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The Normative and the Transformative in Ferrara's Exemplary Politics

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For *Jura Gentium*

Abstract: In *The Democratic Horizon* and other works, Alessandro Ferrara offers an original theory of political judgment, exemplarity and political liberalism. This article examines two distinctive features of this theory, his accounts of the normativity of a Rawlsian form of political liberalism and of democratic openness or transformative politics. It is suggested that there are some tensions between his commitment to a judgment-centred epistemology and political liberalism.

Keywords: Ferrara, Judgment, Exemplarity, Political Liberalism

The Normative and the Transformative in Ferrara's Exemplary Politics

In *The Democratic Horizon*, Alessandro Ferrara deepens his project of developing a post-foundational conception of political normativity built on his conceptions of exemplarity, authenticity and judgment.¹ He seeks to redeem what he sees as the unique promise of Rawls's political liberalism in helping democratic theory rise to a series of critical contemporary challenges by subjecting it to a hermeneutic and conjectural turn. Theorists who have emphasized the significance of political judgment, whether inspired by a realist sense of or, like Ferrara, by the conception of reflective judgment in Kant's *Critique of the Power of Judgment* (and by Hannah Arendt's influential political interpretation of this) have tended to be skeptical about the kind of political liberalism. On the face of it, the gap between Rawlsian political liberalism and the judgment paradigm seems ominous. The former seems to offer a set of theoretical constraints on legitimate political action which must be applied to political practice. The latter seems to reject a priori theoretical constraints in favour of the primacy of practice in determining how we orient ourselves to particular concrete political situations. In part, the boldness and originality of this important book lies in its attempt to bridge this chasm. This article traces a very narrow path through Ferrara's rich and wide-ranging discussion to suggest some difficulties with this bridging project.

Ferrara has been at the forefront of what we can think of as the strong programme for political judgment to political theory. This breaks with weaker views of judgment that restrict it to the formation of belief or envisage it is merely a necessary supplement to the broader principles or

¹ Ferrara 1998, 1999, 2004, 2008.

rules.² For these theorists, general principles cannot or should not provide guide rails for political judgment, which instead has a more autonomous status as a means by which agents guide, orient and shape their action in political contexts. He shares with realist proponents of political judgment an appreciation of the distinctive character of the political (informed not only in his case by Rawls's conception of political liberalism but by engagement with wider literatures in political science, including, governance theory) and the contextual character of political judgment. Yet he shies away from the radically contextual view of political judgment espoused by realists such as Raymond Geuss in favour of a conception of judgment that is meant to support a particular view of ideal liberal political theory.³ Ferrara's project is more intimately related to the strand of thinking about political judgment inspired by Kant's *Critique of Judgment*, from which core notions of reflective judgment, exemplarity and *sensus communis* derive, and which was given an influential political elaboration by Hannah Arendt.⁴ For this approach, political judgment combines the appraisal of concrete situations with a context-transcending claim to validity. The Arendtian approach shares some features with Rawls's political liberalism, notably a view that inherited moral criteria no longer provide an authoritative framework for political decision-making, an emphasis on accommodating a plurality of perspectives and the expulsion of truth as a standard in political evaluation. However, its proponents also distinguish themselves quite insistently from what is seen as excessively principle-centred and unpolitical conception of political theory (cf. Honig 1993, Zerilli 2012).

² "For a concept of understanding, which contains the general rule, must be supplemented by an act of judgment whereby the practitioner distinguishes instance where the rule applies from those where it does not. And since rules cannot be in turn provided on every occasion to direct the judgment in subsuming each instance under a previous rule (for that would involve an infinite regress), theoreticians will be found who can never in all their lives become practical, since they lack judgment" (Kant 1793: 61).

³ Bourke and Geuss 2009, Philp 2010, Geuss 2010, Geuss 2015.

⁴ Kant 1790, Arendt 1982. See Azmanova 2012, Beiner 1982, Norval 2008, Zerilli 2005, 2012.

