

THROUGH THIN AND THICK: COMMENTS

*Daniel Markovits**

I. COMMENT

Thanks, Ángel, for including me in this fantastic discussion. Kendall, Carrie, it's a great pleasure to be on a platform with you both. Thanks to UConn for letting me come. And thanks everybody for joining on a beautiful Friday afternoon. It's just nice to be here.

I thought what I would do is spend my time illuminating the sensibilities of the book, as I understand it, in three ways, and then conclude by observing something that connects these three sensibilities.

A good way to start is by identifying a series of oppositions that are familiar to every lawyer—that get taught in one way or another in the first term of law school—and identifying how the book stands with respect to these oppositions. What are the oppositions? The first is law versus politics, where law is understood as a technocratic elaboration of neutral principles, and politics as the setting of priorities. A second opposition is reason versus will, where reason is the set of principles that all minds share, and will is the choice of a particular mind. A third opposition is courts versus legislatures, where courts are peopled by lawyers performing their technical functions, and legislatures are peopled by citizens performing their political functions. Finally, a fourth opposition is the global order versus state sovereignty, where the global order is the set of rules that govern the behavior of all states, and sovereignty is the prerogative of an individual state to do as it wishes regardless of rules.

Now, the conventional way of thinking about human rights is to accept these oppositions and then take sides with respect to them. Human rights are associated with the first half of the oppositions. They're law, not politics. They're reason, not will. They're administered by courts, not legislatures. They're global and international, and they limit sovereignty.

Next, it's conventional to ask how we should think about human rights in light of the fact that they take sides in these oppositions.

On the one hand, there are champions of human rights who favor the first side of the oppositions—who think that law, and reason, and courts, and global regimes are all good things. Maybe, some human rights champions say, they're the best things. Maybe they're even sufficient to guarantee fundamental human interests for everyone. And for these reasons, some conventional champions of human rights—on the model, perhaps, of Human Rights Watch—place human rights at the center of how we should procure widespread and equal human flourishing in a conflicted planet.

On the other hand, there are detractors of human rights who think that the first half of each opposition unduly limits the prerogatives of the second half. That what it is to be sovereign is not to be constrained. That legislatures have a kind of innate, inherent authority that courts only trammel. That to have will is to be able to choose. And that law is just an ideological way of limiting politics. That's what certain leftist Latin Americans argue, and it's an argument that the book in a way begins with.

* Guido Calabresi Professor of Law, Yale Law School; J.D., Yale Law School.

Still, others adopt a third position with regard to how human rights relate to the familiar oppositions. This is the position: "Human rights aren't enough." Proponents of the third way say something like the following: "Well, the first side of the oppositions – law, reason, courts, global governance—names some great things, which are all closely associated with human rights. But while these things, and human rights, may be a necessary condition for human flourishing and equality, they aren't sufficient." This is what might be called the "Human Rights Plus" tradition.

Now, Ángel, I take your book to embrace none of these three conventional approaches. I take it that instead of choosing sides in the oppositions, or even embracing both sides, what you would like to do is apply each side of the oppositions to the other. That is to say, you want to put law within politics, to connect reason to will, to have courts think like legislatures, and to show the mutually constitutive relationship between the global order and sovereign states, so that each side of the opposition is transformed by its engagement with the other. You want to politicize human rights themselves. And that what's going on in the book is an elaboration of what it looks like for human rights to be themselves political, and for politics itself to take human rights as one of its ends.

The hope of the book is that when we do this, we'll avoid the ways in which politics can oppress law. We'll avoid the problems of Maduro in Venezuela. And, at the same time, we'll also avoid the way in which law can stunt politics. We'll also avoid the problems of the US's imposing its own neoliberal agenda on the inter-American system. In this way, the book implicitly works through each of the oppositions to show that by bringing the two sides into direct communication with each other, each can avoid the pitfalls that plague it when operating against the other. The hope is that this dialectic as a whole can overcome the shortcomings of each of its individual moments: that there's thesis, antithesis, and then synthesis; and that by following the dialectic method, we can be raised up to a better understanding.

Once again, this is a distinctive vision. It's not the same as the human rights maximalist view. It's not the same as the skeptic of human rights, nor is it even the same as the moderate middle that says human rights are good but not enough. It says the appeal of each side of the opposition is understandable, is intelligible, only in the shadow of an active and constant engagement with the other side. So that's what I take the first sensibility of the book to be.

