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Ten Years.

This Issue. Next Issue. Call for Papers

### **The Tenth *Annale di Teoria politica*. Glancing into the Future**

The tenth volume of *Teoria politica* is introduced by Luigi Ferrajoli's contribution '*Towards a Constitution of the Earth*' (Per una Costituzione della Terra), originally delivered at a meeting in Rome on February the 21<sup>st</sup>, 2020. At the time, the presentation had a slightly different title and was aimed at developing a realistic and necessary utopian idea of a global constitution. The presentation was also intended to be a first step towards the creation and promotion of a movement of opinion for the adoption of a constitution of the earth. The meeting was held at the opening of a new School, a centre of education and knowledge for numerous activities converging to shape a *global political consciousness*, a definition which could be reworded as a new cosmopolitan awareness.

A global constitution is an idea that speaks to cultural and moral roots of the regulatory idea underlying a *cosmopolis*. At the dawn of modernity ideas such as these spawned projects of ever lasting peace based on great ideals. In the mid-20<sup>th</sup> century there was an attempt to implement a global constitution with the establishment of the UN and the Universal Declaration of Human Rights, opposed and basically defeated in the era of bipolar power. The cosmopolitical idea resurfaced after the end of the *short century* but was met and ousted by neoliberal globalisation, its arrogant *double*, a disloyal and unfriendly competitor that asserted itself by shaping real life and widespread conscience, establishing itself as the only possible model in the world, leaving no alternatives.

Global Neoliberalism is not merely something else, it was the opposite, incompatible with cosmopolitical universalism: a stage for embittered competition, irresolvable conflicts, abysmal inequalities, shameless violations of rights. Above all: a non-sustainable self destructive world. The latter is why the global political conscience which recent movements such as *Fridays for Future* call for and consider essential: it resembles the 'atomic conscience' against the bomb that splendid intellectuals tried but failed to promote in the post World War 2 world seeing it as a moral shield against the catastrophe that was about to befall on human beings.

*Teoria politica* wishes to offer Luigi Ferrajoli's ideas to a wider audience as well as to use them as a source in redefining our research framework. Furthermore, many of us ideally already subscribe to such movements of opinion. Let me reassure you: our pages will not offer an overlap between scholars and active citizens, nor between the impartial ethics of scientific research and citizens' ethical quest, nor misleadingly between descriptive and prescriptive discourses, *is* and *ought to*, analysing events & trends, discussing arguments and adopting values. Rest assured, our journal *Teoria politica* (Political Theory) will not turn into *Ideologia politica* (Political Ideology). That said, a clear and rigorous distinc-

tion between spheres entails neither a lack of involvement nor refusal to listen to each other. Impartiality does not mean indifference: it can be best described as intellectual honesty, (self) critical attitudes. Scholars from different spheres of knowledge can —and must if they so wish— be the travelling companion of practical actions deemed to be good by those who promote them. On the other hand, theoretical research is not always self-sown, the child of a ‘pure’ impulse: it often stems from a specific ‘interest in the world’ from a given or determined concern —or initially undetermined, indistinct. Research is not always driven by the need to fill a gap of knowledge but also from an ethical unease, a practical problem to be solved. *Teoria politica* calls on scholars, each one from their point of view, their specific scientific tools to observe and study the host of problems Luigi Ferrajoli framed and summarised. However close or distant readers and contributors of this journal are to the moral and political concerns which led to the movement for a constitution of the earth highlighting the real or possible current and future weight of the project.

Luigi Ferrajoli’s presentation started with a brief overview of the global problems human survival hangs on: climate change and its far reaching consequences; the resurging insane nuclear danger; the exponential growth of inequality; unbearable incalculable poverty, deaths due to hunger and lack of treatment; and desperate migrants attempting to flee all these disasters.

On the same day as Ferrajoli was holding his speech, on February the 21st of this doomed year, 2020, the epidemic from China, still not a pandemic, made its first official début in Europe, in fact in Italy. In the months that followed many observed the ‘chilling truths’ the pandemic unveiled and the dramatic urgency, the nature of the risks for humanity focusing on their shared origins, speaking to all those who wished to hear, reawakening from the numbness of habit.

The threats to human survival *all* stem from the hegemonic model of life, from the prevailing social paradigm of the past fifty years embedded in our heads and in things. The world has been turned into a hypermarket where everything has a price tag and no dignity, where everything is up for consumption and nothing is conserved, where everything is private, even the public sphere which is at the service of the private one. The many trends and events that make up what we call globalisation have led to an in depth reshuffling with opportunities for large swathes of the humanity to surface, although I would not push it as far as terming it emancipation.

An inherently unequal process has shaped global outcomes: very few access the luxuries of the market-world; very few share in the more or less obvious gains it can offer, with the exception of the widespread albeit incomplete sharing of media channels; many and increasingly so are pushed out, pushed down, expelled; many remain standing their noses pressed against the shiny windows of the market-world. We all are its victims: executioners, winners, current or future victims, like the pandemic which is the consequence and part of the same model, built on pillaging.

In the *post scriptum* drafted at the end of May 2020 in view of this publication, Luigi Ferrajoli commented on how Covid-19 had highlighted the root of

ills but also indicated the only direction to follow if we wish to remedy- presuming it is possible: operating for the development of a 'global public sphere'. His words are very different from Habermas's better known formula: Ferrajoli refers to universal principles and rules throughout the world to defend peace and fundamental rights, establishing institutions as guarantors for their implementation, having the means to impose limits and effective constraints on all global powers, private and public, *de facto* or *de jure*. This is precisely what a global constitution implies: a linguistic provocation for consciences, forcing us to imagine utopias, hard to do as current ideology surrounding and blinding us is like mist, not easily lifted. If we wish to dispel or at least stem the global catastrophe hovering above us, we have to switch the logic of the hegemonic model: reversing the destructive prevalence of the private sphere over the public one, or particular interests over universal ones. We have to thwart the *global misgovernment*, of States or of super-national bodies: in our global era states have relinquished most of their powers to them, making it possible for the political rule of the economy to be replaced by the economic rule of politics.

