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# HUMAN RIGHTS: FROM THE CHALLENGE OF RELATIVISM TO THE POSSIBILITY OF COSMOPOLITANISM

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ABSTRACT
The article presents a reflection on Corradetti's distinctive position developed in *Relativism and Human Rights. A Theory of Pluralist Universalism*. It concentrates, in particular, on a detailed analysis of the development and deployment of the text's argumentation in the final chapter. In this analysis, the article indicates aspects and elements of the argumentation which lead to potential difficulties with the elaboration of a theory of pluralist universalism.

KEYWORDS
Democracy, Human Rights, International Law, Peace, Pluralism, Universalism

Human rights remain an integral aspect of contemporary political and legal theory, and this rests upon a shared presumption of their central importance in the configuration of the state and the international order. The specific designation of rights, as human rights, transforms those who are accorded these rights and freedoms into autonomous right-holders at domestic and international level. The transformation is the counterpart of the redefinition of the relationship of the state to the individual in which the state is the guarantor of these rights and freedoms to enable their full and effective enjoyment by the right-holder. The state's guarantee of these rights is itself part of an international order shaped and regulated by states' ratifications of international and regional human rights treaties which confirm and extend the human rights and freedoms at the domestic level. The presumption of this shared background enables contemporary political and legal theory to establish the boundaries and parameters of its reflection and questioning and, thereby, to determine the degree to which it engages in a critique of human rights and the concomitant configuration of the state and the international order.

The shared background offers the initial interpretative perspective from which to situate the reconstructive theoretical analysis developed in the enhanced version

of Corradetti's *Relativism and Human Rights. A Theory of Pluralist Universalism*.[1] In relation to this background, Corradetti's text represents a singular intervention which, within his own work, can be considered a prolegomena initiating the paths of analysis undertaken in subsequent work.[2] The singularity arises from the renewed emphasis upon the philosophical justification of human rights which is distinguished by a particular synthesis of the traditions of Anglo-American philosophy, Critical Theory, Classical, Modern and Contemporary Legal and Political Theory. The insistence upon philosophical justification indicates that the shared background, rather than existing as an unexamined horizon, is placed at the centre of the analysis. This, in turn, entails a form of 'backwards questioning' in which the shared background is interrogated in order to establish its philosophical presuppositions.

The process of philosophical justification which guides and structures the composition of the text is one of foundation. This philosophical gesture of foundation is undertaken within a resolutely post-metaphysical framework informed by the linguistic-turn in Anglo-American analytic philosophy and the resultant delimitation of Critical Theory to the 'second generation', represented, in particular, in this text, by Jürgen Habermas. The singularity of Corradetti's gesture of foundation arises from the manner in which the text adopts a reflective distance towards this post-metaphysical framework in order to establish and develop its distinctive philosophical justification of human rights.

In relation to this project, which presents itself as both a justification and an application of these essential presuppositions of human rights, a critical engagement can commence from the final chapter – The Legal Dimensions of Human Rights – , and, in indicating certain limits of the position of that chapter, traces these to a number of aspects of the preceding chapter – Human Rights and Pluralistic Universalism.

## 1 HUMAN RIGHTS AND PERPETUAL PEACE

The formulation of human rights as legal norms, in the system of international and regional human rights treaties and associated institutions[3] arising from the

[1] C. Corradetti, *Relativism and Human Rights. A Theory of Pluralist Universalism* (2nd ed.), Dordrecht, Springer, 2022, hereafter, *RHR*.

[2] See, for example, C. Corradetti, *Kant, Global Politics and Cosmopolitan Law: The World Republic as a Regulative Idea of Reason*, London, Routledge 2020; C. Corradetti, "Engaging with Forst's 'Right to Justification': Kantian Analogies and the Problem of Subjectivity", in E. Herlin-Karnell, M. Klatt and H. Morales Zúñiga, (eds.), *Constitutionalism Justified: Rainer Forst in Discourse*, Oxford, Oxford University Press, 2019, pp. 33-52; C. Corradetti, "Transitional Times, Reflective Judgment and the 'Hōs Mē' Condition", in C. Corradetti, N. Eisikovitz and J. Rotondi (eds.), *Theorizing Transitional Justice*, London, Ashgate/Routledge, 2015/2016, pp.185-198.

