

# *Sovereignty across living generations*

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In his 2023 book, *Sovereignty across generations*, Alessandro Ferrara (hereinafter “AF”) contrasts two understandings of how we should relate to a polity’s constitution across generations. These two views tell us how much our sovereignty as the living segment of a transgenerational people should be constrained by a constitution inherited from the previous generations. The two views are labelled as “serial” and “sequential”. While AF defends the latter, I defend the former here.<sup>1</sup>

## *The serial and sequential views*

What are these two views about? They are meant to provide understandings of “the temporal relation of the people as author of the constitution and the living segment of it” (2023, p. 209). They are “models of the relation of the people to their constitution” (2023, p. 212). They are *normative* models of the way in which the living segment of a people *should* relate to the constitution of their people.<sup>2</sup> They define the margins that a living segment of a people has towards the constitution that it inherited from the previous generations. They tell us how far each segment of a people should consider itself sovereign, and how far departures from the inherited constitutional setting can be seen as legitimate.

Consider the following passage that provides an analogy meant to help us understanding the *serial* view: “Just as the subsequent owners of a piece of property – be it real estate or simply an automobile – 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

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1 This paper builds on earlier work on constitutional rigidity and generational sovereignty. See Gosseries (2014, p. 2016). I also want to thank F. Corvino, A. Ferrara, M. Sa Valente, and a referee from the journal for their feedback on an earlier version of this paper.

2 AF is explicit on the fact that the three flaws of the serial view raise a “normative” problem (Ferrara, 2023, p. 216).

comport with the use to which the same piece of property was put by the previous owners, likewise when our ancestors' constitution finally becomes *our* constitution, *we are free to make it reflect our sovereign will*" (2023: 209, last italics added). The idea is one of "popular sovereignty as exercised serially by each living segment" (2023, p. 209). AF is especially explicit in the following passage referring to authors – that he disagrees with – who understood that "the generations of the people or the nation as severally possessed of the *full* right to *reshape entirely* 'the present form of government', without any normative limits other than formal presuppositions or natural law" (2023, p. 210, italics added)

When we inherit a constitution, we need to decide on whether we keep it or change it. If we change it, we should decide whether we do so in accordance with the amendment procedures that it defines or not. And even if we don't change it, we ought to decide to what extent we give weight, in interpreting its wording, to the intention of its original drafters and/or its interpretation by courts in the past. The serial and sequential models seem to differ along those lines. It is not clear whether they differ more than as a matter of degree. We can probably say that the *sequential* model would express reluctance towards radical changes in a constitution, that it would encourage us, as a matter of legitimacy, to change it only in compliance to procedures set in the amendment section of the existing constitution, and that we should give some degree of authority to the intentions of the founding authors and to the interpretations of the constitution that we inherit by earlier constitutional court decisions.

### *The last word and the living word*

Before moving to AF's argument against the serial view, let me spell out what a positive defense of the serial view may look like. I suspect that there are two distinct (yet converging) intuitions at play. To understand why, let me begin with the following quote that embodies the interpretative implications of the sequential view:

"a constitutional court, as 'conservator of the constitution', must represent the entire multi-generational people, without letting the constitutional agency of the past generations evaporate as the commitments of the pres-

ently living segment of the people emerge and prevail.” (Ferrara, 2023, p. 215-216)

Consider a constitutional court supposed to interpret an old constitutional provision today. AF’s quote suggests that the current court is somehow meant to capture how a polity as a whole understands the provision and to reflect this in its judgment. The court is asked to answer at least two implicit questions here:

Q1: *Should the court consider itself bound by what a polity meant about this constitutional provision one century ago?*

Q2: *Should the court consider itself bound by what it said itself about this constitutional provision a year ago?*

How should “being bound” be understood exactly? I propose to understand it as “being bound as a matter of legitimacy”. It would mean that completely disregarding past interpretations of the provision would render the court’s decision *illegitimate* under the sequential view. This applies to both interpretations by past polities or courts, and to past interpretations by the current court. In contrast, I submit that the serial view will provide a negative answer to both questions. And if so, it would reveal two very different underlying ideas.

Let me begin with the intuition that Q2 may reveal. If I change my mind as a court on a specific issue, why would I feel bound by my own interpretations in the past? Of course, I may have to explain *why* I changed my mind. But I would reject the view that, as a court, my previous “self” has authority in a strong sense on me today. There is, of course, the judicial doctrine of *stare decisis* in Common Law systems, which gives authority to precedent.<sup>3</sup> It serves predictability and coherence across time. Yet, what this doctrine does is to force courts to offer a justification for why they are addressing a new case differently. A rule that imposes a justification of deviations from earlier positions does not deprive a current court of its democratic authority to decide in a strong sense. I submit that the authority that precedent has in judicial interpretation is not authority in the sense of an authority binding us for

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3 On *stare decisis*, see e.g. Douglas (1949), Macey (1989)

reasons of legitimacy. It may simply result from valuing predictability or from other considerations.

