465 *Etica & Politica / Ethics & Politics*, XXIV, 2022, 3, pp. 465-479
ISSN: 1825-5167

JUSTIFICATION AND APPLICATION OF HUMAN RIGHTS
AUTHOR'S REPLY TO CRITICS

CLAUDIO CORRADETTI
Department of Literary Studies, Philosophy and History of Art
University of Rome Tor Vergata
claudio.corradetti@uniroma2.it

ABSTRACT
In this reply I explain the philosophical project behind the book and the reasons for its expansion in occasion of the second edition. I respond to the challenging remarks of my critics and clarify in which terms I adopt a Hegelian approach to a theory of human rights. Hopefully, this should guide the reader through the requested clarifications I provide with regard to functional aspects and possible applications of the theory.

KEYWORDS
Pluralism, human rights, relativism, universality.

It is an unusual privilege to have the opportunity to respond to such a philosophically engaging array of comments from colleagues and friends. There is indeed a wide range of issues to elaborate and organize in view of the preparation of a satisfactory reply. I believe though that, in a quite unforeseen plan, the seven contributions here collected fit well into three main areas. These concern: 1) the ultimate philosophical roots of the theory I present as grounded in German Idealism, 2) the philosophical and functional aspects of the theory of human rights, 3) some possible applications/extensions of the theory to practical cases.

Indeed, the first two contributions, Cesarale's and Buchwalter's, investigate the German idealist - particularly Kantian-Hegelian roots - of the book and its Habermasian developments; whereas the following three essays (Tonelli's, Langford's, Herlin-Karnell's) engage with different important aspects related to my proposed theory of human rights: i.e. the notion of humanity, relativism, peace. Finally, the last two contributions (Eisikovits's and De Vido's) extend the discussion of the theory respectively to the case of artificial intelligence (AI) as well as to non-humans and the environment.

Given the layout presented above I articulated my answer into three parts and organized systematically, for each section, the set of received comments.

1. THE PHILOSOPHICAL ROOTS OF THE THEORY: BETWEEN GERMAN IDEALISM AND THE FRANKFURT SCHOOL

Cesarale's comments are very valuable for their focus on three different aspects that I consider crucial in defining the basic philosophical assumptions of the theory: a) the relation of human *rights with the notion of (pluralistic) universalism, b) what it sees as a 'problem' of a pre-determined* body fixation for a pre-discursive, reflective dimension, c) the problematic relationship between *Verständigung* and *Einverständnis*, namely, as Habermas defines it, between 'reaching understanding' and 'mutual acceptance of a validity claim', respectively.

Let me discuss each of these points in turn. It goes without saying that these are all very deep philosophical remarks, for which I'm indebted to Cesarale.

Regarding the first point, it is true that the construction of historical notions of human rights not only takes place in given discursive practices, but responds to the determinate denial of the enquirer; one might call this 'a critical standpoint', in respect of a purely abstract conception of universality. The critical 'no' prompts the conceptualization of a 'situational plus normative' validity constraint of the illocutive act. Let me give an example: suppose that you are telling me not to exit my house after 9pm (a case that is sadly frequent in the current pandemic situation). I would immediately react by protesting and invoking my constitutional liberties of movement and so on. Next, if we were in a context of ideal exchange, you would provide me with *reasons of justification* for the adopted measure. Eventually, I would challenge at least part of your reasons and so on and so forth. The overall result would be a qualification of the right of freedom of movement as a content validity claim for the illocutive act.

The meta-illocutive characterization of the locutionary content is what Cesarale rightly refers through Hegel as the 'mediating factor' which negates the 'immediacy' of a universal abstract. I do completely share such view and indeed part of my project has been an attempt to rethink the role of the dialectics both in discursive as well as merely negative terms.

Moving to the second point, Cesarale sees a potential difficulty in the characterization I provide of spatial categories as pre-discursive, pre-reflective parameters of spatial orientation. Here, I draw from the discussion in cognitive linguistics, particularly from Lakoff, that has developed over the last twenty-five years and that has focused on the 'embodiment' of our concepts and their experiential bases. The position I take in such debate is indeed one of full acceptance of the construction

of abstract notions from environmental/interactional dynamics. Yet, I consider that at the bottom level of our experientially based categories is a set of limited spatial-orientational options. Nevertheless, I do not exclude that there may be a plurality of spatial conceptualizations sensitive to different cultural values, I just show that the choice would fall to a limited option.

