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(Relative) Authority and Inter-legality

(doi: 10.4477/104016)

Rivista di filosofia del diritto (ISSN 2280-482X)
Fascicolo 1, giugno 2022

Ente di afferenza:
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Abstract
The question of how to legitimize authority is generally addressed with reference to Raz's service conception of authority. Yet, his functional explanation does not concern itself with how authoritative institutions are empowered at the outset. Even though Raz's monistic account of authority is coupled with input legitimacy and pluralized with Waldron's analysis of the inter-institutional allocation of authority, it does not assist us in inter-legal situations. As inter-legality is a theory oriented towards finding legitimate ways of legal intersection, this article aims at showing how authorities between different legal orders may engage in a legitimate relationship. In doing so, it benefits from Roughan's pluralistic and relational account of authority coupled with a conjunctive justification thesis.
Keywords: Authority, Justification, Inter-legality, Legitimacy, Institutional pluralism.

> When I hear myself express these sentiments,
> I say to myself: "Dream on".
>
> (Joseph Raz)

1. Conjunctive Justification of Authority

1.1. Multiple Challenges to Hakan's Authority: How to Justify Authority?

Imagine a small, ostracized community in Latin America, living in total isolation from the rest of the world. It is governed by a ruler, assumed himself as the leader of community, just because one day he took the initiative to call himself *Hakan*[1] (*Hakan the first*). As an isolated community, they lag highly

[1] *Hakan* is a very old Turkish name meaning supreme ruler or emperor. From now on, *Hakan* will be used as a shorthand of presiding *Hakan*.

ISSN 2280-482X

behind in the race of modernization and still subsist their life as hunter-gatherers. After a few fruitless attempts to domesticate animals, they give up trying and decide to use animals only for meat consumption. Even once they try to use an ox as a watchdog, yet any effort to educate it renders futile. As it becomes obvious, *Hakan* fails so far in his attempt to provide basic services to his society. One day, they encounter an unforeseen, strange animal, having long hairs with a tail. Despite its resemblance to a wolf, it is much bigger and runs much faster. Having caught the animal (horse), a discussion burst as to how to use this animal. On that occasion, the subjects begin to question *Hakan*'s authority, complaining about his past failures in bringing novelties to the community. They are right at their dissatisfaction with the quality of his service, as they are still giving each other a piggyback to carry out their daily activities. One of the inhabitants, by turning this into an opportunity, finds a use for this new animal, proposing to ride it rather than piggybacking each other. This is the moment when the old *Hakan* is overthrown and replaced by the new *Hakan* (*Hakan the second*). *Hakan*, rolling up his sleeves, gets started well and meets the expectation of the community by planning hunting, organizing regular expeditions into the further lands, and most importantly helping the inhabitants to reach their objectives. Long story short, *Hakan* gains his legitimacy by providing a service to society. Perhaps something which might provisionally be taken as showing some family resemblance with the underlying rationale supporting what is argued by Raz in his service conception of authority (Raz 1990).

Suppose that *Hakan*'s isolated community, in a very short period, undergoes radical transformation by establishing the basic institutions for the well-functioning of a legal system (Raz 2017, 142). In a way reminiscent of Hart's mythical transition from primitive to modern society, *Hakan*'s community creates institutions for legislative, executive, and adjudicative functions. Under these conditions, it can be asked whether *Hakan*'s legal system approximates the idea of a comprehensive legal system whose two conditions are extensive responsibility within its domain and freedom from external legal constraints (Raz 2017, 145-147). Given that *Hakan*'s community is immune to external interference, the second condition is automatically satisfied. As for extensive responsibility, it calls for visiting Raz's service conception of authority because it pertains to the authoritative use of legitimate power.

For Raz, the authoritative use of power is legitimate not because of the consent granted from legal subjects but because it serves them by allegedly helping them to achieve their own objectives. For instance, it solves coordination problems, saves them from indeterminacy, brings clarity and predictability into their lives by offering exclusionary reasons for action. *Hakan* is, therefore, thought of as authority and might be welcomed by the community even in the absence of a full-fledged democratic legitimacy. As such, the

reason for the justification of his authority rests mainly on the service it provides to society: discovering an efficient means of transportation.

