relation to temporary migration. While she appreciates the authors' aim to move beyond the reductive image of migrants as passive victims, Salvatore argues that their account risks distorting the very notion of agency by tying it too closely to the voluntariness of migration choices and the idea of rational life plans. A central point in Salvatore's paper is that agency, understood in the moral sense central to liberal egalitarian theory, does not require that individuals make voluntary choices under ideal or even near-ideal conditions. The mere fact that a person can act intentionally and for reasons is enough to affirm their status as a moral agent. Ottonelli and Torresi, by contrast, seem to suggest that migrants earn recognition as agents specifically when they pursue migration as part of a coherent life plan – one that reflects voluntary, goal-oriented decisions despite structurally unjust conditions. Salvatore questions the necessity and legitimacy of this link.

Salvatore also questions the theoretical apparatus Ottonelli and Torresi use to frame agency – namely, the idea of the life plan. Drawing on traditions that see life planning as a mark of rationality, the authors treat migration as a choice embedded in a broader pursuit of long-term goals. But this, Salvatore contends, is a rational ideal, not a moral one. The capacity to plan is certainly important, but liberal theories of justice are more concerned with creating conditions under which individuals can freely form and pursue their conception of the good, not with rewarding those who already manage to do so despite systemic obstacles.

In this light, Salvatore suggests that Ottonelli and Torresi's framework drifts toward a kind of libertarianism. It risks treating people's current preferences as sufficient grounds for policy design, while neglecting the deeper egalitarian commitment to questioning the justice of those very constraints. This is, for Salvatore, a reversal of priorities: justice should begin by affirming that all individuals are moral agents, and that unjust structures must be reformed so that

everyone can freely form and revise their plans, not just act on those they have managed to develop under adverse conditions.

In the end, Salvatore's critique calls for a return to a more robust liberal egalitarianism, where agency is a baseline moral status, not something migrants must prove through strategic planning. Migrants do not need to be seen as voluntary planners to deserve recognition, rights, and protection. They deserve them simply because they are agents – full moral persons – whose dignity remains intact even when their choices are shaped by injustice.

In his critical response to Ottonelli and Torresi's book, Dimitrios E. Efthymiou acknowledges the value of their effort to foreground the rights and interests of temporary migrants. The book's central claim – that liberal-democratic states should actively support temporary migration and return as legitimate life plans – is presented as an important alternative to dominant models that focus on permanent integration and citizenship. However, Efthymiou questions whether the authors' proposed regime of special rights grounded in a liberal principle of accommodation is the best way to address the needs and vulnerabilities of temporary migrants. His central concern is that the principle of liberal accommodation, as Ottonelli and Torresi use it, risks fragmenting the rights landscape and undermining commitments to equality and reciprocity. By tailoring rights to the particular interests of temporary migrants, they may be weakening the broader egalitarian foundation that demands equal status and protection for all residents. In particular, he warns that Ottonelli and Torresi's proposals risk inadvertently legitimizing differentiated treatment and lower protections for temporary migrants, especially in areas such as social care and labor rights. He also criticizes the proposal to exempt temporary migrants from certain social contributions, arguing that this undermines the principle of shared responsibility that underpins liberal welfare states. Contributions should not depend on whether individuals expect to directly benefit from every service, just as affluent citizens are not exempt from paying for welfare programs they may never use.

Thus, while Efthymiou agrees with the normative ambition of Ottonelli and Torresi – to affirm the legitimacy and moral value of temporary migration – he maintains that their framework of differentiated special rights falls short of offering the most just or effective response. A better path, he suggests, lies in expanding egalitarian transnational rights regimes, such as those seen in the EU, which treat all migrants as equal members of the political community for the duration of their stay, without fragmenting their status or entitlements.

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Notes on contributor. Domenico Melidoro is Assistant Professor at Universitas Mercatorum, Rome. In addition to getting a Ph.D. in Political Theory from LUISS (2008), he held a research appointment as Visiting Scholar at the Department of Philosophy, University of Pennsylvania. Melidoro is the author of *Multiculturalismo. Una piccola introduzione* (Luiss University Press 2015) and *Dealing with Diversity: A Study in Contemporary Liberalism* (Oxford University Press 2020). He has presented his work at international conferences (UK, Canada, Denmark, among others) and published in both national and international academic journals. Since 2024, he has served as Co-editor of *Filosofia e questioni pubbliche – Philosophy and Public Issues*.

Gloria Zuccarelli is a postdoctoral researcher at the University of Piemonte Orientale. Her main research interests are migration ethics, forced migration, smuggling, individual responsibility towards refugees and gender-based harm. Another current line of research concerns issues of intergenerational justice as she is part of the project 'Age-It: Ageing individuals in an ageing society'. In Autumn 2024, she was a visiting researcher at the Institute for Advanced Studies in Princeton. She completed her Ph.D. at the University of Milan in 2022 on forced migrant women and injustice and was a visiting student at the University of Southampton (UK). She recently published on *Migration Studies* and *Political Philosophy*.

Contact. domenico.melidoro@unimercatorum.it; gloria.zuccarelli@uniupo.it

ORCID. Domenico Melidoro https://orcid.org/0000-0002-6470-2648;

Gloria Zuccarelli https://orcid.org/0000-0002-2375-2593

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Temporary Migration Projects and the Context of Justice

David Owen

University of Southampton, Southampton, USA

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Abstract

This commentary focuses on the methodological issue of the relevant context of justice for the discussion of Temporary Migration Projects and on drawing out the implications of this issue for the arguments of The Right Not To Stay. It contends that the methodologically nationalist approach to specifying duties of justice to persons engaged in TMPs that Ottonelli and Torresi adopt leaves their argument exposed to a number of challenges that a methodologically transnationalist approach would not confront.

Keywords: Methodological nationalism, transnationalism, justice, temporary migration, migration projects, liberalism.

Summary: Introduction; I. The Concept of a Temporary Migration Project; II. A Methodological Concern: The Transnational Context; III. Transnationalism and the Rights and Duties of TMP Migrants; Conclusion; References.

Introduction

Valeria Ottonelli and Tiziana Torresi have written an important book for the political philosophy of migration, one that draws attention to conceptual and substantive issues that have been overlooked or neglected in much of the existing literature but whose importance they cogently draw out. Their contribution includes demonstrating the normative significance and specificity of temporary migration projects (TMPs), highlighting the salience of migration for ideal theory against the tendency to treat it as a matter of non-ideal theory, offering an account of the concept of the voluntary (and non-voluntary) and its

significance for a liberal theory of justice in migration, and developing a substantive account of special rights for individuals engaged in temporary migration projects. My appreciation of, and respect for, their work does not, however, prevent me from having significant disagreements with the argument that they advance. This disagreement ranges across methodological, conceptual and substantive issues but the most fundamental one concerns – as my title indicates – concerns the methodological issue of the *context* of justice in terms of which TMPs are addressed. I will begin by sketching out the concept of TMPs for the sake of clarification before addressing the character of my methodological concern and then proceed to address some substantive issues raised by this excellent book.

I. The Concept of a Temporary Migration Project

TMPs are defined thus:

> Temporary migration projects consist in migrating to a foreign country for a variable but limited span of time or in repeated engagement in short migrations, such as what we see in circular migration patterns. The migratory project is undertaken with the purpose of sending money home, accumulating capital, and acquiring knowledge and expertise needed to advance specific aims once back in one's country (2022, 23).

Notice that to be a migrant engaged in a TMP has no necessary relationship to the length of time that they are present in the state, the individual may intend to stay for a long period, returning only at the end of their working life. Rather a TMP is constituted only by the structure of intentions described when conceived as a part of an individual life-plan. This will eventually lead Ottonelli and Torresi to argue that any migrant should have the option of choosing between two different types of migration status – one that is geared to the permanent migration projects and another that is oriented to TMPs – with very different implications for their rights and duties. In this respect, TMPs have no relationship to temporary migration programmes except to deny that any such programmes that do not allow migrants "after living for some time in the host society" (2022, 118) to choose, and change their choice, between these two general statuses are just[1].

[1] At times Ottonelli and Torresi seem to suggest a stronger thesis, namely, that temporary

The key point for us is not to confuse TMPs with temporary migration programmes not least since a permanent residency visa may be the best way of – or even necessary to – pursuing a medium or long term TMP.

II. A Methodological Concern: The Transnational Context of Justice

People engaged in TMPs are, as Ottonelli and Torresi acknowledge, engaged in transnational lives (e.g., 2022, 119) and at various points in the book they acknowledge the importance of mechanisms such as bilateral agreements with the sending state for addressing issues such a welfare measures (2022, 126). But they do not explicitly address the question of the *context* of justice for persons engaged in TMPs by which I refer to the relevant frame (national, transnational or global) within which the schedule of rights and duties are appropriately specified, rather they operate throughout in methodologically nationalist terms. Should we accept this framing of the normative issues? How do we identify the relevant context in relationship to temporary migration projects?

To identify the context of justice requires appeal to a principle that identifies the relevant basic structure as the subject of justice in relation to persons engaged in TMPs. There are three main candidates:

1) The context of justice is specified by the domain of social cooperation for persons whose life-plans involve the pursuit of TMPs.

2) The context of justice is specified by the institutional domain that pervasively and profoundly shapes the life-chances of individuals whose life-plans involve the pursuit of TMPs.

3) The context of justice is specified by the institutional domain that subjects persons whose life-plans involve TMPs to coercion.

To keep the discussion tractable, it will be helpful to consider a case in which the individual pursuing a TMP as part of their life-plan is a national of home state A and is working in state of residence B. The salient point that emerges from consideration of any of the three specifications is that the relevant context of justice is the transnational context 'A-and-B' and the relevant duty-bearer to the individual pursuing a TMP as a part of their life-plan is 'A-and-B'. The duty

migration programs that have fixed time limits are, in the absence of the option to stay, necessarily non-voluntary (2022, 84) but since such a view would not cohere with their own methodological approach to, and substantive account of, voluntariness so I will take it that they are not committed to such a thesis.

of justice towards this individual is a joint duty that is shared by A and B.

Why does this point matter in relation to Ottonelli and Torresi's argument? After all, they acknowledge that their account is one of the ethics of immigration relevant to individuals engaged in TMPs that could be extended by taking up the ethics of emigration in relation to these same individuals. Further, they argue both that receiving states have a duty to set up bilateral treaties with sending states "which implies correlative duties on the part of sending states to participate in the establishment of such agreements" and that "there are many other duties and obligations of sending states that mainly or exclusively fall within their own jurisdiction" (2022, 172) Is my objection then simply that their book only gives us a one part of what a full account of justice-in-migration relative to TMPs would require? Although it might be read in this way, the point that I am concerned to highlight is more conceptually challenging to their approach than this interpretation would suggest. Let me explain.

If it is the case that the duty of justice towards individuals pursuing TMPs across states A and B is a joint duty shared by A and B, then it follows that A and B have an obligation to cooperate in realizing this duty where, given that they are states with distinct territorial jurisdictions, this entails that they engage in joint action (e.g., a bilateral treaty) which establishes a fair division of duty-bearing labour between them. Put thus this may seem at least practically consonant with the position sketched by Ottonelli and Torresi, but conceiving of the duty of justice as a joint duty shared by A and B has the implication that since the primary context of justice is the whole transnational scheme regulating TMPs across A-and-B, it is necessary to specify the conditions of transnational justice prior to specifying what justice in A and justice in B require. Put another way, the duties of A cannot be specified independently of the duties of B. It is, I think, a methodological error to suppose that one can deal first the duties of B and then go on separately to specify the duties of A and then think about what cooperation achieving this may require. This is however precisely how Ottonelli and Torresi proceed albeit that they only seek to specify fully the duties of B.

Consider the case of emigrant voting rights. If we approach this question from the national standpoint of state A in the contemporary global context, then we have good reason to think that such rights are permissible, neither forbidden nor required by justice, at least for 1st and 2nd generation emigrants. However, if we approach the same question from the transnational context of A-and-B relative to individuals engaged in TMPs, then there is strong reason to see them as required precisely because the individuals in state B engaged in TMPs are oriented towards to home state rather than the state of residence, the home state is the primary locus of the social bases of their self-respect and they identify

themselves are members of its political community. They are thus more akin to diplomats or soldiers stationed abroad than to permanent emigrants who are looking to make another state their home[2].

There is a further issue that also arises from the fact the duty of justice is a joint duty shared by A and B. If the duty of A could be specified independently of the duty of B, then in a scenario in which A was not fulfilling its duty whereas B was, B could legitimately claim that it bears no moral responsibility for the fact that the condition of individuals pursuing TMPs across A and B is unjust. Whereas if we conceive of the duty of justice as a joint duty shared by A and B, then under the same scenario B cannot claim that it bears no responsibility for the fact that the condition of individuals pursuing TMPs across A and B is unjust. On the contrary, B would have obligations to attempt to bring A into compliance with the duty-bearing requirements that compose its fair share or to take up the slack (at least to some degree). Thus, if we suppose that it is part of A's share of the joint duty to enact and implement emigrant voting rights and it fails to do so without good reason, then B is obligated to try to persuade A to introduce emigrant voting rights or to take up the slack by provide individuals engaged in TMPs with other means for fulfilling the relevant ends.

III. Transnationalism and the Rights and Duties of TMP Migrants

Recognizing that people engaged in TMPs are living transnational lives that contribute to a transnational scheme of social cooperation across states A and B, that these lives are profoundly and pervasively impacted by the institutional context of A-and-B, and are subject to coercion by this institutional context, entails that the relevant specification of equal treatment must be attuned to this transnational context. That these migrants live transnational lives leads Ottonelli and Torresi to argue, albeit in their methodologically *nationalist* framing of the normative issues, that individuals engaged in TMPs resident in state B require a set of special rights that acknowledge the transnational-specific needs and risks that are bound up with their life-plan. We might reasonably note though that the same logic applies to state A. How does this impact Ottonelli and Torresi's argument? It might be thought that this simply entails that state A

[2] Note, however, that if there are compelling prudential reasons for A not to enact and implement emigrant voting rights that outweigh the reasons to adopt this practice, then the duty-bearing agent A-and-B would have a duty to adopt or invent alternative measures for ensuring that the ends that are otherwise served by enfranchisement in the home state are met.

has a set of special rights for those engaged in TMPs which apply only in territory of state A. This seems to be the presumption that Ottonelli and Torresi make when they talk about bilateral treaties for welfare provisions that allow, for example, pension pots built up by the migrant in state B to be transferred to for their use in state A. But the implications goes further than this and we can illustrate the point by considering the discussion of work rights.

Ottonelli and Torresi make a compelling case for the claim that work and employment rights may be justifiably different in some respects for workers engaged in TMPs compared to other workers in ways that are responsive to the transnational character of their lives – for example, when not constrained by safety considerations, TMP workers should be entitled to work more than 35 hours a week and, by doing so, should be able build additional holiday time that they can take in ways that support their transnational family lives. Particularly important though is their argument that TMP workers should have more than the usual associational rights to "defend and enhance their bargaining power in the labour market" precisely because "these associational rights come to play a different and more extensive role than they do for citizens since they must function as substitutes for the right to vote in elections, which is of little use to temporary migrants" (2022, 123). Thus they propose that for TMP workers:

associational rights, and the right to join trade unions must entail new forms of mobilization such as the enhancement of transnational workers' organizations, bilateral agreements among unions based in different countries, a closer interaction with worker centres and migrant networks, the creation of specific sub-branches of existing national unions, or partnerships with self-organised migration movements (Ibid.).

This is all very pertinent but why should the question of work rights be limited to this context? TMP workers are citizens of state A working in state B, and we may reasonably suppose that as part of the special rights due to them is an extension of their right to diplomatic protection to the field of labour relations such that state A works to ensure that their TMP citizens are not exploited. This could be done by having specialist staff at the embassy focused on the needs of the TMP citizens. Furthermore, if we consider institutional examples tied to other groups of persons who lack national voting rights in state B – such as children and future generations – then we can see that this oversight and monitoring by state A could be combined with an Ombudsman in state B whose role is to represent the interests of TMP migrants. The special rights of TMP citizens of state A may then be integral to realizing the political representation of their interests in state B.

I have two further questions to raise in this context, both of which concern the

issue of time. The first concerns whether there are TMP workers who should not be able to transfer to a permanent migration project (PMP) status. The second concerns whether, as Ottonelli and Torresi's argument supposes, the duration of a TMP project has no normative implications (beyond acquiring the option to switch to a PMP status) for the rights and duties of those engaged in TMP projects.

To pose the first question, we can consider the case of critical medical personnel from states with weak health systems migrating to states with strong health systems. There are good reasons why such personnel might wish to engage in short-term (or circular) TMPs to improve their knowledge and skills, and why their home states might support them in this endeavour. But there are also good reasons why these states may be opposed to the loss of these personnel to long-term TMPs or PMPs. Can the life-plans of these individuals be legitimately circumscribed? My own view here is that the answer to this question is conditional on whether states A and B can jointly realise circumstances that ensure that the human right to health of the citizens of A is not threatened by the norms governing the migration of medical personnel between state A to state B. But given the normative weight that Ottonelli and Torresi put on individual life-plans in their liberal framework, it is not clear to me that they would accept this constraint on individual freedom.

The second question concerns whether the duration of a TMP has any implications for their rights and duties. We can put this starkly by asking whether a TMP individual who has been present in a municipality of state B for 1 year and another who has been present for 40 years are in the same position as far as their rights and duties go. My general intuition here is that time does matter because even if both remain oriented to the home state in the way that Ottonelli and Torresi's argument stipulates, presence does still, I think, have implications for social membership and relational obligations. Of course, it may be that the kind of social membership acquired by the long-term TMP worker is distinct from that of individuals engaged in PMP projects, but it is implausible to imagine that this hypothesised TMP migrant has not, simply as a product of the ordinary conduct of everyday life, formed social relations outside of other TMP workers. This may lead to the view that, given the service delivery focus on municipal government, that the TMP migrant should acquire a right to local voting rights (regardless of whether they wish to have it or to exercise it) after a period of time – or to the view that whereas the short-term TMP migrant might be excused from jury duty that the long-term TMP migrant should not be. I simply raise this issue here – and note that it might also matter for rights and duties in the home state – because it is not one that Ottonelli and Torresi address, but it is significant for the kind of proposals that they advance.

Conclusion

My primary purpose in this commentary has been to raise an objection to what we may call 'the normative methodological nationalism' of Ottonelli and Torresi's argument and to argue that the appropriate context of justice is transnational and that this has non-trivial implications for the kind of argument that they want to make. Following from this argument, I have suggested that their framing of work rights – although insightful and important in a number of respects – limits itself precisely because it does not consider the duties of the home state towards TMP workers within the state of residence. I have concluded by raising to questions where I am not clear about the implications of the argument advanced in this original and provocative book.

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Notes on contributor. David Owen FBA FAcSS is Professor of Social and Political Philosophy at the University of Southampton and in 2024-25 SSS Visiting Professor at the Institute for Advanced Study, Princeton. His recent work *includes What do we owe to refugees* (Polity 2020) and the co-edited volume *The Political Philosophy of Internal Displacement* (Oxford University Press 2024).

Contact. dowen@ias.edu

ORCID. David Owen https://orcid.org/0000-0002-8865-6332

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The Principle of Accommodation and Special Rights for Temporary Migrant Workers: A Critical Reassessment

Mario Josue Cunningham Matamoros

Hoger Instituut vor Wijsbegeerte, KU Leuven, Leuven, Belgium

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Abstract

This paper argues that Ottonelli and Torresi's immanent critique and revision of liberal inclusivism ultimately fail to deliver their promise: a proposal to tackle temporary migrant workers' vulnerability that remains faithful to liberal inclusivists' normative commitments. After briefly introducing Ottonelli and Torresi's critique and revision of liberal inclusivism (section 1), the paper parses the concept of life plans to explain how migration can be conceptualized as part of a life plan that deserves accommodation from states (section 2). Then, the paper scrutinizes the principle of accommodation and shows that Ottonelli and Torresi endorse an inflated interpretation of this principle at odds with liberal inclusivists' normative commitments. This conceptual endorsement suffices to call Ottonelli and Torresi's special rights account into question as an immanent critique of liberal inclusivism.

Keywords: labor migration, Principle of accommodation, Liberal inclusivists, Special rights

Summary: Introduction; I. Inclusivist Egalitarian Liberalism: From Equal to Special Rights; I.I. Revising the Liberal Inclusivist Account: Towards the Special Rights Approach; II. Accommodating Temporary Migrant Workers' Life Plans: A Critical Assessment; II.I. The Principle of Accommodation; II.II. Life Plans, Accommodation and Membership; III. Life Plan Accommodation and Special Rights: A Critical Reassessment; Conclusion; References.

Introduction

Access to foreign labor markets provides temporary migrant workers with higher salaries that radically improve their household's welfare. Yet, such access is often paired with rights restrictions that render these workers vulnerable – e.g., the abuse of migrant workers associated with the 2022 Qatar FIFA World Cup (Human Rights Watch 2023). In migration ethics, the dominant response to temporary migrant workers' vulnerability has been given by liberal egalitarian inclusivists (liberal inclusivists, henceforth), who advocate for equal protection in the form of equal rights as the way to tackle it.

Multiple critiques have been raised against this view (e.g., Barry Ferracioli, 2018; Oberman, 2017; Song, 2016). Among them, Valeria Ottonelli and Tiziana Torresi's (2012, 2022) immanent critique stands out. They accuse liberal inclusivists of endorsing an institutional Procrustean bed that offers the same rights to all workers yet leaves temporary migrant workers' vulnerabilities unaddressed, hence infringing upon their equal treatment claim. For them, eradicating these vulnerabilities requires granting *special rights* to migrant workers. However, this paper will show that Ottonelli and Torresi's special rights account ultimately fails to offer (i) a sound immanent revision of liberal inclusivism and (ii) a solid grounding for these special entitlements.

I will proceed as follows. First, I will briefly introduce Ottonelli and Torresi's critique and revision of liberal inclusivism. Second, I will parse the concept of life plans to explain how migration can be conceptualized as part of a life plan that deserves accommodation from states. Third, I will scrutinize the principle of accommodation and show that Ottonelli and Torresi endorse an inflated interpretation of this principle at odds with liberal inclusivists' normative commitments. This conceptual endorsement suffices to call Ottonelli and Torresi's special rights account into question.

I. Inclusivist Egalitarian Liberalism: From Equal to Special Rights

As a normative stance, liberal inclusivism responds to the presumed tension between the inclusivist drive of liberalism's cosmopolitan principles and the exclusionary practices of nation-states. Liberal inclusivists address this tension by arguing for a fairly open migration policy within the boundaries of the liberal state. That is, they endorse the idea that liberal states should be open to accepting new members without denying the *conventional moral view on migration* that grants states considerable discretionary control over admissions.

Against this backdrop, the question of what type of entitlements temporary members should have arises.

At a principled level, temporary labor migration does not necessarily pose a problem to liberal inclusivists. For them, the conventional moral view on immigration allows liberal democratic states to legitimately take in workers while restricting the duration of their stay. However, this type of migration is constrained by the requirements of democratic justice, which entails the enforcement of equal consideration regarding migrant workers' (i) conditions of employment [1] and (ii) access to full membership (Bertram 2019; Carens 2013; Reilly 2016; Stilz 2022).

I.I. Revising the Liberal Inclusivists Account: Towards the Special Rights Approach

Ottonelli and Torresi develop an immanent critique of liberal inclusivism. [2] Namely, they ground their rejection of the equal rights approach in the same normative commitments used by liberal inclusivists. At its core, this critique contends that inclusivists misconceptualize temporary migrant workers in at least two dimensions. First, on the socio-economic dimension, liberal inclusivists see no difference between these migrants and the rest of the workforce. Hence, the claim that offering them lesser or different working conditions than those offered to domestic workers violates the principle of equal consideration. Second, from the political dimension, they conceptualize these migrants as citizens in the making. Namely, liberal inclusivism disregards temporary migrant workers' understanding of their relationship with the receiving state. They are simply taken in as potential citizens.

This two-prong misconception neglects that the life plans of these migrants are embedded in what Ottonelli and Torresi call *temporary migration projects*, which

> consist in migrating to a foreign country for a variable but limited span of time or in repeated engagement in short migrations, such as what we see in circular migration patterns. The migratory project is undertaken with the purpose of sending

[1] For a contrasting view defending the need for equal socio-economic rights while rejecting the full membership requirement see (Attas 2000).

[2] The immanent character of Ottonelli and Torresi's (2012) critique becomes apparent in the fact that they view their special rights proposal as a reform to liberal inclusivism that remains "loyal to its main project of reconciling the ambition of universal equality with the acknowledgment of the existence of (porously) separate political communities" (p. 20).

> money home, accumulating capital, and acquiring knowledge and expertise needed to advance specific aims once back in one's country (for example, paying for children's education, building a house, supporting a family, starting a new business activity upon return, pursuing a professional career). The decision to migrate is usually motivated by greater economic opportunity in the host country, but it specifically aims to take advantage of this differential to achieve personal ends in the society of origin; the migratory project, therefore, is always meant to lead to return. The centre of the migrants' lives remains their home countries, and they never intend to re-create a new life in the destination country (Ottonelli and Torresi 2022, 22-3).

In sum, liberal inclusivists' theorization of temporary labor migration ultimately fails as they neglect temporary migration projects. Hence, they overlook that the center of these migrants' lives remains in their home countries.

Understanding temporary labor migration as part of a life plan sheds light on why the equal rights approach cannot adequately protect temporary migrant workers' socio-economic needs. Take the case of labor laws protecting workers' right to family life through guaranteed leisure time (Rose 2016, 38). For temporary migrant workers, their physical dislocation *vis-à-vis* their families makes it impossible for them to benefit from it. On the contrary, labor legislation banning longer work weeks in the name of family life acts against temporary migrant workers' interest in enjoying a better family life – which they could enjoy by, for example, being allowed to work extended work weeks that facilitate holiday accumulation for them to visit their families.

The normative ground of this critique is the *principle of accommodation*. For Ottonelli and Torresi, liberal democratic societies are strongly committed to respecting people's life plans – i.e., the projects they undertake following their conception of the good. Liberal states instantiate this respect at an institutional level by "setting up a system of rights that creates and protects the conditions in which people can actively pursue their projects and their conception of the good" (Ottonelli and Torresi 2022, 94). At its core, the principle of accommodation entails a commitment to shaping institutions to facilitate people's pursuit of their life plans and avoid unduly burdening any particular life plan.

