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AMENDING POWER AND VERTICAL RECIPROCITY IN THE CLIMATE CHANGE ERA: RECONSIDERING *SOVEREIGNTY ACROSS GENERATIONS*

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ABSTRACT
The paper revolves around the need of rethinking the amending power as one of the crucial issues within the contemporary political theory of democracy. The topic is addressed starting from a selective reading of Sovereignty Across Generations by Alessandro Ferrara. The book offers the opportunity to develop a series of considerations for a theory of sovereignty that, in my view, takes the theme of climate change as the focus and epochal destiny of our time. Two macro-questions and correlative sub-questions will be underlined. On the one hand, the paper proposes a series of possibilities for reviewing and integrating the theoretical vocabulary and profiles we would like to ground the idea of justice at the centre of every democratic exercise of sovereignty. On the other, the paper focuses on the elaboration and the functioning of the "vertical reciprocity" procedure, that is understood as the fundamental normative structure for a renewed idea of sovereignty that is capable of meeting what we should consider the most urgent challenge of our time.

KEYWORDS
Amending power; generations; intergenerational justice; vertical reciprocity; climate change.

1. PREMISE

This essay originates from the reading of a study that I consider authentically significant for the current philosophical-political debate, such as *Sovereignty Across Generations. Constituent Power and Political Liberalism*[1]. This wide research opens and deals with a number of fundamental questions related to how to shape

[1] A. Ferrara, *Sovereignty Across Generations. Constituent Power and Political Liberalism*, Oxford, Oxford University Press 2023 (hereinafter: SAG).

or rethink a political sovereignty of inter- and trans-generational scope. However, in my view, it also offers the opportunity to develop a series of considerations for a theory of sovereignty that takes the theme of climate change as the focus and epochal destiny of our time. In what follows, these considerations are organized along two macro-questions and correlative sub-questions.

The first macro-question revolves around a definitory topic: the possibility of reviewing and integrating at least a part of the here used theoretical vocabulary in order to better profile the contribution of various stakeholders to the definition of the idea of justice that we would like to be at the centre of every democratic exercise of sovereignty.

The second one concerns the elaboration and the "functioning" of the *vertical reciprocity* procedure, that is understood as the fundamental normative structure for a renewed idea of sovereignty that is capable of meeting what we should consider the most urgent challenge of our time.

2. AMENDING POWER AND ITS FEATURES RECONSIDERED

Amending power constitutes one of the crucial theoretical structures of Ferrara's work[2]. After having preliminarily defined profile and function of the amending power, the author outlines four constitutive features, or "four facets of the exercise of amending power"[3]. Those facets are referred to fundamental logic-structural moments as the *when*, the *what*, the *who*, and the *where* of the amending process. In this regard and within a wide framing and exposition of unavoidable questions, at least two points could be underlined as possible "argumentative milestones" for our discourse.

The *first point* directly refers to the *when-question*. "When a constitution should be amended?" Ferrara's answer to this question is clear:

> "[...] amending power ought to be activated whenever a sector of the electorate or an authorized institutional actor believes that a desirable new rule, standard, or principle cannot be generated via construction or, in other words, lies 'beyond interpretation'."[4]

The answer collects two different but intertwined conditions. On the one hand, new issues, which have been rising at the level of public discussion, have acquired a so high level of shared acknowledgement and relevance to deserve to be represented at the constitutional level in explicit and consolidated form. On the other

[2] We are referring here to SAG, Ch. 7., "Amending Power: Vertical Reciprocity and Political Liberalism", pp. 247-282.

[3] SAG, p. 252.

[4] SAG, p. 254.

hand, it is not possible to give evidence to this kind of shared representation's need within the borders of a reasonable interpretation of what is already present in the constitutional text. It deserves to be noted that, for the first time in this context a kind of rhetoric *clausola* or systemic link among specific terms appears on the argumentative scene: the combination of "new rule, standard, or principle". We'll return on this specific point later.