[3] This is understood to encompass the UN General Assembly, UN Security Council, Economic and Social Council, International Court of Justice, and the UN Secretariat, the UN Committees

impetus of the non-binding UN Declaration of Human Rights 1948, creates a distinct international order within which states are located. The underlying assumption, originating in the UN Declaration of Human Rights, is that the primacy of state sovereignty is definitively qualified by the duties and obligations which are the corollary of the individual human rights and freedoms contained in this system of international and regional human rights. The definitive qualification entails that state sovereignty ceases to be the sole, exclusive origin of the domestic legal order and the attendant rights and freedoms of the individuals who reside within a particular state's territory. The modification of the relationship between state sovereignty and the individual, as a legal subject of human rights norms, is accompanied by a modification in the relationship between states. The attribution of statehood, on the basis of sovereignty, as the prerequisite for legal recognition, as a formally equal subject (state) of international law, is now rendered more complex. The participation of states, within the system of international and regional human rights treaties and associated institutions, is considered to transform states' understanding of their relationship to other states as part of a wider transformation in the character of international law from the particularism of a law of nations to the universalism of human rights. The wider transformation is held to mark a redefinition of peace as collective security in place of one as the unstable equilibrium of a balance of power between instrumental, self-interested states and their temporary alliances.

The historical change in the international order remains an unfinished or unconcluded process in which the system of international and regional human rights treaties and associated institutions continues to co-exist with the violation of human rights and armed conflict within and between states. These violations have persisted despite the significant alterations, within this framework, resulting from decolonization, the Cold War and its 'resolution' in the apparently more multipolar character of the contemporary international order.

It is the insistence upon the unfinished or unfulfilled character of this international order, inaugurated by the UN Declaration of Human Rights, that animates Corradetti's critical reflection. The reality of the contemporary international order – the real – introduces a separation between itself and its unfinished character – the ideal. The separation or duality of the real and the ideal becomes the central structure which orientates the text's philosophical justification of human rights in relation to the contemporary international order. The philosophical position of the text is the rejection of an irreducible dualism between the real and the ideal and the justification of human rights as the elaboration of their unity. The singularity of Corradetti's justification emerges through its distinctive elaboration of the post-metaphysical conception of this unity.

established as an integral part of the international human rights treaties, the various UN Working Groups and Special Rapporteurs, and the regional human rights bodies and courts.

The justification of the unity of the real and the ideal entails a rejection of both realism – the primacy or even suppression of the ideal by the real – and of the decline of the ideal to either the external assertion or imposition of a particular value as universal. The particular post-metaphysical justification is one in which the unity is more sophisticated than that of a simple reversal in which the demonstration of the primacy of the ideal replaces the primacy of the real. In place of a simple transformation, produced by the reversal of primacy, the moments of the real and the ideal are preserved in the more complex unity represented by the transformation of duality into pluralist universalism.

The legal dimension of pluralist universalism, represented by the formulation of human rights as legal rights, proceeds from the demonstration of these legal rights as the foundation for "the validity of purposive action in general".[4] The foundation is established by demonstrating that human rights, as legal norms, "protect the coordinating preconditions to purposive agency in respect to which one can claim to have a right".[5] Human rights, as legal norms, render transparent the normative foundation for purposive agency, and in conformity with the underlying post-metaphysical philosophical framework, this foundation has the status of a performative non-contradiction. It is a normative foundation which, if placed into question or denied, deprives the position of questioning or denial of non-contradiction: to deny the preconditions of purposive agency which render possible the capacity to articulate the position of denial in language.

