Gianluigi Palombella

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Abstract
Inter-legality discussed in this paper draws on a previous more general treatment of the question. A theory of inter-legality has descriptive and normative aspects. The descriptive aspect captures, rather than just fragmentation and plurality, the interconnections that legal functional separations are hiding. The normative aspect highlights a methodology for managing the overlapping and conflicting legal rules, sourced from separate domains, State orders, regional or supranational regimes, controlling the same issue at stake. In this respect, inter-legality refuses the weakness of both dualism and monism in coping with interconnected orders, and it focuses on positive laws relevant to the issue, and the reasons claimed from diverse and equally valid sources. This article chooses one emerging problem, i.e., where global common concerns are at stake: an epistemic change is needed, focusing upon the law relevant to the case, which often is non-coincidental with one-system-based legality. Inter-legal comprehensive assessments would pave the way for avoiding injustice by preventing unilateral judgements. Recent paradigmatic case law is considered.
Keywords: Inter-legality, Global Common Goods, Monism, Dualism, Judicial Dialogue, Legal System, Case law.

1. The Transformative Setting of Inter-legality

Before dealing with the issue of inter-legality, some preliminary considerations are in order. First of all, comes the repeatedly announced *fragmentation* of law. Its descriptive strength rests on the fact that what was thought of in terms of one single legality is seen now as a diaspora of sources, each getting to autonomous grounds, self-recognition, and legitimation (Fischer-Lescano and Teubner 2004; Koskenniemi 2009). The so-called "global" law is itself one of the layers of legalities and not the all-encompassing label for them (Palombella 2019a). Global regulators, regimes and orders do not eventually displace or substitute for national, State, regional, or even subnational orders. Admittedly, fragmentation might be deemed to offer a second

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chance for weaker parties, seeking a different legal perspective toward a more favourable assessment (Cohen 2017).

Fragmentation, however, says much more about our conceptual categories than about law as such. It proves how our epistemic perspective is tuned with the idea of a closed system, where unity is the essential condition for the law to be law. Accordingly, fragmentation generates uneasiness, "anxiety" (Koskenniemi and Leino 2002), while at the same time unity gets lost. States have reduced their control precisely because of the transboundary nature of the issues in an array of fields of emerging relevance, from security to climate and environment, health, trade, human rights, cultural heritage, and so forth. Functional decision-making connected to some specialized knowledge displaces territorial separations and crosscuts demos-like allegiance in transnational forms. These and further premises are factors whose diverse nature is mirrored in a mixed and interwoven setting of distinct and often self-referential normative structures[1] The proliferation of extra-States regimes and international organizations (on whose autonomy and independence cf. Johnson 2014), often including jurisdictional or para-jurisdictional conflict-treating bodies (Quayle and Gao 2019; Howse and Teitel 2009), reinforces the appearance of a shifting allocation of power (Broude and Shany 2008), and the dissemination includes regulatory or *jurisgenerative* entities, private, public, hybrid, spanning huge differences in legitimacy, nature, function, statutory goals, social embeddedness.

Anyway, fragments do not tell the whole story, and sticking to fragmentation would simply mistake the artificial divisions – created by regulatory governance functional techniques – for the *real* situation. The latter, however, shows material *interweaving*. In fact, environment and economy, human rights and trade are not dwelling in separate realms, but are strictly entangled. This is where inter-legality works as an enlightening notion, beyond the sheer understanding of fragmentation as such.

However, the same word does not always mean the same thing: the notion may have different meanings. When Sousa Santos (2004) puts forward the notion of inter-legality to explain the fabric of multiple legalities of which social life is made, he registers the variety of legal regimes looming over us: individuals partake in diverse circles of norms apparently pursuing different goals. The consequence of globalization resembles a global scale picture of legal pluralism, earlier studied by sociologists in well delimited social contexts. Notably, that was the recognition that being "legally plural" is not just a feature of countries with a colonial history, but a state of affairs including any social field "in which behaviour pursuant to more than

[1] As Walker (2014, 159-180) puts it, the *intimations* of global law hint at inexorability, but counter factors flourish.

one legal order occurs" (Griffiths 1986, 2) or, as famously stated by Merry (1988, 870), "a situation in which two or more legal systems coexist in the same social field". On a global scale such a generic extension of pluralism involves multiple proliferating ordering structures, dramatically exceeding the nation-State, and proving more like a *heterarchy* than a fixed, traditional *hierarchy* under international law (IL)[2]. *En passant*, even IL scholars clearly cherishing unity and constitutionalization admit that "a clear (substantive, procedural, or institutional) hierarchy which could resolve normative conflicts has not really emerged, and a further future maturation seems unlikely" (Peters 2017, 685).