As evidence for such a strong commitment to the active role of the mind, I suggest that Putnam's argument for internal realism (the Twin Earth) should be rephrased in terms of indexicality: 'I refer to the water here!'. It is this indexicality function of locutions that I regard as a valuable achievement for an experiential, non-realist, conception of semantics.

The third point raised by Cesarale is philosophically more demanding. The relationship between *Verständigung* and *Einverständnis* is at the core of the problematic relation of my proposed theory with the Habermasian view on communicative action. Indeed, the presupposition I defend of a large portion of beliefs – functional to the redemption of 'mutual understanding' – is not coextensive in my theory with the notion of a 'mutual acceptance of validity claims'. On the contrary, I see here a problem with the Habermasian notion of 'ideal' conditions of a discourse agreement. It would be too long of a route to engage in an in-depth criticism of such aspect (which by the way is not only an Habermasian problem). The point I make is that 'the acceptability' process that accompanies the acceptance of the validity conditions (*Einverständnis*) is truly discursive and not extra discursive as it is in Habermas when he refers to 'ideal discursive conditions'. The justification of the universal validity of human rights (the formal categories of the system of liberties), passes through the negative dialectical engagement of the speakers when they confront each other argumentatively.

The result of such discursive justificatory practices is what generates the idea of a 'concrete universal' but in a post-metaphysical way with respect to Hegel's Absolute. It is a post-metaphysical view because the weight of justification is only internal to the process that generates it, namely, the dialectic-discursive one. It is also an anti-prejudicial and truly emancipatory position, in so far as the *Lebenswelt* is internal to a circle of experiential justification, on the one hand, and of argumentative practice, on the other hand. There is certainly the need for a transcendental residue in all of this argument, and this is given by the pragmatic-transcendental character I recognize in the notion of freedom and well-being within the general system of liberties. Yet, such categories are only orientative principles that inform us of the inevitability of the justificatory demands they pose – namely, that any illocutive speech-act in order to achieve coordination through the free acceptance of valid reasons has to respond to the request of freedom and well-being in its most abstract terms.

So, the discourse of human rights ceases to be a parochial discussion on Western values and the ways in which liberal democracies organize the political life of their citizens. Human rights in the role that I reconstruct here are essential elements for any social coordination that aims to achieve mutual compliance in virtue of the 'right reasons'. Yet, such reasons are the result of a discursive process of justification and not – as in Habermas– the outcomes of an ideal speech-act situation.

Cesarale also observes other aspects of my theory, but let me focus on the most significant perplexity he advances with regard to the difficult connection I draw between 'cognition' and 'recognition'. Cesarale considers problematic my attempt to detach the emotional recognition of the other from cognitive processes in general. More specifically, Cesarale believes that I adventure into a dangerous and unstable relation between a physical predetermination of bodily categories (as discussed above) and the reason-giving practice which responds to my emended attempt of discursive theory.

To reply, whereas the two mentioned aspects – cognition and recognition – are analytically separable and also practically disjoinable, I don't see them as radically independent poles. Indeed, the assumption is rather that cognitive understanding (*Verständigung*) requires an intersubjective process of recognition in order to proceed, next, to assess the acceptability of the presupposing validity assumptions (*Einverständnis*). Since the same process of categorization is sensitive to our physical interactions with the environment *mediated* by our cultural practices and beliefs (in the book I refer to the inversion of the spatial categories in certain Aboriginal tribes due to spiritual beliefs), the conclusion is that the process of recognition applies also to this basic level of categorization.

In short, to summarize together some of the issues raised by Cesarale, the idea of universalism I propose realises a post-metaphysical turn towards the Hegelian view of the Absolute. It does so by transforming the same dialectical dynamics into a double form of negation for what is the third moment – the 'speculative' moment in Hegel. This means that universality can be attained only contingently and through the determinate negation of a negation. History is the series of such double processes of negation. Rather than the triumph of an Absolute Spirit, the normatively immanent sense of history is the process by which humans have achieved forms of emancipation through social struggles. These have – at best – been realized only as determinate forms of an unattainable full positivity of the universal. The idea of a 'concrete' universal that I pursue in the light of Hegel is thus a notion of a negation of a negation that does not instantiate positively the universality of the Absolute, but which points only critically to it. There is a space to be filled in which this conceptual movement does not cover and it is the idea of freedom as self-determination which can be realized only after the forms of contradiction of the universal (the first negation) are in turn negated.