The preconditions of purposive agency, as human rights formulated as legal rights, are then further specified and delineated with regard to the degree of their reciprocal interconnection with duties. The analysis is distinguished by considering the relationship between rights and duties as a "formal frame of intersubjective interdependences"[6] which encompasses, rather than being limited by, the difference between positive ('the right to') and negative ('the freedom from') rights. The difference between positive and negative rights becomes an internal difference *within* the formal framework of intersubjective interdependencies. The designation of this difference, as an internal difference, is the counterpart of a conception of duty which contains positive ('the obligation to') and negative ('to refrain from') duties as an internal distinction. The minimization of the difference between positive and negative rights and their attendant duties enables the focus of analysis to extend beyond the parameters of the individual right-holder to consider duties as

[4] *RHR*, p.159.

[5] Ibid.

[6] *RHR*, p.162. Corradetti's analysis also entails an oblique relationship to the descriptive schema of the Hohfeldian approach (Jural Opposites and Jural Correlatives) and to the contemporary divergence in the Anglo-American discussion between an interest theory and a will theory of rights. Whilst both Hohfeld and the Anglo-American debate are cited and discussed, neither are a determinate or predominant influence upon the development of Corradetti's position.

the conceptual correlate – "the reasons rights advance for their protection"[7] – of human rights. The commonality of human rights, whether formulated in positive or negative form, is to "generate the actors and the content of the duties in relation to the recognized right".[8]

The emphasis upon the common conceptual structure of human rights facilitates the combination of a subjective and an intersubjective justification predicated upon the "lexical priority of duties"[9] as the corollary of legal rights as human rights.[10] The justification identifies the preconditions for purposive agency – human rights as legal rights – as co-terminus with a "society governed by a system of rights".[11] The conceptual space, arising from this justification, is not simply one of the reversibility of the role of a specific right-holder and a duty-holder, but the generalization of the role of duty-holder: the duty to ensure "the perpetuation of the right-system itself" as the collective space for the full and effective exercise of human rights.[12]

The capacity to generalize the role of the duty-holder indicates the potential for both a number of duty-holders and for substitution of duty-holders ('third-party intervention') as an integral aspect of the justification of human rights as legal rights. The potential for substitution furnishes the basis for "functional differentiation for the protection of duties" and "an institutional model for the protection of the guaranteed rights".[13] Functional differentiation and institutionalization are also the expression of the incapacity of individual right-holders and duty-holders to assume the entirety of the burden of the full and effective exercise of human rights. For the space of human rights – the legal community composed of the relationship between rights and duties – arises merely from the justification of their specific existence. It is the repository of a multiplicity of human rights and their attendant duties which confront the possibility of the assertion of competing rights and duties: the conflict

[7] *RHR*, p.165.

[8] Ibid.

[9] Ibid. The lexical priority expresses a triple set of duties, which Corradetti explicates through the example of the right to liberty:

"(a) The fulfilment of the right to liberty is dependent upon the fulfilment of three generated duties:

(a.1) a negative duty to avoid deprivation of liberty by individuals and institutions

(a.2) a positive duty to protect and secure from deprivation of liberty:

(a.2.1) through the enforcement of (a.1) by the individuals and by the creation of institutional mechanisms oriented to rights protection.

(a.3) a positive duty to aid the deprived subjects of liberty through the institutional allocation or the reallocation of the required conditions for its enforcement due to failures of fulfilment of (a.1) and (a.2)." (ibid.)

[10] This position is Corradetti's acknowledgement and resolution of the 'antinomy' represented by the agent-relative and goal-relative conceptions of human rights, which is also distinct from that of Sen's resolution in the 'capabilities' approach to rights.

[11] *RHR*, p.166.

[12] Ibid.

[13] *RHR*, p.162.

of rights as an intrinsic element of the "multilateral intersubjective sets of right-duties relations".[14] The space of human rights developed from the post-metaphysical justification of human rights reveals the inseparable relationship between the preconditions of purposive human agency and their formulation as legal rights.

For Corradetti, this is the articulation of "a formal system of human rights categories" which in itself remains "an abstract form of justification".[15] The ideal of human rights presented by this post-metaphysical justification is a self-contained theory of human rights elaborated through its abstraction from the real. The passage from the ideal to the real requires, in order to realize their complex unity as pluralist universalism, the presence and operation of reflective judgment and the capacity for the transplantation of human rights between legal systems.