How authority *comes into existence* does not concern Raz's functional approach to authority. In fact, it is "parasitic upon the (existence and) identification of authority" (Roughan 2013, 120). As such, the question of standing – who should be an authority and through which process – does not have a place in Raz's functional approach. However, even a functional justification of authority should not disregard the question "who should have it" as Roughan believes (Roughan 2013, 127). In today's modern legal orders, justification of the standing condition – endowing institutions with authority – is grounded in a process where the principles of autonomy and self-determination play a key role (Roughan 2013, 243). So understood, *Hakan*'s service-providing function does not meet the standing condition of legitimate authority in today's legal orders and democracies, and he may only be "a natural leader whom other people have an interest in following" (Roughan 2013, 128). Thus, and consequently, it may happen that one of the members of the community calls into question the legitimacy of *Hakan*, claiming that the people never give their explicit consent to the *Hakan*'s authority. Moreover, they may even choose a new *Hakan* (*Hakan the third*) through a process of democratic participation based upon the equality of members of the community. Yet, Raz's service conception of authority maintains its silence in addressing whether *Hakan the third or second* is the legitimate authority in the community and whether the premise of consent would make a difference. The only tool we have at our disposal is to ask the following question: Which one does better help individuals comply with their underlying reasons? But this leads us to a dead-end because Raz's theory is interested in how to legitimize authority that was already established.

Functional justification of authority may not be that problematic for Western domestic legal orders where authority is brought into existence through a democratic and participatory process. However, it becomes challenging and wanting when increasing complexity of state's internal administrative apparatus and highly connected yet fragmented orders in the extra-states setting are considered. For once, the exercise of authority in contemporary States is very often in the hand of unelected institutions (think of independent authorities, technical committees, epistemic agencies, and so forth) because of the qualitative and quantitative increase in the services to be offered. Therefore, not even Raz's theory can simply avoid the consideration of the democratic credentials of authority or simply start from presupposing it. And this calls for rethinking the democratic base on which his functional justification of authority is rested.

Or at least that is the challenge that Jeremy Waldron intends to focus on when he advances a hybrid theory designed to explain the inter-institutional

dimension of authority that exists within the borders of one legal order, one single State. Questioning the sustainability of Raz's conception of authority, tailored to explaining the relationship between a legal system and the individual (Raz 1986, 73), he examines instead how internal institutions pay respect to each other's decisions. When a question of "common concern, which have to be settled, one way or another" was already duly settled (Waldron 2003, 49), such a settlement, according to Waldron should be respected. For instance, when "legislature has spoken to an issue on which it is competent to speak, the courts should not even begin to second-guess it, not even if they are sure they could come up with a better answer" (Waldron 2003, 67). This is in fact nothing more than the prioritization of law-making institutions, namely parliaments, over the judiciary. This claim makes sense, especially when it is considered in the light of Waldron's core case against judicial review where he rejects the idea of judicial supremacy (Waldron 2003, 2005).

As authoritative institutions are collectively responsible for the justification of authority towards individuals (Roughan 2013, 67), this entails that courts are obliged not to disrupt the already established legitimacy relationship between an institution and an individual (Roughan 2013, 68). This duty, however, is predicated upon the former's meeting the conditions of functional justification (which is conceived with reference to the individuals). The priority given to elected institutions over the unelected ones instills a modicum of procedural (democratic) justification in Waldron's account, which also makes us consider it as a hybrid theory (Roughan 2013, 87). However, the alleged priority of democratic institutions reduces the likelihood of its success in extra-state legal orders, as functionally legitimated institutions, say international organizations, play a much significant role.

Raz looks at the relationship between a legal system and an individual in his functional legitimation of authority (Raz 1986, 73), with no regard to specific institutions within the legal system. Nor does he pay heed to democratic legitimacy. Compared to Raz's holistic-monistic account, Waldron's institutional turn enables us to strip off the holistic dimension of authority by tolerating plurality of authorities within a legal system. However, it is still doubtful whether it may account for authoritative relationships occurring *between* interacting *legal orders*, as it is designed for domestic legal orders with a clear bias towards allegedly democratic institutions.