I believe this is the way to reinterpret Hegel's consideration of history in the light of a post-metaphysical thought.

These last reflections introduce Buchwalter's remarks on my interpretation and use of Hegel as a conceptual resource for my theory of human rights. Buchwalter points to several aspects of Hegel's philosophy of right and metaphysics that are reflected in my work. He also wanders why I move to Habermas's speech act theory without fully exploiting the conceptual resources that Hegel himself could provide to an intercultural and post-metaphysical theory of human rights.

To begin with, Buchwalter contests that my interpretation of Hegel's natural law argues for the *rejection* of this tradition in favour of a mere positivistic view.

This is not what I intended to suggest and I'm glad, if there was unclarity in my position, to be asked for a clarification.

I do indeed believe, as Buchwalter does, that the subtitle of Hegel's *Philosophy of Right– Natural Right and Positive Political Science–* provides an important interpretive key to the text. Bobbio had already noted that Hegel maintains a relation of "*dissolution* and *fulfilment*"[1] with the natural law tradition. Dissolution for Hegel is necessary since the natural law tradition, in so far as it interprets the civil state as the result of a 'contract', an ideal state of nature and so on, adopts legal categories which not only are abstract but also misplaced (i.e. the contract for Hegel is part of private law); fulfilment, instead, is due to the transformation – not the abandoning – of the natural law tradition in view of a general account of a process of *rationalization* of the institutions of the State as well as of the social life.

To Bobbio's remarks, which I fully endorse, in my book I have tried to further depart from the Hegelian metaphysical project by adopting as conceptual resources the pragmatic transcendental features of speech act theory which Habermas, before, had also adopted. In such respect, the overall Hegelian project for the definition of the system of law as part of the historical unfolding of the 'objective Spirit' is transformed into a process of justification which relies on the understanding of the counterfactual normative discursive standards. This accounts for Buchwalter's demands of clarification on why I link Hegel to Habermas.

Buchwalter advances doubts to my presumably postulated intersubjectivist take on Hegel's anti-individualist and anti-contractualist foundation of the legal-political realm. He considers that Hegel's *Philosophy of Right* confronts with a commitment "to both atomism and contractarianism",[2] before arguing for a deeper notion of intersubjectivity.

[1] See N.Bobbio, "Hegel e il giusnaturalismo", in *Studi Hegeliani*, Einaudi, Torino, 1981, p.3 (my translation).

[2] See above, Buchwalter, in this symposium

I'm not sure I understand the charge on my argument but this may be due to the disposition of the arguments I present. Indeed, I do agree with Buchwalter on the (Hegelian) necessity to deal with the modern 'market oriented' categories of contract and atomism in order to show their inadequacy as political concepts. The route I choose for the construction of an intersubjective link of mutual recognition starts from what I take to be processes of continuous 'misrecognitions' and social struggles among subjects. For this reason, as Buchwalter aptly notices, I insist more than other interpreters on the 'negative' moment of the dialectic as being an essential component of the process of a yet to be re-established recognition. In this respect, I aim to avoid a sort of 'externality' of recognition in the argument I defend. It is also my intention to argue for the 'priority of the whole over the parts', as Hegel often reminds us in an Aristotelian fashion, as a superior notion for justifying the priority of an intersubjective interrelation over the atomistic view of the subjects.

This same perspective is defended also when I revisit Gewirth's argument for purposive agency. There too, the universalization of the normative requirements for purposive agency is sensitive to an intersubjective standard of justification.

All in all, my argument for the priority of a theory of recognition, rather than from blunt postulation, is the result of a series of a posteriori pragmatic-transcendental contradictions that prompt the formulation of ultimate requirements of discourse validity. Both strands of my arguments – Hegel's and Gewirth's – point in such direction.