The second point we would focus on is related to the *what-question*. This is the place in which a relevant distinction is introduced. It is the distinction between 'corrective' and 'ameliorative' amendments. The "'corrective' amendments tend to remedy the perceived inadequacies of the extant constitution or, to 'respond to imperfection'",[5] for example, by emending or remedying electoral mechanisms that fail to secure stability of the government, or age-requirements that exclude people from the possibility of being elected to certain offices. In turn, "'ameliorative' amendments are motivated by the intention to 'constitutionalize' new standards (e.g. of accountability) or new principles or rights (right to privacy)."[6]

Both points should be put in relationship with another fundamental question, namely: who is in charge of proposing or guiding the amendment process? On this respect, which covers the third facet of the exercise of amending power, Ferrara introduced some clarifications, that are oriented to link the importance of the subject of the amendment with the degree of representativeness of the authorized amending subject. Put in other terms: within a democratic context, the more relevant amendment proposals should be in charge of the highest representative "voice".

However, the conclusion he derives from this argumentative segment is something which deserves of being furtherly explored, thus giving voice to our *first question*.

> "To conclude, the normative indication that could be gleaned from the above considerations is to envisage a division of functions, whereby institutional actors should be primarily vested with the prerogative to enact amendments concerning *rules* or the organizational structure of the polity (save for high-impact rule-change), and the electorate with the prerogative to modify or introduce constitutional *principles*, with the area of constitutional *standards* falling in between."[7]

The first general question devoted to the author's comprehensive argumentative path arising from this passage is twofold, revolving around both a *clarificatory* and an *integrative* profile.

[5] SAG, p. 255.
[6] SAG, p. 256.
[7] SAG, p. 258.

2.1. The opportunity of a clarification

From the *clarificatory* point of view, we do have *two sub-questions* to address. It could appear as not completely clarified the distinction among *rules*, *principles*, and *standards* here recalled as well as a univocal clarification regarding *who* is in charge of *what*.

2.1.1. Identifying the actor and its specific role

Let's start with the latter point, namely, with the *second sub-question*. In turn, this one can be divided into three different but intertwined issues.

Prima facie, we might affirm that the elected representatives (by limiting to this group of public functionaries the qualification of "institutional actors") oversee amendments regarding the organizational structure of the polity. Following an implicit but easily shared understanding, this typology of amendments should concern very basic facets of the living together. If we agree on this, then a further twofold question appears. On the one hand, if we assume that those amendments concerning *rules* are really basic, we could consequently suppose that they are already identifiable and obtainable within the possible and "legitimate interpretation" of what is already written in the constitution. In this case, then, the amendment proposal would be neither necessary nor efficient, having in mind the complex path requested for its approval. Conversely, if we assume that the amendment proposal could be effectively innovative or integrative with regards to what is already in the constitution, we must then wonder if that very amendment would not be an "high-impact rule-change" – and, if this would be the case, who could be vested of proposing and approving such a typology of amendment.

Secondly, if we move our attention to the *principles'* side, we could wonder whether the specific responsibilities' assumption has been completely assessed. Recalling the text, we should agree in giving to the electorate "the prerogative to modify or introduce constitutional principles". The point here is precising the modality through which the electorate – namely, the people – could propose a so demanding and accurate amendment modifying or introducing a constitutional principle. In this case, a parallel re-reading of the previous chapter could be surely helpful[8]. Nonetheless, also in this domain another twofold question seems remaining on the floor.

On the one hand, we could wonder if we are not implicitly running the risk of attributing to the people a too demanding accurate and specific competence. On the other, we must ask ourselves on who could represent the specific "voice" in charge of shaping that amendment proposal in a form adequate for being approved. Furtherly, we could wonder which is the specific and legitimate way from the people's side for being listened to within the institutional sphere. Specifically prolonging

[8] I'm referring here to SAG, spec. Ch. 6. "Representing 'the People' by Interpreting the Constitution", pp. 217-246.

that assumption, we could share a linear answer: the elected interpreters of people's political will are the best actors for giving voice and shape to such an amendment proposal. But, in this case, we should admit that the same subjects are in charge for proposing both *rules* and *principles*. If this were true, then the "distinction of functions" that the text tries to consolidate is to rethink.

Thirdly, as explicitly noted in the text, even less evident is the subject in charge for proposing amendments related to the so-called *standards* (the institutional actors or the electorate?), that remains thus in a kind of middle-domain, with no other specifications.