As I am writing (October 2020) the second wave has come; during the first wave some of these institutions, first and foremost the European Union indicated they wanted to change direction, the path to disaster. However, it is not at all clear if—and if so which— main actors of the public scene conceived this inversion: I am referring to the dominion of the private sphere over the public one, of economics over politics as a possibly necessary but certainly temporary means to then attempt the Great Restoration. On the other hand, last summer we clearly saw the ominous signs of recklessness and ignorance regaining space in the minds and behaviour of impolite, ill mannered dis-educated citizens, ready to follow the Pied Pipers of catastrophe.

Last Autumn's issue of *Teoria politica* (9/2019) focused on the current return of old and new forms of bad government. Let me be more specific: in a general sense it referred to bad politics, and in a more specific perspective of deviated and degenerate systems of governments (*regime*). According to classic theories, bad or mis-government is two tiered: despising the common good and imposing arbitrary power. In other words it indicates when private interests prevail over public ones and when the rule of law is replaced by a monocratic, personal and Caesarean single person's, or absolute government overseeing laws. The two complete each other: a power without laws to check (Montesquieu), no constitution, prone to pursue their own and the dominating classes *bonum proprium*, to the detriment of general interest. In other words it allows and favours the subjugation of the public sphere to the private one. It uses force and fraud, the two 'cardinal virtues' of political struggle (Hobbes) mixing or alternating repression of dissent and the trading of consensus along with the manipulation of social unease and protest, now as then fuelled and channelled towards delusional and misleading aims, imagined enemies. The ancient image of the tyrant casts its shadow onto the present offering, a kaleidoscope in a range of weaker or stronger shades, all ruinous: technocracy, plutocracy, demagoguery, alternating competition and monstrous contaminated hybrids, all bring forth a catastrophe.

In these past dismal months, the most emblematic figures of power concentrated on the called and misunderstood leadership recall psychiatric Bonapartism (believing you are Napoleon, or Nelson) have surfaced offering wicked and disastrous attitudes to the pandemic. Arbitrary power is blind and seeks the support of other blind.

We need to see clearly, and attempt to do so in the sharp light of a planetary emergency. This is the light *Teoria politica* offers in this 10<sup>th</sup> Issue: new contributions to the study of the political problems of our time, nearly all written in the months before the pandemic became apparent, although in some cases the authors finished and reviewed them with ‘hindsight’. In a more general sense, *Teoria politica* invites all authors to go back and rethink the results of the research the journal has promoted over the past years of scientific commitment —the thirty five years since it was founded, and the ten years since it was renewed as *Annali*—, lastly in its joining the collective research on the phenomenology of bad government. We call on you to identify threads and identify consistent and innovative lines of development. We call on all of you to cooperate in redefining your scientific project for the future.

### **This issue**

Scholarly articles in four sections follow Luigi Ferrajoli’s introduction to this volume of *Teoria politica*.

Section 1 is entitled, *Oltre lo Stato rappresentativo?* (Beyond Representative State) with a question mark. The previous issue identified the question as the angle best suited to further analyse the degenerative trends of contemporary politics. In Modernity, new and old forms of bad government seem to suffer from the distortion of the prevailing form of State, that is to say representative State. Movements of opinion and currents of thought have been developing or re-proposing critiques or alternative proposals against modern political representation. The 9th Seminar of *Teoria politica* held in Turin on the 10<sup>th</sup> and 11<sup>th</sup> of October 2019 discussed the concept of representation, its classical form, its historical, ancient and modern institutions which are juxtaposed in view of the idea itself being replaced. The articles in this section all draw from the contributions presented at the seminar. The first three deal with the issue from distinct complementary viewpoints addressing what the opponents of representative institutions see as its three ‘antidotes’ to the institutions themselves or to their malfunctioning: a binding mandate, appealing to the people’s will, and drawing lots: Isabel Lifante writes that a forbidding an imperative or binding mandate is essential to the nature and functioning of a modern democracy, in spite of criticism and attempts to revoke the prohibition. In informing her position, Lifante retraces the general meaning of representation and then specifically of political representation. She links both the general and the specific notions to modes of action which inevitably require a degree of discretionary power, in itself incompatible with imperative or binding mandates; Francisco Laporta targets his analytical darts against referenda, the main institution of direct democracy. He suggests they have few or

no political virtues, and even in the event of them having some virtue, they are drowned in the faults of ambiguity of the concept of the people and of popular sovereignty; Giuseppe Cambiano focuses on drawing lots for democracy, repeatedly indicated and invoked as an alternative or corrective method, or even as a replacement for election of representatives, in distributing power and attributing public posts. He retraces the genesis and the fortunes of the systems, but also highlights their limitations in application, at the origin of political culture and Greek democratic institutions. Cambiano then describes the developments in the Roman Era and when it was picked up in the modern Age, including the disputes among the great political thinkers of all times; and Valentina Pazé is the author of the fourth essay. She considers the negative or defective side of representation, drawing the attention to those who are not, cannot or do not wish to be represented: in current regimes of actual democracy, long term residents without political rights; citizens whose rights are annulled or penalized by distortive electoral systems or by the small size of representative bodies; those who have lost trust or rebel against traditional channels of representation.

