Legal Interpretation, Human Rights, and a New Jurisprudence

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In what sense do human rights influence or condition the theory and practice of legal interpretation and, through this, transform the general configuration of legal science?
In answering this question, which is much more difficult than it might appear, we have to presuppose at least two theses, which cannot be discussed here and must be taken for granted.
The first thesis affirms that interpretation as activity and method of research on meanings depends on the object to interpret and models itself on it. The phrase object to be interpreted must be taken to mean not only the type of sign that communicates the meanings, but also, and more broadly and profoundly, the type of meaning to be understood and its truth status (whether, for instance, of a theoretical or a practical character). As a result of this thesis it must be affirmed that understanding and practice of legal interpretation depends on the concept of law and legal science that we presuppose.
The second thesis is apparently opposite to the first one. It affirms that in the field of practical life interpretative activity is an integral part of the object to interpret, which does not properly exist outside or without interpretation, so it can be said that interpretative procedures model the object and cause it to exist in a certain way. The consequence of this thesis is that the concept of law that we have depends on legal practice.
Human rights concern legal interpretation from two points of view, connected to one another and yet distinguishable. On one side according to the first thesis as an object of legal interpretation human rights require special methods that are not usual or are not admitted in the specific tradition of codified law (with particular attention to the teleological method and to the method that gives weight to consequences). On the other side, because of the pervasive character that the presence of human rights has in relation to all legal experience, the interpretative approach to human rights is communicated to all positive law and helps to remodel the general concept of the latter on the basis of the second thesis presupposed.
We will now limit ourselves to explaining better this double influence of human rights on the theory and practice of legal interpretation.

Moral rights and legal rights

The typically Anglo-Saxon distinction between *moral rights* and *legal rights* has legal implications which are not to be neglected. It tells us that the ultimate justification or foundation of legal protection lies not in the will of the sovereign but in the moral status of the human person. The fact that individuals and groups have certain forms of protection available is not the basis of their rights, but if anything the sign of the recognition of the fact that the goods in question are of such importance that it would be wrong to deny them to the person. This means that there are sources of law that are not strictly legal , that is to say that human dignity itself is a source of law, and therefore that legal science derives its object from it in the same way as it derives it from official legal sources.
In order to interpret and apply human rights we need to have recourse to a complex articulation of highly controversial political and moral doctrines. Consequently, the work of concretization of rights, their implementation and operativeness in national and international contexts necessarily resolves into a debate on the reasons that make certain rights fundamental, since it is only in this way that we can specify to whom they must effectively be recognized, on what conditions and when and how they can be exercised and protected.
This debate is taking place today in all public forums, not only in legislative assemblies, but also in judiciary courts and in meetings of jurists. In this sense it can be affirmed that political and ethical arguments have now become internal to positive law and legal science. The positivization of rights is not a sufficiently original datum to justify them, but if anything an arrival point of the reasoning that justifies them and that interpretation is called on to go over and to reconstruct. In this sense interpretative activity takes on a new role, concerned with understanding and reordering issues rather than simply perceiving the meanings of legal texts. Legal prescription depends more and more on the solidity of the reasons (relating to facts or to values) on which it is founded and less and less on the imperative force of the authority. But these reasons are not incontrovertible. The fact is that we are talking about the open field of practical reason, a locus of conflicting opinions and endless debates.
If positive law is taking on this configuration, legal science too is being transformed. Though we have to admit that its primary objective continues to be apprehension of the content of legal norms, it now implies introjecting all the problems that the latter involve. Jurisprudence itself becomes as Waldron notices the locus of debates on the reasons connected to norms, just as legislative meetings and courts of justice are. **[**1] The difference, certainly not a

negligible one, lies in the fact that the latter ones are institutions and are therefore linked to formal and procedural constraints. Legal science is certainly bound by the criteria of normative validity, but these in turn require complex elaborations by jurists because of the intersections between normative sources that are no longer rigorously structured in a hierarchical way and not infrequently belong to different legal orders.
We have thus arrived at a decisive change in law and jurisprudence. The closing of the legal system was justified by the need to guarantee certain parameters of justice, but the impossibility of justifying a decision by resorting to parameters external to the legal order itself has constituted a major obstacle for the development of law according to justice. Now that the banks of the legal one have broken at several points, alongside serious problems of uncertainty, there open up new opportunities for justice that legal science is called on to control and harmonize.