Accommodating temporary migrant workers' life plans, Ottonelli and Torresi argue, requires adapting receiving states' institutional framework by offering special rights. We can divide these into (i) special rights in the form of differentiated working conditions; (ii) special rights in the form of adapted work-related social programs – or the partial or full exemption from

contributions to programs temporary migrant workers cannot fully enjoy; and (iii) special rights concerning other social programs, including redistributive ones, described as mobility and return rights and welfare rights.

II. Accommodating Temporary Migrant Workers' Life Plans: A Critical Assessment

With Ottonelli and Torresi's special rights account in mind, we can now discuss whether their project is duly grounded. For this, we will delve deeper into the internal logic of the principle of accommodation and discuss what it means for temporary labor migration to be part of a life plan.

II.I. The Principle of Accommodation

The principle of accommodation is the normative cornerstone of the special rights approach to temporary labor migration. We can spell out this principle in the following formulation:

Principle of Accommodation Standard Account or $PA_{(S)}$: liberal institutions should be set up in a way that creates and protects the conditions in which people can actively pursue their projects and their conception of the good.

$PA_{(S)}$ is ultimately grounded on the liberal commitment to respecting the agency of individuals. People have conceptions of the good and an understanding of how to achieve happiness. Liberal states should not prevent anyone from living according to their own judgment. Liberal states live up to $PA_{(S)}$ by establishing a system of rights that does not overburden specific life plans – as limiting people's capacity to pursue their life plans directly violates their agency.

Now, three qualifications apply to $PA_{(S)}$. First, the harm principle limits the extent to which institutions should be tailored regarding specific life plans. Hence, life plans that intentionally aim at harming other people do not deserve accommodation. Second, only "those activities that are central to the meaning of the life project of a person (like practicing a religion) or are necessary conditions for achieving it (like traveling or making contracts)" deserve accommodation (Ottonelli and Torresi 2022, 96) – not personal preferences such as hobbies. Third, the life plans of all members of society deserve equal accommodation. Unlike transient people, such as tourists, temporary migrants who enjoy the right to work are members of the receiving society – even if partial and temporary.

II.II. Life Plans, Accommodation and Membership

Acknowledging that temporary labor migration life plans deserve accommodation from liberal states does not tell us much about the extent to which they should be accommodated. To clarify this, we should start by understanding what a life plan amounts to. We can briefly define it as the "people's comprehensive goals and pursuits" (Stilz 2019, 40), which are determined by people's conception of the good (Ottonelli and Torresi 2022, 90). Talking about life plans is preferable to solely talking about conceptions of the good given that it highlights (i) the agential aspect of people's lives and (ii) the "trans-temporal dimension of our lives and our interests in being able to pursue not only single goals but sets of 'compossible' goals, i.e., complex plans of action" (Ottonelli and Torresi 2022, 92). Namely, people's life plans, both choosing and pursuing them, are an exercise of agency that people exercise through time.

Clarifying the concept of a life plan is relevant for understanding how temporary labor migration can be part of a person's life plan. Moreover, it helps us understand that the thousands of people who decide to migrate every year and subject themselves to a period of toil do not do so for toil itself. They accept these conditions because doing so benefits themselves and their families. As the empirical literature shows, temporary labor migrants invest most of their income in the health and education of their households (Basnet and Upadhyaya 2014, 7). Furthermore, many use the savings from their work abroad to invest in economic activities in their home countries (Bossavie *et al*. 2021; 2022). It becomes evident that migration is a means to an end for these workers, not an end in itself. Yet, this does not make temporary migration less deserving of accommodation. On the contrary, as argued by Ottonelli and Torresi, temporary migration deserves accommodation because it is a constitutive element of these people's life plans. Let us unpack what this claim entails.

Some people consider migration an integral part of the life plan they would like to pursue. For them, working or studying abroad is a constitutive means to the end they work towards. However, this fact does not suffice for people to be entitled to enter the foreign state of preference. In the absence of the right to immigrate, as in our current world, migration is not a ready-made means to an end that people can include in their life plans. On the contrary, migration restrictions make it so that those who desire to migrate have to apply for the right to entry – which receiving states can deny for various reasons. Furthermore, those who obtain this right typically get it in a restricted form. For example, visas are commonly granted with restrictions on people's right to work and to stay.

Facing restrictions when pursuing one's life plans is not exclusive to migration-based life plans. On the contrary, life plans and the means to achieve them are rarely pursued without encountering restrictions. For example, someone's life plan might be to form a family, but that does not guarantee they will be able to find a partner with whom to start one. Furthermore, the regular functioning of social institutions limits the degree to which we can count on specific means for pursuing our life plan. A high school graduate who views becoming a physician as central to achieving their life plan might be unable to enroll in medical school due to their GPA. In this case, public universities' admission policy and the states' educational investment level can be seen as restricting the graduate's chance of pursuing their life plan. Liberal democratic societies secure accommodation in these two cases by ensuring their members do not face unfair restrictions (i.e., have a fair opportunity) to pursue their life plans, not by guaranteeing individuals' success in such endeavors.

III. Life Plan Accommodation and Special Rights: A Critical Reassessment

We have established that in devising their life plans, migrant workers consider the restrictions that are part and parcel of migrating. We can now parse the accommodations that liberal democratic societies should provide to temporary migrant workers. According to Ottonelli and Torresi (2022), they comprise extensive mobility and return rights as well as welfare rights. Concretely, these rights entail that the receiving state should grant renewable visas to temporary migrant workers so that they can go back and forth as they see fit – i.e., according to their life plans. Likewise, receiving states should partially fund and settle investment (or development) infrastructure and welfare institutions in the sending state to help migrant workers upon return and to tackle the care drain generated by temporary labor migration.

If we parse these extensive special rights, we see that they impose obligations on liberal states in the name of the life plans of both prospective and former migrants. First, they forbid liberal states, in the name of the life plans of prospective migrants, from setting migration restrictions, such as granting visas that lead to deportation once they expire. Second, they require liberal states, in the name of the life plans of former migrants, to commit resources to develop welfare and development infrastructure in sending states. One could defend these entitlements by referring to the transtemporal nature of life plan accommodation. Nonetheless, this is a misleading application of the principle

of accommodation, which in the liberal tradition applies solely to members.

This issue is obscured in Ottonelli and Torresi's formulation of the principle of accommodation, which, as formulated in $PA_{(S)}$ calls for setting up liberal institutions "in a way that creates and protects the conditions in which *people* can actively pursue their projects and their conception of the good" (2022, 94). However, once we look at their application of this principle, we end up with the following inflated account of it:

Principle of Accommodation Inflated Account or $PA_{(I)}$: liberal institutions should be set up in a way that creates and protects the conditions in which *prospective, actual, and former members* of a liberal community can actively pursue their projects and their conception of the good.

One could undoubtedly defend $PA_{(I)}$ from alternative accounts of the principle of accommodation. Nonetheless, this is not the strategy followed by Ottonelli and Torresi, who claim that their account of the principle is constructed by isolating the common aspects shared by different liberal theories. However, this is far from the truth, given that some of the key authors behind this principle, whom Ottonelli and Torresi refer to, limit the scope of application of this theory to the members of a liberal state (i.e., Rawls, 1999; Royce, 1908). Thus, no argument is offered for inflating the scope of accommodation from $PA_{(s)}$ to $PA_{(I)}$, and no explanation is given for decoupling accommodation from the liberal understanding of membership.

Additionally, $PA_{(I)}$ directly conflicts with the liberal theories' *conventional moral view on migration*. According to this view, states are "morally entitled to exercise considerable discretionary control over the admission of immigrants" (Carens 2013, 10). By requiring states to grant migrants extensive mobility rights, $PA_{(I)}$ entails that states cannot grant temporal visas or deport migrant workers. If so, $PA_{(I)}$ forces states to relinquish a significant part of their discretionary control over immigrant admissions. Rejecting states' discretionary control over admission is a clear-cut departure from one of the liberal inclusivists' core normative commitments in favor of a cosmopolitan interpretation of the principle of accommodation that does not differentiate actual from potential or former membership as a normative ground for claim rights. Thus, Ottonelli and Torresi's endorsement of $PA_{(I)}$ undermines their attempt to provide an immanent critique of liberal inclusivism.

Remaining faithful to liberal inclusivists' normative commitments while following Ottonelli and Torresi's argumentative strategy can, at best, justify a deflated account of the principle of accommodation:

Principle of Accommodation Deflated Account or $PA_{(D)}$: liberal institutions should be set up in a way that creates and protects the conditions in which the

permanent and temporary members of a liberal political community can actively pursue their projects and their conception of the good.

$PA_{(D)}$ highlights that membership is not exclusive to permanent members (i.e., citizens and permanent residents). On the contrary, liberal states, as Ottonelli and Torresi rightfully argue, comprise both permanent and temporary members of different kinds. To the extent that all those comprising these groups are members, they all deserve accommodation *qua* members.

By coupling accommodation to membership, $PA_{(D)}$ indicates that those who have never enjoyed membership status (i.e., such as prospective members) and who lost it (i.e., former members) are not entitled to accommodation. As previously hinted, extensive return and mobility rights commit receiving states to accommodate their legal structures to prospective migrants' life plans. Given that the life plans of non-members do not bind states, states are morally entitled to offer prospective migrants the right to entry under restricted conditions compatible with liberal states' normative imperatives, such as basic equality and human rights. It is up to migrants themselves, in the exercise of their agency, to decide whether the migration opportunities available to them are a desirable means to achieve their life plans. Likewise, it is impossible to ground extensive welfare rights on the $PA_{(D)}$. To the extent that these programs are addressed to former members, creating welfare and investment infrastructure or partially funding welfare programs in the sending state exceeds what $PA_{(D)}$ requires.

This is not to say that liberal states cannot accommodate their institutional framework to the life plans of temporary members *à la* Ottonelli and Torresi. This paper simply claims that the principle of accommodation, as traditionally understood in the liberal tradition (i.e., $PA_{(D)}$), cannot serve as the ground for receiving states' obligations to prospective and former members.

Conclusion

This paper argues that Ottonelli and Torresi's immanent critique and revision of liberal inclusivism ultimately fail to deliver their promise: a proposal to tackle temporary migrant workers' vulnerability that remains faithful to liberal inclusivists' normative commitments. It fails due to its endorsement of an inflated account of the principle of accommodation for which no argument is presented and, thus, liberal inclusivists have no reason to accept.

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Notes on contributor. Mario Josue Cunningham Matamoros is a PhD Fellow at KU Leuven's Hoger Instituut voor Wijsbegeerte, where he is part of the Justice and Migration group of the RIPPLE research center. His doctoral research focuses on economic migration specifically and on PPE-related topics in general. Before joining RIPPLE he studied at the Universidad de Costa Rica and Universiteit Utrecht. His recent publications include *Normativity in Migration Ethics: Toy Theories and Prudential Normativity* (Topoi. An International Review of Philosophy 2025), and *Democratic Justice & Status Inequality in Temporary Labor Migration* (Critical Review of International Social and Political Philosophy 2024).

Contact. mario.cunningham@kuleuven.be

ORCID. Mario Josue Cunningham Matamoros https://orcid.org/0000-0003-2010-9276

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Liberal Institutions, Migration and Moral Agency. Some Remarks on The Right Not to Stay

Ingrid Salvatore

University of Salerno, Salerno, Italy

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Abstract

Ottonelli and Torresi defend the reasonable thesis that migrants should be treated as moral agents rather than passive recipients. However, they seem to imply that moral agency is related to voluntary migration. I contend that the voluntariness or involuntariness of migration is irrelevant to the normative thesis that we should treat migrants as moral agents. I also argue that the concept of voluntary migration is elusive and that the authors' intentions in defending it are unclear. Finally, I express reservations about their political proposals for temporary migrants and the arguments supporting them.

Keywords: Rational and moral agency, Life-plans, Social explanation

Summary: Introduction; I. Agents under unjust conditions; II. Voluntary migration; III. Tailoring welfare protection; Conclusion; References.

Introduction

Looking at a book about the right of migrants *not* to stay, one might wonder what this right is.

The richest Western countries do not seem committed to containing migrants who are eager to return to their countries. The armies that guard our borders prevent migrants from entering, not from leaving. What is the problem with migrants who don't want to stay? In defending a right not to stay, Tiziana Torresi and Valeria Ottonelli pursue the ambitious project of changing conventional sociological and political views on migrants and migrations. Indeed, one of the most brilliant aspects of the book is that it aims to capture the broadest

philosophical implications of the right not to stay. The right not to stay that Torresi and Ottonelli defend is the right of migrants whose "migratory plans" are intended to be temporary. According to the authors, migrants who move abroad for a period with the intention of returning home once they have achieved their goals do not fit into the conventional view of migrants as a nameless mass forced to leave their country. Even if the circumstances and conditions under which they decide to migrate are less than just, these temporary migrants must be seen as agents with a life project. Whatever we owe them, we owe them as such. While the book focuses on temporary migration, it does not imply that all temporary migration is voluntary and all permanent migration is involuntary. Both can be voluntary or involuntary. Rather, the authors emphasize that although migration can be involuntary, we should not think of all migrants as at the mercy of forces beyond their control. This makes temporary migration relevant in two different ways. On the one hand, temporary migration provides some clear cases of voluntary migration. On the other hand, while temporary migration is a sociologically and economically relevant phenomenon, it raises questions that are generally neglected in the philosophical literature on migration.

Devising specific policies for temporary migrants and their particular needs and aspirations is one of the aims of Torresi and Ottonelli's book. In what follows, I do not question whether migration, both temporary and permanent, can be voluntary or not. Even less do I argue that we should not treat migrants as (moral) agents. What I am interested in is how we should understand the relationship between these two propositions. I have divided my remarks into three short sections. In the first section, I argue that if the authors want to defend the normative thesis that we should treat migrants as (moral) agents rather than passive recipients of our charity, then the voluntariness or involuntariness of migration makes no difference. Theoretically, we do not need to relax the conditions for voluntary choice. Normatively, we shouldn't. In the second section, I explore the possibility that the authors are not saying that in order to treat migrants as agents we need to show that at least some of them *are* agents. What they are saying is that we should treat migrants as agents *and* that migration can be voluntary even under non-ideal conditions. I argue that the arguments used to prove the voluntariness of migration are unconvincing. In the third section, I examine the policies that the authors consider to be due to temporary migrants once it is made clear that they must be treated as agents. I raise some doubts about these policies and the strategy adopted to defend them.

I. Agents under unjust conditions

According to Torresi and Ottonelli, the condition under which migrants are placed in the literature on migration is an impossible one. In practice, either migration is treated as clearly voluntary, but then capricious and not worthy of our concern, or migration deserves our attention and concern, but only if it is suitably framed as uniformly unvoluntary. In rejecting such a Scylla or Caridis alternative, Torresi and Ottonelli make room for the possibility that migration is neither a trivially voluntary decision that absolves us of duty, nor infallibly not a choice. While often based on the benign intention of soliciting our commitments and concerns, the conception of migrations as uniformly unvoluntary holds migrants to incredibly high standards of voluntariness. Whenever the conditions under which they decide to migrate are not ideally just, their decision is classified as involuntary, even though similarly unjust conditions in the domestic case would never disqualify a decision as involuntary. For Torresi and Ottonelli, on the contrary, if migration can be a choice even under conditions of (qualified) injustice, this by no means implies that it is a superficial choice. Migration is a serious decision involving "important and meaningful goals and goods" (73). To conceptualize migration as a voluntary but significant choice, the authors conceive of migration as (part of) a life plan. In a way that capricious desires do not, "the notion of a life plan refers to agency as a fundamental dimension of our lives" (92). Since, according to the authors, "only voluntary choices count as a form of agency", and since agency is linked to the notion of life plans, the idea seems to be that if something is a life plan, it is voluntarily chosen and that whoever has a life plan is an agent. Agents need to be treated as such. This is the main tenet of liberal theory, the authors note. For liberal theory, voluntary choices "deserve to be honored and accommodated by social and political institutions as an expression of people's capacity to pursue their life plans" (89). But if liberal theory aims to honor and accommodate our life plans as expressions of agency, and (temporary) voluntary migrants do have life plans, then (temporary) voluntary migrants must be seen and treated as "purposeful agents" whose projects and desires deserve to be honored and accommodated no less than those of citizens and/or permanent residents.

By mentioning the honor that liberal institutions owe to the ability to pursue life plans, the authors clearly refer to agency as a moral concept. It is *moral* agency that dictates how we should be treated by liberal institutions. But the idea of life plans is a rational ideal, not a moral one (Rawls 1971). It specifies what a fully rational agent should do to realize her good, whatever it may be.

The most basic idea of practical rationality says that an individual is rational if, given a desire, a need, or an interest, she chooses appropriate means to satisfy it. However, as the authors note, individuals do not have one desire at a time, but many. If I want to meet a deadline, but I also want to have some rest, I need. to organize myself. Some of the most important desires we have are long-term desires. The desire to become an astronaut or a philosopher is a desire whose fulfillment requires years of education and training, saving money to pay for it, it may require moving to another city, sacrificing personal relationships, and so on. In considering her life, an individual is rational to the extent that she organizes her wants and desires into a plan or plans (Bratman 1999). This is a formal definition of what it means for a person to be rational or to conduct her life rationally. It is not an obvious definition. A hippie, a Buddhist, Charles Larmore (1999), Daniel Little (2018), and many others would dispute it. It is also obviously an idealization. We do not act so rationally in our lives. In particular, the more unjust the social circumstances, the less people will take such a rational attitude toward their lives. I admit, however, that in less than just circumstances, individuals can make plans for their lives. Would these plans be freely chosen? Obviously not. Not from a liberal-egalitarian point of view.

A crucial part of our needs, interests, and desires can only be realized by participating in systems of social cooperation. We need others to realize our goals. According to some perspectives, rational beings with needs, interests, and desires that can only be realized by acting together will find a way to coordinate stably. The institutions that structure systems of social cooperation must be explained *and justified* in this way. This is what Hume believed about (distributive) justice, for example. Liberal egalitarian theories say that systems of cooperation that are the result of this kind of strategic behavior are unjust. Because they allow morally arbitrary circumstances to determine the outcome, they fail to treat people as moral agents. One way to articulate the idea that unjust institutions fail to treat people as moral agents is to show that people taken as moral agents would not voluntarily adhere to them. This is obvious in Rawls's original position, but it is also clear in Dworkin's auction (Dworkin 2002). It follows, that even if we grant that people under unjust conditions are rational and make plans, insofar as their plans are shaped by morally arbitrary circumstances, they are not freely formed. As I understand it, in liberal egalitarianism just conditions are precisely the conditions under which people can *form* life plans free from arbitrary circumstances. To say that people's plans are made voluntarily under unjust conditions is to depart from liberal egalitarian theories. This is no less true of migrants than of domestic cases. Contrary to what Torresi and Ottonelli claim, a woman's decision to switch to part-time

work or to quit her job when she becomes a mother, however rational it may be, is a decision made under conditions of coercion. She is forced to make it (Cudd 2006, Haslanger 2015). But more importantly, this in no way says that she's not a moral agent. On the contrary, it says that while she is a moral agent, she is *not treated* as a moral agent. Whatever is due to migrants as moral agents does not depend on whether they have a life plan or whether they migrate voluntarily or involuntarily. There is absolutely no need to relax the conditions under which a choice is voluntary in order to treat migrants as moral agents. Moreover, it is normatively problematic. For if women voluntarily switch to part-time work or leave the labor market, how do we say that the conditions under which they make such a choice are unjust? On what grounds?

II. Voluntary migration

Perhaps Torresi and Ottonelli never intended to make a connection between treating migrants as agents and the voluntariness of at least some migration. Perhaps what they meant to say is that there are reasons to treat migrants as agents, *and* there are reasons to believe that there are less than ideal conditions under which migration is voluntary. Torresi and Ottonelli examine three cases of temporary migration that are plausible candidates for voluntary migration: Mexicans in the United States, Romanian women mainly in Italy and Spain, and Ukrainians in Poland. All of these migrants are temporary migrants, not because they could not stay. They wanted to be temporary. Their migration is the result of projects set at home that are difficult or impossible to realize in their home countries, but become affordable with a period or periods abroad. These include repairing or buying a house, providing a better education for their children, getting married, saving money for their old age, and so on. These migrants are not fleeing from intolerable economic or political conditions. In fact, they are leaving to come back. Perhaps the sooner the better. In all these cases, migration is better understood as a voluntary choice.

To say that migration is voluntary is to say that the conditions under which the decision to migrate is made do not determine the decision (34). People migrate because of their reasons or plans, not because supra-individual factors made them do so. If this is the case, even if the authors mention supra-individual objects such as Mexicans, Romanian women, Ukrainians, poverty, institutional collapse, unemployment, all these supra-individual objects must be considered as ways of speaking. The real explanation of this temporary migration could avoid mentioning Mexicans, Romanians, and Ukrainians, replacing these

entities with Edmundo, Kostyantyn, Elizabeta, and their different and independent reasons for leaving. Indeed, since names are culturally connoted, they should be replaced by unnamed individuals and their independent reasons. In scholarly debates, the urge to provide explanations in terms of individuals depends on ontological concerns about entities that sociologists and other social scientists like to play with. On the other hand, a very good reason to resist these concerns is that individualism makes many social phenomena essentially impossible to explain, especially in the area of social justice (Kinkaid 1995). Assuming that we have a very strong correlation between poverty and crime, to claim that crime is voluntary is to say that criminality must be explained in psychological terms, not in terms of poverty. Dishonesty, a criminal mind, an attitude of cheating, etc. are the explanatory terms, even though poverty allows us to make good predictions and design good policies. The temporary migration cases of Torresi and Ottonelli fit this pattern. Assuming supra-individual objects like Mexicans, unemployment rates, etc., allows us to give simple and really explanatory answers to why Mexicans migrate to America and Americans do not migrate to Mexico, why Romanian women migrate in this period, or are mostly women. What would we get in terms of the preferences of unnamed individuals? Besides, I do not think that is what Torresi and Ottonelli are trying to say. Torresi and Ottonelli do not seem to question that in the cases they study the decision to migrate depends on supra-individual factors. What they seem to be suggesting is that while the decisions of these migrants are obviously influenced by supra-individual factors, they are still genuine, voluntary decisions. But it is difficult to understand what exactly such a position amounts to. The reference to individual preferences in this context would at best identify the psychological mechanisms through which supra-individual factors are linked (Coleman 1994). Although the explanatory power of these underlying mechanisms is disputed (Garfinkel 1990), they clarify how individuals organize their strategies in response to social circumstances. In this sense, they could help clarify how circumstances produce temporary migration as opposed to permanent migration, or how Mexican migration differs from Ukrainian or Romanian migration. In any event, they would say nothing about voluntariness. As ways of connecting macro phenomena, they would show how individual preferences shaped by supra-individual facts produce supra-individual facts. The opposite of free choice.

III. Tailoring welfare protection

Torresi and Ottonelli believe that it is a mistaken and widespread attitude among migration scholars to assume that migration falls into non-ideal theory (46). As if in a just world no one would move. I will not attempt to determine whether this is a fair description of migration research, although a more moderate way of putting it is that it is very hard to speculate about migration in a just world (Carens 1996). Assuming, however, that things are as they claim, Torresi and Ottonelli are clearly right. Of course, people do not migrate, either temporarily or permanently, solely for economic or political reasons. According to Torresi and Ottonelli, however, liberal institutions have an obligation to accommodate only important and meaningful goals. What would be such important and meaningful ends in a just world? Because all societies would be just, their citizens could live very decent lives at home. Still, people may have all sorts of reasons for migrating. For instance, aesthetes around the world may want to live only in beautiful countries. Should states create departments to determine the seriousness of migrants' motivations? Be that as it may, Torresi and Ottonelli also offer another argument. Shifting to migration as a social rather than an individual phenomenon, they argue that even under the best possible conditions, societies will be economically differentiated from each other, with rich countries attracting migrants from poorer ones. In such a scenario, the just institutions of the richer countries should include policies tailored to temporary migration that relax some social protections and economic guarantees. The reasons for weakening guarantees and protections lie in the authors' conviction that by treating all migrants as if they all had the same interests, we would end up providing temporary migrants with protections that they don't need and can't use, while "leaving important needs and vulnerabilities unaddressed" (119). For example, according to Torresi and Ottonelli, the standard work-life balance cannot be defended as protecting the interests of temporary migrants, since "it is rational for them to maximize their time earning a wage while they are abroad" (120). Even if the right to equal pay for equal work is not questioned, Torresi and Ottonelli envisages atypical work contracts and new sectors of low-skilled work for areas largely dependent on temporary migrants, such as agriculture and domestic care. The authors are aware of the difficulties posed by these liberalized policies. They wonder "whether these developments should be allowed or whether, instead, certain forms of contract and employment that are structurally dependent on temporary migrants should be banned altogether" (120). But the answer is that they shouldn't. This is because the characteristics of the jobs that would emerge from

a labor market structured in this way would "fit the project" of temporary migrants. Low investment of personal resources, high turnover rates, and significant job mobility make sense for migrants who plan to live abroad "for a limited period of time and then invest the accumulated resources at home, where the cost of living is significantly lower" (121). It must be said that it not easy to evaluate the kind of policies the authors propose, since it is unclear what scenario they envision for a just world. We don't know, for example, whether the idea is that the richer societies of a just world would get rid of unskilled labor and unemployment, requiring unskilled migrants from just but poorer countries. We might ask why. If, on the other hand, even rich societies are going to have unemployed and low-skilled workers, as seems plausible, it is unclear why we should allow the policies they propose. If low-skilled residents would rather be unemployed than take on heavy and low-paid jobs, there seem to be two options: support and regulate the labor market to make these jobs attractive, or allow temporary migrants. It is not obvious that we are compelled to choose the second. The authors' reference to failures in the implementation of this type of policies only shows that policies can be poorly designed and incentives can be inadequate. Incentives clearly work in the case of temporary migrants, otherwise they would not take these jobs. Why should residents be any different? The same applies to domestic workers. In rich countries, women's work and the growth of the elderly population create a demand for services that a state can meet either by expanding public services or by attracting temporary migrants. An expanded supply of public services also expands the availability of guaranteed and protected low-skilled jobs (Scharpf 2001). On the other hand, richer countries can leave everything as it is and attract temporary workers, as they do in fact. Again, it is far from obvious that we should choose the latter. This is particularly puzzling given the way in which the authors address these doubts. As many have noted, current immigration trends show that "a system in which temporary immigrants fill low-skill, low-wage, labor-intensive jobs" could prevent "the development of better, more rewarding, better-paid, and more professionalized job opportunities in the same field" (138). According to Torresi and Ottonelli, however, such counterfactual reasoning is "epistemically suspect". The reason for the suspicion is that "we cannot know what would have happened if these migratory patterns had not occurred". As far as we can tell, "a worse constellation of circumstances" could have resulted "from the lack of migrant labor" (139). I am not sure I really understand the point, but the answer seems rather quick. Torresi and Ottonelli can *deny* that their policy of temporary migration would prevent more remunerative and professionalized job opportunities from developing. But what does it mean that we cannot know

whether the counterfactual is true or false? Would Torresi and Ottonelli accept as a serious objection to the policies they defend that we cannot know whether they would help and benefit temporary migrants? I don't think so. Torresi and Ottonelli must admit that their proposals would be seriously undermined if the measures they propose to regulate temporary migration prevented the development of better paid, better protected, and more professionalized jobs. It they believe that their (de)regulation does not create these problems, they should explain why.