The last two essays look at the beginning and the end of the representative State: Manuela Albertone goes back to the beginnings of modern political representation, the framework of the French Revolution, taking the meaningful building blocks of the project underlying representative institutions step by step. The Author identifies the genesis of a decentralised representative government linked to moments of popular participation in decision-making processes to physiocratic economic-political thought; she then identifies Condorcet's constitutional vision as the mature version of the model; and Carlo F. Ferrajoli closes section 1 illustrating a case of erosion and deformation of the representative State: the author analyses the degeneration of the Italian institutional system over the past twenty-five years, as Parliament has been progressively divested of its authority, both by a host of distorting electoral laws and by the loss of its law making powers, following a *de facto* transfer to the Head of Government.

Section 2, is called *Borders in Global Age (I confini nell'età globale)*, and it includes six essays all drawing from the presentations given at the conference by the same name held in Aosta (Italy) on November the 8<sup>th</sup> and 9<sup>th</sup>, 2019: Maria Rosaria Ferrarese wrote the first one starting with an overview of border culture transformations in time, finishing with a new analysis of the main features in our day and age: from the pre-Modern era when empire sovereignty was not defined precisely by territory borders being blurred, to the modern States with clearly defined borders in spite of expansionist trends, to globalization usually depicted with blurring or liquid borders. The Author suggests the picture should be reviewed and seen in more relative terms, along with the so called Post-Global Age. The latter is not merely identified by reactions such as *souverainism*, but also by the surfacing of mobile and selective borders, that change according to situations and players; Enrico Grosso's text focuses on the link between the idea of a boundary and borders and the legal definition of citizenry described in two manners. Firstly, a vertical relationship between a person and the sovereign power of the State; and secondly the horizontal one that refers to the members of a collective identity. The Author points to the prevalently negative function legal



citizenship has had throughout history, an instrument that could be manipulated to separate and exclude. Thirdly, he debates the link between citizenship and borders in the light of the contemporary constitutional State, critically assessing theories which suggest going beyond citizenship as a privileged status and abolish borders; Dario Gentili's article examines the notions of *frontiers* reducing them to ways on which one determines the relationship between 'inside and outside' by referring to the etymology of Latin terms *finis* and *limes*: the former indicates a line and the latter a mobile *frontiers*, for instance to indicate a qualitative difference, as is the case between civilized people and barbarians. The Author sees globalization not as a world without borders but rather as spread of the border logic. However, our present situation is an overlap of *frontiers* in the new 'border walls', between those who are included and those who are excluded; Giorgio Grappi's essay is a study of logistics, not merely as the technical side of global capitalistic organization but also as a form of power which contributes to shaping relationships between and among states, their policies and even their identities. Logistics in a technical sense spawned the material integration of the world market. Its coercive logic acts among borders generating major political effects. The Author considers the 'politics of corridors' as especially important, a sort of nervous system of global geography and suggests they act as a framework for the recent sovereigntism; Enrica Rigo's contribution starts with Georg Simmel's definition of 'stranger' and rethinks it as a female figure, the female-stranger, centring around social reproduction and its role in determining migration; and Ermanno Vitale's piece is a reconstruction of the right to migrate, developed at the start of modern culture, when it was used to justify European colonization. Now it is denied and questioned, since migration has changed the direction of the flow to the point it has turned borders into barriers against a presumed 'invasion'. The Author stresses the short-sightedness of inhumane anti-migration policies, the result of an eclipse of reason like the one which gave us the horrors of the Twentieth Century. In the *post-scriptum* he suggests extending the diagnosis of blindness and irrationality to our entire way of life and dominating culture, as revealed by a predictable but unexpected pandemic.

Section 3 is called *Essays*. Usually it is not focused on one theme, although in this issue three of the four contributions debate the same ills of contemporary democracy, that is mediation, immediacy and disintermediation or neo-intermediation in political relations and processes. In view of this, the essays can be usefully seen as developments, further investigations or a completion of Section 1, devoted to the representative State and its enemies: Antonio Campati sees the crisis of representative democracy as the result of the discredit of Intermediate Bodies (IBs) and the spread of the myth of instant, direct rapid politics, analysing how the various developments of 'immediate democracy'. Proposals emerged from Italy's very lengthy debate on institutional reforms starting with the suggestions Serio Galeotti made in the 1960s before the Milan Group (Gruppo di Milano) led by Gianfranco Miglio. Subsequently proposals moved on to Roberto Ruffilli's outlined in the 1980s, up to the oxymoron of Nadia Urbinati's recent definition of 'direct representation' by leaders of 'populist democracy'; Mauro Barberis and Gabriele Giacomini are critical of what is defined as the 'myth of disintermediation', that is the presumed direct relation between the so called

‘people’ and institutions. The Authors suggest replacing this vision with an interpretative model instead of a ‘neo-intermediation’ model for interpretation. They also offer two cases in point: the media specific one of the great digital platforms and the politics specific ones for digital or digitalized parties; Damiano Palano reassesses modern ‘direct democracy’ and how it differs from the idea of ‘ancient democracy’. He identifies two variants, the first as a check on the political classes, the second as an actual constituent project. In both cases he observes the presence of old and new political paradoxes mostly outlined by Norberto Bobbio in the 1970s, and Francescomaria Tedesco is the author of the last contribution for section 3. He delves into the complex relations between categories: terrorism, terror and sovereignty. He starts by analysing how France resorted to the state of emergency (*état d’urgence*) after the 2015 terror attacks, the rhetoric whereby the state of emergency was likened to a state of war. Tedesco highlights the resulting derogation of human rights legislation that leads him to suggest emergency management of terrorism entails and reveals the exercise of *sovereign power by awe* which is at the basis of the Modern State according to Hobbes.