2.1.2. Rules, principles, and standards

Finally, if we move our attention to the first sub-question above introduced, we should investigate about the distinction among *rules*, *principles* and *standards*. In this regard, we could preliminarily consider where those terms are defined. We wonder if the readers have sufficient material for distinguishing among those technical terms – and the correlative normative requests that should characterize and legitimize each of those groups.

To find out an explicit definition of these terms, Ferrara invites the reader to refer to the Ch. 6, Section 2C. In this context, the distinction is proposed by recalling a work by Balkin[9]. Going ahead, Ferrara dedicates many precious considerations to what he calls *underlying principles*, but in my view an extended definition regarding each of the three terms here mentioned would be really useful, with specific reference to the theoretical borders of each one in comparison with the other two.

Last but not least, while the distinction between *rule* and *principle* can be intuitively grasped, we could ask if the contents potentially referrable to the concept of *standard* would deserve to be constitutionalized or could be better framed as subrealms of a rule or even of a social and cultural norm that that benefits from an implicit approval and a social embedding in contextual forms of ordinary life.

[9] "Following Balkin, it is possible to distinguish *rules*, *standards*, and *principles* within a constitution, as well as structure- forming provisions that shape the polity. Rules are used in order to bind the judgment of future generations by strict directives subject to virtually zero interpretation: no person is eligible for the office of President of the United States 'who shall not have attained to the Age of thirty-five Years' (Article II). Instead, the use of terms that refer to general or abstract concepts indicates that the framers 'sought to embody general and abstract principles of constitutional law, whose scope, in turn, will have to be worked out and implemented by later generations'. Sometimes that content takes the form of a standard (e.g. 'cruel and unusual punishment'), in other cases of a principle ('equal protection of the laws' or 'free exercise of religion'), and in both cases we need to construct 'subsidiary principles' that can help us to make sense of or contextualize the main principle." The reference is here to J.M. Balkin, *Living Originalism*, Cambridge (Mass.), Harvard University Press, 2011, pp. 12-13.

2.2. The opportunity of an integration

As announced at the beginning of the paragraph, it is possible to raise another comprehensive question regarding the *who-issue*, which is also due to its intrinsic fundamental relevance. This is what we could call a *question of integration*.

More specifically, also having in mind the issues just above raised, we are wondering if the insertion within the argumentative path of the concept of *public sphere* might be useful, as integrative conceptual tool. I'm referring here to the pioneering research by Jurgen Habermas, first[10].

Let me recall a preliminary definition of such a concept. With *public sphere* we can mean a communicative space within which the members of a specific society or more restricted group express and share (in the largest sense of the term) their opinion on issues of general and collective interest. This is a place that is primarily physical (the square, the café, the club), but step by step always more immaterial (due to the fundamental development of traditional and mass communication instruments). Moreover, this is a place that every member of every political community can potentially access and in which, along with a variable regularity, are discussed the issues who are of interest of the majority of those members, or of the part of them that is more aware of itself, of its own social role, as well as of its collective needs and goals.

Within a series of historical and sociological specifications that is not possible to recall here, what could be of interest, from an integrative point of view, could be the fundamental distinction between *weak* and *strong public* introduced by Nancy Fraser and subsequently recalled by the same Habermas[11].

Starting from the avoidance of every evaluative consideration related to the usage of such adjectives, with *weak public* we should intend that contextual communicative space who hosts the genuine emersion of new or innovative issues that, thanks to a dedicated communicative activity, become objects of a vivid and rich discussion. Innovation and discussion but not binding decision are then the constitutive characters of such a form of public sphere.

In this context we can appreciate the rising of innovative issues or the shaping of new collective sensibilities and attention *vis à vis* new problems and needs. That sensitivity and attention can be structured by a vivid discussion among stable or

[10] I'm referring here to J. Habermas, *The Structural Transformation of the Public Sphere: An Inquiry Into a Category of Bourgeois Society* [1962], transl. by T. Burger with F. Lawrence, Cambridge, Polity Press, 1989.