Conclusion

I think there is a thread running through Torresi and Ottonelli's book. In setting out their principle of accommodation, Torresi and Ottonelli explain how, for liberal theories, treating people as bearers of life plans "means setting up a system of rights that creates and protects the conditions in which people can actively pursue their projects and their conception of the good" (94). Although Torresi and Ottonelli qualify and limit the scope of this principle, they still forget that the central point of liberal theories, before the active pursuing of our good, is to establish a system in which people can freely *form* conceptions of their good, where the free formation of a conception of the good implies just conditions. This is what most distinguishes liberal egalitarian theories from libertarianism. Precisely because individual preferences are seen to depend on social, political, geographical, sexual, racial, etc. positions, in liberal egalitarian theories conditions of justice precede and shape individual life plans. Liberal egalitarian theories differ in the way they conceive of just conditions, but they all hold that the rules of the game must be set independently of existing preferences. Only in libertarian theory do individual preferences play a role in setting the rules of the game. By stating that (qualified) choices under unjust conditions must be taken seriously because they are the preferences that people have, it doesn't matter how they were formed, Torresi and Ottonelli adopt a libertarian position. Although they moderate their position by restricting the choices that can be considered voluntary, they still endorse the (mild) libertarian credo that we would treat migrants as passive patients if we did not recognize their agential life plans. As I said, however, in liberal egalitarian theory people are moral agents *per se*. In outlawing asylums, we have sought, as far as possible, to treat mental ill as moral agents. In demanding reforms for the hospitalized or the terminally ill, we want them to be treated as moral agents. All of those people cannot be said to have life plans. Not only are individuals

not moral agents simply because they have life plans, but to the extent that life plans matter, it is the capacity *to form* them that justice addresses.

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Notes on contributor. Ingrid Salvatore is an associate professor at the University of Salerno. She teaches political philosophy. Her recent publications include *Giustizia sociale: Aspetti Teorici e Assetti Istituzionali* (AlboVersorio 2023), *The Indeterminacy of the Principles of Justice: The Debate on Property-Owing Democracy versus the Welfare State and the Ideal of Social Union* (RES PUBLICA 2022). Her current research focuses on three main themes: social stability, the relationship between work and distributive justice; and social justice in regard to distributive and non-distributive issues.

Contact. isalvatore@unisa.it

ORCID. Ingrid Salvatore https://orcid.org/0000-0002-2882-2853

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Mobile Lives, Immobile Rights: Beyond the Principle of Liberal Accommodation

Dimitrios E. Efthymiou

Vita-Salute San Raffaele University, Milan, Italy

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Abstract

Does the principle of liberal accommodation require states to create special rights regimes for temporary migrants, or can it be satisfied through universal protections? Ottonelli and Torresi argue that liberal democracies must accommodate voluntary temporary migration plans by introducing tailored policies and corresponding rights that align with migrants' temporariness preferences. They contend that failure to provide such accommodation violates liberal commitments to supporting autonomous life choices. This commentary challenges whether their principle of liberal accommodation necessitates the specific differentiated rights they propose. I examine whether accommodating temporary migration requires special provisions or whether universal worker protections combined with enhanced portability mechanisms better serve liberal principles. The analysis reveals that liberal accommodation might actually oppose rather than require differentiated treatment, since creating separate rights categories risks the subordination and exploitation of temporary migrants. Drawing on comparative analysis with EU citizenship arrangements, I argue that universal protections ensuring equal status while facilitating cross-border coordination better realizes liberal accommodation principles by avoiding the creation of not just differentiated but also hierarchical rights regimes that may undermine rather than support autonomous choice.

Keywords: Temporary migration, Liberal accommodation, EU citizenship, Transnational justice, Welfare rights

Ottonelli and Torresi's *The Right Not to Stay* presents a compelling argument for a novel approach to immigration ethics in liberal-democratic states. The authors contend that such states ought to grant immigrants a right not to stay, a positive right to institutional support for voluntary temporary migration and return projects. Their thesis deserves special attention as it challenges conventional frameworks that prioritize permanent integration and citizenship

rights as the primary means of addressing immigrant rights and vulnerabilities. In this commentary, I critically examine the key arguments supporting Ottonelli and Torresi's thesis and contrast their proposals with an alternative approach grounded in a normative framework of transnational justice within the current state system and associated existing transnational rights. This alternative framework aims to more robustly track and protect the interests of all mobile workers, focusing also on considerations of equality and reciprocity, in contrast to the authors' preferred model of liberal accommodation for temporary migration life plans. Additionally, I question whether their principle of liberal accommodation is best served by the specific regime of special rights they advocate.

Ottonelli and Torresi's argument could be re-constructed through its key propositions, which together form a critique of current immigration paradigms and provide the foundation for the authors' proposed alternative. The book begins by arguing that many migrants voluntarily choose temporary migration as their first or preferred option, rather than being coerced by restrictive migration policies. This premise is supported by empirical studies (in Chapter 2) demonstrating that migrants often plan for temporariness to achieve specific goals in their country of origin, such as education or entrepreneurship (23). The authors provide concrete examples, such as Filipino workers in Rome or Los Angeles who strategically minimize integration to maximize savings for their eventual return (7).

It is difficult to disagree with the authors that at least a subset of migration is temporary in intent. The challenge for Ottonelli and Torresi is to show that the choice of such temporary migration plans has distinct value and merits a distinct approach. To do so, one needs to begin by providing us with a clear definition of temporary migration plans versus permanent migration plans. Temporary migration plans, we are told, are voluntary life plans where migrants intend to return to their country of origin after a limited time abroad and where they deliberately avoid deep integration into the host society (e.g. political engagement, long-term residency) as well as prioritize goals linked to their home country (e.g. remittances, funding education and entrepreneurship at home). For temporary migrants, migration is a constitutive element of a broader life plan centered on the home country (see Chapter 1, 9-10).

The authors recognize that temporary and permanent migration plans are often more open-ended and dynamic in nature (24). Temporary migrants might turn into permanent migrants and permanent migrants into temporary ones. The question then is what provisions would best accommodate temporary migration plans while recognizing the fluidity of such plans. Thus, the challenge for

Ottonelli and Torresi is to show that their account provides a superior alternative not just to citizenship rights often linked to meeting conditions of naturalization such as long-term residency but also to other alternatives such as an EU citizenship-like bundle of rights that might be more attuned to temporary migration plans and better serve as an intermediate status before meeting conditions of naturalization and long-term residency.

The relevance of EU citizenship-like rights as a baseline for comparison becomes even more apparent given the emphasis placed on the voluntary nature of such plans. This is true even if one disagrees with Ottonelli and Torresi's threshold approach to voluntariness (in Chapter 4, 79-84). The theoretical grounding of their approach depends on showing that the choice of temporary migration plans is voluntary and thus an autonomously chosen conception of the good life and that liberal democracies need to accommodate such plans. The connection between the voluntariness and deprivation behind temporary migration plans is maintained by advocating for a threshold of voluntariness that remains largely unaffected by relative inequalities and that treats the fulfilment of fundamental human needs such as the provision of food, shelter, and personal safety as sufficient background conditions for making a voluntary choice (see 87 and also Chapter 8, 173). Even if one prefers a more scalar or demanding conception of voluntariness, it is difficult to argue against the existence of at least some migrants, for example often EU migrants, who voluntarily choose temporary life plans when moving between similarly well-ordered member states. This could be due to industries and jobs being more widely available in one member state versus another, or because of jobs being seasonal or temporary in nature. The question, as will become clearer below, is whether alternatives, such as EU citizenship-like rights, should align with Ottonelli and Torresi's suggestions regarding the rights of those moving between member countries for temporary migration projects or whether Ottonelli and Torresi's suggestions should become more attuned to alternatives, such as current EU citizenship provisions, if the latter prove better in serving temporary migration projects (see e.g. 22; 58). Answering this question requires examining both the *theoretical underpinnings* of their argument as well as its *policy implications* for temporary migrants.

The strength of Ottonelli and Torresi's approach lies, therefore, in its ability to identify a subset of cases that undeniably possess the characteristics they attribute to temporary migration projects, even when defining voluntary temporary migration narrowly. The subsequent, and crucial, step in the argument is to investigate whether temporary migrants encounter distinct or additional systematic vulnerabilities and subordination compared to those with

permanent migration plans. Furthermore, it is crucial to examine whether safeguarding against such vulnerabilities and providing special rights tailored to temporary migrants' interests align with liberal democratic principles, or if these provisions simply represent a broader acknowledgement of interests shared by all mobile workers, potentially amounting to supplementary provisions within more inclusive rights models (such as EU citizenship-like rights frameworks). This is what I take to be the main theoretical challenge to Ottonelli and Torresi's approach that will be discussed further below.

A major theoretical merit of Ottonelli and Torresi's approach is its emphasis on the systemic vulnerability and subordination faced by temporary migrants due to their exclusion from labor and social protections. This vulnerability may be compounded by limited political engagement in the host country, diminishing migrants' ability to assert their rights, and a focus on home-country objectives that heightens their susceptibility to exploitation (40). This aspect of their argument effectively counters the objection that voluntary migrants should bear all consequences and costs of their decision to migrate. This objection, they convincingly argue, erroneously equates voluntariness with an absolute assumption of risk, a distinction recognized in liberal-egalitarian theory (108-9). The distinction, although subject to debate, grounds the position that voluntary choice is not alone sufficient to justify disadvantage, no matter what framework of opportunities it operates in, and emphasizes that the exercise of choice in liberal democracies presupposes baseline protections against disadvantage (see Anderson 1999; Kymlicka 1995; Stemplowska 2013). Ottonelli and Torresi astutely observe that while individuals may voluntarily choose a course of action, this does not negate the necessity for institutional safeguards. Indeed, liberal societies are fundamentally structured with protections and accommodations for various voluntary choices, ranging from career paths to family structures (106). Consequently, temporary migrants have a vested interest in non-exploitative working conditions in their host state, even when they voluntarily opt for exploitative jobs. The fact that they can return to their home country and choose a non-exploitative job there does not alter the exploitative nature of the working conditions offered in their host country, which stem from the lack of labor and social protections unavailable to temporary migrants due to their exclusive association with permanent migration. Why not argue then for the extension of the national protections available to long-term migrants also to temporary migrants?

To comprehend why extending national provisions to temporary migrants is both inadequate and unsuitable, according to Ottonelli and Torresi, we are reminded that labor and social protections typically presuppose a level of social

and political rootedness associated with 'social connectedness' through civic participation and long-term residency (11). These prerequisites of social connectedness are, by definition, beyond the scope of temporary migration projects and thus incompatible with such life plans. It is noteworthy that, akin to EU citizenship-like rights, Ottonelli and Torresi advocate for decoupling certain social protections from social connectedness and long-term residency. However, this decoupling is primarily justified on the grounds of the distinct interests of temporary migrants, rather than the primacy of a broader concern for domestic, regional or global social justice considerations and achievements (see Chapter 3; 52-7). For instance, we are informed that temporary migrants have not only an interest in social protections from vulnerability and subordination, which they share with all other workers, but also a particular interest in bilateral agreements ensuring the portability of savings and benefits from the host state to the home state, rather than an interest in investing such savings or acquiring such benefits in the home state.

The broader theoretical question one could pose here is which perspective should take precedence when there is a conflict between these two viewpoints. If social justice considerations are paramount, then temporary migrants have a duty to regulate their life plans in accordance with domestic or regional social justice achievements (e.g. length of working day/week), like every other worker, and to act in a manner that does not undermine them. If, conversely, the optimal realization of their life plans necessitates working longer hours than the permitted or conventional maximum, then they appear justified in requesting and choosing opt-outs that might potentially undermine domestic social justice achievements. The discussion of social dumping in chapter 6 (132-140) addresses some of these concerns, but it fails to provide a convincing resolution to the tension in cases such as the one outlined above (i.e. competing interests in shorter vs longer working hours). Moreover, it is challenging to see how some of the responses generalize equally convincingly to all temporary migration plans, as they rely heavily on examples drawn from specific professions (e.g. care work and healthcare) where special provisions for longer working hours often exist for all workers, regardless of migration status, due to the very nature of the work undertaken (120).

The subsequent phase of the argument aims to demonstrate that not only general interests for protection from vulnerabilities and subordination at work, but also specific interests linked to temporary migration plans merit special consideration as conceptions of the good that liberal democracies must accommodate. This aspect of the argument draws from a liberal principle of accommodation based on the notion that individuals have a right to pursue

happiness through self-authored plans (see Chapter 5). Ottonelli and Torresi contend that institutions must alleviate the risks and costs associated with voluntary choices of life plans as long as those plans are consistent with basic tenets of justice and that people 'should not suffer serious deprivations in fundamental dimensions of their lives' as a consequence of pursuing their chosen life plans (97-9). Consequently, this principle of accommodation suggests that states have an obligation to establish rights regimes that align with migrants' temporariness, encompassing work protections and return facilitation.

What, then, is the nature of the special interests of temporary migrants that necessitate the attention and accommodation of liberal democracies and how special are they? Broadly speaking, they fall into three categories when we move from their theoretical justification to the relevant policies: work protections, including enforceable contracts and safe working conditions; return facilitation, such as portable savings and bilateral agreements; and political voice through labor unions and migrant associations, rather than national voting rights (see Chapters 6 and 7). The first category roughly corresponds to a plea for extending labor protections to temporary migrants that nationals and long-term migrants often enjoy (124-7). The second category pertains to rights that appear specific to temporary migration projects as they concern return to the home state, while the third comprises a restricted bundle of rights of political representation that fall markedly short of the right to vote in national or even local elections (unlike EU citizenship-like rights that permit the latter).

Let us examine these three categories of rights individually, beginning with the second as it appears to be the most contentious. One objection here is that temporary migration projects do not constitute genuine 'life plans' deserving of institutional accommodation. This objection, however, rests on an overly narrow conception of what constitutes a life plan. Ottonelli and Torresi argue persuasively that temporary migration often reflects complex, multi-stage plans that are central to migrants' conceptions of the good and that are more in line with liberalism's commitment to individual autonomy and pluralism (92).

Another objection is that temporary migration plans are instances of voluntary risk, due to the absence of coercion and compulsion. As Ottonelli and Torresi point out, liberal states routinely accommodate risky life plans and mitigate unnecessary risks through institutional design, such as dangerous professions, through regulation and social protections (109). The same principle, they argue, should extend to temporary migrants. A further critique they refute claims that accommodating temporary migration plans violates liberal neutrality by favoring particular conceptions of the good. Ottonelli and Torresi counter this by asserting that liberal neutrality does not require

abstaining from all accommodation but rather ensuring that basic institutions do not systematically disadvantage particular life plans. In fact, they maintain that accommodating temporary migration enhances neutrality by eliminating existing biases against such plans (104).

At this juncture, however, one wonders whether the appeal of these responses relies implicitly more on the supposedly distinct nature of the interests at stake rather than on the principle of liberal accommodation alone. For instance, we do not consider moving from one town at the northern end of a country to another at the southern end a reckless act of risk-taking, but rather an exercise of our right to freedom of movement. Moreover, and plausibly for that reason, we do not believe that tax rebates for those who face significant relocation or commuting costs violate the principle of liberal neutrality; rather, they resource the exercise of their freedom of movement. Temporary migrants encounter similar, if not significantly higher, costs of this nature, but these types of expenses are not unique to their temporary migration plans; they are common for all mobile workers. The additional transition costs migrants face are typically linked to acquiring or improving linguistic skills, familiarizing themselves with new institutional rules and norms, and building new community bonds. These costs, however, fall outside the scope of temporary migration life plans, by definition, according to Ottonelli and Torresi as (if) temporary migrants do not face any of these costs.

An alternative account of the vulnerabilities faced by migrants could instead be based on a tripartite relationship between a two-tiered workforce with differentiated rights linked to temporary migration status, and legal, economic and social hindrances to the open-endedness of migration life-plans, and perhaps most importantly, the lack of a corresponding egalitarian ethos that treats equal status as something that a (temporary) migrant needs to contribute to, and to earn, rather than as the default position that all those residing within the borders of a state are responsible to bring about and to respect (see Efthymiou 2021; Strumia 2024; Ypi 2018). The worry here is that a liberal principle of accommodation provides the room for individual projects to flourish without reinforcing a notion of equal concern for all interests based on equal status.

The first and third categories of rights appear less contentious, as they pertain to working conditions, labor and welfare rights, and opportunities for political participation. However, they become more controversial when one scrutinizes the specifics.

Regarding rights of political representation (see Chapter 7, 161-5), Ottonelli and Torresi advocate for rights of membership and representation by labor

unions in the host state, as well as transnational coordination of advocacy networks and non-governmental organizations that support migrant workers' rights. This is because temporary migrants do not meet naturalization and residency requirements for granting them electoral rights, and because they do not have an interest in committing themselves to the political institutions of the host country due to the temporary nature of their migration and the corresponding ongoing allegiance to their home state. Given this perspective, however, it is challenging to comprehend why the authors treat electoral rights merely as less effective than the aforementioned forms of political participation, as opposed to simply irrelevant (161). In addition, one might argue that access to electoral rights could add a substantial layer of robustness to the protection of temporary migrants' interests, if and when they wish to make use of these electoral rights. Furthermore, temporary migrants need not be individually permanently present in the host state to become an organized interest-group with electoral rights, whose votes of temporal, but systemically ever-present members, political parties of the host state have an interest to attract. The additional leverage electoral rights give to temporary migrants as an interest-group is a consideration that the authors are reluctant to fully acknowledge.

When addressing social protections in Chapter 6, Ottonelli and Torresi's starting point is that "labor rights as functional to individual life plans should give us a powerful reason to worry about the consequences of establishing differential-rights regimes. For it is not only migrant workers' life plans that matter, but the life plans of all individuals, obviously including local workers" (121). However, they subsequently assert:

> In fact, if we care about equality, then we should ensure that acquiring protections in the labor market is no more onerous for migrant workers than it is for other workers. But this is precisely what occurs when the rights instituted are not a good fit for some workers. Consider, for example, the kind of care provisions (mentioned above) that migrants' taxes support equally but of which they cannot avail themselves (137).

Care provisions feature prominently in Ottonelli and Torresi's advocacy for special rights throughout their work (31; 126), and justifiably so. However, it is challenging to discern whether this recurring emphasis on these provisions amounts to more than a call for the portability of certain contributions, rather than exemptions from making such or similar contributions to the host state, as commentators like Anca Gheaus (2013) seem to suggest (126). The broader argument appears at times to be that temporary migrants should be exempt from

contributions and taxes from which they cannot benefit. It remains unclear which specific contributions the authors have in mind and what argument underpins the normative basis for identifying all of the relevant exemptions.

For instance, by analogy, there are segments of the population whose life plans may never rely on access to certain social benefits, such as social assistance, due to their substantial savings and capital or their highly marketable and lucrative skills upon which such life plans are based. Nevertheless, liberal and egalitarian approaches to social justice would not exempt these groups from contributions and taxes that fund these benefits. Consequently, a different type of justification must be at play here.

One could contend, for example, that contributions and taxes funding care provisions are distinct in nature because most individuals must resort to care provisions at some point in their lives. Crucially, one could add that such provisions should be offered at the location where either the person themselves or the relevant dependant habitually resides. Therefore, what ultimately matters is a mismatch between the point of provision of such care services in one country and the point of contribution to them in another. This discrepancy arises not merely due to the absence of a federal state, or a similar regional political union, where such a mismatch could be easily addressed through transfers from one locale to another, but also due to the lack of bilateral agreements between nation-states and relevant portability schemes due to an unwillingness on the part of (usually better-off) states to sign up to such agreements (see Chapter 3, 58-60; and Rawls 1999). In a world where mobile lives become increasingly common, it is not technically infeasible to address such issues by enabling transfers that cover publicly funded childcare, education, and healthcare costs of dependants and minors in the sending state. However, it is difficult to perceive the advantages of schemes that provide economic incentives for, say, a separation of children from parents for longer than six months, as opposed to migration schemes that facilitate family reunification in the host state after such a period. Further, temporary migration projects that extend beyond six months in any single tax year entail tax residency in the host state and hence must be treated as cases that trigger the same rights and obligations for both temporary and long-term migrant workers who are asked to shoulder the same tax burden that resources the rights protections of all tax residents. Using the concept of temporary migration to refer to cases of several years of residence in the host state seems more relevant only for the case of all persons who can be removed from the territory of the host state, but it is more difficult to see how assigning such a description to those who intend to return to their home state, even though, for instance they could choose to stay permanently, best serves the interests of

all those who find themselves in such a predicament or to make sense of the relevant vulnerabilities they face and the rights protections they lack (Stronks 2022).

Instead, one could envisage portability schemes between states where funds are transferred to cover the costs of certain services provided in the sending state in a transition period. Any surplus remaining (after all relevant deductions) would not be retained by the host state but reimbursed to mobile workers as increased tax rebates for particularly high expenses, such as commuting and relocation costs. However, given the fluid nature of migration projects, it is prudent that most, if not all, of these benefits, especially those linked to old age, such as pension schemes and social care, as well as some social insurance benefits, are administered and paid directly to the migrant by the (usually more affluent) host state, even after they have returned to their home state (e.g. as a portion of their pension). This approach is likely to benefit temporary migrants, particularly in the long term, and therefore should not be subject to exemptions from relevant contributions. It is important to note that all of the aforementioned provisions for transnational transfers, or even increased tax rebates, do not amount to exceptions from contributions or special rights. In this alternative scenario, temporary migrants would pay the same contributions and taxes and enjoy equal rights. In their case, the resourcing of their rights might be more costly in some instances (e.g. higher commuting costs) and less costly in others (e.g. lower educational costs) compared to sedentary claimants who do not need to relocate or commute for work. The onus would then be on the home state to coordinate the coverage of relevant costs for care provisions, as well as all other pertinent provisions, with the host state.

In conclusion, let us revisit the comparison between the provisions suggested by Ottonelli and Torresi for temporary migrants and those provided by EU citizenship and EU regulations concerning the coordination of social provisions. What would the implications be, for instance, for EU citizens who have not yet fulfilled the permanent residency requirements, and who themselves consider their migration projects temporary, if we were to adopt Ottonelli and Torresi's provisions and reform EU citizenship and EU regulations accordingly? The answer seems to be a significantly narrower bundle of social rights (e.g. no full and long-term access to social and welfare rights such as unemployment and housing benefits) and political rights (e.g. no full access to local and even state elections rights as is the case in Scotland, for instance) with special provisions for the portability of a significant number of contributions, especially those linked to care provisions, as well as taxation and contributions exemptions (127 and chapter 6). Instead, similar rights provisions to EU citizenship for all

temporary migrants who have not yet reached permanent status are better suited to protect and resource the basic liberties and interests that are necessary for all persons residing within the borders of a state to be able to pursue their plans of life (Efthymiou 2022; Lenard 2012).

Overall, it appears that EU citizenship-like rights appear to provide more robust social protections from vulnerability and subordination, and opportunities for political empowerment, to temporary (and long-term) migrants than Ottonelli and Torresi's far more moderate provisions. Perhaps adopting an EU-like model of rights for all temporary migrants is politically challenging to implement within and beyond the borders of the EU, but I take it that Ottonelli and Torresi's approach is concerned with what temporary migrants are due as a matter of justice from liberal democracies as opposed to what is politically feasible in the current milieu (116, 140).

This is not to say that an EU citizenship-like rights regime is without its shortcomings (especially regarding current regulations on seasonal and posted workers) and that there is no room for improvements in line with some of the suggestions made by Ottonelli and Torresi. The main area of policy where EU citizenship and regulations seem to fall short of Ottonelli and Torresi's recommendations is return facilitation, but this is primarily because some member states lack such provisions in their tax and benefits system, and not due to a lack of recognition of mobile plans of life as valuable on the part of at least some of the EU's liberal democracies. The issue arises when the host state provides, for example, tax reliefs and benefits only to those who relocate and commute within its territory.

In sum, one could argue, against the authors, that liberal accommodation does not entail special or differentiated rights in those areas of special concern identified by Ottonelli and Torresi. Instead, it merely requires bilateral agreements that facilitate the coordination and portability of benefits on grounds of equality and reciprocity (see Bruzelius 2021; Efthymiou 2021 and Olsthoorn 2025). These agreements should align the rights of both nationals and migrants with best practices that both protect and resource the mobility of persons within and across borders without subjecting them to costly transitions involving unnecessarily complex and differentiated entitlements to the very same rights needed for the social and political empowerment of all persons, regardless of where they reside or roam.

Ottonelli and Torresi's book makes an invaluable contribution by highlighting the numerous ways in which temporary migrants' interests are sidelined by current policies that unduly favor sedentary people. However, if the above criticisms are correct, even the remedies they propose might not be

sufficient to robustly protect and facilitate migration life-plans as a matter of justice.

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Notes on contributor. Dimitrios E. Efthymiou is a Research Fellow at Vita-Salute San Raffaele University in Milan and a Visiting Research Fellow at the University of Edinburgh. He served as Principal Investigator of the research project 'Towards a Transnational Theory of Justice for the EU' at Goethe University Frankfurt, with recent publications including *Between meeting quotas and following the duty-bound heart: navigating the formidable dilemma of refugee protection in the EU* (Comparative Migration Studies 2024) and *EU migration, out-of-work benefits, and reciprocity: Are member states justified in restricting access to welfare rights?* (European Journal of Political Theory 2021). His research focuses on normative political theory and its methods, particularly on EU migration, social justice, and welfare rights.

Contact. efthymiou.dimitrios@unisr.it

ORCID. Dimitrios E. Efthymiou https://orcid.org/0000-0002-8961-9250

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Accommodating the Life Plans of Temporary Migrants: Principles and Context

Valeria Ottonelli and Tiziana Torresi

University of Genoa, Genoa, Italy and University of Adelaide, Adelaide, Australia

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Abstract

In our response to our commentators, we address four main issues. First, the role and purpose of our account of voluntariness in migration, and how it differs from the notion of voluntariness employed in the ideal theory of liberal egalitarian justice. Second, where our account of receiving states' obligations towards migrants stands with respect to a cosmopolitan right to free immigration on one hand, and the discretion of receiving states in deciding the conditions of admission on the other. Third, our reasons for insisting on special rights for those who engage in temporary migration projects, rather than relying on frameworks of supranational citizenship rights. Finally, our choice to frame our account of receiving states' duties to temporary migrants without relying on strong transnational assumptions.