## To Remo Bodei

Section 4 is a collection of opinions on Remo Bodei’s last book, *Domination and Submission (Dominio e sottomissione)*. The book was published in the late 2019 summer a few weeks before Bodei’s death: he was one of the greatest philosophers of our time, a great and generous person who supported and contributed to *Teoria politica* right from its foundation. A group of friends, including many students of his, formed an ideal circle and shared tasks each selecting a theme, a facet, a feature, a section of the book so as to offer a joint reading. The distinct and complementary contributions mirror the many tiers Bodei moved in-between as he assembled and disassembled problem such as the *domination of man over man*, starting with the submission of humans, forms where the dominator reduces the subdued human to a thing or animal. It ends with the disquieting perspective of a machine having power over humans, having taken over human intelligence and our ability to dominate. Remo Bodei’s wealth of writing that he bestowed on us for half a century, *Dominio e sottomissione* has a special place because it is not just the last of a series, one after many others: it is the book of a lifetime, that Bodei continued to write virtually in secrecy while exploring and discovering new horizons of knowledge and reaped the fruit of his inexhaustible research.

Personally, I had been waiting for this book for over forty years. In fact I can date it exactly, since February the 24th, 1976 when I first met Remo at the Feltrinelli Foundation in Milan. He held a presentation as part of a cycle of seminars organised by Salvatore Veca, called ‘*Modelli di potere. La coppia servo-signore*’ (*Power Models: The Master-Slave Couple*). That day Bodei illustrated what was to become the first version of the core which he said would soon be published and even gave the title of the ‘forthcoming’ book: *Servo-padrone. Per la storia del concetto di subordinazione fra gli uomini (Master-Slave [Hegel]). A history of the notion of subordination among humans*. In the months that followed Bodei presented another two “cartoons”, as he liked to call them, of the text that Tomaso

Cavallo mentions in his contribution below. Again he announced the launch, but the book never came out, although I was aware that the project had not been altogether shelved and from time to time surfaced recognizably in this presentation. When we met at our yearly Seminar of Political Philosophy I would ask him: we had 38 such seminars between 1981 and 2018 and in the 2011 edition I realised he was possibly back working on the book. At that seminar Bodei gave a presentation '*Il mistero doloroso e il mistero gaudioso dell'obbedienza*' (*The Painful and Joyful Mystery of obedience*) later published in *Teoria politica* (2/2012). He gave the inaugural speech at the last seminar of our group he was able to attend, in October 2018. His presentation was entitled '*Un malgoverno dell'altro mondo. Corruzione, avidità e violenza all'origine dell'America latina*' (*Bad governments from another world: Corruption, greed and violence at the birth of Latin America*) and was published in *Teoria politica* (9/2019). It is a short version of the Chapter 3 of *Dominio e sottomissione*. I would also like to recall that a few months previously, to be precise in May 2018, we met in Mexico to attend a seminar which he closed, and now published in the proceedings entitled *Capitalismo algoritmico y democracia. Máquinas, inteligencia artificial, trabajo*: it is a brief summary of the final parts of *Dominio e sottomissione*. A short time later, in December of that year, at an event organised for his Eightieth birthday by some of the Italian philosophers closest to him, he debated the same topic albeit with a number of variations. It was to be the last public meeting he attended and the book was finished in the painful months that followed.

Eight friends of Remo Bodei's continue the exchange, a dialogue, they had had with him for many a long year. They offer *Teoria politica* a landscape of thoughts mirroring nearly all the complex facets of *Dominio e sottomissione*: Tomaso Cavallo traced the distant origins and inspirations to the book, following the steps of its development and rethinking, and the updating of the old project in the light of present day issues and of the (un)foreseeable future; Alessandra Fussi refers to and debates the interpretations of slavery in the Ancient world and the range of classical justifications Bodei discusses in his first two chapters; Luca Baccelli deals with heavy issues in Chapter 3 on modern slavery and the cruelty of the other word but also on the debate it raised, that eventually led to the theory of natural rights; Pasqualino Masciarelli addresses the Hegelian core *Master-Slave* theme following a two pronged approach which blended precise philology and innovative theoretical philosophy. Bodei used this theme, unravelling and enriching it for decades focusing on subordination among humans; Andrea Borsari opted to analyse the link or nexus of the relationship between humanity and animality Bodei raised in Chapter 6. In one way it is the kernel, an initial explanation of the why civilisations can regress and humans slipping back to an animal-like condition, but in another it opens the possibility of reformulating the relationship humans have with nature and to the possibility of Nature itself being comprised once again in the framework of *hospitable reason* (*ragione ospitale*); Michela Marzano draws our attention to the importance of Chapter 7 where Bodei sees dignity as a barrier against inhumanity, while questioning the actual possibility of finding a solid foundation for it; Alfredo Ferrarin bids us to consider the problematic relationship between freedom and machines as the focus the book: he dwells on Bodei's questioning exploring tensions between animality and humanity, between

nature and reason stressing the emancipatory value of the mechanical labour, in conclusion suggesting a unique affinity between Galileo and Bodei; and lastly Giovanni Mari debates Part 4 of *Dominio e sottomissione*, where Bodei considers the latest technological developments, the ones where ‘God was made machine’ and ‘reason and language objectified as an algorithm live in non human bodies’. Mari suggests reconsidering these two issues through the lens of the two paradigms: ‘freedom from work’, and ‘liberation in work’.