Hence, this first idea here involves something like a “last word” logic. This is akin to what we would say about a person changing the content of her advance directives. The last word would be regarded as the *only* authoritative one, provided, of course, in the advance directive analogy that the person is still mentally capable of a properly informed and lucid decision. Note that, at this stage, a negative answer to Q2 reveals a logic that has nothing to do with interactions between the living and the dead, i.e. with the spirit of the Jeffersonian phrase: “The Earth belongs in usufruct to the living” (Jefferson, 1789). It also does not have anything to do with a decay rate of past decisions associated with the mere passage of time, older decisions being for mere reasons of “age” less authoritative than more recent ones. Rather, it has to do with the fact that a decision is the last one in a sequence, and should, for that reason, be regarded as more authoritative. The last words of the living have authority over the past words of the living.

In answering Q1, a different logic than the “last word” one may be at stake, too. It could be referred to as “the living word”, in a Jeffersonian spirit. When it comes to the *legitimacy* of decision-making processes, we should as much as possible stick to granting power to decision-makers in proportion to the degree to which they are affected by policies (Brighouse & Fleurbaey, 2010). If we accept that dead people cannot be affected by our current decisions in any significant sense, they should not have decision-making power on issues taking place after their death.<sup>4</sup> This is a key reason to support the serial view. I leave things open here about reasons *why* being affected by a decision matters for deciding who should have a vote (motivational reasons, epistemic reasons) (e.g. Gosseries 2022).

What the view certainly entails is that if the “all affected” rule applies to define the franchise, it also defines whose interpretations of a legally binding text should be understood as authoritative in a *democratic legitimacy* sense. If dead voters should not be represented by proxies in current elections, past supreme Courts should not claim more than inspirational “authority” on current supreme courts. Hence, the all-affected principle, once applied to dead people, has something to tell us not only about the (non-) authority of past votes but also about the (non-) authority of past

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4 See Gosseries (2003) and for a view in the opposite direction: Bengtson (2022). For a voting scheme that would allow for a representation of the dead: Mulgan (2003)

supreme court decisions on current constitutional interpreters. To be clear, I am interested in the authority of past constitutional decisions on current supreme courts. I am not making any broader claim here about the authority of constitutional court decisions on other institutions.

Of course, if we consider that we have duties of justice to the future, acting in line with these duties will necessarily have implications for the future. So, if making sure that the future inherits certain “things” is required by justice, why can’t making sure that the future inherits certain decision-making processes and fundamental rights also be part of our duties? It can and it should. But I guess that it is one thing to make sure that the future inherits certain goods or institutions. It is another to constrain the future about how to use these goods or whether to stick to these institutions as they are. And it is still another thing to claim that the future should feel bound by our interpretations and procedures *as a matter of legitimacy*. So, while we have a duty to leave the future with a specific set of institutions, and while there may even be an inter-generational case for some degree of constitutional rigidity (Gosseries, 2014), we should not expect the future to feel bound by such rigidities *on grounds of legitimacy*. Along the same lines, while benefitting from a historical perspective on how a constitutional provision has been interpreted in the past is key, the issue is whether past constitutional decisions should be seen as *authoritative* on constitutional courts in a sense that goes beyond the authority associated with the intrinsic quality of the arguments offered by past courts or by original drafters.

Hence, in terms of *legitimacy*, I would give more democratic weight to the interpretations of a constitution by the currently *living* “minority” than to the interpretations of a larger number of generations in the past – along the lines of the “living word” logic. This may admittedly point to an interesting tension between, on the one hand, drawing implications from the all-affected logic if we assume that the dead cannot be affected today and, on the other hand, defending a deliberative understanding of democracy that values genuine exchanges of perspectives and gives authority to the best arguments. If the latter were the only concern at stake, and if the idea of “deliberative exchange” were interpreted broadly as including “exchanges” between non-contemporaries, a deliberative view could attach *democratic authority* to “past words” by past authorities, as an important element to feed into our current deliberations.

In a nutshell, at the core of my disagreement with AF is probably a different understanding of what *democratic legitimacy* requires. My con-

ception of legitimacy grants no power to the past on today. This reflects the logic of the last word and, more importantly, of the living word. The last words of the living should democratically prevail over the past words of the living. And the words of the living should democratically prevail over the words of the dead.

### *Does regime volatility raise a legitimacy problem?*

As a challenge to the serial view, AF envisages a scenario involving a succession of 6 generations under which each generation introduces deep institutional changes (e.g. moving from a presidential to a parliamentary regime, from a bicameral to a mono-cameral system, etc.) (2023, p. 211). Note that it is not assumed here that one of the successive institutional settings is preferable to another. In other words, the problem of the 6 generations scenario is not meant to come from the fact that we would be moving towards an overall worse institutional setting. Rather, what seems to be at the heart of AF's concern is the *depth and frequency* of institutional change, the high instability about constitutional essentials.