The second thing I want to talk about with the book is to emphasize its focus on the inter-American system. There are lots of human rights regimes in the world. Probably the conventional way to think about human rights is to focus on the EU as the central system, as the most successful human rights regime in the world. Certainly, it's not to focus on the inter-American system. So why does Ángel think about the inter-American system as the core elaborative or explanatory case for the correct view of human rights, or the central site for analyzing the problems of human rights, or the place where the development of human rights can be best understood, most fully engaged with, and realized?

I'm speculating now, but the answers may lie in a peculiarity of the inter-American system that's different from most other human rights regimes. In most human rights regimes, the limiting features of human rights, the sides of the oppositions that human rights as conventionally understood stands with, comes second in time to the things that human rights limit.

That is especially true in Europe. Consider, for example, the opposition between human rights as universal reason and politics as local sovereign will. The European human rights tradition begins, perhaps, in the French Revolution with the Declaration of the Rights of Man. But this comes a millennium after sovereign nation states in Europe start forming. And so human rights come against the backdrop of already ensconced, established, secure, and theoretically well-understood states and sovereignties. And that puts human rights in an odd position, because from the get-go, they are constraining something that is thought to be complete in and of itself.

In the Americas, things are a little different. There are lots of gruesome and terrible legacies of settler colonialism, many of which are suppressed in conventional histories. For example, it's not widely known (and I'm embarrassed that until recently I hadn't known it) that when Cortez arrived in Mexico, there were 30 million people living there, but 60 years later there were just two million people left living in Mexico. This simple statistic gives a sense of the devastation that that form of colonialism wrought on a continent. But one thing colonialism did is it wiped out sovereignty. It wiped out sovereignty through brutality. And this has as a consequence that, in the inter-American system, there's a sense in which sovereignty and human rights arose co-extensively. Neither was prior or uncontested vis-à-vis the other.

And so, if one's interested in understanding each as a form of dialectical engagement with the other, the Americas are a promising place to look. Because of the destruction of the colonial enterprise, something arose that doesn't exist elsewhere in the world, and certainly not in Europe, where there wasn't the same measure of destruction of sovereignty. So possibly one reason why the inter-American system is so interesting, and I wonder what Ángel will think about this, is because it has this peculiar feature that the nested oppositions at the center of Ángel's thought had each side arise in the shadow of the other, rather than having one be clearly prior in time, in theorization, and in conceptual power. In this way, the second sensibility that I have in mind—the book's insistent focus on the Inter-American system—is closely connect to the first.

Finally, let me raise a third observation about Ángel's book and its sensibilities. The book is self-consciously non-discursive. I think I've called it elsewhere a hermeneutic explosion of a book. It proceeds impressionistically through stories. It jumps around from place to place, case to case. It refuses to announce its own central claims. It leaves the reader to fight through the examples it uses. It demands that readers struggle to draw associations in much the same way, I take it, in which Ángel's mind drew them, as he was thinking through the writing of the book. And so the third question is, why does the book do that?

I imagine the answer is connected to my first two observations. The central opposition in an ordinary argument is between author and reader, between creation and reception. And there's a way in which the author produces something, and the job of the reader is simply to take up, to assume, what the author has produced.

But this book can't be read in that way. This book has to be read performatively, not discursively. It has to be read by somebody who goes through the same struggles that its author went through in the writing of it, and I imagine that's not accidental for the topic. Because once again, there's a dialectic between writer and reader, and the success for each comes from the synthesis of the two. This dialectic of writing and readings proceeds in much the same way as the dialect of human rights, in the first sensibility I talked about, lifts up the

familiar oppositions that dominate conventional legal thought; and it proceeds in much the same way in which the inter-American system becomes so important on account of embracing the co-creative element of the national and the transnational. This is, then, a book that you write as you read it, and I take it that's important to Ángel, and that it's important to Ángel because he regards it as important to his subject.

Let me conclude by revisiting the title of the book. The title of the book is *Through Thin and Thick*. I think the most important word in the title is actually "through." It's not Thin as Against Thick, or Between Thin and Thick. There is an opposition there, thin versus thick. But the critical thing is the "through" part that builds a connector, and lets each side of the opposition bleed into the other in just the manner in which each side of the first oppositions has to bleed into the other, in just the manner in which the inter-American system allows the national and the transnational to bleed into the other, and in just the manner in which the style of writing in this book allows the author and the reader to bleed each into the other.

So, I think if the book has a single central lesson—a lesson that can apply directly to our current moment—it is that the only way forward is through.

Thanks very much.

II

I'm recollecting a collegiate presentation by socialist President Felipe González from Spain. Girded by one of his handlers with a printed oration, he commenced by reading it, with a glaring feeling of discomfort. This commencement occupied him for a little while. Ultimately, it exasperated him.

He handed over the folder, with the words: "Okay, I must liven up." After this resolution, his oratory flourished.