In aligning his project with Rawlsian political liberalism, Ferrara stands out from, and challenges, these alternative views of the judgment paradigm. Before examining the machinery of Ferrara's account, we need to set it in the context of some of the key features of Rawlsian political liberalism. For this account, modern democratic societies are characterized by "the fact of reasonable pluralism": that is, their members possess "comprehensive doctrines" (moral, religious, philosophical) which are both incompatible and reasonable. The inevitability of reasonable disagreement about moral, religious and philosophical issues flows from what Rawls dubs "the burdens of judgment", the differences in experience and limits on human thought and knowledge that lead different individuals through the free exercise of reason to arrive at different reasonable conclusions. In order to provide a form of liberalism that does not require the imposition of controversial moral, religious or philosophical views on citizens who reasonably disagree with them, Rawls rejects a view of liberalism grounded in comprehensive doctrine (such as he finds in Kant and John Stuart Mill) in favour of a "freestanding" political conception with its own sort of political justification. Unlike a comprehensive doctrine, this conception does not aspire to be true but rather to be acceptable to all reasonable citizens and endorsed by all reasonable comprehensive doctrines in an overlapping consensus. This can then form the basis of informed and willing agreement among citizens viewed as free and equal persons, for Rawls.

Rawls views this conception of liberalism as having a particular kind of normativity. As he puts in a well-known earlier formulation, "what justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us" (Rawls 1999: 306). The normative standard of correctness for this conception is not truth but reasonableness. The burden that Ferrara takes up from Rawlsian political liberalism is to provide an account of this particular political conception of objectivity with the resources of the judgment paradigm. Ferrara's account of the sources of political normativity seeks to offer an alternative account of "the normative hold

that the most reasonable argument in a public reason controversy exerts on us” (Ferrara 2004: 588), which opens up some different ways of thinking about the character and scope of political liberalism. As he puts it,

the normativity that can bind us in a democratic horizon marked by pluralism is the normativity of what is *reasonable for us*, where what is reasonable for us cannot be determined independently of who we want to be [...] without at that very moment collapsing the specificity of public reason into some form of theoretical or practical reason. (Ferrara 2014: 219)

Ferrara eschews the justification of criteria for this with reference to pre-political principles. At the same time, the emphasis on what is “reasonable for us” is not intended to move political liberalism in a relativist direction, grounding it merely as the expression of a communal sense of identity: who “we” are and what such an identity consists in are not taken as fixed. Nor does Ferrara think we insouciantly dismiss the question of the sources of this political normativity as in any case irrelevant to, or fully addressed by, an assertion of what we choose to do around here, as in Richard Rorty’s “ethnocentric” conception of political liberalism (Rorty 1991; cf. Festenstein 2001). Instead, Ferrara draws on the Kantian concepts of reflective judgment and exemplarity in order to delineate the distinct normative character of our democratic horizon.

Reflective judgment involves the appraisal of a concrete particular as a particular, without subsuming it under a more general category. When I judge an object to be beautiful, on this account, I make a particular appraisal of this object, which is not a matter of subsuming it under the concept of beauty. However, this judgment also makes a claim to universal validity or communicability: the aesthetic judgment is “exemplary ... because everyone *ought* to give the object in question his approval and follow suit in finding it beautiful” (Kant 1790: s. 19). Judgments of taste exact agreement from everyone, and appeal to a common capacity to apprehend beauty

(“*sensus communis*”). In claiming this kind of normativity for the Rawlsian category of the “most reasonable”, Ferrara fleshes out the conception of exemplarity at work.