This is our starting point. Where do we go from here? We need to agree on whether there is an all things considered problem here. Note that properly announced constant change may be both efficient and fair under certain circumstances. Yet, let us accept the view that this specific case of high instability is an undesirable state of affairs. Once we agree that the instability scenario that we have in mind is a problem, we still need to spell out what renders this state of affairs undesirable. This is where my disagreement with AF arises. What requirement does a polity violate when going for constant changes over six generations on essential constitutional matters?

AF writes that “nothing in the model of serial sovereignty allows us to raise doubts about the *legitimacy* of this polity” (2023, p. 212, my italics). This suggests that the core problem is seen by AF as one of legitimacy. To agree with AF, we would need to conclude that it is *illegitimate* for each of the six generations at stake to proceed with such radical changes - or perhaps to contribute to such a radical succession of changes, had they known about the whole sequence of changes. I agree with AF that his hypothetical succession of radical changes may raise *serious problems*. And I also agree with AF that a serial model would not

regard this as an *illegitimate* set of moves on the part of each of the six generations. Yet, I would disagree with AF on three significant fronts.

*First*, I would disagree on AF's diagnosis in the regime volatility scenario. I think that the problem of instability is not best analyzed in terms of legitimacy. Of course, we cannot exclude that our intuitions are blurred by the assumption that the 6 generations scenario would involve a change for the worse. Let us leave this aside here. One alternative concern is, of course, the *inefficiency* associated with important transition costs. Along the same lines, AF points himself at "empirical" problems (2023, p. 216) associated with the 6 generations case, referring to a Madisonian concern, for e.g. threats caused by uncertainty for large scale investments (Ferrara, in *litt.*). Another worry could be that it generates a strong *identity change* (or perhaps an identity loss if the change is constant). These are normatively relevant concerns. I think that they are the ones that are doing the work in our concern with the regime volatility scenario. Yet, I would not label them as *legitimacy* concerns.

*Second*, I disagree with AF on what the regime volatility scenario tells us about the serial model. My first point had to do with diagnosing *what* is worrying in the volatility scenario. I don't think that it is mainly a problem of legitimacy. This leads to my second disagreement with AF. He claims that "serial democratic sovereignty *indirectly negatively affects* the prosperity of the polity" (2023, p. 216, italics added). If the serial and the sequential views are views about institutional *legitimacy*, these views cannot themselves be a direct source of lack of prosperity. The models say something about whether we should feel bound by the past. They are not meant to say anything about the *content* of the rules that we inherit. And the serial model does not say anything about whether, *all things considered*, a given degree of institutional volatility is desirable or not. The only thing that the serial model says is that, from the perspective of *legitimacy*, the volatility scenario does not raise any problem.

While the 6 generations scenario "affects the prosperity" of the polity, I don't think that this should be traced back to the serial view itself. At least, it cannot show that the serial view is mistaken *on legitimacy*. Hence, when AF writes that "serial sovereignty models (...) have a serious difficulty in helping us grasp why these extreme forms of cross-generational iterative discontinuity would reflect negatively on *legitimacy*" (212, our emphasis), I agree with him. But this is only a problem if we



are unwilling to diagnose other serious problems than legitimacy problems in the volatility scenario.

In addition, we could imagine a reverse “stable inefficiency” scenario. Here, generations would stick to a very inefficient - and possibly unfair - institutional system that was set up by an unwise very first generation. Under such a scenario, the *sequential* view would not regard as *illegitimate* a very inefficient course of action – the inefficiency resulting from a problematic starting point rather than from volatility. It would be uncharitable towards the sequential view to claim that the view itself encourages such an inefficiency. Defenders of a sequential view could respond that this “stable inefficiency” scenario *does not raise problems of legitimacy*. As for the serial view, the sequential view is not meant to provide us with an *all things considered* assessment of the situation. I would not see this “stable inefficiency” scenario as a challenge to the sequential view, in the same way as I don’t see the instability scenario as a challenge to the serial view.

Third, I also disagree with AF’s account of the implications of the serial model for the role of a constitution. AF claims that that the regime volatility scenario levels down “the regulatory function of the constitution to a virtual null point” (2023, p. 212), that “serial sovereignty ends up undermining the very idea of a constitution” (*ibid.*) and that “the constitution would forfeit its regulatory function and would be reduced to a projection of the pro-tempore popular sovereign’s inclinations” (2023, p. 213). I share AF’s view that constitutions are key instruments in our regulatory toolkit. Yet, I think that his claim is too strong.