However, if inter-legality had to mean just that, something would be missing. The point of inter-legality, in the meaning that I submit, departs from its previous use. It should better be taken to describe a phenomenology reflecting not only plurality but something else. Santos adopts this word with an interest in the social circumstances and their critique: in his view, the multiple fora that the plurality of orders generates can end up empowering individuals *vis à vis* unaccommodated and incoherent legal sources.

This sounds correct. However, inter-legality, as submitted elsewhere (Palombella 2019b), is not just a tool that subjects may use to compensate for the overwhelming political or technocratic global regulators, although it can certainly work in managing dysfunctional effects due to the so-called "external sources" (Palombella 2021). First of all, it is a phenomenology of law & regulation focused on the texture of increasing and *objective* interconnections. One should acknowledge that in order to be legally mastered, many questions are just artificially (i.e. fictitiously) taken as an insulated matter, under the control of a special sector's regulation. Nevertheless, they might bear multiple concurring or competing rationales. Accordingly, inter-legality would register the resilience of the material entanglement among functional fields that is purposively overlooked. Needless to say, interconnectedness overflows and imbues the law, it trespasses the fault lines and the legal closure of discrete orders. It should better be upheld in the self-recognition of their own coherence by each legal order. In order to account for what the law becomes under these circumstances, it is needed to shift our attention from the subjects to the *objective* state of the law: i.e., what the law becomes on the occurrence of multiple intersections.

Concisely, while pluralism enhances the autonomy of those legal players contributing to a given normative context, included the global one (as confirmed by Schiff Berman 2020), instead inter-legality accounts for the interwoven normative texture impinging upon the same object, i.e. for the outcoming inter-action on the ground among diversely entitled normativities.

[2] Among the pioneers considering pluralism as a 'global' matter, Teubner (1997).

Inter-legality refers to the newly generated "composite" structure of legality: it rests on a plane uncovered by exclusive criteria of recognition, intended for the law *inside* one system (*intra*-systemic question), not to address as well the *inter*-systemic issues.

Aside from the socio-centred view, then, what inter-legality is – and does – concerns shifting perspective from a *system*-based law only (Raz 1970; Raz 1974) to the *law* as it unfolds as a *composite* notion.

2. Global Goods and Global Concerns

One among many litmus tests of interconnections is the acknowledged emergence of *common public goods* (Schaffer 2013), transcending territorial limits and particular interests. Their recognition confronts our milestone legal concepts. Human rights, environmental or world security-related norms all require up-to-date approaches. At the end of last century, the *UN Development Program* put forward the issue of global public goods (for that time, Grunberg and Stern 1999), calling for cooperation: taking global goods seriously ends up conflating with some received ideas of authority in law and the State-based legality.

IL itself gets into transforming paths, mainly due to the flourishing of "layers" beyond the conventional law, the regulatory layer and that involving the international community as a whole (Weiler 2004). By the International Court at the time of the *Barcelona Traction* decision[3] a form of "public interest litigation" is underscored through the categorisation of *erga omnes obligations*, allowing for standing to all in order to protect common interests against infringements, that is, interests of the international community (Thin 2021). The existence of "objective obligations" corresponding to international fundamental values "begins to display more and more features which do not fit into the "civilist", bilateralist structure of the traditional law" (Simma 2009, 268). The will of states[4], caring for their own interest, is no longer the only pivotal pillar describing the very structure of IL.

Global goods – in the widest definition – include fields of *common concern* like climate and environment. But again, the latter question existing arrangements and forms of governance. Global specialised regimes not only expose the plurality within the legal universe, but ironically, demonstrate the *global* character of the *objective* they pursue (trade, rights, energy, forest, water, security, etc.). Indeed, the underlying justification of their *authority*

[3] *Barcelona Traction, Light and Power Company, Limited* (Belgium *v.* Spain) [1970] ICJ Rep 3.