[11] See N. Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy", in C. Calhoun (ed.), *Habermas and the Public Sphere*. Cambridge (Mass.), MIT Press, 1992. The distinction introduced by Fraser has been recalled by the same Habermas in J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, transl. by W. Rehg, Cambridge (Mass.), MIT Press 1998. A wider analysis on this point is available in A. Pirni, *Filosofia pratica e sfera pubblica: percorsi a confronto*, Reggio Emilia, Diabasis, 2005; Id, "Il nesso sfera pubblica/democrazia, eredità e compito per l'Europa", *Ragion Pratica*, n. 30, giugno 2008, pp. 189-207.

more occasional participants to that communicative structure, and it can also be converted into new regulative proposals that organized expression and "voices" of the public sphere (such as associations or groups) can bring (in-)directly to the political arena. From this point onwards, however, the *strong public* starts developing its own role.

With this expression, following Fraser first, we allude to a crucial difference. While the *weak* form of public – and of *public sphere* – is the ideal venue for linking the side of *emersion* of new topics and issues with the dimension of the communication and appropriate *discussion* on those topics – and specifically on those among them who receive the widest and deepest attention –, the *strong public*, and extensively, the *strong public sphere* is the place in which the *discussion* domain is coupled with the exclusive exercise of taking *decisions*. These are decisions that are legitimate, if assumed following specific procedures and binding for all members of the same community to which that specific strong public sphere refers and is part of.

Described in these terms, we are now able to acknowledge in the strong public sphere the profile of a parliament or of any other public institution embodying a decisional power.

The question we might add to the comprehensive domain is then a request of integrating the argumentative path above proposed by inserting the function of the (two) dimensions of public sphere. In this case, we could perhaps imagine a different comprehensive picture of the actors in charge for ensuring the pursuing of the approval of new *rules* and *principles*. Moreover, we could find out a specific figure in charge of promoting a series of proposal that could be *converted* into standards for and within a specific society or political community.

3. RECONSIDERING VERTICAL RECIPROCITY WITHIN THE AMENDING POWER SPHERE

Vertical reciprocity is for sure one of the more theoretically exigent and nuanced concepts that is presented in Ferrara's book. For any scholar working on theories of justice and, specifically, on theories of intergenerational justice, this concept is extremely rich of echoes and possible argumentative developments, that will be not possible here to fully recall[12]. Nonetheless, in what follows we would like to retrace some passages of the text, to voice a comprehensive question on this topic and

[12] Among the most interesting contributions of this point, let me just recall here: A. Gosseries, & L.H. Meyer (Eds.), *Intergenerational Justice*, Oxford, Oxford University Press 2009; F.C. Menga, *Lo scandalo del futuro. Per una giustizia intergenerazionale*, Roma, Edizioni di Storia e Letteratura; Id., *Etica intergenerazionale*, Brescia, Morcelliana 2021; A. Gosseries, *What is Intergenerational Justice?*, London, Polity Press, 2023.

formulate a proposal related to a specific topic which is systemically involved in the vertical reciprocity process.

First, the author openly clarifies the stakes: "Vertical reciprocity is the normative core of sequential sovereignty"[13]. However, this statement puts in play another fundamental concept of an overall vocabulary used in *Sovereignty Across Generations*, and, specifically, the distinction between *sequential* and *serial* sovereignty. In a nutshell, such a distinction has already been presented in the introductory chapter: while a "sequential exercise of popular sovereignty" is aware about another fundamental distinction between "constituent and limited amending power", the serial sovereignty is based on a "doubtful idea" of a comprehensive "ownership of the constitution, consisting of an exclusive exercise of sovereignty (and full constituent power) on the part of each living generation".

In other terms, the sequential sovereignty finds its authentical meaning on another fundamental distinction: that one between *constituent power* and *amending power*.

The *constituent power* "responds to the political conception of justice most reasonable for its bearers"[14], namely: it offers the best consolidated framework of the idea of justice that a specific political community decides to make its own. Accordingly, the constitutive power grounds its legitimacy on the people of a specific political community understood in its intergenerational continuity and totality. Instead, the *amending power* is based only on the "living segment" of that people, meaning, the present people, that is subject to direct participation, electoral and referendum processes, as well as any other direct procedure of confrontation among subjects that is possible to see and take part of by each member of that community.

Coming back to the former distinction, between sequential and serial sovereignty, we conclude that, while the *sequential sovereignty* keeps the difference between *constituent* and *amending power* as insurmountable, the *serial sovereignty* embodies an opposite behaviour, by attributing to the living segment of people both powers[15]. This is what, in the present decades, many democratic contexts are experiencing in such a multifaceted series of phenomena now usually gathered under the label of *populism*.