Constitutional Interpretation

A major innovation for the theory of legal science arises from the central role taken on by constitutions in the place of codes. I believe that it is necessary to distinguish interpretation according to the Constitution and interpretation of the Constitution. The former, which has systematic aspirations, presupposes stability in the understanding of a Constitution, while the latter is a sign that this stability is lacking or can be challenged, as it often is.
The former is wholly part of interpretative activity in the traditional sense, while in the latter the argumentative dimension decidedly prevails over the merely interpretative one. We can say that constitutional principles are interpreted through argumentation, that is to say by showing on the basis of reasonableness that they derive from having set certain values at the foundation of the constitutional system. Here the reasoning is circular: from the positivization of certain principles the constitutional presence of certain fundamental values is deduced and from the latter the sense content of the principles and the way in which they are to be interpreted and practised is deduced.
Interpretation of the Constitution requires a hermeneutic conception. The latter does not necessarily connect the concept of legal interpretation to the intentions of whoever has produced the rule, that is to say it rejects every form of originalism, and it also makes it possible to include argumentation in interpretative activity. [2] In this sense the activity proper to the Constitutional Court when it specifies the meaning of constitutional dispositions (and not only how ordinary laws are to be interpreted) also belongs to all intents and purposes to the practice of legal interpretation. In this sense interpretation and argumentation are one and the same thing.
Since the constitutional text is an act of positivization, there is undoubtedly an intention behind it, but it limits itself to implementing certain values, to setting them at the basis of social life; it is not the master of them, it does not dominate them, but rather is dominated by them. Constitutional principles are not produced by human volition, but are a sign of adhesion to underlying values.
In conclusion, constitutional interpretation, in both the senses indicated, becomes a complex activity that also encompasses argumentation and legal reasoning and appears, taken as a whole, as deliberative and not merely applicative activity, so that the distinction between it and the deliberative (or political) activity of the legislator is not the one between two different genera, but between two different species of the same activity. We are free to use or not use determined normative reasons, but we are not free to give them whatever content we want. For this reason legal interpretation starts from authoritative use, but then has a deliberative character that constructs the rule for the concrete case. [3]
There ceases to be any meaning in the current distinction between what a rule means and what is to be done, or at least the two perspectives come very close to one another. [4] It would seem obvious that it is one thing to wonder how a case is to be resolved according to a rule and another thing to wonder whether an agent, all things considered, has to settle a controversy in this way or has to follow in his or her behaviour this interpretation of the rule, that is to say whether this solution is reasonable and acceptable. But if it is true that the judgment of reasonableness is internal to the rule itself and is part of interpretative activity, then it helps to construct or reconstruct the meaning of a rule. In this outlook it would make no sense to affirm that this is the meaning of the rule, but it is not to be followed , unless one believes that justification is external to the rule and remains extraneous to interpretative activity. The fact is that the constitutionalization of law, making the validity of norms depend on judgments of constitutional conformity that are to all intents and purposes value judgments , has officially made the justification an essential part of the rule.
Moreover, the provocative character of the concrete case causes the rule not to have a single meaning, in that it is the circumstances of the application of the law that highlight (or, according to others, produce) ever-new meanings of the same rule.
At this point it is superfluous to repeat that in the light of these considerations a definition of interpretation as a search

for meanings (it does not matter whether they already exist or are attributed) appears very reductive and mortifying if it is meant to refer to merely cognitive activity in a descriptive sense. This certainly depends on the conception of meaning that we have, and nevertheless we must not neglect the fact that we are in the field of practical reason, that is to say of knowledge for action, of interpreting for settling concrete cases in the light of the demands of the normative system and deciding how one must act legally in given circumstances.

Contemporary pluralism

The fact is that there is an ongoing change in contemporary constitutionalism. It arose and developed in a state-centred sense, being governed by the idea of specific institutions that occupy the kernel of political and economic life and are regulated by shared values and fundamental principles and practised by the political community. The constitution has been offered as a programme for community life and therefore as the basis of the unity of the legal system.