[4] Famously in the Case *S.S. Lotus*, PCIJ. Ser. A. No. 10, at 18, (1927).

is their global extension, their supra-state scope, and the *coordinative rationality* that allegedly they offer. On the contrary, whichever regional or state authority will appear to speak in their own interest, lacking the standing to speak in the name of world society. The vantage point of a global regime authority (like WADA, UNSC, ISO, WTO, WIPO, WHO, UNCLOS, and so forth) is the *common* good or concern that it covers. But those public or private or hybrid entities are still- both *internally* and *externally* (for the divide, Zhunussova 2021) – *partial* (or fractional) regulators.

Internally, multiple authorities concur in the same realm.

As well known, even with human rights regimes, the deontological strength of international norms (e.g. at the Interamerican or the European HR Convention) is just one side of the coin, the other being the cultural, domestic identity, embedded in national law. Therefore, the plurality of human rights regimes is made even more complex by the variety of interpretive assessments due to the *fundamental* connections to domestic orders[5].

In the realm of environment & climate change feature authorities placed at various territorial levels and with different legal strength and social embeddedness (think e.g., of the State *vis à vis* the UNCLOS); no fixed or no effective hierarchy rules work among them. Indeed, environmental law has a "transboundary nature", unmatched by the sheer separation among international, regional, national law (Heyvaert and Etty 2012). As Heyvaert (2019, 771) writes, "(e)nvironmental norms and rules are not 'made' at one particular level and then simply applied at another; they are products of interaction" and States are *among* the players including non-state actors, NGOs, sub-national authorities, and operate connecting "combinations of public and private authority".

In the governance of climate, we refer to models like *regime complex* and *experimentalist governance*. To cut a long story short, single regimes were imagined as top-down regulations imposing obligations/sanctions upon States. The WTO Treaty-based institution and its jurisdictional competence are the iconic models. As was theorised (by Kehoane and Victor 2011), "loosely coupled regime complexes" avail of less integration and more flexibility, while joining through thin shared goals. They innovate inasmuch as they emphasise "that regulator and regulated, alike, rarely know what is feasible when they begin to tackle a problem under uncertainty"; they prize "a diversity of efforts rather than monopoly" and improve through selecting solutions that work "while siphoning resources away from those that don't" (Keohane and Victor 2015, 206). Notably, the environmental field cannot be left to top-down provisions sourced by power negotiations,

[5] For further connection with the margin of appreciation doctrine and the issue of defining "fundamental rights" cf. Palombella (2001 and 2021).

both for the lack of a single hegemon authority and for "cognitive" limitations: "This uncertainty explains the inability of any country or firm that takes deep decarbonisation of emissions seriously to identify ex ante what behavioral, technological and regulatory commitments will actually prove most effective" (Kehoane and Victor 2005; cf. also Sabel and Victor 2017). Accordingly, governance takes the mode of experimentalism, as tesitfied by the 2015 Paris Agreement[6]. Experimentalist governance resorts to *pledge and review,* learning interactions, paving the way for a bottom-up process and fostering horizontal coordination. In truth, *accommodation* works as the practical arrangement, responding to errors and supervened evidence as well as gathering different sub-regimes without pre-determined rigidity[7]. Moreover, this means that general Treaty-law is not the ultimate determinative instrument (the Treaty regime, patterned as the WTO). Finally, interactions do not create a novel comprehensive "sphere of authority" (Kreuder-Sonnen and Zuern 2020, 256).

The fact that law and regulation can only work basing on existing interconnections is a premise to the recognition of a kind of inter-legal horizon.

B. Beyond the "inside" issues' areas, something happens *externally*: the common good of a healthy environment faces interfering pretences from other fields of action: security, trade, human rights, to name a few. Accordingly, through the example of environmental studies we learn that, on the one hand, what intuitively belongs to a global concern is broken down into bits and pieces of regulation stemming from varying sources; on the other hand, our definitional tools are incapable of isolating in practice one "good" from the other (as self-contained). Good life is a value made of many, as much as security. Common goods might well be an articulation of a number of separate goods as well as tightened to other concerns. It is naïve to think of insulated security: overlooking the struggle for global resources, water, food, energy, and the like. Peace and welfare cannot seriously exclude ecological resiliency: large-scale climate change disruptions produce inequality, migration, hunger, and dissolve the fabric of settled societies. Similarly one-sided is thinking of human rights, State obligations, and climate as freestanding. Eventually, the qualification of a problem, in terms of, say, trade or human rights, results out of a choice in contingent occurrences, a matter of interpretive selections.