1.2. Conjunctive Justification Thesis and Plurality of Authorities

One day our isolated but institutionalized community comes indirectly into contact with another community. *Hakan* is confronted with a migration crisis after he constructed a coal-fired power plant at the far end of his territory

whose emissions do serious harm on air quality of the adjacent community. Its residents (let us call them *Han*), not tolerating the deteriorating air quality begin emigrating to the lovely and peaceful country of *Hakan.* Nonetheless, *Hakan*'s citizens start to impugn his authority, arguing that *Hakan* is responsible for preventing after causing the refugee influx. They discuss the view that *Hakan*'s service is only confined to its own territorial borders, demanding that it be responsible for maintaining sustainable relationships with the *Han*'s community. However, this demand falls largely on deaf ears, and *Hakan* refuses to establish friendly relationships with *Han*'s community by closing the doors to the refugees. This was the time when *Hakan the third* is overthrown by its successor *Hakan the fourth*, who promises to maintain legitimate relationships with other legal orders.

This foregoing incident invites us to rethink the legitimacy relationship between authority and subject, on the one hand, and between different authoritative institutions on the other. A novel and inclusive theory of justification is needed as neither procedural (standing) nor substantive (functional) one succeeded in addressing the challenges encountered in *Hakan*'s society. As shown above, legal orders, in today's highly interdependent global legal geography, cannot but produce externalities engendering either legitimacy gap or surplus. These externalities lead domestic legal orders to eschew impairing each other's internal legitimacy relationship. To put it differently, when their policies generate justice-related externalities, states cannot take shelter in the right to be left alone (Kumm 2016, 239). They are restricted by side-effect constraints (Roughan 2017, 113). Accordingly, Roughan proposes the conjunctive justification thesis (CJT), suggesting that authority, if it is to be accepted as legitimate, should rest on "how those who have the standing of authority actually use their authority" (Roughan 2017, 129). However, this responsibility of using authority in a legitimate way (say, providing service) is not confined to the internal relationship of the state with its citizens, but also extends to its external relations with other legal orders and their citizens.

The CJT goes beyond the theories proposed by both Raz and Waldron, as it includes side effects as well as functional and procedural reasons. Yet, it is not capable of providing a solution to inter-legal cases because it does not concern itself with the relationship itself. Under the CJT, it is sufficient for authoritative institutions to be responsive to any institutions originated from any legal order. So, it bases the justification of authority on the self-assessment and ensuing self-restraint of institutions, which is prone to be a mono-perspectival one. As the CJT does not discuss the quality of the relationship as such and makes it a condition for legitimate authority, it does not address head-on the question of relative authority. For this, we must wait until seeing authority through the prism of legal institutionalism.

2. Limited State, Relative Authority, and Sovereignty like Virginity

2.1. State of the Art: The World We are Living in

Self-contained domestic legal orders, once seen as the paradigm case of legal analysis, are today regarded as an "endangered species of law" (Roughan 2017, 161). In contrast, today's new normal is "the interwovenness of legal orders" (Klabbers and Palombella 2019, 8). It is, nevertheless, doubtful whether the monistic account of authority has always been dominant as it was held to be, not least for the legal orders emerging after the Peace of Westphalia. For they also contain an internal organization, which is plural to a greater and lesser extent, as best exemplified by the jurisdiction-gubernaculum duality (Palombella 2009). It is, thus, not far-fetched to suggest that domestic legal orders are inherently plural, seen from an institutional perspective (Krytsis 2015), provided that authoritative use of power is allocated between legislator, executive, and judiciary. Put differently, "supreme legal power ascribed to a single organ is not necessary even in a unitary state, and incompatible with the very frame of government of a federal state" (MacCormick 1999, 129). So, the impact of globalization is nothing more than rendering the implicit plurality embedded in domestic legal orders explicit. What distinguishes the latter from the former is the space this inter-legality takes place; inter-legality today is also visible beyond the boundaries of territorial legal orders.

