

# *Representing the Future: Amid Present Contingencies and Future Aspirations*

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Received: 21/09/2025

Accepted: 23/12/2025

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Alessandro Ferrara's *Sovereignty Across Generations* is a compelling work that engages with the contemporary debate on intergenerational justice. Ferrara intervenes in this debate tackling not only questions of ethical and political obligations between different generations in terms of distributive justice or environmental sustainability, but also of institutional continuity and political possibilities. He develops his argument with the usual acumen and systematicity, identifying the main problems, deconstructing their various dimensions and, then, addressing each of them to construct a solid answer.

The core of the argument concerns democratic sovereignty, specifically the locus of constituent power: whether this power resides with the people in a cross-generational sense—incorporating past, present, and future generations—or the people in its pro-tempore living segment. The former perspective leads to what Ferrara terms 'sequential sovereignty,' which he advocates and which he considers attuned to Rawls' political liberalism; while the latter results in what he calls 'serial sovereignty,' a view he criticises and associates with contemporary populist movements and thinkers like Rousseau, Locke, Sieyès, and Jefferson.

For Ferrara, serial sovereignty is problematic for several reasons, which stem from its inability to properly account for the intergenerational dimension of the people. Indeed, serial sovereignty, he argues, allows for continuous, possibly very deep, alterations to the foundational structure of society, which could undermine the transgenerational regulatory role of the constitution, curtail the rights and freedom of future generations, and render the political identity of the people unstable and susceptible to being shaped along ethno-cultural lines. Grounded in a notion of vertical reciprocity, instead, sequential sovereignty entails the necessity of the present generation to engage with both past and future

generations under fair terms of cooperation. This means that the living segment of the people, as co-author of the constitution, has the right to amend it, but within the limits set by the constitutional essentials to prevent the infringement of future generations' rights and the betrayal of the common political project inherited from the past generations.

One reason this topic is particularly urgent today, Ferrara notes, is the increasing influence of populism. Contemporary populism, indeed, emerges in his analysis as the primary opponent of the sequential conception of sovereignty. In a somehow uncanny proximity to the political tradition mentioned before, extending from Rousseau to Jeremy Waldron, populists champion a strong majoritarianism, wherein majorities emerging from elections are deemed to possess full sovereignty—including the right to modify the constitution virtually without impediments.

It is precisely on populism that I want to focus, in particular, to discuss whether Ferrara's proposal is really up to such a challenge. While I find Ferrara's overall argument persuasive, I have some reservations about his take on the populist challenge; reservations that stem from his account of political representation, which I find wanting in certain respects and which will be the focus of the following discussion.

The question of representation in the book arises from the following reasoning: if, as posited, the living segment of the people, as co-authors of the constitution, possesses the right to amend it, but without transgressing the basic framework of the political project authored by the transgenerational people, then it becomes necessary to consider whether that boundary has been crossed. This implies, in other words, to assess whether the will of the present generation aligns with that of past and future generations. Such responsibility is typically entrusted to constitutional or supreme courts, which are tasked with overseeing potential infringements of the constitution. In this sense, thus, these courts can be taken as the representative of the transgenerational people; in contrast with legislative bodies, which are primarily tasked with representing the living segment of the people. The courts can be said to represent the transgenerational people, because, acting as guardians of the constitution, they 'act for' the interest of the transgenerational people—that is, they function as representatives in what Hanna Pitkin has called the substantive sense of representation—in ensuring that the legislative power does not unduly alter the essential elements of the constitution in ways that could undermine the fundamental rights of

future generations and the core of the project entrusted to us by the past generations.

As Ferrara notes, the legislatures (along with elected presidents and appointed prime ministers) could also exercise this role of representing the whole people, especially in historically significant moments. But this is not their primary role, and it is unrealistic to expect that the interests and demands without an immediate electoral impact would have the same influence on current representative bodies as those that directly affect election outcomes. Claims to act with a perspective that not only goes beyond the temporal span of the next elections but that takes into consideration generations to come, he adds, are usually nothing more than propaganda.

The *nemo iudex* principle is often raised in the context of discussions on the legitimacy of judicial review. Waldron (2009) has argued against applying this principle to justify judicial review. According to him, not only elected representatives have a vested interest in decisions regarding the possible infringement of constitutional dictates by laws passed by them. Constitutional and supreme court judges also have a stake in these decisions, he notes, as they are themselves members of the citizenry who will be affected by the outcome. Ferrara, however, rebuts that there is an important difference between: a) having (as in the case of constitutional or supreme judges) a general interest, as citizens, in the adjudication of such a conflict and b) having an interest as a member of a politically organized group (in the case of elected representatives), which could directly benefit in terms of votes and power from one decision over another regarding this conflict. The second type of interest can (and usually does, according to Ferrara) unduly influence the outcome of the decision; whereas assigning the decision to an institution like the constitutional court, with a much greater level of independence from the configuration of interests that animate the political arena, allows for a fairer decision.