As Axelrod and Kehoane (1985, 239) wrote, pioneering in the '80s the turn to cooperation in international relations studies, there is a relevant mat-

[6] Adopted by the parties to the UNFCCC (into force: 4 November 2016). On it cf. Bodansky (2016).

[7] On the subject cf. Capar (2021), to whom I am grateful for on-going discussion. Further factor of regulatory complexity, epistemic/scientific authorities become intrusive: and unresponsive authorities are escaping traditional rule of law checks (cf. Palombella 2019c).

ter in world politics, that is *Issue-linkage*: "Most issues are linked to other issues. This means that games being played on different issues – different 'chessboards', (…) affect one another". IRs enlighten the *political* manoeuvre reducing pluralism to a pre-condition for State-centred bargaining. Although *political* negotiation can foster coordination, the question of pluralism and/or fragmentation concerning the law (that is, from a *legal* point of view) still needs to be addressed. The limited scope of legal regimes coping with complexity, their dis-ordered plurality proves to be still insufficient a legal apparatus *vis à vis* the unity of the "goods" or, say, the indivisibility of rights, or the transboundary nature of environment.

3. The Law, the System and Inter-systemic Questions: Accounting for External Norms?

Both "Issue-linkage", relations among authoritative entities, and wider problem(s) of common goods (or resources, like water, seabed, and so forth) show how inter-legality becomes the state of affairs, as it descriptively captures the crossing threads of originally separate legalities. However, further reflection has to identify the conceptual points that legal understanding should offer to account for the normative synergy produced by a variety of orders and regimes.

First, legal orders experience new forms in their relations to external sources, as well as a relativization of their exclusive normative authority (Roughan 2013). Since real "cases" are placed at the crossroads of multiple regimes, the law of the "case" looks more complex than the application of the only law sourced within one single system. Accordingly, inter-legality as a method should discuss doctrines traditionally premised on the selective functions of a fundamental rule (or a rule of recognition), which defines a valid norm according to its own system by excluding any other.

As is known, when it comes to the rule of recognition, Hartian legal positivism works through disallowing rules responding to external criteria of recognition. This method is suited to a notion of law perfectly sealed by the borders of a system[8], a notion at pains *vis à vis* two overflowing phenomena: on one side, the direct effect (when it is the case) or otherwise the internal application of external norms, as well as the recurrent concurrence with extraneous regulations; on the other side, the elusiveness of the regulated *objects*, within the reach of various jurisgenerative entities and hardly under

[8] Pino (2015, 198) wrote that given systems' interactions, the rule of recognition becomes "un insieme di considerazioni normative defettibili, che funzionerà più o meno come la ricerca di un equilibrio riflessivo". Cf. also Palombella (2002, 105-106).

the exclusive control of one single order. Both phenomena are critically interfering with the binary logic of a legal system.

The crucial issue concerns the main presumption of systemic self-contained-ness: to what extent has a legal order the power to determine what counts as law and what counts (only) as a fact?

In the current context, plural relevant legalities, which are validly entitled to discipline the same issue, entail consequence as to the identification of something as law: what cannot be done only from one point of view (say, from a "domestic" standpoint). There shall be a plurality of concurring validity judgements – due to validity criteria in each converging normative regimes –, that are ineffective in excluding each other. We are used to thinking, in the light of Hart's distinction between an internal (from a participant taking system's rules as guiding behavior) and an external point of view (from an observer taking the legal order's norms as a historical fact, in which she is not involved) (Hart 1994, 89), that the validity criteria of a legal system that is not "our" own, bear no direct value in normative terms. As a matter of fact, such an assumption falters because what is taken as a valid rule based on criteria different from ours might well feature as endowed with normative value, not just in its own system but *in the common context of the case as well*, where that system's legality is entitled to be itself of relevance. Any external observer might be called upon to take the standpoint of a virtual participant (Palombella 1998) because for a legal order involved in the case it can be necessary to assume the point of view of another competing legal regime as well. The long line of cases placed in between the control of different regimes of law (think as a start of the Mox Plant case[9] followed by a huge number of collision cases) proves decisive in this regard.

The inter-legality approach can be, then, considered as a method for understanding law amidst a situation in which the law in one single jurisdiction would not fully embrace the extent of the issue at stake (Shany 2019, 319).