The process of justification of the legal dimension of human rights – the ideal – is, thereby, situated within the real – the reality composed of the plurality of existing legal systems. This marks a transition in Corradetti's process of justification in which the plurality of existing legal systems become the sphere of justification. Each legal system, insofar as it contains human rights formulated as legal norms, contains elements of the ideal elaborated in the initial stage of Corradetti's process of justification. The interconnection between the existing legal systems is provided by the capacity for comparison of human rights, as legal rights, within these legal systems. The capacity is dependent upon establishing the possibility of commensurability between legal systems; and, for Corradetti, it is demonstrable as the "partial commensurability among different systems of liberty-rights" which express "a *general balance* of satisfied freedoms".[16] This form of partial commensurability enables a general evaluation of "the overall fulfilment of freedoms among different legal systems".[17] From this general evaluation, "the moral and political obligation [arises] to expand, through legal transplantability, the system of protected liberties and fundamental rights".[18]

This alteration in the character of the justification introduces recourse, through the conception of legal transplantation, to a theoretical framework which diverges from that of philosophical justification in the initial stage. The conception of legal transplantation which Corradetti considers plausible is that of "mediation" situated

[14] *RHR*, p.165.

[15] *RHR*, p.166. This indicates the significant difference between the position of Corradetti and the work of Luigi Ferrajoli, for whom the character of the philosophical justification of human rights, as a theory of global neo-constitutionalism, in itself provides the conceptual foundation for the articulation of the complex unity between the ideal and the real. See, for example, L. Ferrajoli, *Costituzionlismo Oltre Lo Stato*, Modena, Mucchi, 2017; L. Ferrajoli, *Iura paria. I fondamenti della democrazia costituzionale*, Naples, Editoriale Scientifica, 2017; L. Ferrajoli, *La democrazia attraverso i diritti: Il costituzionalismo garantista come modello teorico e come progetto politico*, Bari/Rome, Laterza, 2013; L. Ferrajoli, *Diritti fondamentali: Un dibattito teorico* Bari/Rome, Laterza, 2001.

[16] *RHR*, p.167. (Emphasis in the original).

[17] Ibid.

[18] Ibid.

"between the absolute autonomy of law" and the absolute autonomy of each particular legal system in "the work of Teubner".[19] The presence of mediation derives from a social theory of the differentiation of society into social subsystems of which law is a particular sub-system, and, in particular, of "the process of 'selective connectivity' between social sub-systems".[20] This adoption of this conception is, however, to pass from the normative analysis of human rights as legal rights to a sociology of law informed by systems theory.[21]

The Teubnerian conception of transplantation is an integral element of a broader set of interrelated conceptual terms – "irritation, reconstruction and re-entry"[22] – which indicate the emphatically sociological, rather than, normative mode of analysis. In the appropriation of this concept, Corradetti, introduces a conceptual element which has been definitively shaped to resist facilitating normative analysis. The resistance of this concept arises, at the level of concrete analysis, from its presentation as a process of irritation which operates without concern for a more constant and enduring effect of mediation between an existing conceptual or terminological dualism (for example, autonomy/context; ideal/real). The conception of transplantation, for Teubner, describes "an evolutionary dynamic"[23] more appropriately designated as one of irritation "which triggers a whole series of new and unexpected events" in "law's 'binding arrangements'".[24] Thus, "when a foreign rule is imposed on a domestic culture", the effect of irritation arises from the foreign rule being understood as

> an outside noise which creates wild perturbations in the interplay of discourses within these arrangements and forces them to reconstruct internally not only their own rules but to reconstruct from scratch the alien element itself. 'Legal irritants' cannot be domesticated; they are not transformed from something alien into something familiar, not adapted to a new cultural context, rather they will unleash an

[19] *RHR*, p.170. Here, relying upon the Gunther Teubner's analyses in G. Teubner, *The two faces of Janus: rethinking legal pluralism*", in K.Tuori, J. Uusitalo and Z Bankowski (eds.) *Law and Power: Critical and Socio-legal Essays*, Liverpool, Deborah Charles, 1997, pp.119-140; and G. Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences*, in « Modern Law Review », 61, 1, 1998, pp.11–32.