Remo died too soon at the beginning of November 2019: he lived an intense and full life, with a wealth of experienced, imagined lives and meetings with other lives. As he used to say ‘our self is nothing but the crossroads or node that potentially links all the people and events that contributed to the shaping of the self’. Life lost Remo too soon too quickly: he fed the world of culture, breathing life at an incredible rhythm joining in meetings throughout the world, to the point he appeared ubiquitous. He cultivated friendships, feeding them with many loving gestures. He lived a life of many different experiences, or just skimmed across other contexts and then reminisced, told and relived them all on as many occasions. We perceive his absence in the same intense and full manner. Let us listen to Augustine, one of the classics he studied in depth: *Those we love don't go away, They walk beside us every day. Unseen, unheard, but always near.* I feel it is my duty to thank Remo Bodei's friends for their outstanding contribution, as you will see in the pages of *Teoria politica*: it helps continue our dialogue with him, as we continue to think his thought.

## Next Issue

Last Spring in the harshest months of the first Italian lockdown I wondered what Remo Bodei would have said of the situation we were experiencing, suffering, dominated by anxiety, subjected to the emergency, most of all, the overwhelming majority resigned to the limitations to our freedom that had followed. I do not believe he would have proposed the paradigm of his *Fenomenologia* again, that of the Slave fearing death and the Master imposing obedience as the framework to understand the pandemic. Nor do I believe he would have resorted to Schmitt or Foucault-like formulae and images, as happened in Italy and elsewhere to expose the dangers of a despotic self-legitimated regime by inventing or exaggerating a nonexistent emergency. I would like to add that the opposite happened: members or proponents of strong governments badly tolerating constitutional constraints, elected or hopeful autocrats did not fan the flames, did not stir up the fear of the epidemic to invoke or request full power and authority. Quite the opposite, politicians with such positions were the first to reject or belittle the health emergency, denying evidence, ignoring or disregarding the pain & suffering, the dead, thus unveiling their syntony with social Darwinism—now also known as natural—the ideological and metaphysical paradigm of the dominating life model. The clearly paradoxical isoform paradigm for the categorization of certain anarchist and pseudo libertarian theories, makes their supporters unable to see beyond repression in the world of the rules of civilization and of the constitutional State.

I believe Bodei would have seen dealing with the pandemic as a tragic but unique opportunity, the *kairos*, for us to stop, and possibly to impart a momentous reverse in the flow of our lives. This is better than merely focusing on restrictions or seeing it only as a dire emergency—which it also is and causes anxiety—and which requires great scientific and moral energy to be fought. On a more personal level he might have encouraged us to look at the positive rather than the oppressive nature of the Great Lockdown referring to the need to slow time down and master it rather than being its slave, to fight ‘squandering and losing ourselves’. More collectively, he would have insisted on the need to stop the upward race, the meaningless and indefinite *anabasis* towards a growth *sans phrase*, which in fact translates into a growth of antagonism, inequalities and catastrophes. He would have also stressed the additional and co-essential need to reverse the downward race, the *katabasis* of humanity, the decline of civilisation: a process of de-civilisation may be starting in a historical context where the conquests leading to the autonomy and equality of beings in Western democracies have become uncertain. *De-civilisation* is something vaster and more devastating than *de-constitutionalisation* which Luigi Ferrajoli has been focussing on lately, and than *de-democratisation* repeatedly analysed and mentioned in the pages of *Teoria politica*: it includes both and at a deeper level links them to anthropological and historical degeneration, something will have to go back to and rethink. Going back to the last page of *Dominio e sottomissione*, written a year before the pandemic: ‘will the *thin armour of dignity and human rights* withstand the blows of the world’s uncertainties?’; ‘could these *antidotes against dehumanisation* become once again so weak as to allow the poison of barbarization flow freely in the social body?’. That is the wave—the horde—we have seen swelling in recent times. It is the race we must stop.

In his speech on February the 2<sup>nd</sup>, 2020 (published herein) just before the outbreak of the pandemic, Luigi Ferrajoli was observing how politics were losing ‘the dimension of time’: both ‘amnesia, that is to say the loss of memory’ of the recent past, tragedies and the ‘never-again’ statements that yielded European constitutions in the post World War 2 period, seen as ‘barriers against inhumanity’ (Bodei); and ‘the short sightedness and lack of responsibility for the more distant future’. The lack of prevention of the Covid-19 pandemic is exclusively due to the refusal of the dominating classes to act, in spite of the outbreak of this catastrophe not being just foreseeable but basically announced by WHO in 2007, as Ermanno Vitale recalls in his *post scriptum* to his article. A sort of intentional conscious and deliberate myopia, the will not to foresee, to forecast, underlying the progressive crumbling of the European health systems to a varying degree according to the country; ceding increasingly larger spaces to private enterprise, mixing and prejudicing the fulfilment of basic rights. In fact, it is the first of the fundamental rights, *conditio sine qua non* of all the others, the right to life, trading it for profit and subordinating rights to interests, and even applying market economy vocabulary, in Italy renaming local hospitals ‘Trusts’.