The main problem with the monist account of authority arises when considering its incapacity to protect legal subjects from external intervention caused by globalization. For once, states have lost their ability to introduce themselves as general ends entity (Palombella 2019a, 369), which was one of the main features of the emerging national legal orders after the Peace of Westphalia (MacCormick 1999, 124). Today, their regulations reach far beyond territorial boundaries even if they do not intend to regulate the globe, impairing the legitimate relationship of authority between states and individuals. We are witnessing a double process of de-territorialization and over-territorialization (Besson 2019, 106), which creates a major challenge to "the comprehensive exclusive conception of state authority and jurisdiction" (Besson 2019, 98). As such, the perfect match between the scope of legitimacy and sovereignty is broken down, as "states are (not) immune from interference by other international agents in all matters that fall within the legitimate jurisdiction of their governments" (Raz 2017, 158-159). This mismatch impairs three main features of state jurisdiction: i) comprehensiveness (in the material scope), ii) exclusiveness (eliminates the authority of other legal orders), and iii) pre-emptiveness (prevents legal norms coming

from other legal orders unless they are incorporated) (Besson 2019, 109-112). This results in either a legitimacy gap or plural legitimate authority.

As states are on the verge of losing their position to be a paradigmatic case of law, though not yet encountered a serious contender to dethrone them (Berman 2016, 157), it is necessary to rethink legitimate authority. That "the nature of authority () has changed" (Klabbers 2021, 419) even if it is not yet totally liquated (Krisch 2016) invites us to discover "in more detail the ways in which state law is limited, and the ways it is integrated within international laws and institutions" (Raz 2017, 159)[2]. And no need to be soothsayer to claim that this will be the main task of legal theorists in the upcoming years, even if this amounts to making "speculative analytical jurisprudence, i.e., "to evaluate some of the dominant trends in analytical jurisprudence in light of likely developments" (Raz 2017, 161).

2.2. A Theory of Limited State

It is wrong to assume that once upon a time in the past states were liberated from the normativity engendered by international authoritative institutions (Núñez 2019). It is no more possible to be content with the consent-based account of an international legal order, particularly considering the transformation of international law following the Second World War (Dworkin 2013). For instance, today's international law contains universally binding norms (jus cogens) by which states are bounded even without their consent. Further, progressive interpretations of binding treaties go explicitly beyond the consented meaning thereof (Article 2(4) of the UN Charter) (Dworkin 2013, 6-8). Additionally, there are also some sectoral areas, say international criminal law and human rights, that claim universal jurisdiction over the domestic legal orders (Besson 2019, 105). However, this is not a novel phenomenon recently discovered by Dworkin; to the contrary, today the insufficiency of consent-based account of international legal normativity is a well-settled view on which many scholars converged (Tasioulas 2021, 4; Jovanovic 2015, 453-455). It is, therefore, arguable that despite the substantial erosive effect of international law on the sovereignty of states and consent-based account of the international legal order, it is not true to claim that it is the outcome of the developments that occurred in the last 70 years. In fact, it "has always been the case that in some ways international law limited the independence of states" (Raz 2017, 151).

MacCormick's account of post-sovereign state attempts to address this challenge, relying on the view that there are two different meanings of sover-

[2] Besson 2019, 118, 123.

eignty depending on the vantage point taken. Seen internally, it refers to the internal design of the legal order, asking the question of whether any institutional body or person is enjoying an unrestricted power to do whatsoever. Yet, external sovereignty corresponds to the absence of supreme legal authority over domestic legal orders (MacCormick 1999, 129). This distinction allows us to carve out a space for the limited or divided sovereignty, for even if states were sovereign externally, it would still distribute its internal sovereignty among different authoritative institutions in a way that prevents legal monopoly (MacCormick 1999, 130). As it is apparent, this does not contradict with external sovereignty, which "is granted by international law to each state to exercise legal control over its own territory without deference to any claim of legal superiority made by another state or organization" (MacCormick 1999, 129). Here, he draws his argument on the view that states as participants in the game of international law are, at the same time, accepting the legitimate claims of the other states (MacCormick 1999, 104-105). Namely, the mere awareness of (external) sovereignty, even if it is grounded in state-consent, attests in fact to the existence of international legal order. It does so because the very meaning of consent and what it means with the rule of non-intervention derives from international law. It is important to emphasize that this is not an argument from *pacta sund servanda*, rather it goes at the root of how it gains its meaning and legality. It is about "forming a world" between different domestic legal orders by creating a common ground via "law on laws" (Besson 2019, 127-128). As Besson lucidly affirmed in explaining her idea of dual legality of jurisdiction, "modern state's jurisdiction is not only set up by domestic rules, but also by international ones. There are two sets of rules stemming from two legal orders for one single jurisdiction […]. It would be wrong, therefore, to see international law as only setting constraints on state jurisdiction: it also constitutes it in the first place" (Besson 2019, 102).