I find this argument persuasive, but not completely. I think, indeed, that it seems to uphold a partial conception of political representation when applied to legislatures, as it seems to reduce it to the protection of pre-existing interests in society, while obscuring its principled and ideological dimension. While it can be true that claims made by representatives, or appointed prime ministers and elected presidents, in name of the people as a transgenerational entity are frequently propagandistic, and that normally the demands with a short-term electoral impact

has a greater weight on their decisions than those looking far beyond elections, it is also true that the responsibility to consider the common good—and by this, I mean making decisions based on general criteria and principles that have an intertemporal validity—is an inherent element of the institutional role they play in liberal democracy.

I believe that in this respect we can detect in Ferrara's argument, at least in the assumptions he seems to adopt, the same flaw that Waldron finds in various arguments in favour of judicial review (Waldron, 1999): namely, to take role of constitutional courts at their best, while considering the role of legislatures in their concrete manifestation, with all the defects involved. There is, in fact, a very important aspect of political representation that seems to remain in the shadows in Ferrara's account, and which makes it one of the pillars of liberal democracy: its role as a mediator in the dialectic between parts and whole and between interests and principles (e.g., Urbinati 2006). Mediating through representation means not only finding a compromise between different interests through bargaining. It also means weaving these interests into ideological narratives and principled positions that project into an indefinite future, thereby making them politically salient—or, as the constructivist turn in political representation would put it, 'creating them politically'—and ready to be publicly in pursuit of the common good.

It is in this way that political representation can continuously (but never definitely) recompose the political unity of society by confronting different ideological, principled visions that are both partial, committed to specific interests and positions, and general, in that they are based on different, competing visions of the good that can still talk to each other. Thus, while of course bargaining and compromise are the bread and butter of elected representatives, we cannot forget that without the other, more ideational and principled dimension, their political representation couldn't play its key role in liberal democracy. And the moment this principled, ideational dimension is taken into account, the temporal horizon of representation inevitably and indefinitely begins to expand over time, albeit, let's say, in an implicit way.

I believe Ferrara would likely agree with this general account of democratic representation. This view is not only compatible with Rawls's political liberalism; it also strikes a middle ground between Kelsen's and Schmitt's conceptions of representation, much as Ferrara does with respect to their positions on the related issue of constituent and constituted powers. In Kelsen's view, representation is conceived as a mechanism for mediating

between competing interests through negotiation and compromise, without ever invoking the notion of a singular, unified will of the people. Schmitt, by contrast, viewed representation as the expression of the people's substantive unity and rejected parliamentary democracy for fragmenting the political will through deliberation and compromise among interests. Each of these positions is untenable on its own, as democratic representation must simultaneously accommodate both functions.

My impression, however, is that in Ferrara's implicit division of representative labour between the courts and the legislatures, all the principled dimension of representation is assigned to the former as they represent the intergenerational people, while the latter are relegated to the merely transactional, petty task of bargaining over interests. So, in this respect, he seems to lean too much toward the Kelsen's pole. Populists, on the other hand, align with Schmitt because they share his belief that democracy should allow to express a strong, unified will of the people—rather than the pluralist mediation of interests—through a charismatic leader, skipping the cumbersome process of parliamentary deliberation and compromise and the checks and balances of liberal democracy.

If my analysis of Ferrara's argument on this is correct, one of the risks it implies is that, in shifting too much the role of representation as the unifier of the people toward the courts, it cannot provide a sufficiently democratic response to counter the populist threat, which seeks unification in an illiberal manner. In this regard, Waldron's stance on judicial review could be seen as more attuned to addressing the populist challenge. He emphasizes that when it comes to political decisions on fundamental issues that inevitably generate divergent opinions—such as those adjudicated through judicial review—legislatures are better positioned than courts to have the final say, as they are far more representative of the people (the living ones).

To be clear, I am not denying that Ferrara recognizes that this role also belongs to political representatives. Of course, he doesn't deny the right of the living people—the co-authors of the constitution—to amend the constitution, albeit within limits. Furthermore, when setting the criteria for assessing the courts' mandate to represent the intergenerational people, he stresses not only that they cannot exceed the boundaries of constitutional interpretation and unduly transform the constitution, but also that they should leave sufficient leeway for the people to subsequently correct their interpretation through constitutional amendments.

The problem, as I see it, lies in not properly thematizing the relationship between the courts and the political representatives in representing the people, both in its cross-generational sense and in its present one, while considering the concept of representation as intertwined with both interests and principles.