Following the spread of the pandemic all—or possibly *nearly* all—the governments of the world have had to *bon gré mal gré* to take on the mantle of the ‘Public Health Committee’ in the strict sense of the word, albeit with dif-

ferent attitudes or even opposite positions and to different degrees. They ought to continue to be and behave like that even after the pandemic, that is if there is an after and if so when it will be, in the New Normal, if we will ever have a new normal and will be able to recognise it. The primacy of the public sector, reintroduced in times of crisis will have to fight the counter-restoration of private primacy, starting with 'public health'. Private interests do not guarantee public health: it is barbarism, anti-civilisation where health is only for those who can afford it. It is despicable that anyone can profit, make money, with activities required to satisfy rights. In the case of health it is really a case of 'your money or your life'. I would like to add that there should not be a postcode lottery by area, legal system or the whims of local powers in implementing fundamental goods and rights, although this may only apply to poor wretched Italy. If any constitutional reform is called for it is a radical counter reform of the Title Five of the Italian Constitution.

Other social rights should be treated just like public health rights, both in theory and axiologically. Article 32 of the Italian Constitution reads health is 'a basic right of every person' (*fondamentale diritto dell'individuo*), as well as being a collective interest (*interesse della collettività*). Let us re-read Norberto Bobbio: 'The hallmark of a social right is that it is recognised and defended not only in the prime interest of a single but also in the general interest of society the person belongs to. In fact it is in the interest of the community as a whole to have educated rather than illiterate citizens, employed rather than unemployed, in good rather than in bad health'.

Thus redefined, the notion of a 'social right' enshrines the paradigm of mutual involvement between individual and collective good. Accordingly, the fulfilment of a right is in the interest of each bearer of the right for others to have their same right recognised and fulfilled. Potentially it is a regulatory idea to rethink the criteria underlying communal living, redefining the covenant that governs cohabitation—in other words the Constitution. This also implies the ultimate *res publica* that becomes the *universitas* of 'inherent dignity and equal and inalienable' rights as stated in the 1948 Universal declaration of Human Rights, bearing an equal interest in their own and others' basic rights, of each and every person. This would apply to the entire human race if we were ever to introduce and apply a constitution of the earth, the Declaration Luigi Ferrajoli calls us to adopt as the shared meaning to save the human race from itself. Equality in fundamental rights is a specifically public sphere that involves both individual and collective interests. To remain as it is, this public sphere must be preserved, protected and *immunised* from the each and every private interest (*quod ad singulorum utilitatem*), which would undermine it. When using the word 'protected' it is not merely referring to a specific, practical, material interest or group of private interests, but from the primacy of private over public, the currently dominating model of life. We can all see what happened to the right to health but let us not forget what happened to the first and foremost social right, the right to work. Nor can we fail to remember the right to education currently subordinated to prevailing preference of 'professionalism' to the detriment of culture, and citizen education with the result of not knowing how to stem a wave of uneducated,

unprepared citizens, prey to fraud, subject to the power of fakes, conquered by the increasingly widespread arrogance of ignorance. As Remo Bodei used to say ‘in times such as ours, any opinion stakes unquestionable claims on truth and we witness the circulation of an aggressive self satisfied falsity’. I don’t know whether ‘and the truth shall make you free’ but certainly falsity makes you a slave.

*Teoria politica* calls you to rethink social rights, an always complex and controversial issue, in the grey light of the pandemic; we call you to reprioritise social rights—as once laid out by Calamandrei—as the condition to actually enjoy the right to freedom—and in turn to enjoy political rights—from all points of view including those who oppose it. Once again let us turn to Bobbio: ‘An educated person enjoys more freedom than an uneducated one’; a person who has a job more than an unemployed person, a healthy person more than a sick one’.

*Teoria politica* also calls to critically assess Luigi Ferrajoli’s appeal to the need of public guarantee for ‘fundamental goods’, jointly with and at the same time as fundamental rights: common and essential goods such as air and water and more so the environmental crisis that highlighted the many specific forms. A public guarantee means reclaiming public rights and goods from the private sphere. The universal and free distribution of Covid 19 profit-free vaccines will be the first test case for the world’s new direction.

All fundamental rights—such as freedom, political rights and future classes of rights, and not just the social ones—are rights that go against the market: you can’t buy or sell, nor exchange and reify them. Such rights have to be free of profit, earnings, and private, particular exclusive advantages. These rights are outside the market spheres, they are unrecognised and disregarded by the market, by the borderless world of interests, and the prevailing life model. However, it is an unsustainable and self-destructing world: if the world, humankind wishes to have of chance of surviving it must stem, *confine the world of interests*. It must *confine the market*. Turn Ronald Reagan on his head: the market is not the solution, it is the problem.

Once again I refer you to Norberto Bobbio’s simple, famous, disarming words: ‘Political democracy has so far lived along side, or has had to live with the capitalist economic system. A system that only obeys the law of the market, which is per se amoral, based on demand and supply and on the ensuing commodification as long as someone is prepared to sell it and someone is prepared to buy it, whether it is your conscience, dignity, conscience, your body, an organ of your body, and why not [...] your vote too. A system whereby you can’t tell what is indispensable and what is not’. ‘What is the purchase of a vote compared to that of a woman’s sexual organ or of illegal drugs or even the eye of a poor child?’. In an interview, Heinrich Böll said: ‘if there is no force able to oppose market materialism—whatever market be it, religious, political or ideological—then we will be open to selling ourselves or even our grandchildren too’. ‘We have to honestly acknowledge that history has offered no other democracy except for the one linked to the market. However, we are also starting to realise that the embrace between the democratic political system and the capitalist economic one are both a source a death and death, vital and mortal’.

*Teoria politica* calls on scholars from all walks of knowledge to consider the possibility of a *theory of the minimal market*. This does not necessarily imply or at least *not only*, not simply *envisaging the 'Maximal State'*. As Luigi Ferrajoli observes *now* everyone is turning to the Government as such and to its provisions, including the Minimal State standard bearers: 'everyone, including liberal anti-statists expect [the government] to provide literally everything: free treatment, unlimited money, saving lives, saving businesses, preventing contagion and economic recovery' However, if the world wishes to survive there needs to be a change in paradigm not simply a tug of war between State and market that in turn requires another mental framework, able to imagine other ways to reproduce lives, recovering lost forgotten or never activate or even repressed potentials the long of the winding path of human experience.