Keywords: Temporary migration, Liberal principle of accommodation, Voluntariness, Supranational citizenship rights, Transnationalism

Summary: Introduction; I. Voluntariness and the Accommodation of Life Plans in Non-Ideal Conditions; II. Would-Be Immigrants and the Scope of the Principle of Accommodation; III. Special Rights versus Supranational Rights: European Union Citizenship as a superior model to accommodate temporary migrants; IV. The Transnational Context of Justice and Temporary Migration Projects.

Introduction

We are grateful for the opportunity to engage with the insightful and thought-provoking comments offered by the participants in this book symposium. Their reflections touch on crucial aspects of our account of the duties that receiving

states have towards temporary migrants, prompting us to clarify the methodological and normative principles that underpin our argument in *The Right Not to Stay*, as well as their institutional and sociological context of reference.

We have organized our response in four sections, each addressing a central issue raised by our commentators. In the first section, we clarify the role and purpose of our account of voluntariness in migration, contrasting it with the notion of voluntariness employed in the ideal theory of liberal egalitarian justice. In the second, we situate our account of receiving states' obligations towards migrants with respect to a cosmopolitan right to free immigration on one hand, and the discretion of receiving states in deciding the conditions of admission on the other. In the third section, we clarify the grounds of our defense of special rights for those who engage in temporary migration projects, in contrast with frameworks of supranational citizenship rights. Finally, in the fourth section, we defend our choice to frame our account of receiving states' duties to temporary migrants without relying on strong transnational assumptions, either regarding the existence of a robust transnational institutional infrastructure, or the engagement of the migrants on which we focus with genuinely transnational lifestyles.

I. Voluntariness and the Accommodation of Life Plans in Non-Ideal Conditions

Ingrid Salvatore questions our definition of voluntariness, and the role it plays in our account of migrants' agency and what is due to migrants. She expresses concern that characterizing migrants' choices as voluntary in the current world risks overlooking the structural injustices that shape and constrain those choices. Furthermore, she questions as insufficiently grounded the institutional proposals we make for accommodating migration under present, non-ideal conditions. According to Salvatore, our focus on existing preferences in devising institutional responses aligns our approach more closely with libertarian theories of justice than with liberal egalitarian ones.

Salvatore's critique draws on the foundational role that voluntariness plays in much of liberal egalitarian theory. In paradigmatic formulations – such as John Rawls's *A Theory of Justice* (1971) – voluntariness is essential to the legitimacy of consent given by members of a well-ordered society to its core institutions and principles of cooperation. For such a society to be just, this consent must be voluntary in the sense of not being determined by morally arbitrary circumstances, such as differences in resources or personal assets, or

asymmetries in bargaining power. When individuals voluntarily agree to fair terms of cooperation, they thereby recognize one another as moral agents. Importantly, in this context, moral agency is not an empirically verifiable attribute of individuals' wills; rather, it is a pragmatic presupposition of just political relations. People acknowledge each other as moral equals when they do not allow arbitrary circumstances to determine the conditions of cooperation.

As Salvatore rightly emphasizes, liberal theories of justice are not grounded in individuals' actual preferences, goals, and plans at any given historical moment. Rather, as she puts it, "conditions of justice precede and shape individual life plans" (Salvatore 2025, 117). In Rawls's rendering of this idea, the social contract that constitutes and justifies the main institutions and conditions of cooperation of a just society (that is, in the Rawlsian jargon, society's "basic structure") is radically different from the contracts negotiated between private individuals within an established legal system. Whereas the latter are aimed at satisfying existing preferences, the former is prior – both normatively and causally. It shapes the institutions into which individuals are born, and thereby moulds their preferences, aims, and character (Rawls 1977).

We acknowledge the relevance of the above account of the relation between voluntariness, moral agency, and justice for thinking about the institutions of a perfectly just society. However, the foundational notion of voluntariness as free consent to the rules of a just society has limited applicability when it comes to the question of what is due to temporary migrants, or migrants in general, under the non-ideal circumstances of the present world. [1] Currently, migrants form their preferences and life plans within deeply unjust institutional frameworks, both domestically and globally. The critical question, then, is to what extent these life plans – shaped by injustice – should still be granted normative weight when we theorize what is owed to migrants.

This question is pivotal, as we argue in our book, because liberal egalitarianism requires that people be respected not only as moral agents but also as purposive agents – individuals with a fundamental interest in forming and pursuing a life plan. We interpret this commitment in light of a rich liberal tradition, from von Humboldt and Mill to more recent thinkers such as Dworkin, Rawls, and Appiah. To regard individuals as bearers of life plans is to value

[1] It is important to stress that by problematizing the notion of voluntariness in the non-ideal circumstances in which migration takes place in the present world, we are not assuming that temporary migration only poses normative problems in non-ideal theory. As we tried to show in our book, the mainstream theory of liberal domestic justice fails to include just arrangements for those who do not plan to migrate permanently (Ottonelli and Torresi 2025, 58-60).

their lives as the expression of a unique authorial perspective on the world – a personal narrative by which they determine their values, ends, and the means by which to realize them. Respecting this first-personal, agential perspective requires institutions that can accommodate and support individuals' efforts to pursue their ow happiness according to their own lights.

How, then, should we respond to the challenge of accommodating migrants' life plans formed under non-ideal conditions – plans shaped by institutions that would not garner the voluntary consent of participants in a perfectly just society? One possible response is to argue that such plans should have no normative weight in current policymaking precisely because they lack the kind of voluntariness required under ideal conditions. We reject this view for two key reasons.

First, it compounds injustice. Disregarding migrants' life plans because they are formed under unjust conditions adds insult to injury, by failing to provide institutional support and protections to the plans of individuals who already suffer from diminished opportunities and prospects. Second, this stance typically ends up targeting specific disadvantaged groups – including many migrants – who are epitomized as incapable of freely forming and pursuing life plans due to their socio-economic background. This dismissive attitude selectively ignores the fact that almost everyone, in current liberal democracies, form their plans under conditions shaped by unjust structural constraints. The application of more demanding voluntariness criteria to migrants than those applied to the life of most members of receiving societies exemplifies a problematic double standard.

Nonetheless, recognizing and respecting people's agency under non-ideal conditions does not mean providing accommodation and institutional support to all choices indiscriminately. We must still distinguish between life plans that are genuinely endorsed by individuals and those shaped by coercion, duress, misinformation, or manipulation. This calls for a less demanding, more down-to-earth account of voluntariness than the one employed in the idealized social contract situation. Our approach to voluntariness in the context of migration adopts precisely such an account. To avoid double standards, we propose that migrants' decisions should be evaluated using the same ordinary criteria we use in everyday life to distinguish between free and coerced choices.

Once the role that the notion of voluntariness plays in our account, and the difference with the foundational role of voluntariness as free consent in the egalitarian social contract tradition are clarified, we believe that Salvatore's qualms can find a response.

First, we fully agree with Salvatore that our account of voluntariness

should not play any role in assessing people's *moral* agency. That is not its function. Rather, it provides a sensible threshold for distinguishing between life plans that, though formed under non-ideal conditions, are endorsed and pursued by individuals as the expression of their agency, and those that are plainly coerced.

Second, it is important to specify that our account of voluntariness in migration does not imply that "the conditions under which the decision to migrate is made do not determine the decision" (Salvatore 2025, 113), if that means that those circumstances do not play any role in explaining migratory decisions. Indeed, institutional and social facts *do* play a fundamental role in shaping people's life plans, and it is worth noting that this is true both in non-ideal and in ideal conditions. The life choices of individuals born in a perfectly just society, whose institutions could be the object of a free consent, would still be shaped by those institutions. Thus, contrary to Salvatore's suggestion, our account of voluntariness is not in tension with sociological explanations of migration that account for its structural dimension, including those circumstances that count as structural injustice.

Most importantly, our account does not seek to obscure or justify existing injustices. The standard of voluntariness we propose does not – and cannot – serve to legitimize current global or domestic arrangements as ideally just. Nor does our account support the view that, since migrants' plans are "voluntary," the conditions of labor migration should be governed purely by the bargaining power of the parties involved. On the contrary, recognizing migrants as agents with life plans deserving of respect and support entails creating institutional safeguards to protect them from the vulnerabilities and subordination their migration decisions may expose them to.

These clarifications should also dispel the notion that our approach is libertarian in nature. If libertarianism entails endorsing whatever contractual arrangements result from existing preferences, then our view is clearly not libertarian. Rather, we are grappling with the complex question of how to respect individuals as bearers of life plans even when those plans are formed under unjust conditions.

A final question remains: Why not instead aim directly at building ideally just arrangements, rather than accommodating life plans shaped by injustice? This is, in the end, the challenging question raised by Salvatore's critique of the special measures we advocate for temporary migrants. She especially targets our claim that speculating about arrangements that would avoid altogether the massive employment of migrants on temporary, low-skill jobs are "epistemically suspect" because we do not really know what would happen in the absence of

migrants' labor (Salvatore 2025, 116, quoting Ottonelli and Torresi 2025, 139). Her retort is that the same could be claimed about the measures we propose in support of temporary migrants; also their effects are conjectural. This objection would require a much lengthier answer than we can afford here. The short answer, however, is that we do not take issue with any possible proposals of improvement that depart from the current state of affairs. Rather, we find epistemically suspect those analyses that contrast the current state of affairs, in which the labor of temporary migrants plays an essential economic role, with distant counterfactual worlds in which such work would become redundant thanks to yet-to come radical technological innovations or the creation of utterly different economic arrangements.

II. Would-Be Immigrants and the Scope of the Principle of Accommodation

Mario Cunningham Matamoros' comments focus on our claim that the institutions of liberal democratic states ought to accommodate the life plans of temporary immigrants. He argues that extending the liberal principle of accommodation to temporary migrants carries strong cosmopolitan implications – implications that are, he contends, incompatible with the widely recognized right of states to regulate the number and conditions of immigrant admissions. This, Cunningham Matamoros suggests, poses a problem for our argument, which aims to engage with mainstream liberal theories of immigration, many of which reject strong cosmopolitan commitments and affirm the state's right to limit immigration.

Cunningham Matamoros' critique appears particularly pertinent in relation to the mobility rights we advocate for temporary migrants. We argue that accommodating their life plans requires taking seriously their project to return home after a period of work abroad. Facilitating such projects necessitates both investment programs that support return, and – crucially – the ability of migrants to maintain strong ties to their country of origin, including important familial and social relationships. Mobility rights are central to this goal: they allow migrants to travel back and forth, to engage in repeated migration spells, and to do so without jeopardizing their current or future status in the host country. As Cunningham Matamoros rightly notes, the mobility rights we propose include streamlined visa renewal procedures that ensure that migrants are not barred from re-entry after returning home and are not subject to deportation when their visas expire. At first glance, this permissive mobility

regime may appear to entail a cosmopolitan right to free movement and immigration, despite our explicit claim that we do not contest the mainstream view that states have a right to limit immigration.

To address this concern, it is important to clarify that Cunningham Matamoros overstates the implications of our defense of mobility rights. We do not claim that anyone holds a right to migrate anywhere. Rather, we argue that *once* labor migrants have been admitted, they acquire specific rights, including mobility rights. The basis for these rights lies not in a universal cosmopolitan entitlement to free immigration, but in the special obligations that receiving states incur through their decision to admit migrant workers. These obligations require receiving societies to accommodate the life plans of admitted migrants – either by supporting their long-term integration or facilitating their plans to return home.

In other words, we do not argue that states must admit migrants indiscriminately. Instead, our position is that *if* states choose to admit migrant workers, they must do so under a visa regime that affords them significant mobility, and does not obstruct migrants' plans to remain indefinitely, if they choose to do so, or to return, if that is what they want.

Even with these clarifications, Cunningham Matamoros raises a more fundamental question. Unless one adopts a strongly cosmopolitan, "inflated" (Cunningham Matamoros 2025, 104) reading of the principle of accommodation – one that obliges states to accommodate not just current members but also prospective ones – why should receiving states adapt their institutions to fit the life plans of would-be immigrants? If migrants voluntarily choose to move, as is the case in the scenarios we discuss, then, Cunningham Matamoros argues, it is up to them, "in the exercise of their agency" (Cunningham Matamoros 2025, 102), to decide whether the migration opportunities on offer serve their life plans. Since the principle of accommodation does not extend to would-be members, states are under no obligation to adjust their institutions accordingly. As such, they may legitimately offer "take-it-or-leave-it" terms of entry, including limited welfare access and non-renewable temporary visas.

In response to this crucial objection, we should start by reiterating our view on the role of agency in the ethics of immigration. As discussed in the previous section, recognizing that migrants' choices and plans can be voluntarily undertaken, even under the non-ideal conditions of the present world, is crucial to the recognition of migrants' agency and their interest in their first-person, authorial role in shaping their own fundamental goals and claims. However, the fact that labor migration is often voluntary, and therefore the

expression of migrants' agency, does not entail that the terms of migrants' admission and residence should be shaped by hard bargaining between states and migrants. Doing so, contrary to what Cunningham Matamoros suggests, would not allow migrants to exercise their agency, but would leave them instead completely at the mercy of the asymmetrical power relations involved. Rather, we argue that such arrangements should be guided by the principle of accommodation.

The duty to accommodate the life plans of immigrants derives from the special obligations that receiving states incur towards them because of the close relations of cooperation on the national territory that labor immigration entails, and the momentous, life-shaping impact that those relations have on the lives of immigrants. These relations ground obligations and special responsibilities that are akin to those that states have towards their permanent members; above all, the obligation to establish institutional conditions that enable individuals to pursue their life plans. Accordingly, the principle of accommodation also applies to immigrants, including those who plan to return home after their stay.

Importantly, this account of the principle of accommodation is fully compatible with the claim that states have a right to regulate admissions. Indeed, claiming that states should apply the principle of accommodation to their immigrants does not impose states a duty to indiscriminately admit immigrants, or to shape institutions to ensure a universal right to free immigration. Rather, it simply implies that *when* states do admit labor migrants, the resulting cooperative relationships generate obligations to ensure fairness and reciprocity in the institutional framework governing those migrants' lives.

Here, Cunningham Matamoros' analogy with the right to form a family helps to clarify the point. As he rightly notes, an individual's life plan to marry does not generate a duty for anyone to marry them, nor does it impose an obligation on institutions to find them a partner. Likewise, the desire to migrate does not impose a duty on states to admit migrants. However, continuing with the analogy, we argue that if someone voluntarily enters a spousal relationship – implying shared residence, cooperation, and mutual care – then special obligations arise. Similarly, when a state admits labor migrants and thereby enters a cooperative relation with labor migrants that implies their continued residence on the territory, it incurs special responsibilities and obligations toward them.

Cunningham Matamoros might seek to extend the analogy differently. He could argue that the absence of a right to have someone marry us leaves people

free to offer lighter, less committal, and more casual forms of relation than marriage, and therefore lighter obligations. Free and consenting adults can engage in casual one-off encounters, which imply the commitment to basic forms of politeness, decency and respect, but certainly no life-long reciprocal obligations and responsibilities. In the same way, the analogy would go, receiving states can offer migrants temporary contracts and visas, with an accompanying light set of rights and obligations. However, we contend that this extension of the analogy fails. Temporary migration is not a casual, low-stakes encounter. It involves people relocating – sometimes for years – to live and work in a foreign society, contributing significantly to its economic and social life and living under its laws and customs. There is nothing "casual" about this engagement. Temporary migration is a serious, life-shaping undertaking that gives rise to meaningful rights and responsibilities.

To be clear, the obligations that arise from social cooperation are not equivalent to the emotional and personal duties of love or care. We agree with Cunningham Matamoros that liberal political institutions are not responsible for ensuring that individuals are happy or successful in their personal life plans. However, if our interpretation of the liberal principle of accommodation is correct, then liberal states do have a duty to make their institutional frameworks minimally hospitable to people's agency in the pursuit of their life plans. This entails ensuring that individuals are not exposed to undue vulnerability, or deprived of essential rights, simply because of the life plans they pursue. In the case of migrants who plan to eventually return home, the principle of accommodation implies that states must structure institutions in a way that shields them from the vulnerabilities and loss of fundamental rights that may otherwise derive from their choosing a life plan that involves migration on a temporary basis. This is the normative foundation for the special rights we propose for temporary migrants.

III. Special Rights versus Supranational Rights: European Union Citizenship as a superior model to accommodate temporary migrants

Dimitrios E. Efthymiou's thoughtful contribution to this symposium encourages us to reflect more about our proposed solution to the normative dilemmas raised by temporary migration projects, and specifically to consider the question of whether our proposed regime of special rights may not be in

some important ways inferior to already existing models of supranational rights, such as European Union citizenship.

Efthymiou agrees with our description of temporary migration projects, and with the fact that they are voluntarily undertaken (despite noting that more demanding definitions of voluntariness than the one we argue for and employ may have merit), however, he notes how, as we also recognize, temporary and permanent migration plans are often open-ended and dynamic in nature. It is indeed quite normal, as he argues, for temporary migrants to turn into permanent migrants and vice versa.

This, according to Efthymiou, means that the question we should be addressing is what provisions would best accommodate temporary migration projects while recognizing their fluidity. Thus, he invites us to show that our account is a superior alternative not just to national citizenship rights but also to other alternatives such as an EU citizenship-like bundle of rights which he claims: "might be more attuned to temporary migration plans and better serve as an intermediate status before meeting conditions of naturalization and long-term residency" (Efthymiou 2025, 122-3).

Efthymiou offers a range of examples where he claims an EU citizenship-like regime would offer better protections than the one we propose. One such example is political rights which, he argues, could add robustness to the protection of temporary migrants' interests, if and when they wish to make use of them (Efthymiou 2025, 128), and care provision measures where he worries our approach may have inferior results in protecting migrant rights than his preferred alternative.

For another example, he notes how, particularly given increasingly stringent border controls, it is difficult to perceive the advantages of schemes, such as the one we argue for, that accommodate a separation of children from parents for longer than six months, as opposed to facilitating family reunification in the host state. In general, despite agreeing with our description and definition of temporary migration projects he finds that expanding the definition of temporary migration to include several years of residence in the host states seems both like a misnomer and it is difficult to see how assigning such a status best serves the interests of those who find themselves in such a predicament (Efthymiou 2025, 129). In short, the claim is that EU citizenship provides overall more robust protections than the ones afforded by a regime of special rights such as the one we argue for.

Efthymiou wonders if our reluctance to suggest adopting an EU-like model of rights for all temporary migrants is because it would undoubtably very politically challenging to implement beyond the borders of the EU, but quite

rightly observes that our approach is concerned with what temporary migrants are due as a matter of justice from liberal democracies, though of course the feasibility of such a scheme is low.

Interestingly, he also notes how our possible concerns with EU-like regimes of rights may be because EU citizenship and regulations fall short of our own recommendations for return facilitation. This is true in the sense that it points directly at what our core objection to EU rights as an accommodation regime for migrants engaged in temporary migration projects, namely, that like national citizenship they are a poor fit for those migrants given their specific migrations plans which set them apart from other migrants and expose them to specific vulnerabilities. Poor fit that is very well evidenced by the lack of provisions for return which is the ultimate aim of the migrants we have in mind. If this kind of regime fails to address such a central aim of accommodation for these migrants this is indeed grounds for doubting its usefulness and adequacy. The specificity of the migratory plans, both of migrants engaged in temporary migration projects and permanent migrants is what requires differentiated and specific regimes.

This point is not negated by admitting the fluidity of migratory plans, which we indeed do. It is precisely because of the changeability of life plans and migratory projects that we argue in our work for the provision of exit options for migrants engaged in temporary migration projects which include a path to permanent residency and full citizenship. In this sense, our approach already provides for the opportunity for migrants engaged in temporary migration projects to acquire full political rights if they do come to a point where they wish to acquire and use them. While still engaged in temporary migration projects, however, the offer of such a provision is, as we argue, a misrecognition of migrants' actual interest and a decentering of their agency because it amounts to suggesting an avenue of political participation that they do not wish to avail themselves of and that moreover has unfair costs. The migrants would have to bear in diverging from their primary goals which do not include such an engagement in the host country.

Similarly, focusing on migrants' agency and voluntarily chosen migratory projects is why we reject the idea that care provisions should aim at fostering children joining their parents after a specified period of time arbitrarily chosen by the host state when this does not fit with this kind of migratory project or with the limitation of the time migrants may chose to remain engaged in temporary migration projects. This is not at all a status migrants are assigned, as suggested, but rather a voluntarily chosen project whose boundaries of time are defined by the agents themselves. It is for these reasons that we do not

believe that an EU-style bundle of rights could provide a general framework of rights that can accommodate all migratory plans. However, this does not mean abandoning the idea of an overall just regime of migration regulation in favor of freedom-tracking special rights, but rather that a regime of special rights to accommodate migrants engaged in temporary migration projects must be part of such a regulation regime in the first place for it to count as fair.

IV. The Transnational Context of Justice and Temporary Migration Projects

David Owen's insightful and challenging contribution to the symposium also concentrates on disagreements about the context of justice in terms of which temporary migration projects are addressed, but unlike the previous discussion it centers mainly on our methodological approach which he characterizes as methodological nationalism, while also pointing out disagreements on conceptual and substantive issues.

Owen notes how despite acknowledging that migrants engaged in temporary migration projects are engaged in transnational lives and the importance of mechanisms such as bilateral agreements with sending states, we do not explicitly address the question of the *context* of justice for migrants engaged in temporary migration projects by which Owen refers to "the relevant frame (national, transnational or global) within which the schedule of rights and duties are appropriately specified, rather they operate throughout in methodologically nationalist terms" (Owen 2025, 89).

Owen recognizes that we explicitly specify that the aim of our work is to address the normative questions raised by temporary migration projects in relation to the ethics of immigration of liberal democracies, while of course recognizing that temporary migration projects also raise questions in relation to the duties of sending states as well. He states, however, that his concern is not simply that we offer only a partial story that relates to receiving states alone, but rather that this omission represents a more difficult and deeper conceptual and methodological challenge:

> It is, I think, a methodological error to suppose that one can deal first the duties of B and then go on separately to specify the duties of A and then think about what cooperation achieving this may require. This is however precisely how Ottonelli and Torresi proceed albeit that they only seek to specify fully the duties of B (Owen 2025, 90)

where B stands for the receiving country and A for the sending counterpart.

This is because if it is the case that the duty of justice towards migrants engaged in temporary migration projects across two countries is a joint duty shared by them, then it follows that they have an obligation to cooperate in realizing this duty where, given that they are states with distinct territorial jurisdictions, this entails that they engage in joint action.

Now, while this may not yield different *practical* implications to the ones that follow from our position, Owen claims that it does entail that prior to defining the duties of each state in their co-operation we would need to specify the conditions of transnational justice that shape them, or as he says, to put another way, the duties of one state cannot be specified independently of the duties of the other.

There are two points we want to make in response to this challenge. First of all, just to repeat that our main concern in our work is indeed the duties that liberal democracies owe migrants engaged in temporary migration projects. These duties are appropriately thought of, in our perspective, at the national level because they are grounded in the presence of migrants within the national boundaries of the state and the role, therefore, that the state institutions find themselves playing in relation to the migrants' life plans, as well as some concern for reciprocity with the sedentary population.

In this sense we do not conceive of the duty to migrants engaged in temporary migration projects as a joint duty with the sending states even though, practically, the fulfilment of the duty may require, or may be best served, by cooperation. This is not to deny that sending states also have duties towards their migrating citizens, but these are grounded in the relationship the migrants have with their country of citizenship and are therefore quite different to the ones that pertain to the host state. This is not least because the sending state may not be a liberal democracy and therefore that relationship may be of quite a different nature, notwithstanding what one may believe the boundaries of liberal justice actually are, a topic quite beyond the present discussion.

Secondly, if we conceive of the lives of migrants engaged in temporary migration projects as transnational at all, this is in the weakest possible sense of the word and should not be taken to mean that their lives span a truly transnational space. On the contrary, a centrally salient feature of temporary migration projects is precisely the fact that the migrants' lives remain fundamentally anchored to the country of origin and do not exhibit the markers of a truly transnational life. Therefore, it seems odd to think of the duties owed to them as needing to be defined within a transnational context of justice. Which

is not to say this may not be true for other categories of migrants engaged in different migratory projects.

Finally, Owen raises two further questions that concern the issue of time. The first refers to what we may call a "brain drain" conundrum and raises the question of whether individual migration projects of migrants could be compulsorily limited to a shorter, or circular, migration patterns for reasons to do with global or intestate justice. The second concerns whether we suppose that the duration of a temporary migration project has no normative implications for the rights and duties of the migrants, as Owen says: "We can put this starkly by asking whether a TMP individual who has been present in a municipality of state B for 1 year and another who has been present for 40 years are in the same position as far as their rights and duties go" (Owen 2025, 93).

In relation to the first point, Owen quite righty guesses that given our focus on migrants' agency and the importance of life plans we do not support the idea of coercively limiting migratory opportunities for migrants, even though of course this does not exclude that we would find other means of achieving global or interstate justice in the brain drain context in other ways, for example, direct state-to-state compensation.

With regards the second point, this is an intriguing question that deserves further consideration. However, as our argument stands, we would not consider the duration of the migratory project as fundamentally changing the nature of the duties owed to migrants engaged in temporary migration projects except to recognize that the longer the stay the more the host countries institutions have an impact on the migrants, therefore strengthening the ground of the duty. It is also important to note though that given the taxing nature of temporary migration projects it is hard to imagine one that may last forty years without turning into a permanent migration experience, though it of course remains possible.

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Notes on contributor. Valeria Ottonelli is Professor of Political Philosophy at the University of Genoa, Dept. of Classics, Philosophy and History and research associate at FIERI. Her main research interests focus on the theory of just migration policies, with a special focus on temporary migration and, more recently, on the right to stay, and on the normative theory of democratic institutions and participation. In relation to the latter topic,

she has published extensively on voting paradoxes and democratic legitimacy, the ethics of democratic participation and the practice of democratic deliberation. She coordinates the national research project *Reconceptualising Immigration: from Exceptionality to Normality*.