In order to acknowledge some further import of inter-legal recognition, I mention two different examples, focusing on applicable laws and jurisdictional limitations.

Initially before a High Court of New Zealand (*Teitiota* [2013] NZHC3125) an environmental migrant, Mr. Teitiota, complained about the dramatic sea-level rise, the saltwater contamination, the scarcity of freshwater, the housing crisis, the people's fight for resources, and the consequent violence,

[9] According to the CJEU, EU rules were governing the issue raised by Ireland against the UK before the *International Tribunal for the Law of the Sea* concerning maritime pollution arising from an English power plant. (Case C-459/03, *Commission EC v. Ireland*, 2006 E.C.R. I-4635). Therefore, the case should have been raised before the European Court. But it was legitimately brought as well before the OSPAR under the Convention for the Protection of the Marine Environment of the North-East Atlantic and, as said, the ITLS.

while no sufficient adaptive policy had been effective. However, the Court did consider climate change impact irrelevant and unsuited to generate for the family of migrants, leaving the island of Kiribati, the *status of refugees:* the latter holds only due to persecution pursuant to the 1951 Refugee Convention. Notably, the Court considered it unreasonable to think otherwise and to consequently pave the way for huge population fluxes.

Refugee "specialized" regime, national obligations to adaptation measures[10], and human right to life (Art. 6, Covenant on Civil and Political Rights, 1966) look like separate sources bound not to meet. The scope and purpose of the provisions are legally defined as belonging to different and unrelated clusters. And still, Teitiota's situation, indeed, could be thought of as inherent in *all* of them.

However, in a pathbreaking 2019 decision by the Human Rights Committee[11], the overall legal context is comprehensively taken to matter: climate change and sea-level rise are held to possibly cause displacement of peoples, *potentially* triggering the *non-refoulement* customary obligation, thus acknowledging the extension of the (art. 33) refugee regime to threats to the right of life due to environmental risks (McAdam 2020).

Eventually, the *Kadi* case at the European Court of Justice is to be mentioned again and again as one of the most telling sample (Palombella 2019b). Famously, the EU Court of First Instance[12] (now General Court) rejected the complaint from Mr. Kadi against a regulation freezing his assets in compliance with a resolution of the Security Council and infringing his rights to defence and property. The denial of Kadi's right then was based on the supremacy of IL over the EU order, following a clearly *monist* conception of the rule of law. Contrarywise, the subsequent decision of the Court of Justice[13] defended Kadi's right to a judge invalidating the EU regulation. The triumph of the European primary law protecting fundamental rights was resting on a few rather "dualist" assumptions: the Court asserted that it was only scrutinising an EU internal regulation, not the UN resolution; the decision to safeguard Kadi's rights was held to have no bearing either upon the international legal order or the legality of the S.C. resolution.

[10] Adaptation is addressed in the United Nations Framework Convention on Climate Change (UNFCCC) (1992), art. 4. Later, major source of adaptation obligations the Paris Agreement (2015, into force 2016) esp. art. 7.

[11] Human Rights Committee (HRC), *Ioane Teitiota v New Zealand* UN Doc CCPR/C/127/D/2728/2016 (24 October 2019)

[12] *Kadi v. Council and Commission*, Judgement of the Court of first Instance, 21 September 2005 (on Case T-315/01). ECR II-3649.

[13] Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* (ECJ, Judgment 3 September 2008).

Either perspectives – the ECJ's dualism, or the First Instance Court monism – tend to be one-sided, that is, they only refer to the legal order of choice (as self-contained, the EU or IL) ignoring the normative relevance of the other. In both decisions, the inter-legal character of the state of affairs was concealed along with the simultaneous effect of norms sourced from different orders and serving countervailing objectives. Yet, both IL and EU law properly constituted the *law of the case.*

Taking the perspective of the law of the case changes the epistemic view by marginalising the issue of primacy among orders and dismissing the quest for unavailable formal priorities that would unjustifiably disregard the interconnection: that is, the concrete enmeshing at issue as the basis for substantial judicial reasoning.

Although on the material level the tussle between security and rights of defence cannot be overlooked, it is neglected *within* each separate orders, because it can only surface where their borders end, "in-between" and beyond the actual limits of their own jurisdiction. However, the real matter of a case is exactly in the middle, as a security issue as much as a fundamental rights' one.

There are examples of a Court making the interlegal choice, through a jurisdictional overstepping[14].