### Call for Papers

The new series of *Teoria politica* is now ten years old. Our journal feels the urgent need to undergo a phase of renewal. Many contributors believe, first and foremost as citizens and secondly as researchers, that political rethinking and political research in the more general sense are required to address the deep changes on the political landscape. We are not afraid to use Aristotle's words in tune with our times: in the architectural sense, philosophy concerning humans. We therefore call on scholars and experts who have identified with the journal over time, to contribute to the redefinition, enrichment and start up of a new project, following the one drafted thirty five years ago and then ten years ago. We need a new research programme, or more simply said we need to identify the key issues in view of renewed research paths. We are suggesting to focus on our global fate as a starting point and horizon to help us rethink and consider.

### *The world we don't want back and the world we wish for*

*Teoria politica* welcomes contributions of the following themes:

- private Sphere prevailing over the Public Sphere, economy prevailing over politics;
- global market and inequality;
- global misgovernment;
- de-civilisation, de-constitutionalise, de-democratise;
- dignity and Rights: a barrier against dehumanization;
- the idea of a super-national constitution;
- global emergencies call for global remedies;
- basic rights and goods;
- global institutions as guarantors;
- the priority of social rights;
- a minimal market theory;
- capitalism and democracy: a deadly embrace?
- how to go beyond capitalism?



Were we trusting would be naïve: the rotten, perverse, unsustainable world will probably return and will last for the time it will be granted given its blindness. Alternatively, future generations will learn how to take the Earth out of the dark cone of this other 'Eclipse of Reason' to quote Horkheimer, as quoted by Vitale, another eclipse after the terrible one that cast a shadow over the Twentieth Century? *Teoria politica* invites readers and contributors to persevere in their duty to exercise reason in the public sphere.

As we hand this volume well past its deadline, we hope the *tristitia temporum* will not further delay its publication.

M. B.

# Per una Costituzione della Terra\*

Luigi Ferrajoli\*\*

## Abstract

### Towards a Constitution of the Earth

*This text is a revised and augmented version of a speech delivered in Rome on February 21, 2020, on the occasion of the inaugural assembly of the «Towards a Constitution of the Earth» movement. The speech begins by stating the global problems on whose solution the survival of humanity depends: climate change and its consequences; the renewed nuclear danger; the growth of inequalities; the abnormal dimensions of poverty, of deaths from hunger and lack of care, of the migrations of desperate people who try to escape these evils. To face these problems, it is pointed out that a supranational constitutionalism is necessary, capable of establishing principles and rules with universal validity to protect the fundamental rights of all the inhabitants of the planet, and to create global guarantee institutions that make them effective, such as a health service world, a world organization of work and education, a planetary public property, a global tax system. This «Constitution of the Earth» is presented as an expansion of the constitutional paradigm beyond the State, in three directions: towards a constitutionalism of international as well as national law, of private as well as public law, of fundamental goods as well as of fundamental rights. Only in this enlarged dimension would constitutionalism be able to face the environmental emergency, prevent new ecological catastrophes; the emergence of wars, terrorism and major crime, effectively banning weapons of all kinds; the social emergency, providing the means to heal inequalities, poverty, hunger and disease. In the Post scriptum, written in May 2020, the author indicates the immediate lessons that should be drawn from the COVID-19 pandemic: the irreplaceable value of public health, and the need for a strengthening and radical reform of the WHO and other possible world public institutions which should be responsible for a global governance of global danger.*

**Keywords:** Global Constitutionalism. Global Guarantee Institutions. Global Emergencies. Fundamental Rights. Fundamental Goods.

### 1. Scetticismi e realismo. Tempi brevi e spazi ristretti delle politiche nazionali

Ci sono problemi globali che non fanno parte dell'agenda politica dei governi nazionali, anche se dalla loro soluzione dipende la sopravvivenza dell'umanità: il

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\* Testo della relazione introduttiva, con il titolo originario *Perché una Costituzione della Terra?*, pronunciata a nome del Comitato promotore della Scuola «Costituente Terra», all'assemblea svoltasi a Roma il 21 febbraio 2020.

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salvataggio del pianeta dal riscaldamento climatico, i pericoli di conflitti nucleari, la crescita delle disuguaglianze e la morte ogni anno di milioni di persone per mancanza di alimentazione di base e di farmaci salva-vita, il dramma di centinaia di migliaia di migranti ciascuno dei quali fugge da uno di questi problemi irrisolti.

È da questa banale consapevolezza che è nata l'idea di dar vita a un movimento diretto a promuovere una Costituzione della Terra. Siamo ben consapevoli del fatto che questo progetto può apparire un'utopia, una proposta irrealistica e irrealizzabile. Come è possibile, in tempi come gli attuali, di crisi delle democrazie nazionali e di processi decostituenti anche nei paesi più avanzati, ipotizzare una democrazia cosmopolitica e una costituzione globale che accomuni centinaia di popoli diversi, talora tra loro in conflitto? Come è possibile che un simile patto possa essere condiviso da 196 Stati sovrani e da quei nuovi sovrani irresponsabili e invisibili nei quali si sono trasformati i mercati?