For Ferrara the normativity of the reasonable consists in the exemplary character of a policy, institution, statute, a judicial verdict, which is disclosed through the art of judgment.⁵ Exemplarity in his sense has four important aspects. First, it consists in the congruence of the exemplar with the collective or shared identity of those for whom it has normative force. This claim to exemplarity is not a claim that this policy is congruent with just how we think we are now but with “our shared sense of who we could be at our best” (Ferrara 2004: 593). So the exemplarity of political liberalism consists in its “congruence with a concrete modern identity premised on the notion of fairness and equal respect among free and equal citizens” (Ferrara 2004: 593). A claim to be the most reasonable is a claim that a policy or institution commands our consent because it fits in the most exemplary way with this shared sense of who we are at our best. Second, exemplarity also consists in a policy or institution’s itself having what is referred to as “exceptional self-congruency”, a “law unto itself”, expressive of a particular moral tradition but not confined to it (Ferrara 2014: 64; Ferrara 2008b: 78). The normative force of an exemplary policy or institution follows from its being a part of and cohering with the “singular normativity of a symbolic whole” (Ferrara 2014: 65; Ferrara 2004: 590). Third, exemplarity has an affective component and “sets the public imagination in motion”.⁶ Fourth, exemplarity is context-transcending. The claim for

⁵ “Given our shared commitment to p, we are shown by the most reasonable argument that we can't but commit ourselves to q as well. [...] The nature of this new commitment is best highlighted not by normativity associated with the application of principles to facts of the matter, but rather the normativity of reflective judgment, understood as judgment in the service of the fulfillment of an identity” (Ferrara 2008: 72-73).

⁶ “Democracy cannot afford leaving political imagination theoretically unattended. The suggestion has been put forward to understand democratic politics at its best – that is, when it brings existing normative principles and practices on the ground into an exemplary congruence or when through exemplary practices it articulates new normative standards and political values – as a way of

exemplarity derives its validity from an appeal to a *sensus communis* and a concept of the furtherance of life that should be viewed as a universal capacity to sense what promotes human flourishing. Exemplarity is linked with a Kantian feeling of the promotion or furtherance of life, which Ferrara glosses as the extension of the range of possibilities of our political life.

Just as reflective judgment is the capacity to understand beauty in the aesthetic realm, this exemplary normativity of the most reasonable for the political normativity is disclosed through the reflective workings of judgment. Exemplary normativity, then, is offered as a way of accounting for the distinctive normative force of the “most reasonable” institution, policy, constitution, constitutional amendment, statute, verdict, a Supreme Court opinion and so on. For the exemplary policy, institution, statute, a judicial verdict or conception of justice to possess exemplarity in this sense and so to exert this normative force requires that we possess and exercise a capacity of judgment that allows us to engage with exemplarity. The work of art can disclose new ways of experiencing the world, which our faculty of judgment can both grasp and project as shareable by others.

Ferrara claims is that political liberalism is “uniquely open” to the dimension of exemplary normativity (Ferrara 2004: 582). Of course, he can’t offer a derivation from higher-order principles of this claim without breaching his own methodological self-denying ordinance, violating his conception of the character of political validity. And he concedes that there are other ways of interpreting this notion of exemplarity for the political domain.⁷ It does so because it uniquely expresses “the art of judgment” in a political context. The constraints of judgment make it a centrifugal for Rawls, pulling us in the direction of different irreconcilable reasonable conceptions

promoting the public priority of certain ends through good reasons that set the political imagination in motion” (Ferrara 2014: 212; cf. Ferrara 2008: 79).

⁷ “The Rawlsian view of the reasonable is one of several possible ways of exporting this view of normativity into the political” (Ferrara 2008: 78).

of the good, but limits of time and capacity make it centripetal for Ferrara where we require “a solution within a temporal frame that it is not up to the deliberators to extend at their will”:

This gap is bridged by judgment not by way of limiting the pluralism of the alternative positions assessed in discourse, but by way of harnessing politics to the reasonable, namely, to the area of overlap where what is shared can be found. The art of judgment is the art of extending as far as possible this area of overlap while continuing to keep the normative relevance of what lies within the area of overlapping consensus still undiminishedly capable of exemplarily reflecting the superordinate identity, which includes the conflicting parties...This exemplary relation between what is shared and who we are, which constitutes the only source from which the reasonable draws its distinctive normative force once we distinguish public reason from practical reason, provides the basis for everyone – no matter whether concurring or dissenting, majority or minority – to accept the full legitimacy of a politically binding, yet nonunanimous, decision. Once again, the normative force of exemplarity presupposes the capacity of our imagination to represent what is not immediately in front of us and to foster an enlarged mentality. (Ferrara 2014: 33-4)

This views political argument as primarily organized around the search for the most exemplary resolution, in the form of shareable reasons. (“Primarily” because it is an important part of Ferrara’s modification of Rawls that he wants to make space for a different mode of “conjectural” reasoning on the part of non-liberal views but I won’t discuss this here.) This process is meant to have an ordering effect, ranking and prioritizing different values and to be binding on participants.

The concern I want to focus on is whether exemplary judgment understood in this way is able both to furnish the source of normativity that Ferrara attributes to it while sticking to the

commitments of Rawlsian political liberalism. It would seem to be not just any judgment that can disclose the reasonableness of a policy but only the judgment of a reasonable person. In this context, it seems to mean someone who is in fact using her imagination to foster an enlarged mentality, reflecting on our superordinate identity, and seeking overlap with other citizens. Viewed this way, civic political judgment seems to require certain important conditions. These include, for example, trustworthy testimony in order to ensure a well-grounded basis for judgment and a space for challenge and to offer reasons.⁸ More problematically, it seems to require certain civic virtues, including a commitment to enlarging one's imagination and affective instincts. What is potentially difficult about this for the Rawlsian political liberalism is not the bare fact that some civic virtues are required by this conception of judgment, since there is nothing in either conception that precludes it from being normatively demanding. Rather, it is the thought that the virtues required by this specific conception of judgment come trailing contentious philosophical and ethical commitments that are meant *ex ante* to be excluded from the domain of the political. The vision of exemplarity brings together emotion, imagination and reasons in a certain way, suggesting, for example, that our affective responses and imaginative projections are subject to scrutiny in the space of reasons (Ferrara 2014: 213). However well justified this is, this seems to be the kind of controversial claim with respect to different reasonable conceptions of the good that Rawlsian public reason is meant to exclude.

Now Ferrara could respond to the effect that there is no commitment to simple-minded agreement on his conceptions of judgment and exemplarity. (Rawls in his late work recognized that the burdens of judgment make agreement on justice as fairness or any single set of liberal principles unrealistic (Rawls 1999: 582-3).) However, this does not seem to meet the challenge, which asks how his model of judgment and exemplarity could reasonably be accepted by free and equal persons while (for example) the Aristotelian conception of emotion cannot. To the extent that the

⁸ Cf. Festenstein 2009.

model of judgment and exemplarity shares premises and arguments with comprehensive conceptions of the good, which are meant to be ruled out, it would seem to be in the same boat. Ferrara does not seem to have given us the material to show why a distinction should be drawn between his own model and the rejected comprehensive ideas.

This tension emerges in Ferrara's distinctive and important discussion of the idea of democratic openness. Exemplary normativity plays an important role in Ferrara's conception of democratic politics "at its best", particularly transformative politics, and his linked conception of a democratic ethos. Politics is capable of "disclosing a new political world for us", expanding our sense of the possibilities of political life (Ferrara 2014: 37-8, 64).⁹ Here Ferrara offers a general characterization of politics at its best – the prioritization of ends on the basis of good reasons that move our imagination. Political innovation, he argues, draws on a "fundamental source – exemplarity and its force, which proceeds from the radical self-congruence of an identity and appears to reconcile 'is' and 'ought', 'facts' and 'norms'." (Ferrara 2014: 38). Like the work of art, so the outstanding political deed arouses a sense of "enhancement of life", the enriching and

⁹ "All the important junctures where something new has emerged in politics and has transformed the world ... were junctures where what is new never prevailed by virtue of its following logically from what already existed, but rather by virtue of its conveying a new vista on the world we share and highlighting some hitherto unnoticed potentialities of it. Like the work of art, so the outstanding political deed arouses a sense of 'enhancement of life', the enriching and enhancement of a life lived in common, and commands our consent by virtue of its exemplary ability to reconcile what exists and what we value" (Ferrara 2014: 38).