This form of constitutionalism has proved unsuited to facing the challenges of pluralism coming from outside and from inside. It is not a matter simply of taking into account the growing number of immigrants, exiles and refugees, but also the increasing disagreement between citizens on the way of interpreting and practising constitutional values. The constitutional state has to distance itself from the nation in order to face three types of conflict: that of interests concerning control and distribution of resources, that of cultural identities and that of values. **[**5**]**

In an ethical-legal regime governed by the ethic of rights, like the present-day one, the principle of duty, necessary for the practicability of every moral discourse and seen as a measure and as order, in a word and in a general sense as a rule , is all concentrated in reasonableness. This transforms values into principles and the latter into rules. Reasonableness expresses for the individual the need to give his or her own actions, habits and practices a general order respecting integrity and authenticity and, for communities, it is the need to harmonize the expectations of partners so as to guarantee certainty and justice together. In the long run the whole legal enterprise is justified on the basis of practical reasonableness, that is to say of the need to coordinate social actions not in just any way but according to equity and justice.

Accordingly, legal normativity is the result of a combination of the prescriptive dimension and the argumentative one, of an orientation to value and a reasonable procedure to be followed in order to realize it in social life. The constitutionalization of principles therefore implies and postulates a dynamic conception of the legal rule. The latter is not a finished product but an ongoing task and, as such, subject to formal and material criteria of correctness. It can also be said that the constitution is generative of law (*jurisgenerative*). Through material principles law communicates with its social and ethical bases, that is to say with those spheres that formalist jurists have always considered as extra-legal or meta-legal, i.e. as not belonging to the concept of law in its purity. To the formation of the rule to be applied to the concrete case there contribute manifold normative standards and interpretative and argumentative processes.

If we now look for the reasons for the centrality of the role of judges in contemporary legal pluralism, we easily find them in the fact that the independence of the judicial institution makes it possible that communication between different legal orders that the legislative and administrative institutions generally block. This communication can be expressed on the vertical and official level with the constitution of international and supranational jurisdictions or, on the horizontal and informal plane, in more and more numerous forms of spontaneous collaboration or operational coordination between the national jurisdictions. From here there also derives the need for mutual recognition that is preliminary to communication. It is not only a matter of affinity between people that perform the same functions inside legal systems, but even more a recognition of the methods used for the interpretation of rules and the plausibility and reasonableness of the very rules of the other legal systems.

In the evaluation of this process of globalization of the judicial function it is necessary to proceed with great prudence without underestimating its risks. **[**6**]** The multiplication of the relations between the national jurisdictions and the now widespread judicial activism must not be interpreted as the emergence of a global community of courts **[**7**]** or as the sign of a new world order. **[**8**]** On the contrary they reveal a situation of disorder and the still unsatisfied demand for orderly pluralism. **[**9**]** Deeper down it is a matter of facing a new way of conceiving the relationships between legal systems and positive law itself in general.

One of the effects that derive from this state of things is at once simple and overwhelming. A profound gap is produced as Cover has acutely observed between the social organization of law as power and the structure of law as meaning. The indefinite and not infrequently uncontrolled character of meaning exerts a destabilizing influence on

power. Precepts must have meaning , but they necessarily borrow it from materials created by social activity that is not subject to the strictures of provenance that characterize what we call formal lawmaking. Even when authoritative institutions try to create meaning for the precepts they articulate, they act, in that respect, in an unprivileged fashion. [10] Law opens up the doors to society, it allows it to make its voice heard, but then it is no longer able to master this new situation with the tools of traditional legal culture.

The priority of the concrete case

Another profile to be mentioned, also linked to the constitutionalization of law and rights, concerns the revival of the importance of the fact and the concrete case.

One can offer different explanations of this passage, now in continental legal science too, from attention to the general and abstract norm to the importance of the concrete case. At all events, in this way the specificity of law in relation to politics is recovered. If the latter looks to the justice of institutions, law has to respond to the demand for justice that arises from the concrete case. Law does not aim directly at a just society, but at justice in a concrete sense, at correct action, at the correct relationship. From the fact there arises the demand for legal justice and the answer is found in the process of formation of the rule that is applied to the concrete case and that at the same time is suited to that case in its significant particularity which is valid for all other similar cases.

If we want to seek the deepest reasons for this change in relation to legalistic dogmatics, we must I believe seek them once more in the personalistic principle that is at the basis of contemporary constitutions and has given rise to legal pluralism. People are by definition incomparable and require equality in difference. But it is extremely difficult to treat different people in the same way. Concrete cases have become normative, because single people have become normative for positive law. At bottom, behind the demand for justice that arises from the concrete case there lies the respect that we owe to the dignity of the people involved in the particular legal situation.