Consonantly, the comments bestowed upon us have seduced me to an enlivenment. They have woken me up. Before them, I was straining to unpack this entire tome: a difficult task after its completion.

At this intersection, a fresh footpath has opened up for me. It is inciting me to seize it. I welcome you to the trip.

Ostensibly, a passage to heavenly survival has unlocked for me. It is beckoning me to tread it, loosening up in my reactions. For the purpose of dialoguing beyond us on the stage, I'll obey the beckon with succinctness.

Those of you on the floor should jump on the bandwagon after me. After the jump, the palaver should resume during the reception. Hopefully, it will evolve into the beginning of a beautiful friendship.

Thankful, I'll begin with the drops of wisdom sprinkled with generosity by Kendall. They suit me in their entirety. Doubtless, the bench proves inadequate, beyond not sufficient, by itself. It avails those outside the courthouse little.

Forever, Carrie has been cautioning us about this inadequacy. We used to study procedure by perseverating on happenings inside the courtroom. An expert on arbitration, she crept up on us exclaiming: "Trust me. Multifarious channels to 'justiciability' exist. They spread from litigious to extrajudicial."

Her exclamation has oriented me from the get-go. Incidentally, it could enlighten the gamut of our disciplines. Irrespective, several of my chapters do focus on caselaw. Through these convergences, they betray my familiarity with it qua a lawyer during my escapades from the ivory tower.

Additionally, I fire off my argumentation with the referenced altercation over the appropriate place for judicial intermediaries in this domain, sizing them up. Altercating with animosity, the insurrectionary faction protested, staring them down: "They should butt out for us to occupy the field." It insisted on the predominance of, foremost, the executive arm, over them.

Against this insistence, I deplored their disempowerment. At this argumentative crossroad, they were screaming for my attention, cycling from effectuating the safeguards before them against the administration, occasionally the parliament, qua violator to buckling under it as a legitimate policymaker, perchance a genuine emancipator. During the enforcement, the cycle was empowering the mobilized populations. Meanwhile, it was incrementing its impact.

One cannot overemphasize this empowerment. In reality, the showcased dispositions exemplify it. They often unrolled as transindividual suits. The claimants, from lone rangers through groups to non-governmental organizations, bespeak the veracity of the wise proposal before us. During their push, they agitated before various branches of governance, internationalist institutions, populaces across the globe.

These presidors over the agitation matter in toto. They would resist a ranking of them on the basis of their weight. In actuality, an affirmation of their involvement invites a critique against them. It induces to an appreciation of their insufficiency in isolation.

Before them, we may agree on the proffered proposition. This agreement aside, my initial, partially structured expostulation concludes with a recognition of the unavailability of competition among them. It presses them to learn to coexist with competitiveness. They should not expect to predominate.

After extolling the age of rights, Kendall may have been pushing us to skepticism about these. For him, they may not represent a silver bullet. With judiciousness, he may have been implicating their idiosyncratic want of sufficiency on the ground, forewarning us about it. We attended to it in musing about them during our drive from New Haven.

With a touch of irony, I wholeheartedly sign off on this implication about them, upon devoting myself to them. During this devotion, my bookish contribution highlights their criticalness. It flags their advancement of integrative equity.

Notwithstanding, I accentuate that they do not further the latter unequivocally. To me, they "appear to advance but not to guarantee it and might extraordinarily thwart it."³⁵ To pursue it, one might have to sidestep them to home in on politically, economically, societally delineated activism.

Daniel's meditations elsewhere about equality might lie on the horizon before us. They could aid me in developing these thoughts in the future. In the meantime, we could return to the supreme adjudicatory decision from April on Puerto Rico, intercalating it here. It arbitrated on the validity of excluding islanders from federal redistributive payments for the elderly.

³⁵ See *id.* at 59-60.

A majority bordering on unanimity validated the exclusion. For the most, it omitted egalitarian preoccupations, disregarding them from start to finish. Against this disregard, they pop up with force in the solitary dissent by Sonia Sotomayor.

She dredged up the concept of cruelty. Without elaboration, I would characterize the crux as cruel indifference toward the weak, beyond unequal treatment of them. In my opinion, one cannot reconcile extreme inequality with minimal decency, let alone significant parity.

Against a backdrop of ideologization, this irreconcilability might engender different responses: from denial onto apathy through disapproval to outrage. It might have fueled the adumbrated ideological brawls. Like Willajeanne, these might lead us to wonder about the feasibility of teamwork around ideologized entitlements. Unlike her, they might convert us into skeptics about the prospect. I hazard a step toward an answer during my journey on paper from legality toward elementary equalization.