[20] *RHR*, p.170.

[21] The theoretical approach of systems theory marks the significant methodological difference between Teubner's sociology of law and the sociology of law developed by Max Weber.

[22] G. Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization*, Oxford, Oxford University Press, 2012, p.148

[23] G. Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences*, in « Modern Law Review », 61, 1, 1998, p.12. For Teubner, the metaphor of legal transplant "makes sense insofar as it describes legal import/export in organismic, not in machinistic, terms. Legal institutions cannot easily be moved from one context to the other, like the 'transfer' of a part from one machine into the other. They need careful implantation and cultivation in the environment. But 'transplant' creates the wrong impression that after a difficult surgical operation the transferred material will remain identical with itself playing its old role in the new organism." (ibid.).

[24] Ibid.

> evolutionary dynamic in which the external rule's meaning will be reconstructed and the internal context will undergo fundamental change.[25]

The difficulty of incorporating this conception into Corradetti's preceding normative analysis of human rights is that legal transplantation – the process of legal irritation – relates, in this text of Teubner, to civil law, and, in particular, to the 'transplant', of the continental principle of *bona fides* into the UK civil law system.[26] The legal principle of *bona fides* is not itself a right, but a more general regulation of the fairness of the agreement, expressed in the legal form of a contract, between the individual parties. It is as a legal principle that it has this effect of a legal irritant and the concomitant effect of "wild perturbations". For Teubner, the legal principle of *bona fides*, together with the Roman law formula of *boni mores* and the classical formula of *bonus pater familias*, are intrinsically ambiguous, and, thereby, affect "the institutional links between legal and social processes".[27] The intrinsic ambiguity centres upon their simultaneous position as "social norms and legal norms, "standards" as well as "directives"".[28] These principles "have no fixed reference...[and] no determined content but are loci for socio-legal debate".[29] Hence, for Teubner, "[t]hey do not create a new unity of the separate discourses involved, they only link them transcending the boundaries but respecting, even reaffirming them".[30] The lack of fixed reference, combined with the absence of a new unity, entails that these principles operate as "purely internal constructs of each discourse" without "an interdiscursive common meaning".[31]

The position and operation of legal principles, in the process of legal irritation, is itself part of a wider reconceptualization of legal pluralism by a sociology of law informed by systems theory. The preceding relationship between "law and society" – the ""translation" of social norms of groups into legal norms" – is displaced by the relationship of law "to a variety of language games" – "the "recoding" of a bewildering multitude of otherwise coded communication in the code of the law".[32] In this displacement, "specialized discourses", rather than the "diffuse social norms in the lifeworld of groups and communities", become the focus of Teubnerian

[25] Ibid.

[26] "Regulation 4 of the Unfair Terms in Consumer Contracts, SI 1994 No3159, implementing the EU Directive on Unfair Terms in Consumer Contracts, Council Directive 93/13/EEC of 5 April 1993 (OJ L95, 21 April 1993, 29)" (Ibid, fn 1, p.11). The extent to which this Teubnerian analysis of 'legal irritation' is itself now 'historical' in terms of the recent transformation in the legal relationship between the UK and the EU will be left undiscussed here.

[27] G. Teubner, "*The two faces of Janus: rethinking legal pluralism*", in K.Tuori, J. Uusitalo and Z Bankowski (eds.) *Law and Power: Critical and Socio-legal Essays*, Liverpool, Deborah Charles, 1997, p.135.

[28] Ibid.

[29] Ibid., p.136.

[30] Ibid.

[31] Ibid.