The constitutionalization of the dignity of the human person presents¬ extremely problematic and potentially contradictory aspects: on one side, there are behaviours that are in themselves a violation of the dignity of the person, that is to say are absolute evils; on the other, the very conscience of the person is also constitutionalized in the sense that the demands for recognition of identity and freedom of choice through the attribution of rights belong, at least *prima facie*, to respect for the dignity of the person. The first perspective can be set to some extent in the tradition of natural law and the fundamental values of the person. The second perspective, that of respect for people s consciences, can conflict with the first and create a conflict between the person and the ethos of the community and the very principles of critical morality.

Through what they have in common people constitute a community¬, but this is necessarily the locus of encounters and clashes of so many universalisms, that is to say of different visions of common values. Hence respect for the person can clash with the imposition of a public ordering of values, the order in the soul with the order in the city. And yet, if the person is a being in a relationship, his or her vision of commonalty cannot be solipsistic, since by definition it also concerns what others should share and practise, and consequently it will have to be the result of a discursive interaction serving to reach a common agreement. Thus the centrality of the value of the person, while it weakens the stability of the constituted order, at the same time activates a search for new and more suitable public arrangements of values.

The primacy of the case challenges the traditional concept of *legality.* The latter is based on the need for *generalization*¬, that is to say for the construction of categories within which to subsume the single cases. The rule that is applied to the concrete case has to be valid for all cases belonging to the same category. Precisely generalization has become a difficult hurdle to get over in the regime of pluralism. The latter is reluctant to accept generality, since it holds out a demand for justice of the particular case, that is to say of particularity. Stressing the detail highlights dissimilarity more than resemblance or similarity. Under these conditions the work of legal science almost becomes dramatic, for its categories, in order to be useful on the operational plane, have to lose generality in order to get as close as possible to the concrete case.

This is a very delicate point that it is necessary to face openly, because without generality legality dissolves. Nevertheless, generality is in danger precisely because of the evolution of the concept of equality on which it is obviously founded. It has several times been noticed that in the historical development of this concept a dissociation has been created between equality seen as generality of the legislative precept and equality seen as justifiability of discrimination and hence as reasonableness. Today the central problem of legal science is making judgments of reasonableness typical, that is to say conferring on such opinions a scope that goes beyond the concrete case,

allowing the foreseeability of decisions.

The interpretation in international law and human rights

A last source of innovation for legal science and interpretation comes from international law. Here too the renewal is largely due to human rights problems. This has allowed a limitation of the external and inside sovereignty of states, but at the same time an increase in their power for interference. Some brief indications confirm this new state of things: the overcoming of the principle of reciprocity (a state cannot justify its own violations of rights through violation by other states); the principle of international responsibility towards respect for human rights; the contraction of domestic jurisdiction (which no longer protects states from scrutiny and international supervision); the priority of the duties of governments regarding the rights of individuals (governments have to be accountable for how they treat their own peoples).

If we then think about the change produced within the doctrine of the sources of international law by the recognition of principles of *ius cogens* linked to human rights, that is to say of peremptory norms admitting no exceptions, which in a way allow a hierarchical configuration of the internationalistic sources themselves, then it appears more evident that interests, values and constitutive common goods proper to the international community are taking shape and that around them a new conception of international law is emerging. The Westphalia model is giving way to a cooperative model [11] (which is voluntary) and, more recently, to awareness of more and more accentuated interdependence of states and national communities (which is involuntary), as regards not only the protection of human rights, but also sectors of the economy, science and technology and ecology.

Contemporary international, over and above states, law is being woven around this nucleus of commonalty, but its interpretation is controversial and it is also subject to various forms of exploitation and manipulation. After the unmasking of the particularism of the legal categories used till now, the need is felt for a new universal legal language or a new way of conceiving the language of international law.

In international law, agreement of the interested parties takes on a central role for interpretative practice. It could be said that all international law is nothing but an enterprise of coordination of interpretations rather than strictly of actions, or more exactly of those actions that are substantiated in interpretations. Judicial interpretation itself should not be conceived as a weak remedy to the absence of interpretative accord, but as a means to facilitate it. If a legal system is not founded upon a central authority, then the meaning of jurisdiction will also change. The very concept of impartiality of the judge will not be applied in the same way in domestic and international law: the former is marked by the principle of equal application of the law, and the latter by the search for interpretation that is shareable in that it is reasonable, equitable and practicable.