This can also be seen deepening into a further key dimension of representation Ferrara discusses. As he delves into the courts' role in representing the people, primarily through judicial review, Ferrara reveals that it carries a crucial political value, beyond the mere defense of their interests by preventing the erosion of future generations' rights. In effect, he argues that, by ensuring that the spirit of the constitution is preserved, the courts also promote what he calls the expressive and integrative function of the constitution. This refers to defining the uniqueness of a community's political identity and strengthening citizens' reflective and emotional identification with it. Indeed, as he stresses, the constitution is not only the fundamental law of the community, but also a crucial source of collective identity that provides continuity across generations, uniting them around a common project based on shared normative commitments.

We can argue that what Ferrara is discussing here is representation understood in what Eric Voegelin called its 'existential' sense, or to use the German expression used by German state theorists such as Carl Schmitt, representation as *Repräsentation*. This sense of representation refers to the process by which a political community represents itself to itself, in its ideal version, and, in doing so, seeks to understand itself and its place in history and thereby establish itself as a subject capable of action (Voegelin, 1952). It is a form of representation that inevitably includes a symbolic dimension, that is, representation as a 'standing for', or *Darstellung* in German. It is symbolic insofar as such representation must inevitably remain, to some extent, incomplete and evocative, since, due to the ideal dimension of its object, this will always remain partially elusive and inarticulable (Hofmann, 2007, pp. 109–112). Furthermore, this kind of representation also carries an important affective dimension, to the extent that the way in which it can secure consent is not only through rational argument, but also in an extra-rational way.

Ferrara, in effect, highlights all these aspects. He emphasizes the narrative dimension involved in the political construction of a *demos*, underlining how the process of identification around a common project cannot but be also an affective one, as it implies the recognition of



belonging to what the community has been and, at the same time, to what it is yet to become.

But the question that arises at this point is the following: in what kind of language should these representations be articulated? Following Rawls, Ferrara argues that constitutional and supreme courts are especially well-suited to employing public reason—this being precisely one of the reasons why they play the key role discussed before. However, we must ask: is public reason enough to persuade citizens, here and now, to accept these kinds of arguments, not only as irrecusable, but also as binding and capable of motivating them to act accordingly? Is this form of language sufficient to inspire the aspirations that Ferrara rightly highlights as essential for making the constitution the foundation of a community's political identity? And is it enough to foster that affective sense of attachment around a shared political project? It may be so if we consider the audience of such public reason to be the people in its intergenerational sense, which, the more it extends over time, the closer it comes to resembling what Chaïm Perelman called the universal audience. But it is unlikely to achieve the same effect with the living segment of the people. This deficit must be addressed by political forces using a language that goes beyond public reason—one that, by its very nature, can also speak to the people here and now. Failing to do so risks breeding disaffection toward the constitutional project, fostering a sense of detachment from it—something populists could readily exploit to undermine the constitution itself.

We see then why the problem of populism resurfaces. Populism, I think, cannot be understood only at the ideational level, as a form of extreme and intolerant majoritarianism, as Ferrara does. Although I cannot elaborate on this aspect due to space constraints, it is essential to emphasize that populism is also a way of doing politics, or a political style, which, through various forms and methods—a particular type of rhetoric, political leadership, way of politicizing collective emotions, and so on—seeks to mobilize a broad segment of the citizenry under the banner of 'the people' (e.g. Ballacci & Goodman, 2023). In this sense, similar to the argument made earlier, one might ask whether the representative function of the courts, which Ferrara highlights, is sufficient to counter the populist challenge. And my answer is that I fear it is not.

In effect, the problem that populism brings to the forefront is not so much the one that concerned Rawls—namely, the intractability of conflicts between unreasonable doctrines. It is more a problem of alien-

ation and frustration with the liberal democracy. It reflects a disaffection with its forms, if not its substance—one that not necessarily manifests in explicitly anti-democratic and anti-liberal tones, but which is increasingly taking on such a configuration. In this sense, I think the challenge lies more in the difficult process of reconnecting citizens with liberal democratic principles and institutions by engaging with their personal experiences and situated judgments, rather than rethinking those principles and institutions at a theoretical level. Or better yet, we might say that the challenge consists in engaging with both tasks simultaneously.

As is well known, Rawls has often been criticized for not giving due consideration to the role of emotions and partiality, as a result of his emphasis on rationalism and reasonableness. However, a number of scholars within the Rawlsian tradition have shown that his perspective is not necessarily incompatible with these concerns. More recently, some have even argued that Rawlsian public reason can be modified, specifically to tackle the populist threat, by incorporating rhetorical tools aimed at attracting back support from illiberal and anti-democratic citizens (Badano & Nuti, 2023).

Ferrara's adoption of the Rawlsian perspective aligns with these developments, as he highlights, for instance, the historical uniqueness of the various political projects embodied in constitutions, their aspirational dimension, and their affective value. However, I believe that how all this affects the issue of public reason—particularly in relation to populism—remains insufficiently addressed.

### *Acknowledgments*

This work is funded by national funds through FCT – Fundação para a Ciência e a Tecnologia, I.P., under project UID/04952/2025.

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