Ebbene, proprio gli argomenti scettici sottostanti a queste due domande —l'inesistenza di un popolo globale omogeneo e l'esistenza degli Stati sovrani— sono a mio parere le ragioni principali a sostegno della necessità e dell'urgenza di un allargamento del paradigma costituzionale a livello internazionale. Contro la concezione nazionalista e identitaria della costituzione formulata da Carl Schmitt negli anni Trenta del secolo scorso e riproposta oggi dai tanti populismi e sovranismi, pensiamo infatti che la costituzione non consista nell'espressione dell'«identità» e dell'«unità del popolo come totalità politica»<sup>1</sup>. Essa è al contrario un patto di convivenza pacifica tra differenti e disuguali: un patto di non aggressione tra differenti e un patto di mutuo soccorso tra disuguali. Per questo è tanto più legittima, necessaria ed urgente quanto maggiori sono le differenze di identità personali che ha il compito di tutelare e le disuguaglianze materiali che è chiamata a ridurre. Una costituzione, in breve, è legittima e democratica non perché voluta da tutti, ma perché garantisce tutti. È d'altro canto evidente che 7 miliardi e 700 milioni di persone, 196 Stati sovrani dieci dei quali dotati di armamenti nucleari, un capitalismo vorace e predatorio e un sistema industriale ecologicamente insostenibile non possono a lungo sopravvivere senza andare incontro alla devastazione del pianeta, alla crescita delle disuguaglianze e della povertà e, insieme, dei razzismi, dei fondamentalismi e della criminalità.

Si capisce come di fronte a queste sfide globali alla ragione giuridica e politica, le politiche degli Stati nazionali siano inadeguate e impotenti. Sono sconcertanti la loro inerzia e il loro silenzio intorno alle catastrofi umanitarie, alle guerre e alle minacce di disastri ecologici dai quali, tra l'altro, fuggono le masse di migranti che le nostre inutili leggi e le nostre frontiere militarizzate non sono in grado di arrestare. Certamente questa inadeguatezza delle politiche nazionali si spiega anche con la loro subalternità all'economia generata dalla corruzione, dai conflitti di interesse e dalle pressioni lobbistiche. Ma essa dipende soprattutto da due gravi aporie che investono la democrazia politica, legate entrambe al rapporto delle politiche nazionali da un lato con il tempo e dall'altro con lo spazio.

<sup>1</sup> Schmitt, 1981: 135 e 241.

Le politiche nazionali sono vincolate ai tempi brevi, anzi brevissimi, delle competizioni elettorali, o peggio dei sondaggi, e agli spazi ristretti dei territori nazionali: tempi brevi e spazi angusti che evidentemente impediscono ai governi statali, interessati soltanto al consenso elettorale, di affrontare le sfide e i problemi globali con politiche alla loro altezza. Le più gravi minacce al futuro dell'umanità —le devastazioni ambientali, le esplosioni nucleari, le stragi di migranti, la fame, la miseria e le malattie non curate che provocano la morte ogni anno di milioni di esseri umani— sono così ignorate dalle nostre opinioni pubbliche e dai governi nazionali e non entrano nella loro agenda politica, interamente legata agli spazi ristretti disegnati dalle competizioni elettorali. A causa della pratica quotidiana dei sondaggi in vista soltanto delle scadenze elettorali, la politica sta inoltre perdendo anche le dimensioni del tempo: da un lato l'amnesia, cioè la perdita della memoria delle guerre mondiali, dei fascismi e dei «mai più» da cui sono nate le costituzioni e le carte del secondo dopoguerra; dall'altro la miopia e l'irresponsabilità per il futuro non immediato e per i problemi globali. Solo così si spiegano il ritorno della guerra avvenuto in questi anni e l'indifferenza spensierata per le distruzioni in atto dell'ambiente e per le prognosi infauste sul futuro del nostro pianeta.

La democrazia odierna conosce insomma soltanto spazi ristretti e tempi brevi. Non ricorda e anzi rimuove il passato e non si fa carico del futuro, ossia di ciò che accadrà oltre i tempi delle scadenze elettorali e al di là dei confini nazionali. È affetta da localismo e da presentismo. È chiaro che l'ottica miope dei tempi brevi e degli spazi ristretti non può che rimanere ancorata agli interessi immediati e nazionali, e quindi escludere ogni prospettiva progettuale capace di farsi carico dei problemi sovra-nazionali e del futuro. La democrazia entra così in conflitto con la razionalità politica, ossia con gli interessi di lungo periodo degli stessi paesi democratici. E rischia perciò di crollare anche negli ordinamenti nazionali. Anche perché nell'odierno mondo globalizzato il futuro di ciascun paese dipende sempre meno dalla politica interna e sempre più da decisioni esterne, sia di carattere politico che di carattere economico.

## **2. La necessità e l'urgenza di un costituzionalismo oltre lo Stato. Istituzioni di governo e istituzioni di garanzia**

È da questa banale, elementare consapevolezza che è nata l'idea di dar vita a un movimento d'opinione diretto a promuovere un costituzionalismo sovranazionale, in grado di colmare il *vuoto di diritto pubblico* prodotto dall'asimmetria tra il carattere globale degli odierni poteri selvaggi dei mercati e il carattere ancora prevalentemente locale della politica e del diritto.

Non si tratta di un'ipotesi utopistica. Si tratta al contrario della sola risposta razionale e realistica allo stesso dilemma che fu affrontato quattro secoli fa da Thomas Hobbes: la generale insicurezza determinata dalla libertà selvaggia dei più forti, oppure il patto di convivenza pacifica sulla base del divieto della guerra e della garanzia della vita. Un dilemma, quello odierno, ben più drammatico di quello allora concepito. Ci sono infatti due differenze profonde tra la società