The most evident basic difference between international and domestic law consists in the lack, in the former, of every possible reference to a common cultural basis, both in the sense of culture in general and in the sense of common legal culture. States are bearers not only of different and conflicting national interests, but which is even more significant of cultures that are often incommunicable. This is one of the reasons for the importance of concerted interpretation (and, in connection with this, of the problem of translation). In domestic law it is assumed that there exists a common language and therefore shared meanings; agreement on use of language is already in place, and consequently interpretative activity can claim to have a cognitive character, though not everyone is willing to admit this. But when there is no stable context of common life, then it is also necessary to agree on the linguistic tools that serve for agreement. It is not always possible to do this preventively. [12] This does not mean that interpretation entirely loses its cognitive dimension because it addresses agreement that has already been reached, but it surely means that it is impossible to distinguish in it the role of knowledge and that of volition. Obviously it was not necessary to resort to international law in order to attain this result, but here it is interesting to see how these problems are seen in the outlook of self-interpretation.

International judges are at first sight decontextualized and can only fulfil their role insofar as each contracting party involves them in conflict and in the attempt at understanding. However, it must not be forgotten that international law is something that is already operative: there are consolidated practices and customs, accepted principles, correct modes of behaviour. The traditional notion of *jus gentium* refers to this. But this does not in the least lead to a compact legal culture. International norms are in a dispersed state. If we really want to speak of consistency of the system, we need to abandon the hope of general consistency and to aim, rather, at sectorial consistency to be reconstructed each time.

International law appears to all intents and purposes like an attempt to build a legal system on a basis of

self-regulation, since the latter is enacted precisely not when rules are produced by those people to whom they apply (as happens in democracy), but when rules are interpreted and applied by those people whom they address.
Lastly, it must be observed that in actual fact the differences between international and domestic law are tending to decrease today. On one side, constitutionalization of law and the crisis of government sovereignty are destructuring the traditional compactness of the national legal system, and on the other side in international law the role of authority and imperative rules is tending to grow stronger. Today reviving the *vexata quaestio* of the monism or dualism of legal systems would be absurd. **[13]** There is no choice of field to make, nor a choice about what system is a foundation one and what system a derived one, because the issue is the point of view, that is to say the practical problem to be resolved. Faced with the practical question, we have to search for the legal rules that govern it and it is now clear that these can belong to different normative plexuses. And then interpretation will be necessary not only in order to perceive the meanings of rules, but even before for identifying what rules are appropriate to the case in hand and, perhaps, how they can become appropriate. In this way interpretation tends to take on a constitutive and constructive role in relation to the law to be applied.
For anyone who takes the model of the legal state (as it is enacted in national legal systems) as the fundamental paradigm of legality, international law continues to appear like primitive law, acceptable only insofar as it seems to be moving towards more advanced legal forms. How can law ever be advanced if its sources are not clearly distinguishable from one another and are not hierarchically arranged? **[14]** How can law ever be acceptable if it is not always mandatory in the same way and if it arrogates to itself the prerogative of ignoring, in custom, long duration and the identity of the content of practice in identifying it? **[15]** Nevertheless, I do not believe that there are ideal law models. There are only legal values, demands for coordination and concrete working conditions. The law that exists depends on the problems of coordination and communication that it finds. Systems are transformed from within and evolve through adjustments. This does not mean that they are impermeable and do not contaminate each other. The complex and unstable order of international law is of extreme importance as a legal laboratory of pluralism, which as is well known recognises no frontiers. And then we have to wonder whether domestic law is not more primitive if it is not yet well equipped to face difference and dialogue among different cultures.
The sovereignty of states has produced national legal cultures that are unable to communicate with one another. The work of law theorists in the wake of Kelsen has attempted unification of world legal experience through similarity in the formal structures of legal systems, at least among the most evolved ones. Progress in comparative law studies has shown that this similarity can also extend to some extent to normative content.
In effect the problems that national legal systems face are certainly similar and the solutions are different ways of responding to practical problems. We know that in the practical field a single correct answer does not exist and that the variety of normative solutions depends on factors like propensity to stress some values over others, the orientation coming from particular cultural forms of common life and, not least, on circumstances. The long experience accumulated in legal practice is no longer a jealous treasure that every legal system preserves for itself, but flows into a sort of reservoir of legal thought on which everyone can draw.
Here I do not only refer to the wholly particular experience of European Community law, in which we meet complex forms of conciliation, harmonization and uniforming of legal systems that come together in the European Union, and recently also forms of competition that presuppose judgments of equivalence. **[16]** I am considering in a more general sense the circulation of legal institutes from one legal system to another and their spread at a global level. Recently Sabino Cassese has spoken in this connection of universality of law , meaning the extraordinary capacity that legal institutes have to cohabit, overlapping, composing and even integrating. **[17]** This means that a legal system is not a seamless web, but a composition of different parts, which can be disarticulated and put together again in various ways. These parts can also be valid and meaningful in different spheres from those in which they originated.
Here I would like to quote just one example among the many possible ones. In the 2005 decision relating to the *Roper v. Simmons* case, regarding the death penalty of a minor, the Supreme Court of the United States used the authoritativeness of foreign law to interpret the American Constitution itself. The acute comment by Jeremy Waldron furnished the most adequate justification of this interpretative practice, which is certainly not an isolated case. Law is not a mechanical application of already existing norms, but a problem-solving enterprise. For this goal it is useful to have recourse as in all other sciences to accumulated knowledge, to the legal wisdom of humanity on rights and justice, to what the ancient Romans called *ius gentium*. For those who consider law a matter of sovereign will, what it is wished and ordered in other parts of the world is of no importance. But for those people that see law as work of