[32] Ibid., p.135.

sociology of law.[33] The 'incorporation' of "social norms as legal norms" is now the 'incorporation' of "economic or technical production as law production".[34]

The significant modification of focus and accompanying redefinition of legal pluralism is the counterpart of the adoption of an essentially detached position of observation and description of the evolutionary dynamic arising from legal irritation. The conceptual distinctions and orientation, in this period of Teubner's work, are resolutely non-normative, and the subsequent, much later, thematization of human rights[35], explicitly limits the possibility of justice to an entirely negative articulation which is unrealizable as a project of the active juridification of human rights.

Thus, the notion of legal transplantation has effectively to be significantly reconceived (or itself transplanted, and, thereby, misread, from a Teubnerian perspective) to facilitate Corradetti's pluralist universalism as a human rights theory. The process of reconception is, however, a process of normative transformation of a notion which was elaborated within the explicitly descriptive methodological framework of sociological systems theory. The degree of interpretative transformation involved reflects the divergence between the two theoretical frameworks and introduces the difficulty, once this notion of legal transplantation is incorporated, of maintaining the coherence of Corradetti's theoretical framework.[36] For legal transplantation retains an underlying orientation to the relationship between law and social systems, whereas the normative framework into which it is incorporated is orientated to a theory of human rights as the juridical relationship between domestic and international legal systems.

## 2 THE FRAGILITY OF PLURALIST UNIVERSALISM

The interconnection between the real – the actually existing relationship between domestic legal systems and the system of international human rights – and the ideal – the universal respect and guarantee of human rights in an international order of perpetual peace – rests upon a process of transplantation. For Corradetti, the

[33] Ibid., p.136.

[34] Ibid., p.137.

[35] See, for example, G. Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization*, Oxford, Oxford University Press, 2012; G. Teubner, *Transnational Fundamental Rights: Horizontal Effect?* « Netherlands Journal of Legal Philosophy », 3, 2011, pp.191-215; G. Teubner, *The Anonymous Matrix: Human Rights Violations by 'Private' Transnational Actors*, «Modern Law Review», 69, 3, 2006, pp.327-346.

[36] Within the comparatively more strictly delineated purview of Corradetti's elaboration of a pluralist universalism as a human rights theory, these difficulties are analogous to those encountered by the Habermasian critical appropriation of Luhman's social systems theory in volume II of the *Theory of Communicative Action*. See, H. Joas, "The Unhappy marriage of hermeneutics and functionalism" in A. Honneth and H. Joas (eds.) *Communicative Action: Essays on Jürgen Habermas's The Theory of Communicative Action*, Cambridge, Polity Press, 1991, pp.97-118.

normatively transformed notion of transplantation creates a process of interconnection which is co-ordinated by two "mutually dependent constraints":

> (1) the activation of a process of validation of the juridical norms of human rights that requires a top-down comparison of juridical formulations starting from the formal presuppositions of liberty and wellbeing (preventing therefore any unilateral and horizontal projection of rights).
> (2) the activation of 'legal irritants', that is according to Teubner, the activation of several social-subsystems which react and reinterpret international norms according to contextual patterns of interpretation and incorporation of the rule. [37]

These constraints guide the process of transplantation which assumes the primary position in place of the process of signature and ratification of international human rights instruments. The generalization of the provisions of international human rights instruments, through the gradual accretion of the number of states which have become parties to a particular international human rights instrument, ceases to be the entire determinant of existence and legitimacy of international human rights.

State practice is thereby redefined as the preliminary stage of a pluralist universalism whose legitimacy requires that the provisions of international human rights treaties are considered by "cultural pluralist frameworks of deliberation" which enable "local legal specification of formal universal principles into legal framings".[38] This, in turn, renders these provisions "open to a biunivocal horizontal legal comparative discussion and possible revision by different, and yet partially commensurable sub-systems of human rights codifications".[39]

For Corradetti, the possibility of the further development of a pluralist universalism – the realization of the ideal in the real – confronts two distinct difficulties in the existing configuration of the real. The first relates to the potential variability and, hence, to the deficiencies of the emerging cultural pluralist frameworks of deliberation. The variability in the procedural facilitation of the passage of the idea into the real, arises to the extent that the particular procedure for "the drafting of a regional or international system of human rights provisions" is undertaken in a framework which lacks "certain prerequisites of public reasonability and institutional structuring".[40] The second relates to the background within which the cultural pluralist frameworks of deliberation arise. This is marked by the presence of both democratic and non-democratic forms of state which represent a differential or unequal capacity for the emergence of these cultural pluralist frameworks of deliberation. For non-democratic forms of state are those forms of political regime "in which institutional arrangements of democratic legitimacy are