The inter-systemic character of the "regulated space" requires some corresponding perspective, one that inter-legality would help to provide, insofar as it takes the point of view of the composite law of the case. From such a standpoint, it has to solve not a problem of the absence of law, but, on the contrary, something closer to an excess of law (Palombella and Scoditti 2021).

The overlapping between the "systems" is not even solved by pluralist theories. A litmus test is given, for example, by the mentioned problem of global public goods: "authors on legal pluralism, such as Mireille Delmas-Marty and Nico Krisch" have little to say on the matter, they do not "focus on the challenges of global public goods. They do not, one might conjecture, because there is a tension between the operation of legal pluralism and the production of global public goods where processes of pluralist interaction will provide too little too late" (Schaffer 2013, 673).

Although acknowledging the autonomy and plurality of separated systems, pluralist theories are unable to explain and *legally* address the increasing problem of systems' interference: unless interference is solved by a higher rule of IL (as suggested by the late MacCormick, 1998 and 1992), which

[14] *E.g.* the ECtHR fully considered the normative value of a different legal regime as relevant in the case at stake, in *Al-Dulimi v Switzerland* App no 5809/08 (2013). On that, see Palombella (2014).

seemingly undermines true pluralism itself, the relations among the multiple legalities are to be left to some negotiation *inter partes*. Such a path is neither legally due nor legally disciplined. Although pluralists would acknowledge many sources, practices, and systems of validity (e.g., spontaneous, transnational, private self-ordering), they can less clearly make the most of the fact of *interconnectedness as a legal, not a political, question.*

On the contrary, inter-legality intimates that the diversity of *jurisgenerative* entities, regimes or orders all contribute to the question at stake, making for the composite law which governs it.

4. From "dialogue" to Inter-legality: Concluding Remarks

Dialogue's renowned topoi are ambiguous tools in this respect, if not belonging to a still different understanding (Kassoti 2015). For sure, *equivalent* protection[15], the Solange principle[16], the counter-limits in the Italian constitutional doctrine[17], as well as the margin of appreciation, the (still debated) advisory reference to the ECtHR (respectively, protocol 15 and 16 to the ECHR), up to the preliminary reference at the CJEU (art. 267 TFEU), are all possibly fostering dialogue, not only by rendering uniform application of supranational rules, but also by defining compromises and interpretations which allow, say, the application of EU law in a national context, or, in the case of the ECHR, providing reasons for a wider latitude of the national assessments implementing Convention's rights. However, *dialogue* in its very function has still to deal with two legal orders addressing their mutual relations.

Consequently, recurrent failures or "resistance" *vis à vis* European or IL on behalf of States hardly come as a surprise. We recently reached a further weakening of internationalist faiths, unconditionally supporting the international order of laws. More reactive attitudes flourish even *vis à vis* the EU from within, that is, from its Member States. The well-known identity argument (often a tool of national resistance: Lustig and Weiler 2018, 315) has not been raised only by "illiberal" members, like Hungary or Poland (Palombella 2018): it can be traced back to the German *Maastricht Urteil* and the *Lissabon Urteil*[18], and the latest decision by the Federal Court concerning the ECB

[15] See ECtHR, 30 June 2005, Case No. 45036/98, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland.*

[16] *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (1970) Case 11/70, "Solange I". The next decision *Re Wünsche Handelsgesellschaft* (1986) BVerfGE 73, 339, was known as "Solange II".

[17] At the Italian C.C., it is explained in the decision "Frontini": C.C, sent. n. 183 (1973).

[18] Respectively, BVerfG 89, 155, 12 October 1993 and BVerfG 123, 267, 30 June 2009.

Quantitative Easing measures[19]. Resistance is meant by the Russian and British reluctance to uphold the ECtHR rulings on prisoners' voting rights (Sajo and Giuliano 2019) and similarly reflects the long line of cases showing the consistent issue of the "uncooperative courts" (Bobek 2014).