A further point noticed by Buchwalter is the appreciation of the Hegelian dialectic as a conceptual resource for my 'experiential' approach. The commentator observes that the Hegelian idea of the ethical life is compatible both with a pluralist as well as with a post-metaphysical political conception. While I accept the first point, I'm not convinced of the second. Pluralism is already part of the Hegelian notion of the civil society in so far as the atomistic self-interest of the economic subjects is grouped into 'classes' of interest (*die Stände*). This first level of mediation is next projected into the institutional representative organization of the State. Thus, arguably, Hegel had a clear notion of the plurality of points of view that confront each other in the public deliberative domain.

Yet, I'm more sceptical about considering this arrangement as a sort of a post-metaphysical political scenario. The reason is mainly that for Hegel there is an objectively progressive process in history that can be reconstructed as culminating in the Prussia of the first decade of the 19th century. Personally, I would resist the view of history as a sort of 'triumph of the Spirit' which materializes in Western statehood. Indeed, I suggest instead to focus on the critical potential of human rights and their ability to structure *demands of justice* rather than fixating objective rational processes.

Last, coming to what Buchwalter suggests as an intercultural theory of human rights based on recognition, my model incorporates a culturalist perspective within a notion of 'exemplarity' which I take from Kant's Third Critique in accordance with Hannah Arendt's reading (a transposition to the political realm).[3] The exemplar status of human rights always maintains a context-transcending tension of the intercultural dimension; it also saves the formal parameters of validation which I consider as the macro categories of freedom and wellbeing. Therefore, I'm not in disagreement with Buchwalter on this point, but perhaps we assign different functions and recognize different potentials to the role of an intercultural dimension of human rights. What I consider to be an open, transformative and potentially all-inclusive category – humanity – is sensitive to such formal and cultural transcending processes of cultural reconceptualization of human rights.

2. THE PHILOSOPHICAL PROJECT BEHIND THE BOOK

Tonelli's paper touches upon a deep philosophical aspect regarding the validity standards of my theory of human rights: whether I endorse a positivist or an extra juridical basis of the law which traditionally has coincided with natural moralities.

Accordingly, she declares her interest in focusing on the anthropological basis of my proposed legal theory of rights. As the author clarifies in the course of her well-argued historical and conceptual reconstruction, the 'human' character of the law is crucial to understanding its validity. The revolutionary character of human rights depends on the revolutionary role that the subject has achieved in history. This positioning has permitted the realization of a self-reflective character of the subject – what I define as human dignity – which is the grounding basis to justify the coercive system of rights and duties as well as their political protection.

As Tonelli rightly recognizes, in my theory of rights the law is the result of a process of rationalization of human relations. It is also true, even if it is not a starting point in my genealogical reconstruction of the notion of human dignity, that Christianity played a fundamental role in conceptualizing a certain notion of 'dignity'. In line with Christian thought, Tonelli's conceptual remark, which amounts also to a criticism of my theory, is that the notion of 'human being' should be taken according to "its pre-political relationships" (Tonelli, in this symposium). This implies that my consideration of higher-order principles of law, including human dignity as an orienting legal principle, is an insufficient conceptual instrument to account for the evaluative richness of humanity as such. In other words, the restriction of the idea of 'humanity' to a legal

[3] H. Arendt, *Lectures on Kant's Political Philosophy*, Chicago University Press, Chicago, [1982] 1992.

notion, as the one contained in the proposed interpretation of the principle of human dignity, for Tonelli leaves out of consideration the pre-political intrinsic plurality of human beings by formalizing it in a purely abstract subject of law. As illustration for her concept of pre-political plurality, Tonelli mentions Gandhi's social reformist philosophy imbued into traditional values of reciprocal harmony. Similarly, this is the case with the Christian notion of 'fraternity' which was not only repetitively invoked recently by Pope Francis but also used as a value template to bring forth transitional processes of community reconciliation as with the South Africa's Truth and Reconciliation Commission (TRC).

What do I have to say on all this?

Regardless of my disagreement with Tonelli's view of the positioning of values vis-à-vis the law, I think she points to a crucial aspect that any theory of rights must deal with. My reply is articulated in two parts which are investigated more adequately in the book: the role of human dignity as a contemporary legal concept and the idea of 'inclusive positivism' as a paradigm for the validity of the law.