Tiziana Torresi is Senior Lecturer in Political Theory at the University of Adelaide and Deputy Director of the Fay Gale Centre for Research on Gender. She holds a DPhil in Politics and International Relations, from the University of Oxford. Her research has been cited worldwide, mentioned by prominent media internationally and used by policy-makers. She has published widely on migration and temporary labor migration, migrants' voting rights, the role of cities in migration, citizenship, and populism. She collaborates with an interdisciplinary team of scientists working on human flourishing and theories of well-being, and she is co-chair of the Wellbeing Portfolio in the Adelaide School of Social Sciences. She is a founding member of the Global Justice Network and was the Vice-president of ARIA- Associazione Ricercatori Italiani in Australasia.

Contact. vottonel@nous.unige.it; tiziana.torresi@adelaide.edu.au

ORCID. Valeria Ottonelli https://orcid.org/0000-0001-6754-5986;

Tiziana Torresi https://orcid.org/0000-0001-7300-2646

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For a Backward-Looking Account of Political Responsibility: Rescuing the Role of Blame and Praise

Hannah McHugh

Ethics Institute, Utrecht University, Utrecht, The Netherlands

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Abstract

Accounts of political responsibility for structural domination from Young and in recent republican accounts separate blame and responsibility. Many of the ways agents interact with structural injustice appear to create exemptions or excuses from blameworthiness. I argue, contrarily, that blame is attributable precisely for failing in a structural responsibility and eliminating many of the excuses and exemptions identified. Philosophers of moral responsibility maintain the role of blame. Drawing on reason-responsive theories of a Strawsonian origin and recent signaling theories of blame, this paper defends blame as both appropriate and important for its ability to reveal emerging norms, improve their uptake, undermine dominating sources of power and transform structures. Blame is crucial in developing agents' sensitivities to normative reasons. Blame is crucial to effect political and personal change such as is required to undermine and transform dominating or unjust sources of power. Rescuing blame may make opaque structures transparent – in particular, where norms are emerging. This paper attends to the role of agents in the creation of sources of power which allows domination to persist.

Keywords: Political responsibility, Moral responsibility, Blame, Praise

Summary: Introduction; I. The social connection model: a critique; II. Blame: what is it and why use it?; II.I. Blame as signaling; II.II. Blame as scaffolding; III. Abnormal and developing moral contexts; IV. Exemptions and excuses; Conclusion; References.

Introduction

In the face of mounting contemporary concerns such as climate change and the impact of our consumer patterns, we are increasingly aware that collective

and individual actions contribute to structures that produce injustice and domination. Yet, we may feel uncertain as to how we ought to act, or to react to those whose behaviors produce and reproduce these structures. For instance: am I blameworthy for not becoming vegan given meat consumption's environmental impacts? Or, should I respond resentfully to a gendered microaggression, despite the minor nature of the apparently discrete harm? Addressing such questions requires investigating the function and role of reactive attitudes (in particular, those expressing blame and praise) and consideration of whether agents are fit to be held responsible in structural cases.

This paper argues for a conception of political responsibility that incorporates backwards-looking features like praise and blame. The primary focus of this article is blame, however I sketch some initial features of praise. The most prominent theorists of political responsibility – Arendt (1987) and Young (2011) – have argued against incorporating blame into their accounts. Young's social connection model (SCM) grounds a distinctively forward-looking account of responsibility which seeks to overcome the challenges of structural injustice by circumventing questions of who is liable for harm by instead exhorting agents to take up shared responsibility for future-oriented change. However, this disregards an integral function of blame identified by moral responsibility theorists: blame is key to revealing normative standards and to improving uptake of action in line with those standards[1]. The important forward-looking function of blame is particularly clear in emerging normative contexts: for instance where new norms related to gender appear, blaming agents for transgression and praising others for compliance is key in signaling emerging standards. Moreover, blame is key in transforming underlying power dynamics, which often are the normative issue at stake. Blame and praise transform power dynamics by challenging prevailing norms, and by improving uptake of transformative norms.

This paper proceeds as follows: Section I argues Young's SCM under-motivates transformative action by excluding backwards-looking political responsibility. I set out challenges that arise where norms are emerging or developing. Section II presents blame as entailing signaling and scaffolding functions attributable to agents of whom better future behavior can be demanded. Section III investigates how blame and praise change over time as normative standards are established. Section IV specifies this account is not merely instrumental, arguing blame is appropriate for contributions to structural domination.

[1] For example, Shoemaker and Vargas 2021 identify the signaling function of blame.

I. The social connection model: a critique

This article focusses on structural domination; a status-based condition which relates not to merely the capacity for opportunistic interference, but to robust capacity for interference constituted by social power. Such power may be drawn from laws, norms, ideologies and/or practices that some agents may participate in (re)producing while others are subject to them (Gädeke 2021). As structural domination is a central form of structural injustice, limitations of Young's SCM in addressing it must be regarded seriously (Ibid.).

To assess Young's SCM, it is important to first consider what a theory of responsibility ought to achieve and identify the challenges involved in doing so. There are two important senses in which agents may be responsible. First, which agents are responsible in the sense of having duties to take-up towards structural injustice and domination? Second, which agents may be held responsible in the sense of being justly subjected to reactive attitudes (i.e. are not excused from blame)? In this section, I specify limitations to Young's approach to these questions before framing emerging challenges to which this account responds.

When considering structural domination, it is at first glance unclear who has duties to act. Consider the case of sweatshop labor; the injustice is experienced by workers subjected to unethical conditions. Their plight is determined not only by floor managers, but also by national and international norms and rules governing the fashion trade. Countless agents' (in)actions contribute to injustices: floor managers and factory owners facing the pressures of market competition, high-street outlets selling items, consumers who purchase fast-fashion, non-purchasing consumers who that do not raise awareness of sweatshop labor. The list could go on.

Young responds by grounding responsibility to act in social connection[2]. Methodologically, Young is an individualist who recognizes individuals produce social structures and are the central locus of ethical responsibility. Young argues socially connected agents have forward-looking responsibilities towards injustice. Responsibilities attach to agents who have a role in the (re)production of injustice, including agents implicated by their power position. Young's model is widely recognized as the most promising. However, the

[2] Young considers political responsibility to be concerned with individuals' duties. This is distinct from 'responsibility' as typically understood by theorists of moral responsibility, who investigate whether agents are fit for attributions of blame or praise in particular contexts (Young 2011, 75). For a classic account of backwards-looking moral responsibility, see Wallace 1994 and Strawson 1974.

forward-looking SCM has limitations. First, Young's capacity-based model could reaffirm problematic power relations. Second, a purely forward-looking account may be insufficient to motivate take-up of responsibilities.

Connection to injustice a non-specific relational rationale for grounding responsibility, which Young does not connect to a role-specific duty to discharge responsibility. Young argues for a capacity-based discharge of responsibility, contending we should alleviate injustice based upon our capacity to act. Capacity is determined by agents' power to effect change, interest in doing so, privilege, and ability to organize collective action (Young 2011, 142-51).

The capacity-based aspect of SCM may reinforce the very problem it seeks to address. As domination is a power relation, agents must disempower themselves; not reaffirm problematic power structures. Consider, a Wall Street investor who enjoys a financial fortune due to investments that maintain unjust power relations (for instance through exploitative investment in mining resources from less developed nations and communities). This investor may donate charitably to local communities in said nations, but would continue to reify her domination (understood as capacity for arbitrary interference). Undermining domination requires addressing what is normatively significant: the power relationship. A capacity-based model will fail to take this into account perhaps by fighting injustice without rectifying those relationships of power that belie it. As Dorothea Gädeke (2021) has stated: "without an awareness of one's own position within structures of domination, its historical genesis and its sociological and psychological implications – and practical attempts at undermining it – any attempt to fight domination is likely to revert into domination" (197)

Domination relies upon the participating and non-participating roles of dominating, dominated, peripheral and by-standing agents. Redress of domination requires recognizing and undermining positions of empowerment or disempowerment, such that the dominator no longer holds capacity for arbitrary interference (whether desired or undesired by the dominator). Similarly, peripheral agents who lend support to the dominating structure must transform their power positions (189-90).

To see how Young's approach could reify structures of domination, consider a misogynist structure. The SCM implores us to see agents' political responsibilities depend upon power positions. While social connection is relevant in grounding responsibility to act, Young argues against attributing blame given structural injustice results from cumulative (often individually morally innocuous) actions. For Young, the genesis of injustice matters normatively, but she focuses only on forward-looking obligations. This doesn't

sufficiently regard the bases of power. Men who dominate do so in virtue of power relations; that men have options to undermine or to not undermine women reflects their capacity for arbitrary interference. A man may do all in his capacity to interpersonally respect the women in his life, however this will not undermine the problematic dynamic. This power relationship is established by a variety of sources including societal perpetuation of misogynistic behaviors and ideas.

Consider men who regularly microaggress, such as by assuming that younger women in the room must be present to take minutes. It would not be enough for this man to stop microaggressing. The refraining (while desirable) does not undermine men's power over women, which is established by the normative environment. To push the case further, perhaps a man chooses to exercise his capacity more widely, and stays quiet in the meeting, consciously allowing women more space to talk. Again while desirable, this could even reconfirm his dominating power: women are given space to speak at his whim or pleasure, and not robustly (in republican terms, a 'benevolent master').

The microaggressing man likely didn't intend to act misogynistically; his assumptions developed in his unchosen social experience, limiting awareness of his action's implications. Male domination relies upon the production and reproduction of such assumptions. Desisting from perpetuating microaggressions would be interpersonally important. However, transforming patriarchy requires collective action and social change. A dominator certainly can get things right on an interpersonal level by desisting. At the structural level, this account calls for agents in power-positions to join collective struggles to transform domination together. Young's model cannot adequately grapple with such features, as while men may seek to exercise their capacity to support women's emancipation, the injustice of these status harms is often unknown to the perpetrator. I will argue that a backwards-looking application of praise and blame is crucial for to reveal the normative character of assumptions on which microaggressions are based, as part of a process undermining the capacity of microaggressors.

In summary: for Young, agents with greater power should discharge greater responsibilities. However, I argue the genesis of this power must be examined, challenged and transformed. A goal of an account of political responsibility then is that it must have a transformational character. This transformation goal goes beyond Young's capacity-based discharge model.

I turn to a second limitation of the SCM: the model under-motivates the take-up of responsibility, specifically by excluding blame. Before setting out this argument more fully, let's consider first why it may be appealing to exclude blame. I have argued that undermining structural domination requires

transforming power positions. Yet, it is also true an agent's status as dominator, dominated, peripheral agent or bystander is unchosen. Agents may be born into their structural position (for instance, in cases of racism or sexism). Agents may find themselves involved in a practice that forces them into a power position, for instance by relying on an unjust global garment industry. This relational analysis is typical of the republican paradigm, where even benevolent masters dominate in virtue of a structurally constituted source of power[3]. An account of responsibility must be sensitive to this structural dimension.

Young circumvents this problem by offering a purely forward-looking conception of political responsibility. Young's SCM encourages agents to take up their responsibilities for the future and abandons blaming agents for the past. For Young, guilt is inappropriate in many cases of structural injustice as such cases lack intention, malice or negligence. Guilt's function is to locate fault and apportion either moral or legal blame. This distinction gives rise to a well-known critique of the SCM, articulated by Nussbaum. For the simple reason that time marches on, it is difficult to maintain retrospective and prospective portions of the conceptual distinction that guilt is only appropriate to past acts and responsibility to future acts (Nussbaum 2009, 141-2). If agents are not held accountable to fulfil duties, which are to an extent discretionary in nature on Young's account, it is difficult to see how many will be motivated to take them up.

Young has argued blame is a distinctively backward-looking phenomenon associated with moral and legal, but not political responsibility. For Young, the backwards-looking notion of blame is the distinguishing feature between moral and political responsibility. Against this, I argue agents can be blameworthy for failing to take up a political responsibility. Young's SCM claims that individual actors produce social structures, which are "the accumulated outcomes of the actions of the masses of individuals enacting their own projects, often uncoordinated with many others" (Young 2011, 63). While these actors may not intend harm, the resulting structure is unjust. Given that many agents whose passive or non-intentionally malicious behavior, consistent with accepted forms of conduct within society, contribute to structural domination, Young (144) identifies that these agents are not guilty "and should not be blamed". Nonetheless, these are cases of "a political responsibility not taken up" (88).

Young (89) specifies that for a responsibility "to be political, action must be public, and aimed at the possibility or goal of collective action to respond to and intervene in historic events". While Young draws a distinction between moral

[3] E.g. Pettit 1997, 73-4.

and legal responsibility as backward-looking, and political responsibility as forward-looking, it remains conceptually possible that a political responsibility may also be a legal or moral responsibility. The SCM is political, but – as Robin Zheng (2019) has argued – there is no inherent analytic distinction between moral and legal responsibility on the one hand and political responsibility on the other (110).

The distinction between the liability model of responsibility against which Young contrasts herself and the SCM can be characterized in terms other than backwards-looking and forwards-looking. The liability model is interactional, that is, involving actions directed at other individuals, while the SCM is structural, that is, involving actions directed at wider social structures. It is this structural nature, I argue, that places the model within the domain of political responsibility.

The core concept underlying both legal and moral responsibility is the notion of *personal responsibility* (Arendt 2003, 27). There are instances of forward-looking legal and moral responsibilities. The law has a forward-looking feature in the form of deterrence. Similarly, parental responsibility is an example of an ongoing moral responsibility. In considering this distinction, Maeve McKeown (2018, 43) has argued that Young's SCM can be divided into two concepts of moral responsibility: "relational moral responsibility (the appropriate conditions for praise and blame) and moral responsibility as virtue (being a morally responsible person). Relational moral responsibility is backward-looking, but moral responsibility as virtue is forward-looking"

I argue, against McKeown, the characterization of the appropriate conditions for praise and blame cannot be disentangled from the development of moral responsibility as virtue. By holding certain agents as responsible in a backward-looking sense, and exhorting others to become responsible for their role in injustice, we develop our sense of what is normatively appropriate. Ability to apply weight to normative reasons is developed when agents exist in a normative environment such that they are sensitive not only to the reasons for (in)action, but are able to assess those reasons using certain types of socially developed sensitivities. Responsibility is a product and consequence of background structures as well as targeted at redressing them. In the next section, drawing on moral theorists, I explicate more fully how blame and praise can improve the uptake of responsibility. Briefly: an agent's uptake of responsibility is influenced by background structures and practices of attributing blame and praise. Our ability to take up responsibility is contingent on our moral and social environment.

I have argued the SCM may fail to motivate the uptake of responsibility. A feature of this argument has been a consideration of the power of moral and

social norms and environments in upholding structural domination. Before moving onto my account of political responsibility, I consider in more depth the implications of norms. In particular, the challenges that normative standards are often unclear or opaque to many agents and that where new norms initially emerge it is difficult to attribute responsibility for their uptake.

Moral and social environments are not static; a theory of political responsibility must also account for the emergence and development of new normative standards. Let's imagine a scenario in which new gender norms are emerging: a non-binary identifying person (Sam) asks that their colleagues adopt non-gendered pronouns for them. Sam specifies that mistakes may happen, but ask everyone to make effort to adopt non-binary pronouns when addressing them at work. Some colleagues struggle to understand, having not knowingly encountered non-binary persons before. We may imagine that some colleagues initially make some mistakes but make a concerted effort to change their language, others successfully adopt the new practice, and others fail in almost all instances. I take this to be a case of structural domination given that non-binary persons represent a marginalized societal group and the harms of misgendering work to provide power to those who undermine their identity claim as well as more broadly to male or female identifying agents[4].

I take the misgendering to be a microaggression. Initially identified by the psychoanalyst Chester Pierce, microaggressions are minor or subtle details of interactions between people that function as a degradation or putdown while appearing innocuous and plausibly unintentional (Pierce 1974). By their nature they are often slight, including behaviors such as particular turns of phrase, body language, comments, or tone of voice and are commonly difficult to detect. In paradigmatic cases, microaggressions occur in the context where the perpetrator belongs to a more dominant group than the victim.

Some agents who fail to adopt Sam's pronouns may do so because they are unfamiliar with the emerging normative standard. They may not intentionally harm Sam, being largely unaware of why misgendering is harmful. While a particular instance of misgendering may only be minorly harmful, microaggressions are disproportionately harmful due to their part in an oppressive pattern of similar insults (Rini 2018). The harm is related directly to the underlying power structure. Oppressive and dominating wrongdoing often occurs at the point of social practice, and these practices contribute to the structural environment. Comparably, where feminist norms emerge, a woman might experience conflicting reactions: on the

[4] This case is considered in the context of oppressive praise in McHugh 2024, 5.

one hand feeling victimized and on the other hand being restrained from expressing or dully experiencing that victimization due to social invisibility of the offenses.

This is an example of what Cheshire Calhoun calls abnormal moral contexts. These arise at the frontiers of moral knowledge when a subgroup of society makes advances in moral knowledge quicker than dissemination and assimilation of this knowledge by wider society. The result is the rightness or wrongness of courses of action are transparent only to the knowledge acquiring subgroup while opaque to others. As moral knowledge is not shared, the presumption that all agents are equally capable of self-legislation breaks down (Cheshire Calhoun 1989 394). Abnormal moral contexts account for emerging norms. However, there are important further cases that track our normative development uncaptured by the Calhoun, which an account of political responsibility should address. The process of dissemination, I argue, extends to instances where new norms have emerged but agents are not attributing the moral or normative weight necessary to make standards sufficiently dominant to motivate action.

Consider supply-chains connected to sweatshop labor; the wrongness of sweatshop labor is transparent to arguably almost all subgroups. There is widespread knowledge of this structural injustice. Yet, understanding of the wrongness of buying cheap fashion continues to develop in the sense that while agents have knowledge of the injustice, many do not attribute themselves or others with responsibility to refrain from practices or to transform their status position within the structure. Agents have not attributed weight to reasons which compel them to take up responsibilities. Our specific capacity to respond to structural domination is in a process of development (agents' particular responsibilities remain unclear and agents have not yet attributed weight to reasons to adopt those responsibilities)[5]. While we hold onto the notion that we are excused or exempted by the structural factors at play, the normative flaws of our actions remain opaque.

I have argued the goal of a theory of political responsibility is to identify agents who have transformational responsibilities in cases of structural domination. The determination of who is responsible, together with practices of holding these agents responsible, should serve to undermine sources of power and to transform power relationships. I have shown that abnormal and developing moral contexts are a particular challenge. These cases may be unresolved by the SCM, given its reliance on only forward-looking

[5] Pettit and McGeer claim that a specific capacity is, beyond a generic capacity, developed capacity to act whereby agents have internalized that they may act or not act in a particular context (Pettit and McGeer 2015, 168-9).

responsibility which does not necessarily address the assumptions which belie could reify dominating structures.

There are three resulting challenges which I now take on. First, undermining the sources of power and transforming power relations. Second, determining whether agents are fit to be attributed backwards-looking responsibilities in structural cases. Third, offering an account which motivates agents to take up forward-looking responsibilities. Blame and praise are key in responding to these challenges as they are key in motivating agents, revealing normative standards and transforming power relations. This requires investigating the roles and functions of blame.

II. Blame: what is it and why use it?

While moral philosophers offer varying accounts of blame, the leading theories converge on the following elements: blame is a response to an agent for a perceived violation of a moral norm where the blamer takes that violated norm seriously. I set out here two key functions of blaming that enable it to fulfil these functions: signaling and scaffolding.

II.I. Blame as signaling

Shoemaker and Vargas argue that what unifies practices of blame (and the reactive attitudes involved) is a signaling function. Blaming can signal how we expect others to act and to react, as well as our own commitment to standards (Shoemaker and Vargas 2021). Following these philosophers, I argue that blaming cannot be only a species of holding an agent accountable; if it were, this would pose problems when we blame the dead or absent. Blaming typically is a costly exercise for the blamer; costing her in emotional energy and time, often to the detriment of relationships. Yet, agents engage in blaming practices to signal commitment to a social group or community. Groups are defined by wide-ranging, subtle and constantly evolving interpersonal and structural norms. There are social advantages to blaming: agents may reveal their personal character, values, practical identity and group membership. Demonstrating commitment to normative standards may increase trust in the agent. Moreover, beyond social signals, the practice can indicate and reveal normative standards of the day reflexively (to the blamer as well as to the blamed and to observers). Blame then is both backwards and forwards-looking, shaping our ability to recognize and respond to moral and normative reasons.

II.II. Blame as scaffolding

The function of blame can be understood from the perspective of social practices. This approach was adopted in Strawson's seminal 'Freedom and Resentment' where blame centralized in theorizing about responsibility [6]. Strawson focuses on a subset of emotions, the 'reactive attitudes', which play a fundamental role in practices of holding one another responsible. Strawson shows that emotions typical of our blaming or praising practices can attach to an agent without calling into question whether that agent has a generic capacity to reason. Strawson places theorizing about responsibility in the realm of social practices and focusses on whether the agent in question is one of whom better future behavior can be demanded. This is a necessary criterion for the ascription of blame.

In Strawson's terms, responsibility does not only depend on the metaphysical issue of whether an agent is in control of their actions, but instead on the social fact of whether we consider an agent fit for 'reactive attitudes' such as resentment or indignation (Strawson 1962). Building upon this, theorists have proposed that responsibility depends upon an agent's 'reason-responsiveness'. Pettit and McGeer have put forward a version of reason-responsiveness that highlights the social nature of responsibility practices development. What matters for ascriptions of responsibility then is not merely a metaphysical possibility of action, but that an agent has capacity to register reasons, and to choose between options in response to those reasons such that an epistemic possibility exists. Therefore, we must consider whether an agent chose to act in a context in which they were able to register reasons for and against choices. The context's bearing upon how the normative weight of reasons appears to agents will be relevant. Blame also works to 'scaffold' responsibility by improving agents' sensitivity to reasons and making agents more likely to take up action[7].

I have set out two characteristics of the role of blame in our responsibility practices. First, that the reactive attitudes involved in our blaming activities are indicative of violated norms (the signaling function). Second, that application of blame can indicate and lead to better behavior that might be demanded of agents to whom it is applied (the scaffolding feature). These characteristics are key, I suggest, in how we respond to agents who have a political responsibility.

[6] The debate prior to Strawson centered on whether causal determinism, or libertarian conceptions of free-will were of merit. Strawson's aim was to find a route between incompatibilist accounts committed to a free-will requirement on responsibility, and forward-looking compatibilist accounts that did not sufficiently account for the interpersonal significance of the affective component of our responsibility practices.

[7] Scaffold is the term adopted by McGeer 2019.

Taken together, these characteristics result in an understanding of blame as is integral in shaping moral and normative commitments and our practical ability to respond to reasons. These features highlight that responsibility practices are crucial sites in which normative reasoning and negotiation takes place between agents. The political and normative influence that one is most profound over those to whom they are socially connected[8].

In cases of structural domination, norms are often unclear or difficult to identify due to concealing structural arrangements and the emerging state of norms (conditions of normative opacity). Where structures are regarded as the cause and fault of injustice, this conceals the actions of agents that produce and reproduce said structures. Removing blame from political responsibility not only excuses agents, but distorts ideas regarding power for collective change. We may prefer to see ourselves as entirely subject to structures, and indeed at times due to the diffuse nature of certain structures it is difficult to identify our moral or political responsibilities. For instance, when purchasing fast-fashion items, it may not be easy to recognize the injustice we participate in as regards sweatshop labor. I argue this perspective is a distortion. Fast-fashion is commonly known to be unjust. Blaming agents involved in the chain will help to make these opaque structures transparent. Blaming can both indicate a norm and build the motivation for agents to take up action to transform structures. Attributing backward-looking responsibility involves making the violation of the norm publicly apparent and provides impetus for change, enabling and motivating forward-looking responsibility.

III. Abnormal and developing moral contexts

I have argued that an account of political responsibility ought to transform power relations. This requires revealing and undermining the sources of power that ground power relations. Motivating the uptake of transformative responsibilities is crucial, including in abnormal and developing moral contexts. I now turn to blame and praise's role in meeting this challenge.

The idea that agents would behave immorally in the absence of social contexts is far from new. In 375 B.C. Plato aired this thought through the voice of Glaucon, who contended that under the conditions of the Ring of Gyges the

[8] Agents will have conflicting ideals of justice and appropriate action to subvert injustice. Responsibility practices offer opportunities to negotiate these standards. An ideal account of emancipatory norms is beyond scope of this article.

Lydian, no person would behave according to the normative standards of society, instead responding purely to self-interest (Plato 2004). To demonstrate blame's role in developing our internal normative standards and our capacity to respond to such standards, let's consider an example of a collective injustice.

We are now aware that our actions are contributing to climate injustice. Yet, a significant number of us are not changing our behavior to the greatest extent compatible with our capacities. Perhaps we know that meat production and use of animal products cause great emissions globally, yet we do not become vegan. On Young's account, we are failing in our forward-looking responsibilities. Many of us have a capacity to become vegan (and incidentally it appears there are few excusing reasons which hold up to the standards of the SCM for most well-off Western citizens where food is plentiful). Such agents have a generic capacity: the bare capabilities necessary to act if so inclined and/or motivated. However, perhaps becoming vegan is not a readily exercisable capacity. It could be merely a speculation about future possibility – in the way that one may speculate as to the possibility of rain – as opposed to a claim about an agent's present capacity to become vegan given their personal disposition and circumstances. The difference being that in the former case, agents do not have capacity to bring about this situation (to make it rain) and in the latter agents have a capacity to take up a responsibility. To assess whether this claim has merit, we must consider the conditions necessary to be reason-responsive. Pettit and McGeer have advanced a version of reason-responsiveness that highlights the social nature of capacity. They argue:

> […] your being disposed to appreciate and act on relevant considerations in various choices – your having the generic and often specific capacity to respond to relevant reasons – is not just the result of your own perception and appreciation of the factors that weigh for and against certain options. It is bound to be due in good part to your having heeded the judgment and advice of others, and benefitted from their encouragement. In developing a reason-responsive capacity, you learned from exchanges with others, in particular others who were ready to reason with you, to draw attention to purportedly relevant factors, to listen to your reactions to their observations, to look for a common point of view from which to reconcile differences, and so on (Pettit and McGeer 2015, 168-9).

A specific capacity to respond to reasons depends upon the 'ecology' of our normative environment. Young argues that in response to structural injustice, agents ought to use capacities to change background conditions. Yet, in light of the conception of blame I have introduced and its role in developing and shaping

our ability to respond to normative reasons, there is a missing element in Young's analysis. For agents to change background structures, the conditions through which a generic capacity becomes a specific capacity must be accounted for and this, I argue, involves practices of blaming and praising.