All in all, "dialogue" is more often premised upon an older view of sovereignty, authority, and the fabric of the world's legal orders. It conceptually connects to the self-understanding of each Court as *gatekeepers:* not necessarily keen to consider their interlocutors' reasons for their own sake. There is no clear direction guiding "dialogue": it is not usually prompted by the concern for bridging the legal diversity and separation among relevant regimes. More often it moves from the imperative of winning the stalemate between two legal orders and defining relational conditions among the players: following the separate or parallel circles' metaphor (Triepel 1899, 111 recalled as dualism in IL). The confrontation between two law's orders not only takes place *from* the angle of one or the other system, but it *remains* in one or the other: contrariwise, it should better be shifted onto a middle ground, the legal terrain within the remit of the case at stake. As remarked in the foregoing, the latter is imbued with norms stemming from the diverse legalities disciplining the same or interconnected objects.

Accordingly, what is relevant is not that a kind of dialogue occurs, but the epistemic, legal scenario through which it happens. Dialogue might be premised on a political track or on a legal assessment, *in the view to balance the justice-related issues to be cooperatively solved*. It all depends on which setting dialogue is placed: systems can even talk to each other in mutually *informative mode*, but still relatively closed within their own self-related normative logics; if they are mutually recognized, instead, as normative in the state of affairs to be addressed, such recognition is likely to be at odds with self-referential (monism/dualism, the "gatekeepers", last word and primacy race, etc.) attitudes. Conversely, the full consideration of multiple normative claims in the light of inter-legality, is not intended to allow for the unreasoned acceptance of subordination to *another legal regime*; regardless of how that system of law might accommodate (or "digest") an external normative claim, what eventually counts- and inter-legal method entails- is only a fair consideration of the countervailing legalities, with reference to the consequence on the ground.

[19] The F.C.C. (Second Senate) on May 5, 2020 (2 BvR 859/15) decided that the European Public Sector Purchase Programme (PSPP) adopted by the European Central Bank is contrary to the German Constitution. To be seen also the decision by the French Conseil *d'État* on April 21, 2021 or the new opinion of the F. C.C. issued on April 15, 2021: although rejecting objections against the Next Generation EU program funding, it comes with a number of caveats concerning the future and confirming that the Constitutional Court retains the *power to scrutinize* EU law under the German Constitution. On these issues Chiti (2021).

The preliminary reference raised by the Italian Constitutional Court and the CJEU decision on *Taricco*[20] is a telling example of the watershed between political adjustment and legal, case-centred decision making. At first sight, in its preliminary reference to the CJEU, the C. C. exposed an unquestionable objection against the CJEU's interpretation of EU Law which would have led to a collision course *vis à vis* constitutional principles. According to the C. C. the nature of the prescription time for crimes prosecution is substantive, not merely procedural: accordingly, it generates a right for the defendants. The European rule, as interpreted by the CJEU, was, instead, premised on the *procedural* character of the prescription, which made its respect and application open to a discretionary judicial choice. The latter, according to the CJEU, had to depend on a variable judicial assessment of whether the infringements had reached a quantitative amount hardly hitting the financial interests of the Union. In the words of the C. C., such judicial discretion on uncertain bases would be unconstitutional in the Italian order, defeating the rights of the defendants and the principle of legality.

Although the issue was of concern because of the *conflict of primacy* between the Italian and the EU orders, the subsequent answer from the CJEU shifted the view from that conflict to the point of judicial fairness and justice delivering. Revolving around the fabric of the case, it provided full consideration for its inter-legal structure, up to saving the milestone *principle of legality.* The new assessment could not be done just by sticking to the European order alone. The rationale in the final decision from the CJEU integrates with the normative claims generated by the two different legal orders, whose relations in the given circumstances jointly constitute the *law best suited to the case.*

To conclude, the disregard for interconnections is a sign of the obfuscating effect of conceptions that might be not fully sufficient and consistent with the life of law as it is. The foregoing consideration should have shown that it is time for a deeper reflection and a better reassessment of what law is in inter-legal occurrences.

[20] The CJEU (Grand Chamber) 8 Sept. 2015, Case C-105/14, *Taricco and Others* considered the reduced prescription time of fiscal crimes, illegitimate for damaging the interests of the EU. The Italian C.C. issued a request for a preliminary ruling 2016, n. 24/2017, asking the Court to consider the nature of the prescription rule in Italy, and the implied relevance of the legality principle. The CJEU has then revised the scope of its precedent ruling (CJEU, 5 December 2017, Case C-42/17, *M.A.S. and M.B.).*

Gianluigi Palombella
Institute of Law, Politics and Development
Sant'Anna School of Advanced Studies,
Piazza Martiri della Libertà 33
56127 PISA
g.palombella@santannapisa.it

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