Even though MacCormick is highly criticized when he withdrew from his thesis on radical pluralism in favor of pluralism under international law (PUIL), it is misleading to attack MacCormick's thesis, claiming that this is nothing more than "a new form of normative unity and therefore a transcendence and so a denial of the very pluralism" (Walker 2011, 378-379). For it is one thing to say that domestic legal orders are grounded in international legal order, it is another to claim that international legal order constitutes a hierarchic legal system. Thus, the coexistence of international law's normativity with external sovereignty shows us that international law though falls short of being deemed a full-fledged legal system, exerts enough normativity on domestic legal orders, penetrating inside them and having a direct influence on the legal subjects.

Additionally, this dual aspect of sovereignty allows us to avoid the sovereignty paradox, according to which either States are sovereign or inter-

national law is not law. There are two main flaws here. First, sovereignty is wrongly thought like property, which "can only be given (by national legal orders) when another person (international one) gains it" (MacCormick 1999, 126). However, it is better to think of it like virginity, "something that can be lost by one without another's gaining it" (*Ibid.*). So understood, what we are experiencing in the post-sovereign era is not the diminishing of sovereignty but more the change in its form and shape.

The second flaw is the insistence on thinking about the law only through the prism of legal systems, as if the law cannot exist without being included in a legal system, be it domestic or international (Palombella 2019b, 40-41). However, they are, as affirmed by MacCormick, "thought objects" not factual entities. It seems convincing for legal officials who assume governmental roles to believe "in the idea of law as a systemic enterprise […] as a kind of 'regulative ideal' (MacCormick 1999, 113); nevertheless, it may have distorting effects by blinding us to see non-systemic legal normativities. Hence, radical pluralism's denial of international law's normativity is one of the reasons why MacCormick dismisses it as unrealistic. Radical pluralism concedes that "not every legal problem can be solved legally", not because of the legal gaps but because of "a superfluity of legal answers" (MacCormick 1999, 119). By endorsing the view that "we need not run out of law (and run into politics)" in case of "conflict and collision of systems" because they "do not occur in a legal vacuum, but in a space to which international law is also relevant" (MacCormick 1999, 120), he finds a legal ground for the relationship between states.

3. From Systemic to Institutional Pluralism and Relative Authority

What MacCormick has done with this move from radical to moderate pluralism might be described as a turn from systemic to institutional pluralism (Krisch 2011, 389). Contrary to the former whose focus is on the plurality of legal systems that run parallel to each other, the latter marks a shift, placing the emphasis on the institutions[3]. This shift in the perspective away from legal systems to institutions renders it more likely to observe how authoritative institutions embedded in different legal orders interact with each other and allows us to derogate any concerns about legal system to a secondary status. It also saves us from the burden of defining what a legal system is from the outset. Additionally, it shows us how our internal legal orders already oper-

[3] Here what institution stands for is confined to authoritative institutions, and thus institutions such as contracts, sale, marriage, etc. is excluded from the scope of analysis.

ate in a heterarchical environment where "important questions of final legal authority remain unsettled", which "is neither a defect nor temporary inconvenience" (Halberstam 2008, 3). As the relationship between legislature and judiciary is regarded not as a one-way street, but as a "joint institutional project of governing" (Halberstam 2008, 13), this leads to a framework of shared authority where different roles allocated to the various institutions. The doctrine of separation of power is a case in point, which is less about "a straightforward use of coercive force by public authority" (Waldron 2013, 456) than a process of articulated governance in which "the various aspects of law-making and legally authorized action are not just run together into a single *gestalt*" (Waldron 2013, 457).