Without doubt, we should meditate on the road ahead. Dissimilar conceptualizations of inclusiveness have emerged across the Earth: from Europe through Latin America to the United States. They may unleash unlike implementations. Unable to plunge into the minutiae at this instant, I'll venture a bare statement. Diversifying European countries are facing ordeals akin to those of their north transatlantic allies. They may be repeating the same mistakes, wreaking comparable iniquities.

Carrie mentioned the leftist movement down south. To my ears, she assayed it soundly. Inspired by the historic champion of regional unification Simon Bolívar, it purported to emancipate the polities under its command. Adopting its self-deprecating denomination, she referred to it as the "Bolivarian Axis."

It ushered in an exciting, turbulent last duo of decades. She might concur with me on a fascination with the coalition's present transmutation into a large, variegated constellation of freestanding regimes on the left. We shouldn't lose track of this apparition.

Sticking to her guns, she accounts the freedoms under perusal, cogitating them as an insufficient boon. In fact, they may insufficiently equalize existential circumstances within the polis behind them. Therefore, one would have to warm up to her cogitation on them. Once in a blue moon, poverty might indeed increase through them. It could evidence this increase, she might concede, through their comparative unenforceability, maybe unavailability, for a poor person.

Without minding this concession, she asks about a universalist reading of them. For me, they have graduated to universal in the banal sense that our worldwide community has espoused them. In the shadow of this espousal, disagreement on their detail persists. It may never disappear during their lifetime atop ours.

Prefiguring the unlikelihood of this disappearance, the fierce fight over them may have intensified across the board. It may have gained in intensity upon their heightened import after their universalization. With pertinence, our symposium has alluded to the nastiness about them in Europe. During the allusion, it might have been presuming the inevitability of this nasty development upon them.

Anyway, their universality may barely extend past the point fixed by me earlier. A judicious commentator might scruple with me at universalizing them into the metaphysical

realm. Clinging to this scruple, she might predicate them “on” many a “broadly shared,” “crucial notion[], like reasonableness, justification,” “acceptability.”³⁶

Her predication of them might up the ante. It might wrap up on this note: “Hence, one might defend” them “with [a] forceful, “widely appealing argument[].”³⁷ She might reinforce them during this defense with a quotation from Tim Scanlon: Their empirical judgmental fundament “presuppose[s],” a “background . . . sufficiently widespread” to count as universalizable in practice.³⁸

Their foundation in their acceptance during our modernity might suffice for her. It might render them applicable everywhere today. Against this ample applicability in the present, she might balk at applying them in the past, tempted by Bernard Williams’s “relativism of distance.”³⁹ For her, they might rejoice in relevance solely within her era.

The democratic deficit around them piques my curiosity a great deal. Among us in this hall, my friend Steve Utz inquired about their relation to democracy at a workshop on campus during the dawn of the semester. Sub silentio, he may have been rooting for their contextualization.

Like wine grapes, they may stem from a single seed to grow differently in consideration of the type of soil underneath them. Against stateside experience, the European besides the Latin American region had to transition in the twentieth century from dictatorship through them to democratization. This transition may have enhanced the autochthonous steadfastness to them.

After this transitional period of unreserved enthusiasm about them, they may have flickered from an enhancement to a curtailment of their prestige. In Germany, the supersession of a dictatorial, genocidal adventure might have augmented the allegiance to some of them, like that to “bodily inviolacy.”⁴⁰ It might have reduced that to others among them, such as that to reproductive choice.⁴¹

Kitty-corner across the ocean, they prolonged this trajectory, with a twist. The southwestern half-sphere epitomizes the pivot toward them with its dramatic entrance into their ambit. It constitutionalized a wild array of them, intoxicated with them, possibly in anticipation of a hangover from them.

This constitutionalization may have revolutionized by unchaining them. It may have influenced Daniel’s deliberations. These intrigued me. They transported me to a remark by a famous filmmaker. I would guess Federico Fellini.

During an interview, a clever critic was opining on a film of his, approving of it. She identified numerous fascinating facets in it, teasing them out of it. With candidness, he

³⁶ *Id.* at 56-57.

³⁷ *Id.* at 57.

³⁸ Thomas M. Scanlon, *Human Rights as a Neutral Concern*, in *THE DIFFICULTY OF TOLERANCE: ESSAYS IN POLITICAL PHILOSOPHY* 113, 116 (2003).

³⁹ Bernard Williams, *Human Rights: The Challenge of Relativism* 14, SACKLER DISTINGUISHED LECTURE: UNIV. CONN. (Apr. 23, 1997) (on file with author).