The comprehensive and fundamental grounding of *sequential sovereignty* is then twofold. On the one hand, we do acknowledge the relevance of a classic (Aristotelian) ontological assumption: it is illogical considering *the part* (meaning, in this case: "the living people") as superior to *the whole* ("the intergenerational people"). On the other hand, the concept of *vertical reciprocity* is at stake for ensuring a clear and stable connection among generations of people. To find out its own legitimation,

[13] SAG, p. 273.

[14] SAG, p. 3.

[15] A wide elaboration on both concepts and the correlative difficulties is presented in SAG, Chapter V., "Sequential Sovereignty: On Representing 'the People' and the Electorate", pp. 177-216.

the amending power must thus refer not only to the living segment or the present people. It must rather refer to the entire chain of possible peoples (or generations), on the basis of a principle of reciprocity: every possible generation of members of that specific political community should be able to agree to the specific amendment the living people is proposing now, in due respect of the foundational transgenerational people and the reasonableness of the proposal for the entire series of past, present and future members of such a community[16]. This is a schema that is explicitly referred to the Rawlsian framework, also by recalling that we owe the first articulation of the idea of intergenerational justice to the author of *A Theory of Justice*[17].

3.1. Testing vertical reciprocity with climate change case-study: A first question

In this context, it deserves to be considered a first operational and intrinsic characteristic of reciprocity, that might conflict with the need of establishing concrete rules/principles/standards (or whatever we intend with those terms: see the previous paragraph) in line with a sharp and urgent issue.

The point of departure could be the reprise of a saying formulated by Thomson and inspired by John Locke, who received a quite large attention in the contemporary debate on the topic: "present sovereigns should leave their successors 'enough and as good' sovereignty as they themselves enjoy"[18].

This saying, which is at the basis of pretty any liberal theory of democracy, encapsulates a core of undoubted relevance. Nonetheless, when it is put in relation with concrete topics or case studies, it might generate some intrinsic difficulties.

[16] "Amending power should be barred from altering the constitutional essentials (basic structure, basic rights and liberties) 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 within that newly generated constitutional order. This threshold of reasonability — to be legally enforced by an institution that represents the transgenerational people — is binding on amending power not because this power, while drawing its authorization from being part of the peoples' generational sequence, acts on a mandate to execute a principals will, but because the living segment of the people — a principal to itself endowed with an autonomous political will — nonetheless is under the obligation to relate on the basis of reciprocity to *all* the free and equal generations of the people. As a link in an intergenerational chain, and no differently from an individual citizen living within a fair scheme of social cooperation, the electorate is under the obligation, also applicable to future generations acting on a basis defined by the constitutional commitments, to abide by terms of cooperation that *all* generations of the same people as free and equal can accept" (SAG, p. 273).

[17] See J. Rawls, *A Theory of Justice* [1971], revised edition, Cambridge, Harvard University Press 1999, spec. § 44.

[18] Among other scholars, Ferrara considers first the reshaping of such a thesis by Thomson (see: D. Thompson, "Democracy in Time: Popular Sovereignty and Temporal Representation", in *Constellations*, 2005, 12(2), pp. 245-261. See also Axel Gosseries, "The Intergenerational Case for Constitutional Rigidity", *Ratio Juris*, 2014, 27(4), pp. 528-539; P. Häberle, "A Constitutional Law for Future Generations – The 'Other' Form of the Social Contract: The Generation Contract", in J.C. Tremmel (ed), *Handbook of Intergenerational Justice*, Cheltenham, Edward Elgar, 2006, pp. 215-229, and J.C. Tremmel "Establishing Intergenerational Justice in National Constitutions", *Ivi*, pp. 187-214.

Let's imagine the comprehensive issue related to environment and *a fortiori*, to the present-day worldwide experienced condition of climate change.