At one time, most felt that becoming vegan was radical behavior. However, over time, as more of our contemporaries have adopted such practices, many no longer interpret veganism as exceptional and more consider whether to adopt such behaviors. The benefits of veganism initially were understood in an abnormal moral context. Only certain subgroups were aware of injustices associated with global meat consumption. In some places, it could now be that vegan norms are in a developing moral context; where the benefits are known yet many have not taken up the practice. Social structures, not merely our individual wherewithal (or access to information, or to plant-based foods), develops our sensitivity to reasons for action and shapes our proclivity to respond to reasons. Agents are only able to select reasons within the context of and guided by social environments. Commonly accepted standards have a significant bearing on what actions agents choose. Blame and praise are important features of this environmental development and improve the uptake of responsibility in abnormal and developing moral contexts.

The driving idea is that reason-responsiveness depends upon sensitivity to actual or prospective audiences and to opinions others are likely to form in light of actions. As reactions change, uptake of the commitment will correspondingly vary. As more agents become vegan the costs associated with doing so decrease. Blame for non-compliance will increase and agents will attribute higher weight to the reasons supporting veganism. This does not, however, mean that agents are entirely self-interested. While social infrastructures can develop and support normative convictions in agents, agents will also internalize reasons and hold them as personal convictions. For instance, children who are brought up to respect honesty will likely become adults who themselves value honesty. The upshot is that agents' responsiveness to reasons in given choices – the specific capacity to respond to reasons – is a function of "the standing sensitivity to reasons that you bring to that choice and the situational strengthening of that sensitivity under the impact of your sensitivity to an authorized audience" (Pettit and McGeer 2015, 175).

This account highlights the developing nature of social environments. Consider what it means to state: 'you ought to be vegan'. This statement implies both that there is a responsibility (conceived of as duty) and that an agent is fit to be held responsible for their (non)compliance. The statement carries a developmental assumption (168). This exhortation bears directly upon reason-

responsiveness. It is part of a process enabling agents to attribute weight to normative reasons and to take up political responsibilities.

Blame has two key roles relevant to the context of structural injustice and domination: a functional role in signaling normative standards and commitments to them, and a role in building sensitivity to reasons. Blame can create conditions under which agents may reform their normative commitments. These norms are sources of power that enable structural domination. Undermining these will have a transformative effect agents' power positions by undermining the assumptions and practices which facilitate (for instance) climate injustice. Blame and praise in emerging and developing moral contexts may serve to undermine sources of dominating power and to render opaque structural injustice and domination transparent.

In conditions of unjust background norms, agents may be unaware whether they are responsible for errantly (re)producing unjust norms. Vargas has addressed how to conceive of agency in such conditions (Vargas 2017, 228). If, for instance, implicit bias diminished an agent's responsibility, society's moral ecology may not develop according to emancipatory goals. Excusing implicit biases may have the effect of entrenching the norms which attend them through responsibility practices. Vargas's agency cultivation model overcomes this possibility. According Vargas, a normative account of the justification of responsibility practices can be grounded in terms of the effects of those practices on an agent's ability to self-govern given moral considerations (ibid.). Blaming is an important form of moral feedback. This feedback is necessary for the socially self-governed agency that our responsibility practices (and moral ecology) depend upon. An upshot of these three features taken together (signaling, scaffolding and socially self-governed agency), is that agents ought to recognize they are reliant on others to engage in normative and moral reasoning: political responsibility entails engaging in practices such as blame and praise.

I have argued that responsibility practices change over time as new norms emerge. I will now be more precise on how these practices develop and focus further upon praise's role in developing our normative commitments. Let's return to Sam's case to consider how the practice of blaming and praising may change as norms emerge and develop.

Firstly, consider the role of praise for those who adopt the practice of using non-binary pronouns. If agents are praised at the outset, this may scaffold the capacity of others to recognize the normative reasons that apply to them. However, if agents are continually praised over time, different impacts emerge. Agents' behaviors become viewed as exceptional. The practice does not appear as an entrenched norm when active praising is elicited for adoption. This creates

instead an image of the practice as supererogatory. Praise can also signal a moral or normative standard and in the same way so can absence of praise (McHugh 2024). Conversely, an appropriate response to colleagues who frequently fail to adopt their colleague's affirming pronouns is blame. This signals the norm in question and reflects agents' responsibility to adopt it.

I have argued that generic capacity to respond to reasons depends upon the ecology of a normative environment. Praise is an element of creating this environment. Recognizing the morally or normatively exceptional through praise ought only happen when such agents genuinely are exceptional in this sense. Indeed, there is a role for such practices in seeking to develop agents' ability to respond to structural injustice or domination. Greta Thunberg's morally exceptional actions in combatting climate change go beyond taking up her political responsibility towards the structure given the extent of her activism and the influence she has created and harnessed. In praising Thunberg, we recognize exceptionality, and this can be a motivational force behind normative development. Over time, as standards develop and become more embedded, conditions of praise and blame adapt. Praise decreases for adoption of the norm, and blame increases for non-adoption. In Sam's case, we see that the attribution of praise and blame operates to reveal the emerging normative standard, and at the same time improve up-take of that standard. The norm of not recognizing non-binary persons begins to lose force and the status of non-binary persons is transformed. Backwards-looking responsibility thereby has a transformational effect on power-relations.

An interesting feature of praising is that, unlike blaming, in many instances it is a low-cost form of signaling. Shoemaker and Vargas have argued that we absorb the costs of blaming (including negative emotions, strained social relationships, time and energy) to signal commitment to norms which benefit the blamer as a demonstrable member of a group which operates under a normative framework (Shoemaker and Vargas 2021). In the case of praising, it could be that undue praise will undermine such a commitment to relevant norms. However, praise appropriately levied (in particular as norms are newly emerging) can help to entrench norms. A shift from praise for adoption to blame for non-adoption in emerging scenarios will be important in motivating take-up of responsibilities. Praise is often less costly to employ, but perhaps too often used in lieu of its counterpart. Praise, wrongly used, can reproduce the structure of domination which purports to excuse agents from taking up their political responsibilities (McHugh 2024).

I now turn to a significant challenge to this account: the structural environment is often considered as an excuse or exemption that renders blame

or praise inappropriate. I argue, however, this is better conceived of as the frame from which agents (re)produce commitments to normative standards. Where agents are a part of the (re)production of that very structure they claim excuses or exempts them from responsibility, they ought to be held responsible for its transformation, including through blaming and praising practices that transform the norms which belie power-relations. Such norms are sources of power that enable relationships of domination. Excusing the behavior of contributory agents may reify unjust structures by giving a sanctioning force to behaviors that cumulatively create those structures.

Many cases of 'twitter-style blame' (by which I mean angry, unnuanced, and unreasoned attacks on non-proximate agents in a social sense), and cases of scapegoating, will fall short of the expectations of the account of political responsibility argued for in this paper. Some may feel alienated by blame; but if we do not call out injustice and seek open discussion, then we reinforce the premises of dominators. Transformation may not be in the interests of those who benefit from maintaining power structures, who may resist. However, it is important to recall that blaming has the capacity to scaffold responsibility in the blamer, observers and the blamed and so should not be dismissed because it may deter unwilling subgroups[9].

IV. Exemptions and excuses

An important objection remains: are agents fit to be held responsible in these structural cases? Put otherwise, my account may appear instrumental in the sense that blame is only a motivational tool rather than a justified response to moral or normative transgressions. Some theorists strongly object to the use of instrumental blame as disrespectful or manipulative[10]. I argue that my account is not purely instrumental by demonstrating that agents often do have backwards-looking connections to structural injustice. There are two reasons that agents are said to be unfit for blame: either by being *exempt* or *excused*. I hold that agents connected within dominating structures are not exempt, and therefore justifiably may attract non-instrumental blame. I go on to specify where agents will or will not have excuses for blame.

Young maintains that backwards-looking attributions of blame are

[9] For a full discussion of how oppressive praise may be transformed to progressive praise, see McHugh, 2025.

[10] McGeer 2013 calls this the 'anti-regulation' concern.

inappropriate in cases of structural domination. I argue that the basis upon which Young asserts this is defeasible. Agents may have an *excuse* not to exercise their political responsibility, but do not have an *exemption* from backwards-looking responsibility. Aside from practical considerations, Young finds that there are three reasons why individuals who, although connected to structural domination, are not guilty and should not attract backward-looking responsibility or blame. First, they do not intend structural domination. Second, they act within accepted rules and norms in the course of participating in these structures. Third, agents are constrained by the system in which they are acting (Young 2011, 170). I will contend that these three criteria do not preclude responsibility from arising in the first place. That is to say: agents are not *exempt* from responsibility on Young's account. I specify the limited circumstances in which excuses arise.

An agent can be exempt from moral responsibility if they do not have the generic capacity for responsibility. For Strawsonians, an exempted agent would not be considered as a moral agent in the relevant sense. Contrastingly, an agent can be excused from responsibility if they lacked knowledge or physical capacity, or their normal deliberative processes were interfered with at the time of acting; in these cases agents do not act voluntarily. To determine whether Young's three reasons are exemptions or excuses, let's consider each reason presented in turn.

Young's first reason is that agents lack intention for outcomes of their collective behavior. Nonetheless, it is not clear why lack of intention should exempt grounding a backward-looking responsibility. Indeed, an account of why social connection grounds responsibility is relevant only to the extent that social connection explains why an agent may attract backwards-looking responsibility. Social connection has no necessary bearing on forward-looking responsibility. Social connection is only relevant to establish a link to a past action that has led to a present wrong. Intention may or may not be a feature of that social connection, but this does not bear on whether backwards-looking responsibility is grounded (even if that responsibility may later be excused).

To elaborate this, recall the example of agents who choose not to reduce meat consumption, such agents contribute to the connected environmental injustices and further lend power to the norm that meat eating is an accepted practice. A peripheral agent is one who, in their everyday interactions, acts on or implicitly accepts relevant norms and practices. In this case, the meat-eating population could be considered as such. They provide support to the power structure. They are connected to the injustice and have a power role to be transformed. A person who has a role in the (re)production of an unjust

structure, even if the effect is unintended, is not exempted from attributions of responsibility.

Turning to the second reason, it is unconvincing that small or remote contributions to injustice that are within normally accepted patterns of action (perhaps not directly traceable to a particular harm or outcome) exempt agents. Young grounds responsibility on social connection to injustice (Young 2011, 89). Yet, she finds that given many actions will not themselves be independently unjust, agents are not blameworthy. This approach does not sufficiently regard the power dynamics that belie structural domination.

Consider again microaggressions against Sam. The normative issue at stake in such cases is that no individual microaggression itself is necessarily harmful. Microaggressions are harmful precisely because of their systematic nature; microaggressions reflect a normatively problematic power structure. While individually minor or innocuous, it is true nonetheless that microaggressions contribute to power dynamics. Microaggressions (re)produce power structures; agents who repeat them hold a powerful structural position. For Young, this position may be considered as social connection. Through collective speech agents (re)produce a power dynamic to which others are subject. Ideas may be perpetuated by peripheral agents, who do not enjoy the benefit of the power relationship they (re)produce, however peripheral agents do take part in the production and reproduction of power structures. The (in)action of peripheral agents is not morally innocuous when seen in this context.

In many cases, an agent cannot know precisely their contribution to harm, nor distinguish it from the harm caused by others. In considering whether a lack of traceability to a discrete harm bears upon backwards-looking responsibility, Sangiovanni puts forward a convincing case for why such responsibility can attach. Sangiovanni argues, contra Young, that it does not matter:

if any particular aspect of the structure is "traceable" to the causal contributions of specific individuals. As long as individuals make a causal contribution to sustaining the unjust structure, the fact that it is difficult to determine which particular aspect of the structure or its resultant injustice is sustained by their individual contribution does not, merely as a result of that fact, mitigate their wrongdoing (Sangiovanni 2018, 477-8).

That a contribution is tiny, unintended, untraceable, and 'everyday' is not enough either to eliminate responsibility. An agent's degree of responsibility may be reduced on the basis that this forms an excuse, however minor contribution cannot exempt blameworthiness.

Young's third reason – that agents are structurally constrained in acting – is self-evidently not an exemption from responsibility. Structural constraints are

relevant only to the extent that they prevent an agent taking up a responsibility that they otherwise would have had. Agents then are not exempt from attributions of backwards-looking responsibility based on having individually morally innocuous consequences, making only minor contributions to injustice, nor from structural constraints that hinder agents' capacity to act. Considering the view of socially self-governed agency defended, not holding agents responsible for contributions to structural injustice would be a failure to engage them as moral agents who require feedback to develop responsible agency. Blame communicates that a better standard of behavior can be demanded and respects the recipient's moral agency.

I turn now to whether agents are *excused* from blameworthiness in structural cases by returning to Young's three reasons. First, lack of intention to cause structural injustice or domination. Young does not focus on cases where agents are unaware of injustice, indeed she exhorts agents to acknowledge their connection and contribution to injustice. Young seeks to develop agents' capacity to respond to injustice by highlighting social connection. Yet, it seems she could do so more effectively if she advocated such exhortations through backward-looking responsibility. In many cases of structural domination, while we may not see the precise impact of our behavior, it has been contended many times that (for example), 'drivers can come to be aware of the damage done by a way of life that ignores atmospheric effects' and therefore become individually accountable for "the unintended consequences of what they do together" (Kutz 2000, 189). That agents' contributions may be minor or untraceable in the outcome of climate change is not to say there is a total lack of epistemic capacity. There is merely a deficit in knowledge of precise contributions to harm. Agents are not excused by the mere fact of having only a minor contribution. Crucially, agents are not individually backwardly responsible for the collective injustice. Agents will be minorly responsible, in a backwards-looking way, for their unknown contributions. Blame is not purely instrumental where agents operate in emerging moral contexts (where they have knowledge of their participation but have failed to act).

Young's third reason for not attributing backwards responsibility – that agents may be constrained by the system in which they operate – is an example of an excuse. Wallace has categorized four classes of excuse from moral responsibility, the fourth of which – most relevant to structural cases– is coercion, necessity and duress. More precisely, structural cases appear comparable to the excuses from necessity and duress: whereby we consider that society is organized so that there is no option but to participate (Wallace 1994, 135). This excuse may be valid for some agents – but certainly not all. Some

will be prohibited from acting due to structural constraints – such as workers on the sweatshop floor, with little alternative. Even where excuses are appropriate the possibility of blame or praise for (re)producing dominating norms invites valuable normative reflection. Backwards-responsibility relates to contributions to injustice and is not for the entirety of structural injustice. Women who make patriarchal bargains may or may not be excused, depending on the extent of coercion, necessity or duress but the reasoning invited by backwards-looking practices will be important for normative ecologies. I suggest that this set of constrained agents is far narrower than on Young's account. For instance, consumers do have the capacity to refrain from purchasing fast fashion and to publicly object. I suggest that blaming agents who fail to do so is crucial in more developing capacities from generic to specific.

In summary, Young's account does not exempt agents from responsibility, but some agents could be excused for failure to act. Having shown that agents are not exempted from blame in cases of structural injustice or domination, and that few are excused by remoteness or by minor contributions to harm (only those genuinely constrained or coerced), there is a far broader set of agents to whom blame may apply. Blameworthiness is appropriate for agents whose actions lend support to structural sources of power that lead to domination, and not merely instrumentally so.

Conclusion

This paper has sought to rescue the role of backwards-looking political responsibility. Blame, in political contexts, is attributable for failing in a structural responsibility. We each have political responsibilities that are not defined solely in terms of the outcomes from which we may be remote or contribute to only in a minor way. There is no remoteness between us and the way that our actions or inactions lend power to structural phenomena such as problematic social norms. These norms provide an important source of power for structural domination, which I have argued is not addressed by Young's SCM. Structural domination is addressed by a transformation of power relationships, which made feasible in part through attributing backwards-looking responsibility. This will have positive effects for improving the uptake of forwards-looking responsibilities. This account of political responsibility will better enable agents to respond to abnormal moral contexts and contexts where norms are emerging and/or developing.

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Notes on contributor. Hannah McHugh is a postdoctoral fellow at the Ethics Institute, Utrecht University. Her main philosophical and ethical interests are approaches to the market economy, social media, neo-republican political theory, political responsibility, and feminist philosophy. Hannah was previously a postdoctoral fellow of the Justitia Centre for Advanced Studies at Goethe University. Hannah conducted her PhD in Political Theory at University College London and has taught at the London School of Economics. Hannah is a Labour Party Councillor in Islington, London.

Contact. hannah.mchugh.16@alumni.ucl.ac.uk

ORCID. Hannah McHugh https://orcid.org/0000-0002-8259-8522

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Borders, Boundaries, Frontiers, Limits

Timur Cengiz Uçan

Universities of Bordeaux, Bordeaux, France

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Abstract

This article delves into the intricacies of the uses of the words and concepts of borders, boundaries, frontiers, and limits, to address epistemological difficulties related to linguistic and philosophical confusions, sometimes used to target migrants populations. These confusions accordingly can and should be ended to coherently pose and sufficiently address social and ecological difficulties whose interrelatedness is increasingly acknowledged. This objective can be attained by criticizing the confusion of borders as frontiers and borders as outlines, which tends to lead to conceiving of (unrestrictive) limits as (restrictive) boundaries and inversely. Assumptions about languages (as English, French, Turkish, etc.) according to which some languages could somehow be as such inherently provided with expressive resources that could somehow be as such inherently lacking within other languages are necessarily misled and misleading: expressive resources necessary and sufficient to account for interrelated uses of the mentioned concepts are available in and across different languages. The establishment of such availability suffices to cast into doubt the projection of an inherent lack of such expressive resources on other languages. Analysis of language uses can manifest that distinctions between applications of the mentioned concepts can be achieved without a one-to-one correlation of concepts and words within and across languages.

Keywords: Border, Boundary, Limit, Outline

Summary: Introduction: A Philosophical, Ordinary, and Human Problem; I. Linguistic and Philosophical Elucidations about Uses of “Borders”, “Boundaries”, “Frontiers”, and “Limits”; II. Borders and Migration; Conclusion.

Introduction: A Philosophical, Ordinary, and Human Problem

This article has for objective to address and solve epistemological difficulties which can be encountered in some works of anthropology, philosophy, political

sciences, sociology, also in mediatized discourses, and which have not been related and studied in their interrelations. These difficulties are related to some accounts and explanations provided of languages (so-called "natural languages", or more simply, languages, such as English, French, Turkish, etc.) in answer to two concerns. The first is about (the status) of the existence of limits, and the second about the sufficiency of languages to make conceptual distinctions with linguistic uses which involve the words "boundaries", "borders", "frontiers", and "limits". Epistemological questions can indeed be raised with respect to our uses of the word of limit. Indeed, in some cases both the existence and the functioning of limits as such involve human actions (as in cases of borders of countries with border-posts). Although such actions can, at least, seem not to be involved in other cases (as in cases of mountains and seas presented as limits of adjacent inhabited areas). Further epistemological questions can be raised about the status of the existence of limits. Some cases (notably involved by mathematics, by grammatical paradigms, but also by cases involving what are sometimes called "fuzzy borders") indeed do not involve demarcations as in earlier mentioned cases of some borders of countries.

One philosophical concern is thus about the status of the existence of limits: to think and account for the existence of borders, boundaries, and frontiers involves some implicit or explicit use of the concept of limit. But as not every limit involves demarcation in the earlier mentioned sense, there might seem to be some unavoidable tension, some intrinsic contradiction involved by the very existence of limits. One correlative conception that might seem adequate to solve this difficulty is the conception according to which a one-to-one correlation of words and concepts is both necessary and sufficient to pose and address the issue. That is to say, if distinct words stand for distinct concepts, then we might use distinct words to apply distinct concepts without mistakes (as with English, and the words "boundaries", "borders", "frontiers", and "limits"). Such conception is advantageous (notably internally to one language) as – to use an image – using distinct tools to achieve distinct tasks is likely to contribute to better achievements of the distinct tasks for which the distinct tools have been conceived. But such conception could not turn out necessarily (and even less, unavoidably) adequate, and tends to generate difficulties when *several* languages are considered. The absence of a one-to-one correlation of distinct words with distinct concepts in a language by contrast with another language, can indeed (wrongly or delusively) be assumed to be indicative of an eventual lack of a concept in a language. Remarkable is that such can *unproblematically* be the case: some languages contain concepts that both testify of earlier made distinctions and nuances, and render achievable

experiential distinctions which are adapted to determinate forms of life (one well-known example are the numerous words for and arguably *concepts* of snow present for example in Inuit, which are correlated to practical differences (See Krupnik and Müller-Wille 2010). But such can also be *problematically* the case, especially if it is supposed that a lack of a concept could be *as such* inherent to a language, and therefore definitive.

Such remarks about languages might seem to be *just* about languages, conceived in a narrow sense, as activities related to *only* inherently linguistic units (as morphemes, letters, words, sentences). Nevertheless**,** the earlier preconceptions about languages also have (un)social and (un)ecological consequences and are thusly correlated with other difficulties. Let us use an image, a comparison to render clear these difficulties. Borders as frontiers are like doors which are open and closed under different descriptions, open to those who can cross the border-doors and closed to those who cannot cross the border-doors. This image can serve to explicit two different ranges of considerations: (i) The first concerns security and trust: members of a political unit (whether that of a country or a supranational union of countries as Europe) might want to exert some control with respect to persons who are allowed or not to cross the borders of these political units. (ii) The second concerns unity and identity: borders (frontiers) are, in some sense, constitutive of countries and political units composed of countries. Countries (not imaginary ones) have borders. To be identifiable as a citizen of (at least) one country involves the existence of borders (frontiers). Borders (frontiers) cannot without mistake be considered as (imaginary) lines under each and every description we can provide of these. Even if one claims, and arguably legitimately, that borders (frontiers) are unnecessary, one does need to account for the intelligibility of the fact that for some reasons, eventually right or wrong, some are allowed and some are not allowed to cross borders (frontiers). Less than claims, such remarks do express implicit aspects of practices and uses.

This article draws attention to an issue that can be characterized as a 'vicious circle', and proposes ways to, so to speak, 'reverse' a common tendency. This issue can be expressed as follows: (Un)human catastrophes (e.g. fatal "push-backs" of migrants) related to the hardening of border (frontiers) policies would be unwanted by everyone. Nevertheless, retractive and hardening moves with respect to migration and border (frontiers) policies provoke or augment the probabilities of the happening of such (un)human catastrophes. Such catastrophes can nevertheless be (illegitimately) used in further attempts to pseudo-justify further retractive moves within discourses, among which, political discourses. As a result, the probabilities of the happening of migration related catastrophes, as a

direct consequence of climate catastrophes, or as an indirect consequence of the functioning of extractivisms, i.e. of massive and interrelated structures of extraction and exchange of natural resources (see Gudynas 2017; Gudynas 2020; Arsel & Pellegrini 2022), keep increasing. Such increase is partially correlated to the increase of pressures related to wars for natural resources, and to labor exploitation. Yet the benefits of migration to countries is recurrently established and basic to social sciences. This article has for objective to contribute to ending such a 'vicious circle' by addressing epistemological difficulties that are involved by problematic instrumentalizations which are directly or indirectly involved by the happening of the mentioned catastrophes. To achieve this objective, the first part of the article presents linguistic and philosophical clarifications concerning the uses of the concepts and the words "borders", "boundaries", "frontiers", and "limits". The second part of the article presents some facts about borders and relations of migration and border policies, analyzed with basic elements and distinctions from contemporary philosophy of action. The article then concludes with elements of an adequate response to the earlier mentioned problematic tendency.

I. Linguistic and Philosophical Elucidations about Uses of "Borders", "Boundaries", "Frontiers", and "Limits"

The approach proposed in this article does not rely on universalism or universalistic assumptions concerning languages and does not assume a requisite of compatibility with universalism. As a matter of fact, uneasiness and confusion can sometimes arise from the use of the same words to express different concepts within a language (as the word "limite" in Spanish, or "sınır" in Turkish which can serve to express both a boundary or a limit), or from the expression of the same concepts by utilizing different words (as "frontier" can be expressed by "border" or "boundary" in English, or "sınır" by "sınır çizgisi" or even "çevre çizgisi" in Turkish). Such uneasiness probably constitutes a motive for which the reality of borders (frontiers) has been conceived as eventually inherently contradictory (Anderson and O'Dowd 1999, 595), or, as a mere counterpart of human activities (Fernández-Götz and Langer 2020, 41). Nevertheless, the epistemological need for such conceptions of borders arguably should be contested for independent reasons. First, suppose that our conceptions of our correlated uses of words and concepts of "borders", "boundaries", "frontiers" and "limits" cannot account for the available variety of uses made of these words and concepts by language users. Then the burden

of the elucidation arguably befalls on us rather than on linguistic users unconcerned with epistemological questions concerning our uses and applications of these words and concepts. Such an account necessarily needs to be able to be compatible – without reductionism – with the variety of such uses to turn out adequate. Second, if it is hardly deniable that the reality of the functioning of some borders (frontiers) as such does involve human activities, another quite contestable move is to conceive of borders as mere counterparts of human activities (as although some seas and mountains have been instituted as borders, it would be misleading to assume that such landscapes would have resulted from human activities or that such landscapes were not likely to be instituted as borders for practical reasons). One central difficulty is to this extent to account for the compatibility of the relative dependence and independence of borders (frontiers) to human activities. Although the presentation of landscapes as borders arguably involves past human actions, among which notably the past institution of a border as such, borders (frontiers) are dependent and independent from human actions in different senses which require to be elucidated as such.

Two distinctions present central significance to elucidate the variety of linguistic uses of the words and concepts of borders, boundaries, frontiers, and limits within and across (some) languages without misconceptions about the expressive resources of languages. The first distinction is between boundaries (or restrictive limits), and limits (or non-restrictive limits). And the second distinction is between borders as edges or outlines and borders as frontiers. The first (conceptual) distinction is between *boundaries or restrictive limits*, that is, limits that involve a contrast between *that* which can be expressed or done and *that* which cannot be expressed or done. To take uncontroversial examples "women cannot drive" is an expression of misogyny and "blacks cannot enter" is an expression of racism. The eventual (and necessarily contestable) normativity such expressions can present or have presented in some places at some times (women were formally forbidden to drive in Saudi Arabia until June 2018; the last of the Oregon black exclusion laws was abolished in 1926), involves the intelligibility of such expressions which in turn involves that we can represent to ourselves the realization of the actions forbidden by these *grammatically well-formed* and yet *meaningless strings of signs*. By contrast, limits, that is, non-restrictive limits, do not involve (but neither exclude) a contrast between *that* which can be expressed or done and *that* which cannot. Linguistic paradigms such as grammatical forms, or mathematical limits are constitutive of the possibilities of expression or action thereby rendered conceivable (see Uçan 2023, 66-70). The importance of this first distinction is

thus related to the fact that contrarily to a quite common assumption which may seem intuitive, it is not the case that each and every limit unavoidably could have involved or unavoidably involves restriction. Correlatively such a remark could not imply that each limit that does not involve restriction involves permission. Rather is remarkable that limits that constitute possibilities of expressions and actions could not be, as such, *oppositive*.