⁴⁰ Grundgesetz [GG] [Basic Law], art. 2(2) (Ger.) (“Jeder hat das Recht auf Leben und körperliche Unversehrtheit.”).

⁴¹ Bundesverfassungsgericht [Federal Constitutional Court], May 28, 1993, 88 BVerfGE (ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [Decisions of the Federal Constitutional Court]) 203 (Ger.) (on file with author).

admitted to her: “You have persuaded me that they find themselves within it. However, I for sure did not put them there.”

I myself would not reject the sensibilities singled out by you with parallel perspicuity, inventing them. Having improved on my pursuit, they merit my faithfulness. In the inspirational tale behind this sentence, Argentine author Jorge Luis Borges regarded (1) a particular translation as an improvement on (2) the original. Upon this regard, he branded the latter “unfaithful” to the former.⁴²

Also, I liked your oppositions. Admittedly, taking sides discomfords me, before (not at) a loss. An additional admission for you: your mentions of dialectics pleased me. They reminded me of a deleted footnote, preventing me from repressing it.

It drew on dialectician Georg Hegel’s “immanent” “substance[s]”⁴³ to illuminate the footnoted arguments. With hesitation, I expunged it during my revisions. It struck me as a potentially pompous, confusing appendage.

During an observational expedition, an observer may confront apparent contradictions. She may have to choose between the apparently contradictory poles. Against the compulsion on her about these, an alternative might occur to her. After this occurrence, she might embrace them both. This embrace might equate to a reconciliation of them. It might permit her to progress avoiding self-inflicted deprivations.

Exempli gratia: adjudicators may joust with constancy against installed politicians. Episodically, they might cooperate with these to transcend the joust. This cooperation could cost them an abundance of energy. Coincidentally, it might galvanize them for the righteous inclusion of disempowered plaintiffs before them.

The commentaries chimed in on this cooperativeness. During their interpolation, they threw me back to an observation by our confrère Jon Bauer, among us within these four walls at the outset, absent now. During our internal colloquium, he admonished me for my conceptualized “waywardness,” challenging me on it. To his nose, it reeked of “capriciousness,” affording officialdom an enormous amount of leeway. Understandably, he was translating the noun into “rationality control.”

Conversing along the highway this morning, I warned against decontextualizing the standard on the table. Per my warning, a civic suitor should contextually counter an arbitrary accused, categorizing it as “wayward” in the context of the liberties at bar, not in the abstract. She may criticize it for diverse failures—from its irrationality through its unreasonableness to its lack of loyalty—by means of the underpinning precepts. Against her criticisms, it may demand elbow room, not a *carte blanche*.

In this spirit, a nonarbitrary authoritative campaign around health guaranties must involve more than rational deportments before acquired-immunodeficiency-syndrome (AIDS) patients. It might cry for fixation on prevention by virtue of the incurability of the disease. In Venezuela, the top tribunal plied these pathways at the turn of the millennium. It ruled against the official vacillation in this battle on account of cost.

⁴² JORGE LUIS BORGES, *Sobre el “Vathek” de William Beckford*, OTRAS INQUISICIONES, VOLUMEN 2, PROSA COMPLETA 250, 253 (1980) (“El original es infiel a la traducción . . .”).

⁴³ GEORG W.F. HEGEL, GRUNDLINIEN DER PHILOSOPHIE DES RECHTS (1821), *reprinted in* 7 G.W.F. HEGEL, WERKE 25 (Suhrkamp Verlag 1970).

Our respondents discoursed about the contextual importance of institutionalization. My colleague Jill Anderson broached the subject during our in-house session. She alerted me to the urgency of the outlined cooperationist exertions.

The secondly sensible insight envisioned by you relates to the concentration on the actualization apparatus for “Inter-America” instead of its counterpart in Europe. From this prism, it shifts to a paradigm in which (1) the investigated protections precede (2) sovereignty. The former supervene after the colonial destructions of the latter, outlasting it. They flower unhindered by it, unintimidated by its subsequent rebirth.

Indigenous custom, whose shelter the crown commanded to no avail during the conquest, may have preserved them in a premodern form after secession. Throughout the secessionist war until after independence, it may have coalesced with civilian jurisprudence, which continued generating them, to safeguard them.

An aftereffect upon them may be materializing before us nowadays. It may be displaying its face whenever a European Union member tackles societal misery through their bureaucratization into the safety net, an Anglo-American compeer via their aggregation, an Iberian-American cousin upon their collectivization.⁴⁴ The incorporation of Britain might complicate the analysis. Inescapably, it will have to wait until deeper, future research.