[37] *RHR*, p.172.
[38] Ibid.
[39] Ibid.
[40] Ibid.

not fulfilled in the international sphere".[41] The process of transplantation confronts a reality whose variability obstructs the passage between the ideal and the real in a manner which is distinct from the limitations presented by Teubnerian sociology of law in the system theoretical description of transplantation.

In place of the relationship between system and environment, Corradetti's appropriation of the Teubnerian notion of transplantation involves the substitution of a normative relationship between the ideal and the real. The variability of the real becomes the effective 'resistance' of the real to the ideal and its realization. It is the conceptualization and response to this 'resistance' of the real that then further demarcates the pluralist universalism of Corradetti's approach.

The demarcation rests upon Corradetti's insistence that the two distinct difficulties of the existing configuration of the real are to be understood as an enduring complexity which is the basis for the realization of the ideal as pluralist universalism. Thus, the attempt to remove these difficulties by the presumption that the second difficulty – the existence of non-democratic regimes – is the primary 'resistance' of the real renders the ideal a 'force' to be imposed upon the real. This presumption transforms and reduces the ideal from a universal into a particularistic value and an associated "political strategy" for the "imposition of a *liberal ethos*".[42] The ideal of pluralist universalism is relinquished for the universalization, through forcible imposition, of a particular value.

Insofar as this presumption presents this political strategy with a theoretical justification, Corradetti considers that it is democratic peace theory, within the field of political science, which supplies the apparently most plausible justification.[43] The theory, which is based upon the generalization of the regularity purportedly observable in the relationship between democratic regimes, establishes an integral connection between a democratic regime, at domestic level, and a non-belligerent relationship, at international level, between democratic regimes. The essentially pacific relationship which the generalization enables to be attributed to democratic regimes constitutes the division between non-democratic and democratic regimes as one in which the internal character of non-democratic regimes is the corollary of an essentially belligerent relationship, at the international level, to other states.[44] The

[41] Ibid.

[42] Ibid. Emphasis in the original.

[43] The discussion, therefore, leaves aside the preceding critique and rejection, by Corradetti, of the approaches which hold that there is a fundamental disjunction between the internal juridico-political characteristics of states and the character of their external behaviour – the relationship between states and the resulting dynamics of the international order.

[44] Corradetti considers the theory of democratic peace to originate in the two-part article of Doyle, in which the distinctive liberal peace between democratic states is elaborated (Part 1: M.W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs*, in «Philosophy and Public Affairs», 12, 3, 1983, pp. 205–235) and the character of relationships between democratic and non-democratic states (Part 2: M.W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs*, *Part 2* in «Philosophy and Public Affairs», 12, 4,

division facilitates the differentiation of democratic peace theory from a purely realist position whilst furnishing the justification for the continued potential for belligerent relationships between democratic and non-democratic states. This semblance of a normative foundation for the differentiation is revealed, by Corradetti, to be essentially incoherent – a contingent empirical regularity – and to content itself with the limits of the division between democratic and non-democratic regimes.

In contrast, for Corradetti, the primacy, within the complexity of the real, must be attributed to cultural pluralist frameworks of deliberation in order that a pluralist universalism is articulated on the basis of a coherent normative foundation.[45] The normative foundation is also one which retains a critical distance from the existing configuration of the institutions of the contemporary international order. The theory of pluralist universalism, which refuses a fundamental division between democratic and non-democratic regimes, seeks, through the combination of a domestic and an international expansion of procedures of cultural pluralist deliberation, to initiate and reinforce a plurality of instances for the integration of the provisions of international human rights treaties – the universal – within the domestic legal systems of states – the particular.