Preserving for the successors of the present generation of sovereigns 'enough and as good' sovereignty means not just and not only 'non touching' or 'not intervening' in natural environments; better 'not consuming' or, reducing as much as we can the consumption of non-renewable sources. In other terms – and by referring to the almost contemporary convictions expressed by German practical philosophy (which would be based on the principle of '*thun und lassen*', 'do or omitting') – with specific reference to the environment and even more clearly to the climate change era, leaving to our descendent at least an opportunity of self-governing their own present which is comparable with ours means nothing less than proactively and restrictively acting. It is necessary take position also by approving clear limitations *vis à vis* specific individual and collective behaviours and, if successful, by stopping once and for all habits and (individual, collective, and institutional) agency models that have a clear and testified negative impact on environment and the state of the climate. This has to do with something that is not 'lassen' – or: avoid considering – some specific topics and behaviours. On the opposite: This has to do with 'thun', namely, 'intervening', by limiting the present generation the possibility of freely acting or of adopting certain behaviours, up to blocking and forbidding specific ones, once and for all.

However, if considered from the twofold viewpoint of both the descendants and the ancestors, this consideration could raise some difficulties for the process of vertical reciprocity as a whole.

If we refer to the *descendants'* point of view, the not-yet-living people, we could face a first normative objection, in terms of a difficulty of universalizing that decision. Descendants may not agree to find their actions more stringently limited than the limiting generation (i.e. the generation that passed that specific amendment implying a specific limitation) experienced firsthand. For example, what might be required, in terms of saving CO2 emissions, would be a behaviour only minimally required of the present generation, of the living segment of the people, but which would instead be entirely borne by future generations. In short, the decision maker suffers almost no consequences of his decisions – and this, from the descendants' point of view, is rather difficult to recognize as a principle of justice.

In turn, if we might refer to the *ancestors*, namely, to the past generations of an ideal transgenerational people, they couldn't acknowledge the relevance of carbon dioxide emissions or any other climate-change-sensitive behaviour already for themselves. They could imagine those restrictions as completely useless and, above all, restricting a vastness of sovereignty that instead – from the Lockean point of view and according to the same Rawlsian principle of reasonableness – they know they have received from their predecessors and would strongly like to maintain for their descendants. In this case, those who decide, not having directly experienced what

their descendants will experience in terms of climate change, would mostly not want others to suffer negative consequences, perhaps useless, perhaps avoidable with respect to something unknown. In short, our ancestors would find it unreasonable to proceed with restrictions to contain climate change[19].

The combination of the objection of universalizability coming from the descendants' point of view, together with the objection of unreasonability coming from the ancestors' one could put in trouble the application of the principle of *vertical reciprocity* to the climate change issue.

In any case, testing this principle with completely concrete cases like the one just addressed certainly helps to understand the possibilities of its refinement and consolidation as well as the potential search for another principle and procedure that appears able to offer more comprehensive feedback to possible objections.

3.2. Climate change as potential systemic difficulty for the liberal democratic system: Further questions for vertical reciprocity

Starting from this overall question regarding the vertical reciprocity principle, other possible "question marks" come into play. These further questions could be triggered by the climate change case-study anew. Nonetheless, they reach a level of general relevance for the entire theoretical building of *Sovereignty Across Generations* that deserves to be carefully examined.

To examinate a *first question* belonging to this derivative group of issues, we should refer to the point previously expressed. As we maintained above, the amendment's proposals regarding the environment and climate change should provide proactive indications and concrete stimuli, in order to authentically support the highest level of sovereignty for the future generations or peoples. Nonetheless, beside the increasing wave of insertion of principles regarding the environment, sustainability and climate change in the constitutional texts all over the world, we should ask ourselves about their normative status, as soon as we enter into the attempt of translating those principled into sharp and existing norms.

If we should do such a play, we could find out that climate policies are intrinsically running the risk of being intrinsically *illiberal* or, in other words, *paternalistic*. They could be considered *illiberal* not just due the fact that are in charge for limiting the liberty of present and future generations. They could be considered illiberal also by thinking at the best modality for being approved: as many recent attempts showed in clear evidence at international, national or sub-national level, it is really complicated and perhaps too demanding to reach a (qualified) majority for the approval of measures that surely counter, damage or block economic, social and

[19] Elsewhere I tried to deepen this issue from an individual and collective point of view as an issue of motivation. See: A. Pirni, "Climate Change and the Motivational Gap", in G. Pellegrino – M. Di Paola (eds.), *Handbook of Philosophy of Climate Change*, Cham, Springer Nature, 2023, pp. 699-720.

cultural interest of large sector of citizens within a specific community for the widest range of motivations.