The takes on mutualized prosecution in the New World may clarify the deliberated placement of “the cart before the horse,” translatable for me into a “tortilla flip.” On the whole, they do not foreground the autonomous, sovereignly constructed ministry for publicly dedicated advocacy.⁴⁵ Relying on the equitable class-complaint upgraded through the pertinent formal rule, the United States encourages injured individuals to stand in for similarly situated peers.⁴⁶ It distinguishes itself from its southern sisters entitling citizens to speak for neighborhoods, cities, counties, provinces, nationalities, planets, universes.⁴⁷

The arrangement to assure constitutional supremacy through abstract review illustrates this idea. On the old continent, it may engage specialized triers.⁴⁸ High-profile complainants—from the commander in chief onto the legislative leadership through a parliamentary minority to the attorney general—may possess standing.⁴⁹ They may contest the constitutionality of laws right before or after enactment.⁵⁰

⁴⁴ See OQUENDO, *supra* note 3, at 298-318 (Chapters 29-30).

⁴⁵ *See id.*

⁴⁶ *See id.*

⁴⁷ *See id.* *See also id.* at 174-76.

⁴⁸ *See* Const. (Fr.), art. 61. *See also* GG, art. 93(1)(2) (Ger.).

⁴⁹ *See* Const. (Fr.), art. 61. *See also* GG, art. 93(1)(2) (Ger.).

⁵⁰ *See* Const. (Fr.), art. 61. *See also* GG, art. 93(1)(2) (Ger.).

Brazil in combination with Mexico adheres to the model from northeast across the Atlantic.⁵¹ Against the grain of these jurisdictions, the bulk of Spanish America is blazing its own trails. It is authorizing the citizenry (without a personal link) to sue.⁵²

At the margins of this blaze, no one can federally undertake such a contestation northward of the Río Grande.⁵³ One may have to petition the enactors to remedy the violation, perhaps by mailing them the petition. Before them, this option may boast a nil chance of success. In its praxis, it may degrade into that of voting them out of office.

In the south, the rights revolution is springing opportunities in consolidation with perils. It is recasting age-old conundrums, reigniting them. We can revisit that of the rivalry of (1) the central democratic tenet with (2) the litigable plights at play.

The former contrasts with the latter in the preceptive parameter under it. Beyond this contrast, it may not constitute one of them. They can hardly accommodate it, qua a comprehensive good belonging to the public, within their ranks. In general, it can integrate them only upon its possession by a holder, to wit, a tangible collectivity.

Within this contrastive crisscross, the “sovereign” as a notional artifact perplexes me. Although unsatisfactory in spades, it may defy endeavors to overcome it. This defiance apart, a “self-determiner” may suitably substitute. It may offer the performative possibilities without the deficiencies—from absoluteness through exclusivity to masculinity—of its predecessor.

Iris Young would propel the constructive newcomer toward these latitudes, securing it at them.⁵⁴ She would headline its inclusivity, its relativity, in conjunction with its preservation of duties to insiders, outsiders, individualities, communal ensembles, nonhuman existences. In fairness, I am myself adding these nonhumans to its obligers, coupled with my construal of it as a player in a non-zero-sum game.

This standpoint intertwines multiple perspectival levels: the local, the provincial, the federal, the supernational. It matches power with accountability at the totality of them. They limit one another throughout their intertwining.

The Western Hemisphere might undergo these changes with relative ease, enduring them without considerable commotion. Before them, it might outdo an erstwhile colonizer. They might facilitate the solidification of the unprecedented, existent entitlements-regimen. During this facilitation, solidarity might profit from them into the bargain. It might enlarge toward the victims of sovereign prepotency: from inlanders to outlanders.

⁵¹ See OQUENDO, *supra* note 3, at 309 (In Mexico, “the ‘Procurator General’ or ‘33%’ of one of the parliamentary organs may contradict the constitutionality of a state’s or the federation’s enactments ‘within’ about a month of their ‘publication.’”) (quoting CONST. art. 105(II) (Mex.)). See also *id.* at 316 (In Brazil, “the Public Ministry, chief executives or lawmaking leaderships of the central or immediate subcentral government; or ‘political parties,’ ‘unions,’ or the ‘Bar Association’ may likewise ‘originally’ assert the unconstitutionality of statutes before the forum of final instance.”) (quoting CONST. arts. 102(I)(a), 103 (Braz.)).

⁵² See *id.* at 307 (“The almost universally exercisable unconstitutionality-complaint provides a special case in point. Apparently unprecedented north of the border and having outdistanced its forebears on the European Continent, it alternatively empowers [anyone] to actualize the polity’s commitment to legislators’ or administrators’ adherence to constitutionalized constraints. She may have unconstitutional norms invalidated as such before their application.”)