First, the two paragraphs *3.3 Human Dignity as an Orienting Principle of the Universal System of Human Rights* and *3.3.1 Human Dignity as a Juridical Principle*, are novel additions to the second edition of the book. This testifies to an integration of my formerly purely formalistic justification of human rights. In such two sections I proceed by presenting, first, a conceptual-genealogical route of the notion of human dignity starting from Stoicism, passing through the Christian tradition and ending in the Universal Declaration of Human Rights (1948). These are indeed processes which show how the relation between law and values have become more and more integrated. The contemporary development of an autonomous paradigm of the law, though, is in my reading not in support of a formal detachment of law itself from its justifying values (as it is for positivism). On the contrary, the law has gained full autonomy in so far as it has incorporated normative values within itself (by reaching thus social compliance in accordance to 'just reasons'). I consider that in a legal space defined by a system of value-driven legal principles (as it is a system of laws based on human rights), the kind of plurality of values envisaged by Tonelli is more highly preserved than frustrated.

Regarding the second strand of my answer, I defend a version for the justification of the law which is academically framed in terms of 'inclusive positivism'. In Chapter IV, I do position myself among various legal traditions in order to clarify precisely the function that moral values play in the justification of the law. Inclusive positivism is a kind of legal view which accepts the idea that contemporary constitutional systems have realized a revolutionary process by incorporating values within the legal systems themselves. This is a position which also Dworkin has widely pursued. Yet, the difference with Dworkin is that I recognize both an internal and external structuring

function to the notion of human dignity. Human dignity in such respect occupies a special position among human rights. It balances not only rights among themselves by allowing for the possibility of generating a coherent internal system as a whole, i.e. a charter, declaration, constitution etc. Human dignity establishes also an international point of anchoring for various international charters (as well as national constitutions) such that the entire system of human rights as a whole receives unity and an overall structuring.

Focusing also on the external dimension of a system of rights, human dignity as a principle of law allows for a plurality of cultural traditions coexisting under an overall system of rights protection, i.e. the Arab, Asian, African and obviously Western system. In this contemporary advancement of the law, I don't see the problem of a levelling of values, but rather a gained advantage in protecting intercultural plurality.

These points can be further illustrated by my response to Peter Langford's comments. Langford provides a very accurate reconstruction of the structure I propose for understanding the conceptual dynamics of the notion of 'pluralist universalism'. I do generally agree with his sketch and my reply will address only some of his critical remarks expressed along the way.

First, as Peter notices, the legal project of human rights magisterially rebuilt right after the Second World War is indeed incomplete and my research agenda (beyond the present book) has been predominantly oriented towards identifying major jurisprudential – legal and philosophical – trends of possible developments for the furthering of such project. Features of such newly emerging world order are, as rightly observed by Langford, the metaphysical character of the law, the rejection of the dualism between the real and the ideal and ultimately the overall unity of the legal conception of human rights in terms of 'pluralist universalism'.

Human rights occupy several dimensions in the theory I propose, the most abstract of which is the formal category of preconditions for purposive agency. At this stage there is not yet an issue of pluralist universalism. This notion becomes significant only after these formal parameters of legitimacy. Langford duly accounts of all this, but he sees a problem in my revisitation of Teubner's notion of 'legal irritants'.

Certainly, the use I make of this concept is functional to the view of the legal system and its validity. It does not aim to be a faithful representation of Teubner's reading of the concept. Thus Peter's observation concerning my substitution of Teubner's notion of system/environment for that of the opposition between the ideal and the real is correct. Accordingly, my task here is to clarify in which terms 'legal irritants' bridge the gap between the normative and the socio-legal aspect of the theory, contributing to the construction of the notion of 'pluralist universalism'.

To begin with, conceptual assumptions are a crucial step in my purported justification of the notion of legal validity. The assumption here is that law is valid if and only if it respects the 'two mutually dependent constraints', that is, the presupposition of liberty and wellbeing and the activation of 'legal irritants'.