But, at the same time, they could be considered *paternalistic*, by considering that, by limiting the possibilities at the disposal of future generations, they are implicitly or explicitly giving shape to a certain idea of society and of sustainability, that is obviously very close to the present-day best standards and by definition less open to host different or alternative ideas of sustainable development that are not yet elaborated or present.

A *second question* is then referable to another fundamental distinction, the one between *policies* and *rights*. Ferrara insert this distinction at the centre of the chapter dedicated to the vertical reciprocity.

> "[...] an important distinction needs to be drawn between (i) representing future generations for the purpose of policy- making, in order to avoid or limit policies foreseeably detrimental to future citizens' general wellbeing, and (ii) representing them for the purpose of protecting their equal rights and political autonomy. For this second purpose, a judicial institution could be better positioned for assessing the alignment of the rights of past, present, and future citizens who live under the same constitution."[20]

Nonetheless, the case of climate change teaches us about the fact of pursuing and approving policies, in order to keep rights alive. In other words, if we don't take severe decisions – as climate hard scientists maintain from many years – the situation for a massive number of future people, or of future segments of a planetary amount of transgenerational people, will be immensely worst as compared to the present one. This means that we must promote climate *policies*, in order to keep open the possibility of experiencing the same (qualitatively and quantitatively) *rights* for the future members of specific political communities.

This state of affairs may profoundly reshape (to the point of breaking down) the traditional distinction between policies and rights, somewhat surprisingly legitimizing the priority of the former over the latter. The question then becomes the following: Is it possible to accept this from a liberal-democratic point of view? Or, in order to keep the traditional priority of rights, should we renounce to the possibility of an effective and systemic change in our institutional behaviours regarding climate change?

The further consequence, which is here raised in form of our *third question*, covers then another crucial distinction that *Sovereignty Across Generations* developed over its entire argumentative path: the distinction between *sequential* and *serial sovereignty*.

By recalling what above on this point, the issue regarding climate change might shape one of the most important difficulties regarding the latter form of sovereignty. By recalling the author's words: "serial sovereignty cannot rule out as illegitimate

[20] SAG, p, 464.

the intentional curtailing of the freedom and rights of future generations for the benefit of the present ones"[21].

More specifically, we might wonder if the climate change issue could enter in the situation of the so called a "wanton republic", in which every generation understands its own role as in charge for doing anything is democratically possible. The constitution has become just the reflection of the preferences of each [...] generations of rulers or of each living people.

> "This 'wanton republic' also, strictly speaking, no longer has a constitution. Because it fails to project any trans- contextual cogency, higher law becomes indistinguishable from ordinary law and indeed from prevailing sentiment: in order to avoid a so-called tyranny of the past, the serial model of sovereignty makes the polity fall prey to the 'tyranny of the momentary political sentiment'."[22]

The point here is the following: has the climate change issue the possibility of being considered as part of a kind of special issues or, better, as the higher exceptional issue that has the "moral right" to be taken into account?

In other words: Could the limitations which a climate-change-sensitive policy-making should approve be considered not the latest expression of such a tyranny, but rather a sort of exception due to an unprecedented epochal and planetary emergency? Ferrara flanks climate issue to other possible macro-issues regarding security and health and to other theoretical weakness of the serial sovereignty, as the "underdetermined republic".

However, couldn't we raise in this case another argument for distinguishing those dossiers? No other issue and dossier in any time and in the present-day debate received a so massive number of scientific attentions and confirmations as climate change did, at a global level and by involving an unprecedent number of scholars coming from the largest number of disciplines. Could this absolutely peculiar condition elevate the "climate-change-issue" to another and exclusive normative status? Could it be considered as an issue that the history of our planet put on the table of all political agendas worldwide and that can't be underdetermined as one of the expressions of a punctual and intermitting political sentiment? If we have arguments strong enough for defending this specific status, we could then avoid the conceptual difficulties characterizing the *serial* exercise of *sovereignty* and reopen the floor to a more extended investigation of this issue within the framework of *sequential sovereignty* and the correlative and grounding *vertical reciprocity*.

[21] SAG, p. 4.
[22] SAG, p. 212.