⁵³ See *id.*

⁵⁴ See *id.* at 23, 184-85, 191.

Thirdly, I would endorse your interpretations stretching, in their focus, from anti-discursivity through impressionism to performativity, appropriating them for myself. They may capture something nestled between these covers, spotlighting it for us. In honesty, it does not derive from my conscious efforts.

I may have subconsciously insinuated it throughout my synoptic pages. These crop up within the Introduction to reappear in the Conclusion. They enunciate the impossibility of an apposite expertise, pleading for a democratization of the dialogue.

Qua a democrat of this ilk, I cannot shove a particular, expertized discourse through my readership. My panoramic impression hulks behind this self-imposed constraint. Toggling from lawyerly to philosophized in its quality, it communes with those of anthropologists, historians, sociologists, laymen, laywomen. With unpretentiousness, I am bidding the assortment of these to a chat.

May they, with you before me among them, accept my bid. Deliberately without authoritativeness, I'm backstopping a position, not a whim, before the amplified "you."

You should pay me back in kind. In reciprocity, we can converge on our passion for the topic. I wish to embark anew upon a pluralistic confabulation, not finalize a lonely peroration.

III

To: Julián A. Quiñones Reyes

From the bottom of my heart, I value this awakening. You're dwelling on a critical dissonance, punctuating it for us. Fortunately, it might not degenerate into an inconsistency.

I would not trivialize it into a "tension" under my reconstruction of the term.⁵⁵ Indubitably, the sovereign's competences may collide with a global guaranty on occasions. Through the collision, they may catapult us back to the problematized oppositional category.

Insightful, you have reconducted us to them for reconsideration. For reference, a subdivision of mine surfaces them in an equivalently conflictive crossway.⁵⁶ It harks back to disputations dating back to the Enlightenment to capitalize on them.

Contemporary philosopher Jürgen Habermas dissects them for us. He crusades to harmonize the duet of camps in combat. Under the inspiration of Jean-Jacques Rousseau, the first of them tunnels in on "popular sovereignty." Under the sway of Immanuel Kant, the second prioritizes the perused prosecutable pledges.

During his dissection, our contemporary within the trinity resolves to escape the polarity between these ideations. He reconstructs them under a unitary "autonomy," subordinating them to it. They respectively incarnate its public and private dimensions.

I adopt a distinctive strategy, ideating it without circumlocutions. It might differ from yours. This weekend, we could contemplate the beauty of a colloquy within the triad of them.

In expectation of this contemplation, I would burrow myself into the first, sovereignly popularized, publicized dimensional variant, recharging against it. It may have entrenched itself with its rigidities. In counterpoint, these egg us on against it.

In a conciliatory lapse, I might not dismiss reinterpreting it. Upon its reinterpretation, it would keep its name, modifying its content. Against its exclusiveness laced with masculine

⁵⁵ See *id.* at 205, 216, 218-19, 239.

⁵⁶ See *id.* at 201-44 (Part III).

absolutism, we could have it divide up the attributable authorizations, remodeling them into answerabilities.

Without qualms, I would rather have it superseded. We should not cower before it, resigning ourselves to its entrenchments. Relentless, it has concatenated intercontinental evolutions with devolutions.

In light of these concatenations, we could eradicate it. After this eradication, it would evanesce in nexus with our worries about its latent defects. Its ghosts would not haunt us anymore.

Per my insinuations, it has articulated infrastructures, from localized to supernationally supersized, around itself. Before all these, I would term our parleys about it “institutional,” not “conceptual,” complexifying them. Upon this complexification, we should not underrate them.

Against a strong temptation, I’ll desist from expanding. Sorry for the brevity. Writing off my sorriness, the Spaniard Baltasar Gracián from the Baroque would back my desistance.

He redacts: “When brief, what is good turns twice so.”⁵⁷ My complementary redaction would resound like a conversion of his: “When brief, what is bad becomes half so.” With gratitude, I’ll alight from the train at this station.

IV

To: Steven Utz

The hardest queries may poke their head out behind a mask of simplicity. They may deceive the responder into underestimating them. Yours sound simple through the concision of their formulation. For me, they recall the renowned debate about dilemmas, repurposing it.

The previously quoted Williams, whom you met in the flesh, transforms it to the core. He injects the underlying emotions into it. Upon this injection of his, I’m trying to transfer it from morality to politics.

Bold as brass, he gainsays the tradition, neutralizing it. Before him, it foreclosed deontological conflicts, disclaiming them as unacceptable incoherences. In particular, he rebukes William Ross’s misinterpretation of them into ostensible clashes discardable after the dismissal of one of the vying “prima facie” prescriptions.⁵⁸

A straightforward setting guides him through the rebukes. It pictorializes them. Within it, a woman promises to lunch with a workmate. By coincidence, she witnesses a terrible accident en route to meet him.