The second distinction which presents central importance for our account, is the distinction between *borders as edges or outlines* (or *contour*) and *borders as frontiers*. Borders as edges, or outlines, or contours, could not conceivably imply a restriction: the visual outline of an object could no more restrict the considered object than the outline of the shapes of a coloring game could restrict the activity of coloring these shapes. While borders as frontiers sometimes (and arguably should not) involve crossing-restrictions according to nationalities, citizenships, material conditions (such as income (see Ip 2020)), laws, and systems of laws. That is to say, and that is an implicit aspect of some contemporary accounts and conceptions of borders as *boundaries*, borders (frontiers) are limits which are distinct in that the functionings of such instituted limits do involve the *possibilities* for border-crossers to be prevented from crossing the considered borders. However, could such remark necessarily or unavoidably have involved that we cannot but conceive of borders (frontiers) as *boundaries*, and further, that we should thusly conceive borders (frontiers) as *boundaries*? A correct reply is, I shall attempt to elucidate, negative. For several reasons: first, even in the case in which one wants to argue in favor of open borders, and even eventually against the necessity of borders, one needs to account for the fact that the functioning of borders as such could not be inherently restrictive: restrictions concerning border-crossings are involved only when persons are unduly prevented from crossing borders. But who is not prevented from crossing a border, and does not undergo unfair treatment while crossing a border (see Reed-Sandoval 2022), could not be, strictly speaking restrictively limited, as such, by a border. But secondly, and arguably more importantly, a further examination of distinct cases involved by the modalities of border-crossing can render conceivable both to better understand and criticize rhetorical strategies which lead to the happening of the mentioned (un)human catastrophes. Borders as frontiers (and not contours or outlines) indeed provide us with a *limit-case* when considered *with* the distinction of restrictive limits or boundaries, and unrestrictive limits or limits.

Borders are indeed crossed, for motives and reasons which are eventually assessable as right or wrong, both legally and illegally, and legitimately and illegitimately. (i) *Illegal* and *illegitimate* are cases of border crossing, for

example, by a person or group of persons intending to use violence and terror, fear of violence, to enforce political change. Although the gravity of such cases is arguably explanatory of the attention provided by media to this range of cases, mediatic sensationalism tends to provide to such cases disproportionate attention. In this sense, at best unclear is whether we should call attention to this range of cases in comparison with the others. (ii) The existence of *legal* and *illegitimate* cases of border crossing, at least of the borders of the country or of the countries of which a human person is a citizen, is by contrast contestable. Thereby is meant, *without legalism*, that cases in which the legitimacy of such border-crossings can be relevantly contested cannot be primary. Persons do cross the borders (frontiers) of their countries. (iii) Cases of *legal* and *legitimate* crossing of borders are of the central and unproblematic range of cases that could and arguably should be broadened. Such modalities of border crossings are indeed more easily surveyable and less likely to result in human rights violations. (iv) Finally, cases of *illegal* and yet *legitimate* border crossings are the central range of cases to which attention is to be provided to think, account, and make cease, real, and (un)human catastrophes which are related to, and aggravated by actual migration and border control policies.

Such analysis of some of the modalities of border-crossing suffices to bring out what can be called the 'trick' of repressive politics (simplistic and short-termist conceptions according to which we could not but have to resort to repression and violent means to make political changes). Such a trick is to suggest that we could understand *illegal* and *legitimate* cases of migration (notably cases due to wars and climate catastrophes) *as illegal* and *illegitimate* cases. Such presentation of illegal and legitimate cases of migration as illegal and illegitimate ultimately amounts to a fallacy, a failure, a deceptive and untruthful presentation of relations of facts and events (Cases related to what are sometimes called "fake-news"; On this see Read and Uçan, 2019, 7-9). One central, philosophical, and linguistic argument to clarify that such presentation of relations of facts and events is delusory, consists in recalling that confusion does not present a dimension of successfulness. That is to say, that such confusion was ever (successfully) *achieved* is contestable. A confusion, rather, results from the *neglect* of a distinction, of a difference, and could not consist in an achievement. The eventually intentional aspect of neglect (which is not *necessarily* problematic: contextual neglect of variations *in order to* account for other variations are commonly involved by practices that are both scientific and social) could not, as such, imply its successfulness. But by contrast, a neglect that does not render conceivable the discerning of further distinctions is not *achieved,* inasmuch as such neglect could not, strictly speaking, be intended.

What is hardly deniable is that the disseminated presence of hate speeches, xenophobic, racist, sexist, and supremacist speeches in our societies do have pragmatic effects, which hopefully enough can also be pragmatically defused. The relevance of linguistic clarifications derives from this point, as these serve to make confusions cease in satisfactory ways.

The table which follows presents words and concept uses of "Border", "Boundary", "Frontier", "Limit" and "Edge" in five different languages (German, English, French, Spanish, and Turkish). As remarked previously, same words can be used to express different concepts in a language, and same concepts can be expressed by means of different words. Further, same or different words can be used to express same or different concepts in a language (as "borne", "boundary", "sınır çizgisi"). And some concepts and words are common to some languages (peculiarly the distinction between boundaries and limits, and also the Turkish word "kontur" which comes from the word "contour" in French).

Deutsch	**English**	**Español**	**Français**	**Türkçe**
Grendlinie	Boundary	Limite, Frontera	Borne	Sınır (çizgisi), Hudut
Rand, Schneide	Border, Edge	Frontera	Frontière, Contour	Sınır, Çevre çizgisi, Hudut
Grenze	Limit	Limite	Limite	Sınır, Hudut
Grenze	Frotier	Frontera	Frontière	Sınır (çizgisi), Hudut
Höhenlinie	Edge, Contour	Contorno	Contour	Çevre (çizgisi), Hudut, Kontur

Two points present central significance for our account: the first is that there is no such thing as an (intrinsic) impossibility of translatability of words and concepts from a language to another, although we might have to use several words in a language to translate a word from another language. Contrary to the earlier mentioned conceptions, this involves that the absence of a concept-word does not involve the absence of a concept in a language, and even less the impossibility of forming a concept in a language which is equivalent to a concept available in another language. The same word can be contextually used to express different concepts, such that language users could not be necessarily and conceptually restrictively limited by the absence of a concept-word in a language. Indeed, and this is related to the second central point, which is that in each of these languages the distinction between restrictive and unrestrictive

limits can be expressed. As rendered manifest by the expressive resources whose means are shown and displayed by the table, there is no such thing as an unavoidable entailment from limits to restrictive limits involved. Limits and boundaries can be imaginary: cases of delusions in which a boundary that does not exist is assumed to exist, but also cases of liberatory and eventually aesthetic uses of our imaginations (as imaginary limits of imaginary countries) are both conceivable.

The absence of a one-to-one correlation between concepts and words (*among* languages and within each language) can, contrarily to what could have been assumed, thus be understood as a clarificatory, therapeutical and eventually liberatory point. The single word through which a restrictive limitation can be expressed ("borne", "boundary") can also be used to express non-restrictive limitation. For example, the word "borne" in French can be thusly used. Learning that you are at, say, km 5 of a road using a milestone ("borne") could not have implied, as such, any restriction whatsoever. This precision is slightly different from the elucidation earlier made: *unsubstantially* conceived, meanings could not be, so to speak, imposed by words. Contextual attention to linguistic uses often suffices to avoid such confusion. As a corollary, *occurrences of words* are to be distinguished from *occurrences of concepts* and conversely. A sentence in the grammatical sense such as "These limits of the river are some limits of two (or more) countries across which we are allowed to travel" can also be expressed with "The contours of the river we now see are parts of the borders of two (or more) countries across which we are allowed to travel" and can be expressed in Turkish with "Çevre çizgileri görülen nehir, seyahatlerimizi sınırlamayan iki (veya daha fazla) ülkenin sınırlarıdır". The central difficulty which requires focus is the necessarily problematic assumption according to which unrestrictive limits could be understood as restrictive limits and inversely. Indeed, we studied that a language, as such, could not unavoidably imply such assumption and correlative confusion. And we also studied that the confusion of restrictive limits with non-restrictive limits, and inversely, can occur independently from other facts. But we yet did not consider that such confusions, frequently undeliberately realized, are also sometimes deliberately realized by individual or collective persons with discriminatory aims, independently from texts as national or international laws or agreements, which are constitutive of the rights of migrants. To this extent, the results of the philosophy of language and of the philosophy of action might seem at odd. However, the elucidation that limits that constitute possibilities of expressions and actions could not be, as such, *oppositive,* can serve to elucidate the circumstantial necessity of oppositive uses that can be made of linguistic

expressions in case of human right violations. Thus, inasmuch as migration related catastrophes are considered, the results of the philosophical analyses of language and action are mutually integrative.

II. Borders and Migration

One of the most striking aspects of the (un)human catastrophes, which happened and continue to happen at the borders of Europe is the deaths of migrants, especially when considering the scale and the modalities of these deaths. The International Organization for Migration of the United Nations reports that "more than 20,0000 migrant deaths recorded on the Central Mediterranean Route since 2014" (International Organization for Migration, 2023). Two central and correlated elements from contemporary philosophy of action are relevant to the analyses, accounts, and explanations of the internal relations of such events (On this see Anscombe 2000, §5; Davidson 1963; Sartre 2003, 455-503). The first is the distinction between causes and reasons, and the second is the concept of (intentional) action. These two elements are interrelated in that distinguishing between causes and reasons and expressing a concept of action, strictly speaking, of intentional action, are achievements that are mutually implicative of each other. To distinguish a cause from a reason inversely involves to distinguish cases of literal or non-metaphorical actions (such as the action of walking) from cases of metaphorical or non-literal actions (such as the action of a solvent over the surface of an object). Although studyable and explainable independently (as different solvents act differently on different surfaces), the causal action of a solvent over the surface of an object is derivative from the realization of an action by a person for a reason (for example, that of using the solvent for maintenance purpose). A solvent acts once someone has acted (by contrast with the erosion of limestone by rainwater). The distinction of causes and reasons thusly involves the intelligibility of (non-metaphorical) action. And conversely, the expression of the concept of action involves a distinction between causes and reasons. While misleading would be to expect a dissolution not to happen consequently to the application of some solvent over the surface of some object by a person, misleading would be to expect the application of some solvent to the surface of an object to merely result from its availability to a person. The exact and precise ways in which these mutual implications should be philosophically conceived, and whether reasons and causes cannot at least sometimes be relevantly equated are contemporarily debated. However, such considerations and distinctions present

uncontroversial aspects that are relevant to think, analyze, and conceive ways for deaths related to migrations to cease.

Persons do attempt to cross the borders of Europe for *reasons*, as notably, escaping from wars, from climate catastrophes (this is clear right from p. 2 of the 2022 annual report of the International Organization for Migration). Such cases of migration are cases in which the motives of the actions of the persons are *reasons*: persons deliberately decide to escape areas in which for motives independent from their wills, living is rendered impossible or quasi-impossible. To this extent, such cases are cases of *forced* migrations. Actions and interactions of persons could not conceivably be reducible to merely causal relations. That someone decides to escape from an area plagued by war is not explainable as the movements of the leaves of a tree by the (causal) action of the wind. That an action can be realized by a person strictly implies that it is conceivable for that person to not realize that action and inversely (On this see Sartre 2003, 455). But such remark could not conceivably imply the inconceivability of *forced* or *constrained* realizations of actions, and is peculiarly important to evaluate both contemporary migrations, and the consequences of the hardening of border policies and controls over migrants. As previously mentioned, such migrations are not the result of merely pleasure-related considerations. In some weak sense, decisions to escape from areas plagued by war or affected by climate catastrophes are *freely* taken: these really are decisions, but the optionable aspect of the choices involved by such decisions is nevertheless to be contested. Consideration of the opposite possibility often suffices to render clear its unreasonableness. These first remarks about human actions in their relations to migrations consisted in an attempt to clarify that the happening of catastrophic events related both to extractivist wars and to the causal results of the would-be imperative of the functioning of extractivist structures (On this see Arsel & Pellegrini 2022; Gudynas 2020) over climates suffice to explain the forced realization of some migrations. But what about the consequences of the hardening of border controls and policies?

Two ranges of cases are peculiarly relevant to think and account for such consequences: (i) persons died as a result of the modalities of "push-backs" (as recently: see Beake, N., G. Wright, and P. Kirby 2023) which in some cases involved the destruction of the vehicles they have been using to attempt to cross the frontiers of Europe. (ii) Persons also have been killed both intentionally and premeditatedly (cases of third-degree murders) during their attempts to cross the frontiers of Europe, as attests cases of persons whose hands were tied and whose bodies were found underwater (On this see Son Dakika 2021; Stockholm

Center for Freedom 2021; Middle East Monitor 2021). Reminding these cases is not necessarily expressive of sensationalism: a better understanding of the (un)humanity of the catastrophes which result from actual border control and migration policies is required. However conceived, there could *not* be *any* justification for the realization of such actions. Such actions cannot be understood as applications of border policies – *there is no such thing as legal murder of migrants*. But the hardening of border controls and policies over migrants who cannot count on the support of the institutions of the countries they had to leave, not only renders more difficult their access to conditions under which they can claim for their rights (notably of asylum, see United Nations 1948; 2010), but also tend to deteriorate the conditions under which their attempts to cross borders are controlled, notably by the organization of such controls in areas such as international waters, thereby indirectly augmenting the probabilities for the happening of human rights violations.

Further difficulties which concern discriminations (not in the unproblematic sense of the distinction or differentiation of different things or persons, but in the problematic sense of the application of unfair treatment to one or several persons) realized at borders (frontiers), notably of Europe, can be expressed. There are remarkable and unjustifiable differences in the amounts of persons allowed both legitimately and legally to cross the borders of Europe, according to their countries of origin, their religious beliefs, and their skin color, independently from their rights. The undeniably desirable help provided to Ukrainian refugees by Europe following the invasion of Ukraine by Russia should also be constructively criticized by consideration of the treatments reserved for other migrants, especially from Syria, but also from other countries. The difficulty is not reducible to psychological or anthropological considerations. Not only that human rights, among which the right to asylum, are insufficiently applied, but also, a criticism of coherence can and should be addressed to countries (such as France, See European Union Agency for Asylum 2021, 245-256) which do not even fulfil the publicly established allowance quotas of migrants, refugees, asylum-seekers.

Such remarks raise the problematic of the relations between what can be called *refugees-outstocking* and *refugees-blackmailing*. Indeed, while as mentioned some countries do not fulfil allowance quotas of migrants, misleading declarations have been made in other countries (host countries of massive migrations, such as Turkey (see International Organization for Migration 2024) according to which the help provided to migrants could be stopped and that they could be (unilaterally) allowed to cross borders (for example and notably, those of Europe), although such cannot be the case. Such

a situation involves problematic asymmetries which leaves migrants at the mercy of smugglers. While migrants have to use the illegal activities of smugglers to attempt to illegally cross borders (such as the borders of Europe) to legitimately claim for their rights for asylum, some countries do benefit from the results of selective migration organized from peripheral areas and countries as areas in which refugees are outstocked. One central objection to such an argument is that such outstocking is not literally organized by countries towards which fluxes of migration are directed. Yet misleading and mislead would be to attempt to deny that the organization of literally the outstocking of migrants exists. Since violations of human rights are involved, the problematic is really that of the indiscernibility of the situation in which migrants, refugees, and asylum-seekers are maintained, with a situation of metaphorical outstocking (See Emmanouilidou 2023; Human Rights Watch 2024). Indeed, arguments such as those in favor of the fairness of what is sometimes called "cherry picking" selective migration, or which propose a reflexion about the conditions under which selective migration can become fair (notably from the liberal tradition), do often neglect the (*ultra*-liberal) reality of the *market* in which smuggling consists. Even if – conceptually – reflexions about the conditions under which migrations ought to be securely organized can really contribute to the fairness and the security of some migrations, such reflections yet need to be broadened. Indeed, even if the scope of the argument is reduced to economic considerations, a problematic tension can be discerned: if migration fluxes from economically poorer countries are related to the application of short-termist and (un)ecological models of development by economically richer countries, those countries cannot without problematic discrimination both neglect their commitments to migration quotas and benefit from selective migration. Further, discourses in favor of political retractions and hardening of border controls and policies, and misleading and misled presentations of forced legitimate migrations as merely illegal and undesirable migrations, are often expressed by persons and groups of persons who suppose that racism and xenophobia could be argued in favor of. The attractivity of such discourses to persons can arguably be partially explained as resulting from the degradation of their own conditions of life in the circumstance of climate change. However, the inversion of such a 'vicious circle' involves as a necessary condition the satisfaction of a requirement of coherence (which is not equivalent with a defense of coherentism). (i) Forced migrations should not be impeded by intervention at the end of what is sometimes called *causal chains* at the borders of host-countries, but by modifications of the relations between the countries from which migrants migrate with the countries to which they migrate. Such

modifications could make vanish the conditions under which forced migrations happen, and thusly impede the happening of the mentioned catastrophes. (ii) Until such modifications are realized, countries towards which fluxes of migrants are directed have the obligation to satisfy, and even extend migrants allowances. If any use of the concept of intuition seemed to be required, such a claim might seem counter-intuitive. Nevertheless, that is one central difficulty which needs to be faced. Xenophobic and racist discourses and policies tend to present some sort of attractivity to traditionally non-xenophobic and non-racist populations within our societies due to degradation of living conditions. But discourses and policies which involve the confusion of restrictive limits and non-restrictive limits cannot but lead to necessarily unhelpful isolationism.

Conclusion

This article proposed a dissolution of epistemological difficulties related to our accounts of interrelated uses of the concepts and words of "border", "boundary", "frontier", and "limit" within and across languages. The establishment of the translatability and sufficiency of the expressive resources of some languages to discern restrictive and non-restrictive limits has been achieved non-universalistically. The supposition that some languages could be, as such, inherently more apt and precise than others, eventually conjoined with a condition of the inclusion of a one-to-one correlation of concepts and words is satisfied, expresses a preconception about language. There is no such one-to-one correlation in each and every language, and yet distinctions between restrictive limits (boundaries) and non-restrictive limits (limits) are expressible within and between languages which do not involve such correlation. Further, contrarily to the eventually expected, this criticism does not concern or apply only to language conceived in a narrow sense, as concerned with only inherently linguistic elements such as morphemes, letters, words, sentences. Such criticism does also concern peculiar conceptions of borders involved by some discourses, among which political discourses, whose applications within our societies lead to the happening or augment the probability of the happening of (un)human catastrophes. Unavoidably restrictive limitations internal to our words, concepts, and languages could not exist. To this extent, dissolving the mentioned interrelated epistemological difficulties renders conceivable the interrelatedness of problems concerning forms of life, migrations, and borders, which too often are considered not only distinct but also unrelated. Social and ecological progress can be achieved if we consider the compatibility of the reasons for which some persons are

sometimes unacceptably forced to migrate with the reasons for which persons want to somewhere live. Border-doors are to remain open or to be opened.

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Notes on contributor. Timur Cengiz Uçan is Doctor in Philosophy, and Associate Researcher at the mixed research unit *Sciences, Philosophy, Humanities* and of the *Social Sciences of Contemporary Changes* department of Bordeaux Universities. His research is about Philosophy of Action, Ecology, Language, Logic, Mind, and Sciences. After having written his Ph.D dissertation on the criticisms of solipsism by Sartre and Wittgenstein in their early works, he continues his researches on their later criticisms of solipsism. He proposes to criticize solipsism in its relations to ecological crises and with problematics of artificial intelligence. His recent publications include: What can Philosophy and Martial Art bring to each other?, in *Da Luta – On Fight* (Associação de Filosofia do Desporto em Língua Portuguesa 2025), *Éléments d'une analyse structurale de l'événement du 11 septembre*, in *L'événement 11 septembre* (Éditions Mare & Martin 2024).

Contact. timurcengizucan@gmail.com

ORCID. Timur Cengiz Uçan https://orcid.org/0000-0001-7620-6601

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Intercultural Medicine and Ethics of care: an Operational Proposal to Combat Social and Health Inequalities

Natasha Cola

University of Genoa, Genoa, Italy

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Abstract

The immigration policies adopted by European states are required to recognise migration processes as a structural phenomenon and, in the health sphere, to implement inclusive interventions capable of promoting integration and well-being for all people living in and/or transiting through Europe. At the national level, despite the forward-thinking measures put in place by the legislator and the establishment of the National Health Service, access to the right to health still seems far from fully inclusive for the more vulnerable segments of the population, particularly people from foreign countries. This article intends to propose an innovative model for ethics of care aimed at the implementation and optimisation of healthcare practices towards migrants living in our country, whether temporarily or more permanently.

Keywords: Migration, Accessibility of social and health services, Intercultural Medicine, Medical education

Summary: Introduction; I. Multiculturalism and Cultural Pluralism in Contemporary Societies; II. Intercultural Medicine; III. Intercultural Medicine and Clinical Governance; IV. A possible model of care for the implementation and optimization of intercultural healthcare practices; Conclusion; References.

Introduction

Migration is a diverse and complex phenomenon that has occurred, is occurring and is destined to occur throughout human history and is closely connected to the development, evolution and ongoing progression of human history.

In Europe, immigration has a significant impact on the demography and economy of individual countries: according to the most recent data, people from non-European countries represent 5.3% of the population in Europe and 5.1% of workers aged between 20 and 64 (European Commission 2023).

At least from a formal perspective, the immigration policies adopted by individual States must recognise migration not as an exceptional phenomenon to be managed according to emergency criteria, but as a structural process. Therefore, they should aim to implement interventions capable of promoting integration and well-being. In particular, the right to health and its protection are fundamental to a democratic society. When this right is upheld through specific policies and targeted interventions in intercultural medicine, the benefits extend beyond those directly affected to the entire community, enhancing well-being for everyone.

In Italy, despite the forward-thinking measures put in place by the legislator and the establishment of the National Health Service, access to the right to health still seems far from fully inclusive for the more vulnerable segments of the population, particularly migrants without legal status.

This article proposes a pluralistic approach to cultural otherness as a framework for the introduction and development of intercultural medicine, also taking into account its implications for clinical governance. On this basis, an innovative model of care is developed, aimed at the implementation and optimization of healthcare practices for migrant populations, with the goal of overcoming the treatment disparities experienced by them. In the conclusions, this issue is addressed as a specific and significant aspect in the establishment of a caring democracy.

I. Multiculturalism and Cultural Pluralism in Contemporary Societies

To tackle the issue of interculturality, and more specifically intercultural medicine, it is crucial to define the two reference models that help recognise cultural differences: the multicultural perspective and the pluralist approach.

The first one dates back to the end of the 1960s and, at least originally, was promoted and supported by Native American movements and the French-speaking inhabitants of Quebec. It progressively spread in the United States and Canada, and subsequently in Europe, gradually replacing the assimilationist view of minorities. This perspective is based on the need to grant minorities exclusive rights based on ethnic and identity grounds and, in more recent years,

strongly opposes both globalisation and cosmopolitanism: the founding ideal of multicultural society is based on prioritising cultural rights over universal human rights and, acknowledging the necessity of coexistence among various communities within states, and on establishing minimum rules for coexistence and non-interference between them.

The emphasis placed on identity comes from viewing it as an element of uniqueness and distinction that is inherent to groups and fundamental to the image that both the groups and the individuals who belong to them have of themselves. It is, therefore, a genuine essentialisation that makes the reference to identity indispensable for asserting one's authenticity, both for individuals and groups who self-identify and seek to be recognised based on their identity affiliation (Manti 2020). Community identification constitutes a kind of prerequisite for effective participation in social and political life (Colombo 2011), and recognition takes on an attributive character: cultures are closed, static systems that do not communicate with one another.

This vision involves, at least theoretically, a model in which society becomes a collective made up of self-governing ethnic-cultural communities, while the state is limited to minimal intervention, aimed at containing conflicts that may arise between the different communities.

As Sartori effectively points out, the politics of identity, which aims to prevent discrimination against minorities, generates an us/them dichotomy within the multiculturalist approach, and therefore, "[…] discriminates in order to eliminate discrimination" (Sartori 2000). In this sense, Taylor's (1998) idea of considering the cultural identities of communities as true ecological niches to be defended and preserved is subject to criticism, as it may create artificial barriers and become an obstacle to dialogue and cooperation. To avoid this risk, C. Taylor argues that only cultures with universal significance have the right to be preserved. In doing so, however, he introduces a form of comparativism into the theory, without specifying who is responsible or authorised to determine which cultures deserve to be preserved and which do not (Manti, 2012).

As this summary suggests, the multiculturalist approach is incompatible with the promotion of intercultural relations: in fact, such relations are rendered impossible because the recognition of cultural otherness is based on the 'ontologization' of identity. In the healthcare sector, specifically, this approach may advocate for the recognition and consideration of traditional medicines from different cultures, thereby validating their use. Regarding this issue, I will make two observations: first, if taken to its logical extreme, this approach ultimately favours tradition over effectiveness; second, successful examples of intercultural collaboration, like those carried out under the WHO's guidance

(WHO 2000, 2010; IBC of UNESCO 2012) would not be possible, as they would lead to the hybridisation of cultures.

A pluralistic and thought-provoking perspective for intercultural dialogue is provided by Appiah (2019) who, while recognising that identities rooted in religious beliefs, nationality, skin colour, social class and culture are essentially misconceptions and artificial constructs with origins in Romanticism also emphasizes their significance for social connection (Herder 1967). The scholar acknowledges that identities cannot be disregarded, emphasizing the need to understand their nature and history in order to establish a dialogue capable of overcoming their barriers.

Appiah's interpretation of identity is key to effectively tackling the perspective of intercultural dialogue: he illustrates both the distortion caused by the ontologization of identities and the unifying force and significance they hold in the process of attributive recognition. When focusing on cultural identity, its historical and contingent nature is emphasized, as well as its role in socially and politically uniting people. At the same time, due to its inherent characteristics, it also proves to be incommensurable. Cultural otherness, then, as an expression of an artificial construct, is neither ontological, nor natural, nor fixed: these qualities allow for both communication and hybridisation, which occur through the flexibility of languages, leading to the creation of new and shared meanings and interpretations of reality. In summary, the recognition of the otherness of cultural identities, alongside the flexibility of languages, provides the foundation for a pluralistic approach to otherness. It enables certain steps to be taken that promote intercultural dialogue. First, it is acknowledged that cultures are incommensurable, as they are unifying constructs that emerge in specific and distinct historical contexts. Instead, their reasons and evolutionary and co-evolutionary perspectives, which can be fostered through dialogue with other cultures, must be understood and studied, along with the prospect of generating new common linguistic universes as an outcome of the relational and communicative flow that has been established. From this perspective, it is possible to design new unifying hybrid constructs. Secondly, when not viewed in essentialist terms, cultures often appear to be shaped by forms of pluralism, which can act as a driving force for the development of dialogue, serving as a source of dynamism both within and between constructs.