The passage of the universal into the particular – normative transplantation – is the process by which the ideal becomes present in the real as pluralist universalism. The process of normative transplantation requires a formally designated procedure whose parameters are themselves normatively determined to ensure that the decision-making, enacted through culturally pluralist frameworks, integrates the universal and the particular. This, in turn, reinforces the divergence from the Teubnerian origin of the notion of transplantation, as the culturally pluralist frameworks of deliberation are orientated to procedures of normative justification and application of the provisions of international human rights treaties. In place of the Teubnerian description of the differentiation between system and environment, and the internal distinction between openness and closure within social systems, the normative appropriation of transplantation seeks to shape and guide the internal and external action of states through a pluralist universalism founded upon human rights.

The capacity for the process of pluralist universalism to develop requires the emergence, continued existence and extension of a multiplicity of cultural pluralist frameworks of deliberation. The fragility of this capacity arises from the

1983, pp.323–353). It is also here that the truncated and limited engagement of the theory of democratic peace with Kant's *Perpetual Peace: A Philosophical Sketch* is evident.

[45] Here, is should be emphasized that Corradetti's position is distinct from the realist utopia of Rawls's *Law of Peoples* in its absence of recourse to the methodological device of the original position, the two levels of contract and the Rawlsian designation of two types of regime – failed states and burdened societies – which are situated *outside* the law of peoples and, thereby, inevitably raises the question of the character of the normative relationship with those states *within* the law of peoples.

dependence upon the transfer and replication, within a formal institutionalized procedure, of the subjective operation of reflective judgment. For it is reflective judgment – the commencement from a particular to establish a universal combined with the subject's sense of this reflective operation – which, for Corradetti, provides the exemplary integration of particular and universal. In the passage from the subject to the institution, the assumption is that the cultural pluralist frameworks of deliberation undertake a linguistically mediated, collective reflective judgment. This presupposes that the procedural requirements of these frameworks of deliberation create the collective equivalent of the subjective operation of reflective judgment.

The analogical connection between individual and collective forms of reflective judgment becomes problematic as the collective form is orientated to single form of reflective judgement: the unity of a particular socio-cultural human activity or state practice and the universal framework of fundamental rights and freedoms of international human rights treaties. The collective form is exclusively normative, and, in this normative orientation, it becomes uncertain whether there remains a process of reflective judgment or whether it has become an effectively Rawlsian process of reflective equilibrium.

The internal normative coherence of this procedure of cultural pluralist deliberation confronts the further question of its recognition and position within the contemporary international order. This involves the determination of whether and, therefore, on the basis of which criteria, the emergence and continued existence of a procedure of cultural pluralist deliberation is considered legitimate. These criteria would necessarily have to be accorded autonomy from a particular state's decision to confer or withdraw legitimacy, but it is the degree of that autonomy which would continue to remain an area of conflict. The conflict would centre upon the definition of that autonomy and, as its necessary corollary, the extent of the juridification of the definitional process. The recourse to juridification is both the attribution of a fundamental human right to a procedure of cultural pluralist deliberation and its justiciability – the existence of a formal, legal procedure for the determination of breaches or violations of this fundamental right and of sanction upon determination of a breach. This, in turn, initiates the discussion of the level (domestic) or levels (regional/international) at which the formal, legal procedure is to be located.

The fragility of the existence of procedures of cultural pluralist deliberation is also located at the level of normativity itself: the status to be accorded to the results of the decision-making undertaken within these deliberative procedures. From an institutional perspective, these procedures, irrespective of their degree of formalization, are not legal procedures, and, thus, whilst they intervene in the legal system – both nationally and internationally – this intervention is confined to communication about law: legal interpretation which exists in parallel with national

and international courts and other formal procedures of the UN human rights system.

These aspects or elements of fragility open onto the wider question, within Corradetti's theory of pluralist universalism of the relationship between politics and law predicated upon the centrality of the system of international human rights.[46]

[46] Here, Corradetti's position is distinct from that of the work of Bohman who has sought, in the Kantian notion of publicity, a cosmopolitan normativity of a pluralist world public sphere.