To her eyes, the responsibility to succor the wounded trumps. In consequence, she misses her appointment with him. This omission, she comforts herself, should not subject her to his reproof. Au contraire, it could attest her virtuousness before him.

Alas, her debt to him might not vanish ex post facto. Albeit for an impeccable reason, she might have failed him. Her promise might attach to her throughout.

⁵⁷ José María Mella. *La revolución de los ricos*, FARO DE VIGO, Jan. 3, 2013. (“Lo bueno, si breve, dos veces bueno.”).

⁵⁸ See OQUENDO, *supra* note 3, at 222 (quoting Bernard Williams citing William David (W.D.) Ross).

Upon this attachment, she should strive to patch up with him. Her breach places her on the spot. She might have to contact him, apologize, reschedule, grab the tab during a renewed rendezvous, et cetera.⁵⁹

The story around her has itself bred scholarly polemics. For controverters comprehending from Mary Mothersill to Terrance C. McConnell,⁶⁰ it amounts to a resolvable, ergo not dilemmatic, difficulty for her. Peter Railton would refrain from misreading it into a drama for her. As a compromise, he would acknowledge her “regret” for “the inconvenience she knowingly . . . caused.”⁶¹

Beyond swapping her for a collective protagonist, I picture an analogous setup dramatically amped up to surmount the polemical misgivings. Like she, the collective might regret its neglect of the upended precept, not its endorsement of the prevailing alternative one. It might have to make amends to those disappointed by it.

Plainly, you were analyzing the vindicable plights surveyed. Still, these may correlate with a dutiful mandate, fixating on it. They may conflict through it.

Tentatively, one might simply state that a quandary looms large whenever a couple of valid norms points in opposite directions.⁶² In an exemplification of this bind, democratically demarcated integrity might necessitate respecting majority determinations that burden an enclave; elemental egalitarianism, contrariwise, ignoring them. Curiously, this normative antagonism might not provoke a deadlock. Again, it might waive through a reasonable choice between the competing commandments.

Nevertheless, one might want to reconsider these confictions, unbolting the door to them. After all, they might arise unavoidably, sometimes in the teeth of the exemplarity, amid the precaution, of the affected subgroup. Undoubtedly, the obligee might know well enough by which of the contending guidelines it should abide. Regardless, it might proceed accordingly without extinguishing the claims of the overridden one.

As an upshot, a residue might remain. Despite comporting itself with propriety, the contingent might experience a bitter aftertaste. In addition, it might owe satisfaction to those it has deserted.

Significantly, this whole posture need not contravene basic deontic logic. Even upon the incompatibility of the execution of *A* with that of *B*, an agent might hold separate obligations toward each one of them. Critically, she might not thereby end up beholden to both, much less to carry out either of them *alongside* to not doing so.

⁵⁹ Peter Railton notes that “obligation, and especially ‘living up to’ our obligations or respecting those to whom they are owed, are complex and partly symbolic matters, with many routes to reconciliation and the mitigation of moral residue.” Peter Railton, *The Diversity of Moral Dilemma*, in *MORAL DILEMMAS AND MORAL THEORY* 140, 159 (Homer E. Mason ed., 1996).

⁶⁰ See Mothersill, *supra* note 12, at 66 (In the face of “a judgment in which all right-thinking people concur, I don’t see why it should be called a dilemma.”); Terrance C. McConnell, *Moral Residue and Dilemmas*, in *MORAL DILEMMAS AND MORAL THEORY* 36, 42 (Homer E. Mason ed., 1996) (No “moral dilemma” crops up whenever “there is a uniquely correct resolution to the conflict.”).

⁶¹ Railton, *supra* note 3, 155.

⁶² Thomas Nagel regards these dilemmas as the most extreme kind of practical conflict. “The strongest cases of conflict are genuine dilemmas,” he writes, “where there is decisive support for two or more incompatible courses of action or inaction.” THOMAS NAGEL, *MORTAL QUESTIONS* 179 (1989).

Of course, a prescriptive bond of this genre might entail a generalized commitment to create conditions for its fulfillment without encompassing one to eschew every incongruous obligatory act. Likewise, separately pledging oneself to this pair of incompatibles might not violate the practical requirement that “ought” must imply “can.” The two independent charges might not illogically aggregate to a joint one to honor them in spite of their resistance to conflation.

My three cents worth, with a hefty tip. I may have overstayed my welcome. Profuse apologies.

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