This brings us to the question of how to establish legitimate inter-institutional relationships. As aforementioned, neither Raz nor Waldron address this question. To fill this gap, Roughan develops a conception of "relative authority", insisting that authority be saved from its monistic account grounded in systemic legitimacy and its relativity be accepted (Roughan 2017, 5-6). Adding the inter-authority relationship as one of the conditions for legitimation to her CJT, she denies taking legitimacy conditions of authorities independently. Searching for the "legitimate inter-authority relationships" (Roughan 2017, 6), she combines her CJT with "a relativity condition, which test the interdependent legitimacy of authorities and requires justified relationship between overlapping or interactive authorities" (Roughan 2017, 136). So rather than individual responses of legal orders to inter-legality, relationship as such will be the main concern of our analysis. This forces us to leave behind the monist account of authority and embrace the concept of relative authority. All in all, what is done by Roughan with her theory of relative authority is to think of authority not only in terms of reasons but also of relations[4]. It is so from the moment on *Hakan*'s small and ostracized community is transformed into an institutional form.

It is worth emphasizing here how the CJT creates a bias towards establishing cooperative relationships by "plac(ing) the onus upon authorities to interact properly" (Roughan 2017, 142). It does so because the functional justification of authority is committed to providing service to society by bringing a modicum of predictability and stability. So, functional justification chimes better with cooperative relationships than conflictual ones (Roughan 2017, 139). This is best exemplified in the EU context where domestic courts strive for maintaining sustainable relationships with the CJEU thanks to the Solange method. Yet, it may happen, as exemplified in the *Weiss II* saga, that procedural/democratic justification impels them to contend against the

[4] See for the seminar given by Nicole Roughan in the Jurisprudence discussion group at the University of Oxford, https://www.youtube.com/watch?v=jKGmVUYGryU&t=417s.

CJEU's ruling. As may be implied from this saga, the justification of an authoritative relationship will always be dependent on the context.

4. Conclusion: Relative Authority as Part and Parcel of Inter-legality

Inter-legality is a recent attempt to theorize overlapping legalities, which are not addressed by monistic, system-based and state-oriented accounts. It argues that when legalities interact with each other, it is crucial to change perspective, avoiding legal system-focused approaches which in the end yields to either monism or dualism, and to search for a case-based solution to the problem. This case-based approach will invite us to embrace a pragmatic attitude without falling victim to neither an abstract morality nor a political compromise. Further, it will help us overcome and not succumb to the comfort zone of unitary perspective of either legal order (Klabbers and Palombella 2019, 2), suggesting that a novel "comprehensive and composite" norm or legality will surface (2). Inter-legality may, therefore, be classified as a *dependent* or *epistemological* theory, grounded in "existing ontological foundations of law" and confined to the analysis of intersections "between legal orders or spaces" without "decid(ing) what counts as a legal order" (Klabbers and Palombella 2019, 10). So, it draws our attention to the so-far marginalized and somehow problematic intersections, claiming that the "legal" does not stop at the borders of other legalities, rather "*interconnectedness* is itself a legal situation" (Palombella 2019a, 378). Rather than seeing intersections something to be managed politically[5] or through tapping the unexplored potential of international law as a higher order law[6], inter-legality constructs "a kind of continuum – it captures the legal compound" by decoupling legality from validity (*Ibid.*).

This epistemological shift from center to periphery, namely, to the point of intersection, enables us to bring the "blind spots" into view, which is the by-product of every legal order, and to see "the dark(er) side of law" (Kratochwil 2019, 49). In analyzing Hobbes' claim that there is no injustice when there is no law, Kratochwil pays attention to an "old Roman adage, *summus ius, summa iniuria* (the highest justice is the highest injustice)" (Kratochwil 2019, 61). This phrase may be re-interpreted, drawing on Cover (1983)'s

[5] See, e.g., Fischer-Lescano and Teubner 2004.