"[A]ll truly transformative moments when new ideas have emerged in politics – from natural rights, through consensus of the governed as the ground of the government's legitimacy, through the abolition of slavery and later universal suffrage, all the way to social rights, gender equality and human rights – new forms never prevailed by virtue of their satisfying antecedently established principles, but rather by virtue of their disclosing new perspectives on the world shared in common" (Ferrara 2014: 64).

enhancement of a life lived in common, and commands our consent by virtue of its exemplary ability to reconcile what exists and what we value.

This creative expansion of our identity is supported in democratic politics by a particular ethos that Ferrara calls a passion for openness: “we can understand ‘openness’ as the property of those elements that set the imagination in motion, create a space of possibilities, allow for the space of reasons (and of judgment) to work and constitute a standard of political desirability” (Ferrara 2014: 65). This is understood as an attitude of receptivity to the new, in favour of exploring new possibilities of political life, promoting a public culture that fosters unconventional solutions, and a condition of cognitive receptivity, the preparedness to be self-critical (Ferrara 2014: 14, 48, 214). Although it cannot be expected to be in operation all the time, democratic politics at its best is a standard for our normative understanding of democracy, equally distinct both from routine politics – politics as “the science and art of political government” and as “the conducting of political affairs” – that we experience during most of our political lives and from populist mobilization. This conception of openness is familiar from the kind of liberalism articulated by Mill and Dewey, who, as have seen, are usually viewed by political liberals as “comprehensive” liberals whose conception of political value rests on a particular controversial moral account and therefore falls beyond the pale of the freestanding political doctrine. We see this contrast in Ferrara’s searching criticisms of other recent attempts to articulate a democratic ethos, particularly *agape* (as it appears in the work of Charles Taylor), hospitality (Jacques Derrida) and presumptive generosity (William Connolly and Stephen White). These approaches share with Ferrara the aim of cultivating a more generous and less anxious form of engagement with difference in a “hyperpluralist” milieu where differences are often perceived as alien and threatening. However, these are all said to be “comprehensive” moral notions as opposed to the “specifically political” disposition of openness (Ferrara 2014: 62).

For Ferrara, the link between democratic openness and political liberalism seems to be something like this. An ethos of openness is part of any reasonable conception of political value, and, in this sense, is part of a citizen’s possessing and exercising the capacity of reflective judgment

in a reasonable way. At the societal level, the ethos of openness allows and promotes any reasonable “great transformation” and so can be integrated in a modular way into a variety of reasonable comprehensive conceptions. Yet to say that any reasonable person *must* be moved by a passion for openness defines the scope of reasonableness in a rather peculiar way. On the face of it, the motivation for political liberalism is that there are reasonable citizens who are not moved by this passion and reasonable political doctrines that do not include it. But if the claim is only that reasonable doctrines must *tolerate* this passion in others that seems to fall short of Ferrara’s vision of a democratic society: it would allow for a society entirely composed of citizens who subscribe to mere tolerance of openness. But this is exactly what Ferrara wants to avoid, although it seems quite compatible with Rawlsian political liberalism.

Outlining these tensions between what Ferrara hopes to achieve with the judgment approach and his loyalty to Rawlsian political liberalism only throws a spotlight on a small aspect of Ferrara’s wider study, of course, but it is an aspect with wider resonances. For driving the adherence to Rawls is a sense that only the principles of this political liberalism can minimize oppression in a hyperpluralist society. Yet it is this kind of theoretical guarantee on behalf of underpinning principles that the strong judgment model rejects.

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