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The Prospect for Liberal-Democracy in Troubled Times

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The Prospect for Liberal-Democracy in Troubled Times

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

edited by

Leonardo Marchettoni

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This Symposium grew out of a Jura Gentium Workshop held in Florence on April 21st 2016. We wish to thank all the friends and colleagues who participated in the workshop. We are grateful to Alessandro Ferrara for his unfaltering and generous support during every stage of the realization of this project.

The Editorial Board of *Jura Gentium*

Inside the Rawlsian Horizon?

Luca Baccelli

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

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

The risks of democracy

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

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

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

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

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

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

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

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

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

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

Democracy between imagination, judgment and pluralism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accommodating hyperpluralism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The plural roots of democracy

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

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

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

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

Governance and deliberative democracy

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

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

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

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

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

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

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

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

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

The role of law and that of power

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

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

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

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

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

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