Certainly, the two steps jointly contribute to the definition of 'what is the law?'. This means that the theory (step 1) and practice (step 2) of law cannot be held separately when defining what law is. Formal and substantive standards come together. Langford observes that the idea of pluralist universalism is a fragile notion. This is true as indeed I believe it is the case with all democratic institutions and chartered liberties. But to openly recognize the fragility of the construction of a pluralist universal notion of rights *is* to legitimize the social emancipatory, freedom-generating critical role of legal irritants. It is not to dismiss them. There is no guarantee that the process I have depicted will take place in the course of history, nor that achieved constitutional gains will remain perennially unchanged. This is the bet that the unity of theory and practice brings with itself when depicting the validity standards of the contemporary system of law.

Where does this picture meet a potential historical *impasse*? Langford rightly connects this theoretical view with my critical take on democratic peace theory as it has been conceived by Michael Doyle and his followers in light of a restrictive reading of Kant's *Towards Perpetual Peace*. Limiting Kant's reading on peace to only the requirement of Republican states (first definitive article) is not only an arbitrary exercise of picking and choosing. It is, more importantly, to ignore the role of ideal thinking in Kant's international and domestic politics. Similar is the case with the relation between the ideal and the real – the theory and the practice – that I aim to develop here.

The analogy consists in the following point: just as Kant envisaged an ideal regulative role for the World State Republic, so I conceive an ideal regulative-orienting role for the formal categories of human rights (the system of formal liberties, freedom and wellbeing). As Kant considered the ideal-regulative role of the World State Republic as having a legal transformative function in those 'moral politicians' (not 'political moralists!') who were open to introducing moral principles into the practice of their States (politics), so I conceive the possibility of formulating and applying exemplar categories and judgments, respectively, of human rights that meet universal parameters of validity (notwithstanding variation). I have developed this reading of Kant elsewhere and I do refer the reader interested in this interpretation to my monograph on Kant's cosmopolitan thought.[4]

Coming to Langford's more explicit criticisms of my position, such as the charge of analogy between individual and collective forms of reflective judgments and whether

[4] See C. Corradetti, *Kant, Global Politics and Cosmopolitan Law. The World State Republic as a Regulative Idea of Reason*, Routledge, London-New York, 2020.

this would amount rather to a Rawlsian process of reflective equilibrium, my reply is that in Chap. II I dismiss Rawls's procedure and therefore I conceive reflective judgment as an alternative to this justificatory method. In this respect, I abandon what Habermas calls the 'monological' process of ethical justification, typical of Rawlsian reflective equilibrium, and I embrace instead a reformed discursive method which incorporates the reflectivity of judgments.

This means that the process of justification has roots in informal processes of communicative exchange. Therefore, I do not take as a charge what Langford considers as a sort of fragility in the procedures of deliberation through which the normativity of human rights receives consolidation on my theory.

Ester Herlin-Karnell asks me to comment on where my theory stands with regard to some of the most debated problems in human rights theory, i.e. in which terms I understand the theory/practice relation, how it stands against minimalist approaches, what sort of pragmatism is involved in the account of validity as well as how peace is connected to justice and in general law to politics. These are demanding questions which I merge together into a single, articulated answer.

To begin with, the theory/practice problem addressed before has significant implications for the type of pragmatism that connotes the theory. Pragmatism pervades all levels of justification that are here presented: from the pragmatics of speech act theory to the pragmatics of institutional decision making. Pragmatics is part of a postmetaphysical turn for moral and cognitive categories. This means that the type of transcendental character that I still recognize to the practical sphere is sensitive to the conditions of validity emerging from discursive action.

This line of reasoning is also developed along an institutional-judicial perspective in other writings of mine that Herlin-Karnell has in mind and that we discussed during the *Wissenschaftszentrum Berlin für Sozialforschung* in 2015.

In a *Symposium* I edited on *Cosmopolitan Law and the Courts*, Transnational Legal Theory, 7(1), 2016, I provide a contribution on "Judicial Cosmopolitan Authority" where I sketch the notion of a newly emerged power that is central to the understanding of the idea of a 'constitutionalization of international law'. This is the notion of 'cosmopolitan authority'. Besides the theoretical aspects connected to this notion which took under examination Raz's 'service conception of authority', I provide a set of jurisprudential trajectories as an illustration of the judicial practice connected to the exercise of this novel form of authority.[5] A related issue raised by the discussant is the principle of holism as a regulative idea for the unity of an international system of rights. As she rightly points out, holism is an organizing idea but does not assign in itself

[5]Josef Raz, *The Authority of Law,* Oxford University Press, Oxford, 2009; Josef Raz, 'The Problem of Authority: Revisiting the Service Conception', *Minnesota Law Review,* 90, 2006, pp. 1003–1044

legitimate authority to any subject. Since Ester combines her theoretical remarks with a series of legal cases taken from the EU, I will respond with an analogous blend of information.