critical reason and moral science, it makes sense to take into account the solutions to legal problems that have been attained in other parts of the world. **[18]**

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[1] J. Waldron, Law and Disagreement, Oxford: Oxford U.P., 1999.

[2] For the identification of law with a practice of an argumentative type cf., most recently, M. Atienza, El derecho como argumentación, Barcelona: Ariel, 2006.

[3] I have developed the thesis of the deliberative character of legal interpretation in La democrazia deliberativa tra costituzionalismo e multiculturalismo , Ragion pratica, 11, 2003, n. 20: 33-71.

[4] For example, Schauer accuses Dworkin of confusing these two planes. Cf. F. Schauer, Playing by the Rules. A Philosophical Examination of Rule-Based Decision-Making in Law and in Life, Oxford: Oxford U. P., 1991.

[5] C. Offe, Homogeneity and Constitutional Democracy: Coping With Identity Conflicts Through Group Rights , Journal of Political Philosophy, 6, 1998: 119-124; see also my Conflitti d identità e conflitti di valori , Ars interpretandi, 10, 2005: 61-96.

[6] Cf. J. Allard, A. Garapon, Les juges dans la mondialisation. La nouvelle révolution du droit, Paris: Seuil, 2005.

[7] Cf., for example, W.W. Burke-White, A Community of Courts: Toward a System of International Criminal Law Enforcement , Michigan Journal of International Law, 24, 2002: pp. 1-101.

[8] Cf. A.-M. Slaughter, A New World Order, Princeton, N.J.: Princeton UP, 2005.

[9] M. Delmas-Marty, Le relatif et l universel, Paris: Seuil, 2004, p. 19.

[10] R. M. Cover, Nomos and Narrative , Harvard Law Review, 97 (1), 1983: 18.

[11] Cfr. W. Friedmann, The Changing Structure of International Law, London: Stevens & Sons, 1964.

[12] On this theme cf. G. J. Postema, Coordination and Convention at the Foundations of Law , The Journal of Legal Studies, 11, 1982: 165-203.

[13] Cf. J.G. Starke, Monism and Dualism in the Theory of International Law , now in S. L. Paulson and B. Litschewski Paulson (eds.), Normativity and Norms. Critical Perspectives on Kelsenian Themes, Oxford: Clarendon Press, 1998, pp. 537-552.

[14] Cf. M. Koskenniemi, Hierarchy in International Law: A Sketch , European Journal of International Law, 8 (4), 1997: 566-582. These characteristics of international law are easily exposed, among other, to the criticisms of the movement of Critical Legal Studies, which has shown up the failed attempts to justify it in the liberal outlook. International authority justifies itself and international rules are highly indeterminate. Cf. D. Kennedy, A New Stream of International Law Scholarship , Wisconsin International Law Journal, 7, 1988. Also see N. Purvis, Critical Legal Studies in Public International Law , Harvard International Law Journal, 32 (1), 1991: 81-127.

[15] Cf. C. Fernández de Casadevante Romaní, La interpretación de las normas internacionales, Pamplona: Aranzadi, 1996, p. 273.

[16] Cf. e.g. F. Viola, La concorrenza degli ordinamenti e il diritto come scelta, Napoli, Editoriale Scientifica, 2008.

[17] S. Cassese, Universalità del diritto, Napoli, Editoriale Scientifica, 2005.

[18] Cf. J. Waldron, Foreign Law and the Modern Ius Gentium , Harvard Law Review, 119, 2005: 129-147.