The pluralistic approach emphasizes that, in addition to the plurality of cultural constructs, there is also a diversity of affiliations within them, with which interaction can take place.

As Amartya Sen (2019) writes:

> The uniquely partitioned world is much more divisive than the universe of plural and diverse categories that shape the world in which we live. It goes not only against the old-fashioned belief that "we human beings are all much the same" (which tends to be ridiculed these days – not entirely without reason – as much too softheaded), but also against the less discussed but much more plausible understanding that we are diversely different. The hope of harmony in the contemporary world lies to a great extent in a clearer understanding of the pluralities of human identity, and in the appreciation that they cut across each other and work against a sharp separation along one single hardened line of impenetrable division. […] We have to see clearly that we have many distinct affiliations and can interact with each other in a great many different ways (no matter what the instigators and their flustered opponents tell us). There is room for us to decide on our priorities. The neglect of the plurality of our affiliations and of the need for choice and reasoning obscures the world in which we live.

The interpretation of cultural otherness from a pluralistic approach serves as the foundation for intercultural relations, as interlocutors are aware of their belonging to a specific cultural construct. However, they also recognise that through dialogue and by 'utilising' the flexibility of languages, they can jointly create new meanings and understandings of reality with their interlocutors.

This is possible because this approach is based on the idea that interculture does not consist of advocating, in abstract and universal terms, for the equality of cultures. At the same time, their incommensurability, regarded as the basis for developing a dialogue between equals, rules out any hierarchy: one cultural construct cannot be deemed superior or inferior to another; it should be appreciated in its own uniqueness, without any comparison. Therefore, the idea that some cultures are more advanced than others is untenable, as each culture is connected to other cultures and reflects a particular context. As a result, stereotypes and prejudices lose their significance, as they often hinder, from the outset, the possibility of establishing intercultural dialogue.

A key question remains about the real possibility of communication between languages from distinct cultural universes. The shift from one of these universes to another necessitates a process of translation that is simultaneously also an act of interpretation. How can the authenticity of the content be protected? Protection may be achieved through the discovery of the internal logic relating to a certain way of thinking, while the comparison must be referred to the constitutive logics of the intrinsic structures of languages. Through this process of comparison, it becomes possible to reformulate concepts within a specific linguistic universe.

Interpretation and translation, when carried out according to the internal logic of a culture, do not imply cultural or linguistic commensurability. Instead, they suggest that, with flexibility, these elements can be translated through their specific internal logic. In this way, translation opens up the possibility for the creation of new languages and, consequently, new shared horizons of meaning and significance.

II. Intercultural Medicine

Shared meanings are fundamental in the healing process, deeply impacting its progress and outcome (Napier *et al.* 2014). Although life, illness, and death are biologically identical for all humans, their 'objectification' does not apply at the biographical and cultural level. Intercultural medicine therefore requires an existential narrative approach, in which treatment techniques, the choice of medications, etc., are part of the experiential dimension of those receiving care.

Medical knowledge varies across different cultural frameworks and is shaped by the processes of meaning-making and sense attribution that individuals engage in this, for instance, makes the encounter with allopathic medicine, which is the dominant system in our medical culture, not inherently 'peaceful', nor by any means taken for granted.

Implementing intercultural medical practices does not require healthcare professionals and medical staff to become anthropologists. Rather, it calls for proper attention to be paid to the social and cultural context of patients, possibly with the support of experts and cultural mediators.

Attention to the social and cultural context can be fostered through the practice of narrative medicine. It allows for an approach to care that places biographies at the centre of understanding and managing health and illness, starting with listening carefully to patients' narratives. Personal experiences and life stories are thus considered essential elements for understanding the clinical situation of patients and for fostering their shared responsibility in managing their care.

Furthermore, narrative medicine should not be seen as an alternative to evidence-based medicine, but rather it emphasizes that the analysis of evidence must take into account the patient's biography and contextual background.

Explicitly exploring life stories allows doctors and healthcare staff to create environments that can address the specific needs of each individual: the primary goal of this approach is to foster a deep understanding of individual challenges and needs through dedicated time focused on care. Indeed, time is

a crucial element for building authentic caregiving relationships, and promoting shared responsibility, and is a key characteristic of the medical professional's expertise.

An adequate amount of care time enables a therapeutic contract to be created that actively engages the patient, evolving into a true therapeutic alliance in which the meanings attributed to life, death, illness, and the caregiving process are clearly articulated and genuinely shared. In this sense, intercultural medicine is not only a necessity but also an opportunity for the advancement of medical science, particularly in the context of personalised and precision medicine.

III. Intercultural Medicine and Clinical Governance

The practice of new forms of communication, and the development of new languages, structures, and governance tools within the NHS are essential for the implementation of caregiving processes by professionals and for the creation of therapeutic solutions that can adequately address the needs of patients from diverse cultural backgrounds (Lombardi 2021).

Healthcare reception from an intercultural perspective must address three fundamental aspects: the complexity of the therapeutic relationship, training, and organisation.

In terms of the first aspect, intercultural medicine must consider the diversity of cultures, which involve various physical, cognitive, and psychological approaches to illness that doctors and healthcare professionals encounter daily in their work. If the care is viewed and practised as a relational process, it is not just or mainly about following standardised protocols, but primarily about implementing operational approaches that can meet the unique needs of each individual. These operational approaches must ensure both proper clinical care and the implementation of practices focused on promoting *well-being*, understood as the quality of a person's life, their ability to shape commitments, goals, and values, and also, where possible, in the context of the illness they are experiencing (Sen 1994).

What does it mean, then, for healthcare professionals to take action in promoting the well-being of those in need of care?

First and foremost, it is essential to understand the illness through the symptoms expressed by the person, along with the meaning and causes they attribute to their experience of the illness, while also paying attention to non-verbal communication. For communication to be truly effective, it is crucial that the patient does not perceive their conception of illness as wrong or irrelevant

in the presence of the doctor and healthcare staff. They should always provide feedback by explaining what they believe they have understood, encouraging any additions or corrections, while also explaining why certain procedures are necessary. All of this, while being mindful of cultural differences and the processes of translation and interpretation discussed earlier.

As for the training of doctors and healthcare professionals, it is worth noting that the Italian university system has yet to allocate adequate attention and resources to courses on intercultural and narrative medicine, which are becoming increasingly essential due to the multiethnic and multicultural nature of our society. This also applies to Continuing Medical Education courses. Moreover, and this represents a gap that needs to be addressed, there is no mention of these duties or of professional responsibilities in the Code of Medical Ethics of the National Federation of the Orders of Surgeons and Dentists of Italy (FNOMCEO).

In this regard, a recent study, limited in scope yet significant, sought to explore the perspectives of physicians working in street clinics in the Municipality of Genoa, using semi structured interviews, concerning the application of intercultural medical practices (Cola 2024).

The results confirmed findings already highlighted in national and international scientific literature: the pathologies observed are similar to those found in individuals without a migratory background, but their clinical progression is significantly more affected by the influence of social determinants among migrant patients (Ibid.).

In addition, widespread dissatisfaction was reported among physicians and, more broadly, among healthcare professionals regarding the training they received on the themes and approaches of intercultural medicine (Ibid.).

The analysis of 3.195 medical records revealed a particularly overlooked issue in the literature on intercultural medicine: oral health. A significant barrier to accessing dental care was identified, stemming from structural shortcomings within the National Health Service, and the widespread underestimation of the importance of oral hygiene, which is often not regarded as 'vital' by a considerable number of migrants who do not perceive its relevance to their overall health. Additional barriers to dental care access include socioeconomic factors, often compounded by regional disparities in the provision of healthcare services across Italy.

Regarding physicians and healthcare professionals, the intercultural approach to dentistry, essential for addressing this emergency, requires an understanding of the oral health practices and perceptions specific to migrant cultures, along with the symbolic significance they attribute to the mouth as a

boundary between what is external and what is more intimately personal. Intervening in the patient's behaviours and proposing potential changes is feasible when a relationship of trust is established, allowing for the adoption of specific procedures and treatments that align with the patient's needs, beliefs, and habits. Integrating knowledge and practices from other cultural traditions with those commonly adopted in dentistry can serve as a fundamental basis for improving oral health. In light of the research findings, a programme focused on oral hygiene education has been initiated, that targets both children and adults. The programme involved initiatives developed in collaboration with companies (Unilever-Mentadent), organisations (Italian Red Cross, Fondo Scuola Italia), and public institutions (University of Genoa, Municipality of Genoa), aiming to enhance the oral and overall well-being of individuals in vulnerable situations, with a particular focus on migrants.

Intercultural medicine presents a challenge for the NHS, even at an organisational level. Its practice requires investments both in economic resources and human resources, not just for doctors and healthcare professionals, but also for administrative staff who handle information and reception responsibilities. Moreover, it is desirable to establish dedicated support desks, possibly within an ethical space, designed for interactions with individuals from different cultural backgrounds.

IV. A possible model of care for the implementation and optimisation of intercultural healthcare practices

In light of the observations and considerations examined so far, I intend to propose a care ethics model that builds upon the one developed by Tronto (2012) integrating and adapting it within an intercultural perspective. This is particularly true for the phases of care, which are reinterpreted in light of the preceding considerations. The model above, in fact, approaches care from a general perspective and does not account for its potential intercultural dimension.

If care primarily involves reaching out to someone (or something) other than oneself, from the perspective of intercultural medicine, it is crucial to be aware of how this otherness manifests in practice, considering the biographies of individuals who turn to the National Health Service or to facilities such as street clinics. As previously mentioned, otherness presents challenges in communication and, in particular, in translation, which physicians and healthcare personnel must bear in mind. Otherwise, there is a risk of overestimating or underestimating

symptoms during the medical history assessment, with consequences for diagnosis, as well as for the administration and monitoring of treatments in routine care. Furthermore, otherness can also manifest as unrealistic expectations regarding the actual capabilities of the physician and the healing potential of 'Western' allopathic medicine. Therefore, preventive measures are essential to manage potential disappointments and prevent patients from discontinuing their course of care.

Secondly, care, when effectively practised, leads to actions aimed at changing actual situations and/or inadequate behaviours to preserve health. From an intercultural perspective, this may require a nuanced process of translation and interpretation, which must also take into account the significance of the symbolic dimension, in relation to the body, illness, and the role of medicine. Therefore, intercultural medicine requires not only a general willingness among medical, healthcare, and administrative staff to embrace change and innovation in their professional practices and training, but also a deep reassessment of stereotypes and prejudices, alongside a non-comparative approach Furthermore, in order for care practices to be effective, they must also be sustainable: healthcare settings must be equipped with services and facilities that meet the needs of culturally diverse individuals, alongside investments in the specific training of human resources, the allocation of appropriate financial resources that are strategically targeted, and a governance capable of engaging with cultural pluralism and diverse conceptions of the good life through dialogue. In particular, the establishment of an Ethical Space within healthcare facilities, featuring a dedicated 'counter' for intercultural relations (Comitato Nazionale di Bioetica 2021), can play a crucial role in involving *patients*, and potentially their families, in the care process, ensuring that adherence to behavioural rules, which is essential in any organisation, is thoughtful and informed (Sen 2002). Finally, those receiving care must be given the opportunity to express whether their care needs have been or are being met. The perception of the effectiveness and success of a therapeutic process is always important, but it is especially so in intercultural relations, as this perception and its communication require the activation of translation processes and can lead to the creation of new shared meanings and understandings between those providing care and those receiving it. This is possible if, together with this kind of feedback, patients are actively involved and empowered in their own care. This involvement is not intended as an expression of monological autonomy or an abstract recognition of rights, but rather as a biographically meaningful journey, constructed through dialogue and sustained over time, which is crucial for the learning and reflective processes of all those involved in care.

On a professional ethical level, caregiving primarily involves listening. Reference has been made to the importance of storytelling in intercultural medicine. If listening is carried out correctly, it becomes an essential component of the bio-psycho-social approach to medicine advocated by the WHO. Moreover, it forms the foundation for precision medicine. From this perspective, intercultural medicine should be regarded as an essential component of healthcare, as it focuses attention on lived experiences, on illness, pain, and death, and on how these are interpreted within different cultural worlds and communicated accordingly. For listening to be truly effective, translation and interpretation processes are required. Doctors and healthcare professionals need to be aware of both the incommensurability of cultures and their 'artificial' yet unifying nature. In order to ensure a successful care relationship, they must address the challenge of how to translate and interpret not only at the level of language, but also in terms of the meaning and significance attributed to what is expressed by their patients. This applies to narratives, but also directly to symptomatology: for example, if healthcare professionals fail to consider the ways in which pain is expressed and conceptualised in certain cultural traditions, they may make significant and dangerous errors in their assessments. Moreover, a key element in relationship building is the recognition of vulnerability as a factor that unites us beyond cultural differences The *Barcelona Declaration* refers to vulnerability as one of the fundamental principles of bioethics, alongside respect for autonomy, integrity, and the dignity of individuals (Kemp and Dahl Rendtorff 1998). I believe that, rather than just a principle, vulnerability is a fundamental condition inherent to all living beings, which manifests in different ways. In general terms, care is aimed at addressing these challenges and seeks to enable individuals to exercise their autonomy while also ensuring that their dignity and integrity are recognised. Naturally, these are principles that can be interpreted in various ways, even within other cultural worlds. As mentioned, vulnerability is a shared characteristic, to the extent that, in some way, different cultures acknowledge this fundamental reality. It is also something that unites the doctor and healthcare staff with the patient, and can serve as an intercultural 'bridge' to build pathways of shared understanding and meaning. This applies not only to the patient's condition and the doctor's role but also to the broader sense within their respective biographies and the relationship they share. For it to emerge and strengthen, the practice of solicitude is necessary. The condition of the foreigner, and in particular the migrant, lies in their very essence of being 'foreign', as outsiders in a cultural context and world that do not belong to them, and from which they often feel marginalised, if not outright rejected. Solicitude

calls upon doctors and healthcare providers to adopt a disposition towards caregiving, understood as *care* – a thoughtful attitude capable of understanding and responding to the needs of those who turn to them. The absence of solicitude is a significant barrier to establishing a trusting relationship, which is essential for a proper interaction between doctors, healthcare professionals, and those receiving care. This is crucial in all cases, but it also creates a key obstacle to initiating vital narrative pathways, especially within the context of intercultural medicine.

According to Tronto, the care process is structured in five phases. Below, I will outline these, partially reinterpreting and integrating them with the concepts and operational methods specific to intercultural medicine that I have highlighted above:

1. Taking an interest.

It entails recognising that care is genuinely necessary based on the perception of a present need, which must be understood within the context of the individual's cultural background. This need can be both material and immaterial, and poverty may encompass both forms of need. In particular, the 'foreigner' or migrant may experience relational deprivation, both due to the physical absence of family or loved ones, and the inability to engage in customs and practices that are essential for their sense of authenticity and self-identity. This makes these individuals particularly vulnerable and can negatively impact the therapeutic relationship and the effectiveness of the caregiving process. Focusing on the cultural dimension can facilitate, through a process of dialogue, a redefinition of the meanings and significance of the patient's condition within the specific context they are in.

Taking an interest also involves evaluating the quality of the need and the fact that it should be met. This aspect is particularly sensitive, especially when interacting with individuals who identify with different cultures, as a need that is significant in one cultural context may not be in another. What should be avoided is the undervaluation of others' needs based on an ethnocentric perspective, refraining from justifying the failure to meet those needs with bureaucratic or legal constraints (unless absolutely necessary), such as needs related to food or rituals (for example, the requirement in Islamic doctrine to face Mecca during prayer). Meeting these needs corresponds to addressing a real need within those cultural universes, while denying or undervaluing them creates a conflict that hinders the opportunity for dialogue and the development of shared pathways of understanding, which are crucial also at a therapeutic level.

2. Caregiving.

It requires taking responsibility for both the individuals involved and the structure in which one operates. In summary, the doctor, along with the healthcare staff, must be accountable for their actions to the individuals they serve and to the institution that hosts them. Furthermore, taking care involves acknowledging the potential to address a need and requires clarity and awareness about the actions being undertaken, as well as the reasons provided, both regarding the possibility or impossibility of action and the process itself when it is put into practice. In summary, this phase of care emphasizes the importance of being aware in order to be accountable. The idea that doctors and healthcare staff must be accountable to those receiving care is not only a relatively recent development in our medicine, but it can also pose a challenge in building an intercultural relationship, a challenge that should not be underestimated. Becoming aware of the possibility of acting to meet a need involves not only an understanding of the nature of the need (which, as we've highlighted, has a social dimension) but also an awareness of its origins. Narrative, particularly in an intercultural context, can be especially valuable in this regard. Therefore, taking responsibility for the possibility of action and translating it into practice depends on the active involvement of the person being addressed. Taking reasons seriously in intercultural terms also means, at least in the beginning, engaging with needs that may appear unusual or eccentric, but which should not be judged or assessed through the lens of our own cultural framework. We must understand the *why* behind them and consider whether and how to attribute meaning to them within the context of caregiving. In any case, the moral obligation to provide reasons for the decisions made and to offer contextual justification remains fundamental. Moreover, caregiving typically occurs within structured and organised settings. Its practice should also be viewed through the lens of *clinical governance*, encompassing both the management of financial and human resources.

3. Providing care.

It involves the direct fulfilment of caregiving needs. As mentioned, these needs can be raised by the recipients of care, but they can also be identified by doctors and, where applicable, by healthcare staff. From the perspective of intercultural medicine, it is particularly important to note that, at times, for doctors and especially for healthcare staff, providing care involves physical labour. The relationship with physicality, especially that of others, is culturally shaped and involves not only direct physical contact but also visual contact. Healthcare professionals are trained and accustomed to delivering care without

gender distinctions, however this can present a significant challenge when engaging with cultures where any form of contact between individuals of different genders is not only seen as inappropriate but is considered entirely unacceptable. It is also essential to take this into account. The potential symbolic redefinition of relationships with one's own and others' bodies in intercultural terms is one of the most difficult challenges to navigate. In different cultures, the body is perceived as something entirely personal, and any exposure or intervention by others on it relates to the ways in which the relationship between symbolic systems and social order is understood. For example, consider practices such as male and female circumcision or female genital mutilation. This is not the appropriate setting to address this issue in depth, as it has long been a subject of debate among cultural anthropologists. What I wish to emphasize is the ethical and professional necessity for doctors and healthcare staff to approach the topic of physicality with awareness, taking into account the biographies and cultural backgrounds of the individuals receiving care.

Finally, caregivers come into direct contact with the recipients, and since this is usually a multidisciplinary contact, it is essential to have training that involves the entire team.

4. Receiving care.

It implies recognising beforehand that the care recipient will respond to the care they receive, and afterwards, or even during the process, evaluating the impact that the care has had or is having. Receiving care should be included in the caregiving process as it is the way we determine whether the care needs have been met and to what extent. When needs reflect cultural belonging, it follows that the recognition and assessment process must be tailored to the specific context. Furthermore, when these processes occur, they are closely linked to the redefinition of one's identity and the re-signification of the reality experienced, particularly in the context of a potential new interpretation of the journey through illness and healing. This is an important aspect for establishing continuity in the caregiving relationship once the acute phase has ended, and it is crucial for the treatment of chronic-degenerative conditions.

5. Caregiving together.

It entails the active involvement and shared responsibility of the person receiving care, and, as highlighted throughout the thesis, it implies a process of mutual understanding and learning. This phase is a key aspect in intercultural medicine, as overcoming stereotypes and prejudices rooted in comparative

processes of identification and recognition (which, of course, applies to all cultures) can only occur through a process that begins with an awareness of each party's 'starting points', and leads to new languages, meanings, and ways of interpreting reality being developed which may also emerge from hybridisations. It is on this basis that an important and necessary practice like informed consent is not reduced to a bureaucratic task, but as stated in the Code of Medical Ethics of the National Federation of the Orders of Surgeons and Dentists of Italy (FNOMCEO), is the result of a dialogue that is an integral and essential part of the caregiving process. The creation of a genuine therapeutic contract or care alliance, at an intercultural level, can only be the result of a process in which both doctors and healthcare professionals challenge themselves and, while respecting their individual roles, embark on a shared journey of understanding with those receiving care. All of this begins with a narrative through which the individuals involved overcome the dual social and individual asymmetry they face as both foreigners and patients, allowing them to state, as Mr. Ortiz did at the end of his story shared with Charon, "No one had ever let me talk like this" (Charon 2008). Finally, caregiving together has an impact on clinical governance through a process that requires a shift from the old management system to a new one, characterised as a transition from a paradigm of unilateral service delivery to a culture of shared learning (Tallacchini 2006).

Conclusions

The model I have proposed aims not only to implement an intercultural approach in medicine, but also to address, starting from this specific point, the severe condition of inequality often faced by foreigners and migrants, whether they are regular or irregular. From this perspective, the healthcare sector is a critical and essential domain, both at the national and global levels. As Sen (1994) pointed out, inequality creates a call for equality, but this must be carefully defined, as it cannot overlook the diverse conditions each individual faces. Therefore, 'equality of what?'. To answer this question, we must emphasize freedom and the development of the ability to acquire the functions we value and that shape our lives, as well as the freedom to actively pursue the goals we consider important (Ibid.). Health and its management play a crucial role from this perspective. Intercultural medicine, as I have outlined, represents a specific and now unavoidable response in societies like ours, which are increasingly characterised by the pluralism of conceptions of the good life, as well as by ethnic and cultural diversity.

It enables two forms of inequality in healthcare to be addressed, which restrict individuals' freedom by affecting the quality of their lives. The first concerns migrants' understanding of how healthcare systems work and, as a result, their ability to fully access them. For those unfamiliar with the rules, these systems can often be perceived as exclusionary. This highlights the importance of training administrative staff, particularly those responsible for reception, in intercultural communication. In short, the goal is to create conditions that ensure foreigners and migrants have equal access to services as the citizens of a state. The second condition of inequality relates to the understanding of an individual's true health status, which is largely determined by standardised procedures that fail to consider the patient's own 'point of view'. Numerous anthropological studies (see Kleinman 1995; Good 2005; 2006; Piot 2015; Crudo 2004; Quaranta and Ricca 2012; Volpini 2017) have highlighted suffering as a central aspect of illness. However, the presence and intensity of pain are part of each individual's self-perception. As Sen pointed out, in relation to this aspect of illness, the empirical data used by those who plan healthcare frameworks, allocate resources, or analyse cost-benefit ratios may be fundamentally lacking. As a result, public health decisions often fail to address the patient's state of suffering and their experience of care (Sen 2009). This is even more significant when it comes to foreigners and migrants, as their perception of pain may be influenced by social and cultural factors and may be communicated in ways that differ from those the doctor or healthcare staff are accustomed to. Therefore, while the patient's perspective is crucial, it cannot be fully comprehensive in medical practice: "A person reared in a community with a great many diseases and little medical facilities may be inclined to take certain symptoms as 'normal' when they are clinically preventable" (Ibid.). or underestimate certain symptoms. In other words, it is essential to consider social conditions such as level of education, poverty, or marginalisation, as well as cultural factors such as the self-perception of pain, and the meaning attached to health and illness, in order to reduce and, ultimately, eliminate the inequalities in treatment that often affect the most vulnerable sectors of the population, particularly many migrants. This applies to both the therapeutic relationship and governance.

Finally, I believe it is important to highlight that since 2001, the WHO has proposed a model for assessing health called the *International classification of functioning, disability and health* (ICF), which draws on the language of Sen's capability theory. The qualifiers provided by the ICF are, in fact, assessments related to an individual's capacity to achieve desired states or outcomes. In my opinion, it is a tool that should also be used in intercultural medicine practices

to prevent excessive fragmentation and, most importantly, to demonstrate its effectiveness concretely through a 'language' that is universally recognised.

The fact remains that the ICF, at least in Italy, is not widely used, and even less so in therapeutic relationships involving migrants. Probably, beyond the technical aspects related to its application, we are dealing with a broader issue: the public and political dimension of care involves defining the relationship between care and democratic politics. This is the argument put forward by Tronto, who explicitly advocates for a caring democracy. Democratic politics requires a reduction of asymmetries in care relationships and implies a vision of citizenship in which citizens are both providers and recipients of care. However, if we are talking about citizenship, then the rights associated with it must be recognised, with minimal restrictions, even for migrants who wish to reside in a given country or make use of its healthcare system. This requires questioning both methodological and legislative nationalism (Chernilo 2007; Beck 2007). Therefore, the development of intercultural relationships, starting with those in healthcare, provides a critical test of how we might meaningfully address the link between care and democracy. If we assume that politics concerns how caregiving responsibilities are allocated, then politics should be understood in terms of actions (who does what) rather than distribution (who has what). Therefore, the substance of democratic politics should focus on the issue of distributing caregiving responsibilities and be determined through a process that ensures the broadest possible opportunity for participation in defining how these responsibilities are assigned.

This concept of politics is both substantive and procedural: substantive, as it identifies caregiving responsibility as the central starting point for embarking on a course of action rooted in coherence and integration; and procedural, because it ensures that no one is excluded from the deliberative process that determines the allocation of human and economic resources for care. All of this entails the need for specific and broad inclusion practices that enable everyone to access a learning process about the needs of others, which requires time, openness, and fairness. Due to its specific nature, intercultural medicine serves as both a field for experimentation and a platform for the development of this process.

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Notes on contributor. Natasha Cola, PhD in Social Sciences, teaches Bioethics and Communication Ethics at the Department of Educational Sciences at the University of Genoa, where she is a member of the Steering Committee for the second level Master's program Pratiche di Filosofia at the Research Laboratory for Applied Ethics. She has published the monographs *Una teoria sistemica della cura, Etica della cura, volontariato e medicina interculturale* (Rubbettino Editore 2024), and *Donazione e volontariato*. *Una scelta etica consapevole e responsabile* (Sentieri Meridiani 2011), as well as various articles on ethics. She has received several awards, including the Thesis Award from the Advanced Training Course on Bioethics, Animal Welfare, and Veterinary Medicine (University of Padua), the First Prize for Bioethics from the Fondazione Erede, and the Special Award A. Langer from the Ecoistituto del Veneto.

Contact. natasha.cola@unige.it

ORCID. Natasha Cola https://orcid.org/0000-0002-5456-2207

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