The solution I propose is one which considers the notion of authority as based on a cosmopolitan standard of justification. As case law illustrations I discuss not only the Solange cases (which Herlin-Karnell also considers), but also the Kadi and Nada cases which illustrate a process of constitutional bootstrapping between three regimes (one international and two regional): the UN, on the one hand, and the ECHR and the EU on the other. This process of jurisprudential bridging between the regimes has been made possible only through a counterfactual presupposition of an ideal cosmopolitan unity of international law. Such criterion responds to what I term a 'reverse use' of the subsidiarity principle. This reversal of what is commonly known in EU law as the principle of subsidiarity derives from a cosmopolitan justification of the law but adds a criterion for a legitimate assignment of authority on the base of such cosmopolitan standard. Therefore, I do indeed conceive of a method for the assignment of authority on the basis of the defended notion of cosmopolitan rights.

This is certainly not a minimalist conception of human rights.

3. PROBLEM OF APPLICATION: ARTIFICIAL INTELLIGENCE, NON-HUMANS AND THE ENVIRONMENT

I have grouped the last two sets of comments in this section because they both start from some central philosophical assumptions of the book in order to extend them to other areas of application as, namely, the non-humans, the environment as well as artificial intelligence (AI). Traditional normative thinking has often dismissed 'questions of applications' as secondary and less noble questions than those purely oriented at clarifying theoretical implications. I disagree with this view and I consider, rather, that applicative problems often show the limits of the endorsed theories requesting accordingly a revision of the theory itself.

To start with, my colleague Sara De Vido has tackled the book from an international law perspective 'open to' philosophical thinking and conceptual innovation. She accepts my proposed concept of 'pluralistic universalism' as a result of differentiated interpretations of the principle of human dignity with the variety of cultural settings. Yet, she also suggests considering that notion in tandem with that of 'common concern of humankind' as a standard for justifying the idea of cosmopolitan law and the equal right of individuals to occupy a place on Earth.

Next, the author connects the problem of climate change to a central concept of my proposal: the 'reverse interpretation' of the principle of subsidiarity. I think this is a

quite interesting line of argument even though I see a problem between reconciling the notion of the 'common concern of humankind' and the author's suggested inclusion of non-human beings within the circle of human rights concern. I fear therefore that new concepts and categorizations need to be constructed if the goal is to fully embrace what De Vido interestingly proposes as the new challenge for human rights.

Since this is not the place to address such a highly demanding task, I limit myself to outlining a reply to both challenges taken under a theoretical perspective. I will therefore leave aside all the legal details that the author provides as well as the impact of human rights on the erosion of the State.

First of all, let me consider in which terms the idea of a 'common concern for humankind' might still be a useful tool for the development of a discourse on environmental protection. Next, I will attempt to suggest how we might enlarge our normative horizon so as to include non-humans within a larger circle of moral consideration.

De Vido suggests that one way to conceive of our relation to the environment is to see our concern in terms of 'fiduciary duties'. This kind of duties requires that the interest of others is put before our own in the order of protection. Whereas this concept works among humans, I'm a bit sceptical with regard to the relation between humans and the environment, not to mention the non-humans.

The point is the following: what are the grounds in which *subjective rights* (as human rights are) can be attributed to the environment? Similar is the case with non-humans.

I find it difficult to see this possibility. Therefore, my suggestion, which would certainly place cosmopolitan rights *above* human rights is that we might think of *trustee duties* to nature as such (the environment and its creatures, humans and non-humans) before canvassing within this larger circle a right-duty relation which applies only to human rights in the way I conceive them in this book.