[6] See, e.g., McLachlan 2005 (advocating for the sufficiency of article 31(3) in solving conflicting international norms); Pulkowski 2014 (developing a theory grounded in Habermas's discourse theory in which he argues to manage inter-regime conflicts appealing to "regime-transcendent" discourse rules).

idea of interpretation as a *jurispathetic* activity, as follows: "*ubi ius, ibi iniuria*". Namely, whenever a legal system regulates a specific area, it cannot but do, at the same time, create externalities for those not directly integrated (Lindahl 2018). This inescapable epistemological blindness brings about legal injustice, which is invisible from the brighter side of the moon[7]. The injustice created by the law's itself surfaces, say, in the aftermath of revolutions, internal wars, and mass violence through the demands of "transitional justice" (Kratochwil 2019, 61-62). Inter-legality plays a role analogous to that of Raz (1979)'s account of rule of law; it is a negative virtue drafted to eliminate the legal externalities by showing us the darker side of any legal order. This is best captured with the idea of "avoiding injustice" (Klabbers and Palombella 2019, 16), and here the injustice escaped is the one that is engendered by the law itself.

Seen in this light, Roughan's CJT, including side-effect and procedural reasons, suits very well into the project of inter-legality, for they prod us to see how legal orders produce legal externalities whose cost is born by other legal orders. Further, her account of relative authority, making the relationship between legalities a condition for the justification of authority, impels us to go beyond the monistic theories of legitimate authority. Even though some treat Roughan's account of relative authority as part of a tradition plagued by the system-based approach to legality (Taekema 2019, 79), it is in fact misleading, particularly when her theory is viewed through the lenses of legal institutionalism. As authoritative institutions are necessarily plural, the idea of relative authority not only transcends the borders drawn by legal orders, but also enables us to focus on the point of intersection, just as inter-legality demands from us. Furthermore, relative authority entails that "justification requires practices of robust recognition" of another authority, which in the end "transmits value between authority and subject"[8]. Recognition as a transmitter of authority's claim to legitimate use of power, is in fact "the heart of inter-legality" (Chiti 2019, 276).

Further, despite inter-legality's explicit emphasis on the process of adjudication by stressing the importance of how case-based approach plays a crucial role in seeing the composite law at the point of intersection, it is not just a theory of adjudication. Further implications are flowing from the role inter-legality plays in adjudication, which may help us rethink our traditional concepts such as legal order, sovereignty, and authority. And so inter-legality, though delves into deeper compared to the others, does not seem incompatible with Raz's account of limited state and MacCormick's PUIL[9]. It is

[7] See how uninclusive global regulations may generate legal injustice: Çapar 2022.

[8] *Supra* note 4.

[9] Particularly when seen in its thinnest light, see, e.g., Eleftheriadis 2010 and Del Mar 2014.

because PUIL enables us to carve out a space for the role that international law may play in its relationship with the other legal orders, be it systemic or territorial, without falling victim to the constitutionalist aspirations. If this role is thought as limitations imposed on states concerning the minimal conditions for peaceful co-existence, rather than as a legal system assigning validity to its sub-level legal systems, I do not think that this creates a problem for inter-legality. Contrariwise, it creates the second legality which resists the domination of powerful legal orders, be it territorial or systemic (Palombella and Scoditti 2019).

As to the relationship between authority and inter-legality, one further clarification is needed. As aforesaid, inter-legality has a particular interest in adjudication when multiple norms are flowing from different legal regimes and orders claiming different outcomes. However, diverse interpretations of one normative statement by various authoritative institutions may also generate an inter-legal situation. It is because inter-legality requires that norms, which are not members of a legal system, as well as those belonging to it, are relevant to the case. So, not every relevant norm at stake does originate from a single legal order (Psarras 2016, 113). Indeed, this gap between validity and legality is not alien to legal positivism (Jovanović 2019), considered the judge's power to use discretion in hard cases (Hart 1961) and the importance assigned to the law-applying institutions as to settle the identity of legal norms (Raz 1986). Viewed in this light, inter-legality does include situations where one norm is construed differently by respective authorities as well as where distinct norms come before a single authority. As such, authoritative institutions interpreting the norms matter as much as norms applied to the case (Yuval Shany 2019, 319).

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