Consider this problem from two different perspectives. First perspective: AF expresses a concern about the relationship between constitutions and ordinary laws. He writes that the polity “no longer has a constitution. Because it fails to project any trans-contextual cogency, higher law becomes indistinguishable from ordinary law” (2023, p. 212). He adds that “the constitution cannot be meaningfully held to outrank ordinary law if ordinary law can outlast the constitution and possibly offer the benchmark for amending the constitution” (2023, p. 213). We *do* live in legal systems in which many ordinary laws have outlasted constitutions over time - the average lifespan of written constitutions being lower than 20 years. This fact does not suffice as such to challenge the hierarchy of norms, so long as, at any point in time, there is a constitution in place and that the population understands that constitutions are supposed to take precedence over ordinary laws. Hence, the fact that



ordinary laws may have a longer lifespan than constitutional provisions is not incompatible with a hierarchical superiority of the latter at a specific point in time.

Second perspective: if we accept that the function of a constitution goes beyond the one of binding not yet born generations, I think that we can still preserve a significant role for constitutions while sticking to the serial view about the legitimacy of constitutional change. A constitution can still operate as a way for a given generation to bind itself and subject *itself* to specific amendment rules (Gosseries, 2014, p. 533). It can still signal that certain rights are especially fundamental.

One tricky question is whether the serial view would regard it as *illegitimate* for the living not to abide by the *amendment rules* of the constitution that we inherited. I guess that it is part of the serial view's pedigree that changing a constitution by a simple majority without respecting the specific revision requirements that it embodies would *not* be seen as *illegitimate* towards past generations. Does it follow that it would not be problematic at all? Not necessarily. But the problem of doing so would have to be traced back to what AF refers to as “empirical” problems. As a result, endorsing the serial view may be compatible with requiring to abide by amendment rules of the constitution that we happen to inherit, for reasons of stability *rather than* democratic legitimacy.

In the end, defenders of both the serial and the sequential view may end up agreeing on the undesirability of some regime volatility situations. And they may agree on the reasons why it is a problem, except for one of them: democratic legitimacy. The serial view will be more reluctant than the sequential view to object on the volatility scenario on legitimacy grounds. In the end, I find that on legitimacy, the serial view is more robust than the sequential one, while not forcing us to endorse implausible positions on e.g. whether or not we should abide by the amendment rules of the constitutions that we inherited. What is key here is *why* we should abide by such rules rather than *whether* we should abide by them. And serialists will say: “not for legitimacy reasons”.

## Conclusion

Alessandro Ferrara has proposed two models of how to relate to an inherited constitution and to its earlier interpretations: the serial and the

sequential model. He defends the latter, and I defended the former here. I distinguished two ideas able to support the serial view, i.e. the last word, and more importantly, the living word ideas. I also think that issues associated with stability and efficiency over time *can* be addressed by serialists in a plausible manner. The serial view only offers an account of whether and when it is *legitimate* to deviate from constitutional essentials that we inherited. It does not offer as such an all-things-considered account of the acceptability of such deviations. Hence, the serial view is able both to take on board a plausible interpretation of what the all-affected principle *does not* require (in relation to the dead) and to accept that e.g. inherited constitutional amendment procedures be respected for reasons *other than* legitimacy per se (e.g. the importance of predictability or the value of peaceful transitions).

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### *References*

- Bengtson, A. (2022). Dead people and the all-affected principle. *Journal of Applied Philosophy*, 37(1), 89–102.
- Brighouse, H., & Fleurbaey, M. (2010). Democracy and proportionality. *Journal of Political Philosophy*, 18(2), 137–155.
- Douglas, W. (1949). Stare decisis. *Columbia Law Review*, 49(6), 735–758.
- Ferrara, A. (2023). *Sovereignty across generations: Constituent power and political liberalism*. Oxford University Press.
- Gosseries, A. (2003). A-t-on des obligations envers les morts? *Revue Philosophique de Louvain*, 101(1), 80–104.
- Gosseries, A. (2014). The intergenerational case for constitutional rigidity. *Ratio Juris*, 27(4), 528–539.
- Gosseries, A. (2016). Generational sovereignty. In I. Gonzalez Ricoy & A. Gosseries (Eds.), *Institutions for future generations* (pp. 98–113). Oxford University Press.
- Gosseries, A. (2022). Should old age votes be granted less weight? In P. Bowman (Ed.), *Studies on the boundary problem in democratic theory* (pp. 149–168). Institute for Future Studies.
- Jefferson, T. (1789, September 6). *Thomas Jefferson to James Madison*. Founders Online, National Archives. <https://founders.archives.gov/documents/Madison/01-12-02-0248>
- Macey, J. (1989). The internal and external costs of stare decisis. *Chicago-Kent Law Review*, 65(1), 93–113.
- Mulgan, T. (2003). La démocratie post-mortem. *Revue Philosophique de Louvain*, 101(1), 123–137.