Trustee duties place us in a particular relationship with the environment and other non-human beings. They invest us with a moral responsibility toward nature and the protection of a healthy environment, as well as to the special moral consideration for, at least, non-human sentient beings. These are intriguing frontiers in human rights reflection, and the way I can consider them here is only in terms of an architecture of trustee duties, covering portions of issues broader than the rights of humans.

This expansion of the theory though does not touch upon my previously mentioned proposed notion of 'reverse subsidiarity'. De Vido rightly notices the social potentiality of this notion when she mentions the 'custodial' protection of cosmopolitan rights by domestic courts. This is an important resource which gives momentum to the defence of higher order duties even in the absence of a coercively structured international system of law.

Last but not the least, let me address the set of comments by Nir Eisikovits who considers the role of AI in recasting the theoretical bases of my theory of human rights (of any future theory to say the truth!).

Nir articulates his reasoning in the following way. A first possibility he considers, but which he does not really raise as a serious concern, takes the potential increase of inequalities due to biases in the algorithms used for the approval of loans, facial identification etc. The injustice resulting from such misuse would be the targeting of neighbourhoods with histories of discrimination, or the application of unfair standards in loan credits to people already subject to racial or economic disadvantage. Because any data can be improved, so too can the use of AI predictions for the purposes mentioned above. Therefore, the potential violations of human rights by technology are something remediable. For Eisikovits, a more serious concern is the impact of artificial technology on the "grounding of human rights" (Eisikovits, in this symposium) since this would challenge classical ideas such as Kant's notion of moral autonomy and self-legislation, just to provide a prominent case. How so? The reason is what emerges from, for instance, the clash between predictive technology and the maintenance of Kantian freedom (as deliberative independence from sensible conditioning). If there is a machine that can make even better and more coherent choices for us, then, why should we be bothered with our moral freedom?

An initial, but incomplete, reply consists in noticing that several cases adduced by Nir do not raise necessarily a moral concern. Yet, this would not be a safe answer since there are cases that do indeed diminish, if not replace, our ability for moral assessment. The overall result though would be therefore worrisome and lead to the suggestion of "a second look" (Eisikovits, in this symposium) to the foundation of the theory itself.

But if in the case of De Vido I concluded that my theory was safe in so far as it addressed a dimension of rights/duties correlation *internal* to a wider circle of trustee duties, in the case of Eisikovits I believe that the theory has to *resist* the proposed challenge.

What to do then with morally challenging cases as the adjudicative freezing that would result from automated machine replacement?

I think that the reply would be straightforward: "thou shall judge!" reverting the biblical dictum.

In some ways the problem is analogous to Raz's paradox for authority which I have tackled in other articles concerned with the establishment of legitimate authority within democratic settings. In such context I made the clear point that the justification of authority is never a one-way process. The source and the target of authority, 'the people' is always the origin of legitimacy and the addressee of the legitimated power. Thus, a legitimacy check must always be maintained as within a circular input process

of power delegation and an output process of power effectiveness check. Moral freedoms accompany the control of efficiency reasons ideally in a Pareto optimal equilibrium.

Let me put this thought in a different way. One of the reasons we should reject a progressive imbalance between practical adjudication and automated calculus comes directly from what Nir sees as the conservative character of automated predictions.

Nir speaks of a decreasing ability of moral assessment due to technological automated improvement. This seems like a slippery slope whereby automated language would require us to renounce our freedom to change our tastes, moral assessments and so on by requiring a demanding trade-off between our moral powers and technology.

Accepting such trade-off means to contradict the very premises of delegation of our 'temporally fixated' moral choices to the machines. Purposive agency, the type of subject I consider in the process of justification of the formal pragmatic-transcendental conditions of action (the system of formal liberties), would be first narrowed and ultimately annihilated. So the attack to the central idea of my (and not only my) notion of human rights is the following: if purposive agency ceases to be central to human rights, then, we need other forms of justification in order to account for the moral meaningfulness of our lives. But, if a cost-benefit calculus can be made in view of maximizing the efficiency of State politics (what Nir calls 'the formidable State'), how could we save human moral autonomy in exchange for increased security and economic performance?

My answer is: simply by rejecting such trade-off.

* * *

I thank all my dearest colleagues who have spent some of their research time in reading my work and writing their papers. These comments have been invaluable and I will keep thinking about their implications in the days that will come.