Editorial

J M Aroso Linhares

Ana Margarida Gaudêncio

Univ of Coimbra, Faculty of Law, University of Coimbra
Institute for Legal Research

ABSTRACT

This editorial identifies the thematic core of the third volume of Undecidabilities and Law, which, concerning the challenges (and claims) of juridically relevant Justice, confronts two different (irreducible) assimilation modes: translation and counter-storytelling. It also considers the specificity of this volume, which, under the sign of exceptionality, departs from some of the rules that support the other volumes.

KEYWORDS

Narrative, paradigm of translation, tertium comparationis, marginalised identities, community-building counter-storytelling

The third volume of Undecidabilities and Law "takes place" under the sign of exception, an exception that we believe is nevertheless justified and productive. For the first time, we have a special issue based on a colloquium (Justice as Translation and Counter-storytelling, Coimbra, May 26th to 28th 2022[1]), which is thus illuminated by the precious and unrepeatable moment

[1] This Colloquium was jointly organized by UCILeR (Instituto Jurídico da Faculdade de Direito da Universidade de Coimbra—University of Coimbra Institute for Legal Research) , ISLL (Italian Society for Law and Literature) and ATFD (Associação Portuguesa de Teoria do Direito, Filosofia do Direito e Filosofia Social, the Portuguese section of IVR). The scientific and Organizational Committee included Carla Faralli, Maria Paola Mittica, Alessandro Serpe, J M Aroso Linhares, Inês Godinho, Ana Margarida Gaudêncio, Luís Meneses do Vale and Brisa Paim Duarte. See https://www.uc.pt/en/fduc/university-of-coimbra-institute-for-legal-research-uciler/agenda-ij/justice-as-translation-and-counter-storytelling/

that this meeting allowed — even if the final outcome is intended to be less a faithful reconstruction of what happened (of what was then effectively said and discussed) than the testimony of the dialogue and intertwined research that its unforgettable occasio set in motion (and that the following rewriting of the chapters corroborates). It is the strength of this very special context (or succession of contexts) that justifies, for example, maintaining in its entirety the moving intervention with which James Boyd White, speaking albeit remotely from the other margin of the Atlantic, privileged us at the opening of this meeting (see, infra, Introductory Note). And it is also the same felicitous irresistible strength that (making an exception to our editorial practices and conventions) legitimizes that, in the proposed sequence of chapters, we not only combine and superimpose distinct registers and filters (interweaving invited keynote speeches and selected reviewed call-answers), but also and very especially welcome, with the plurality of unmistakable voices, an effective plurality of linguistic expressions (without daring the betrayal with which translations always wound us). Could it be otherwise (with regard respectively to French and Italian) when the interlocutors involved are called François Ost and Carla Faralli? And when the researched thematic core, whilst referring to the (specifically juridical) claims of Justice, is composed of a stimulating counterpoint between translation and counter-storytelling?

In a well-known passage from The Narrative Paradigm, Walter Fisher actually argues that "narrative rationality", since it "celebrates human beings" as "storytellers", should be treated as an "attempt to recapture Aristotle's concept of phronesis". It is this central topos in the contemporary rehabilitation of practical thinking (projected in Law's specific practical world) that our Colloquium and our special issue claim to explore, whilst paying attention to the plurality of approaches it allows. The anticipated counterpoint does not actually do more than distinguishing between two polarized assimilation modes.

1) On one hand we have the so-called paradigm of translation, not only in the general version that we owe to MacIntyre's communitarian narrativism — exploring the possibilities of dialogue between traditions (notwithstanding the impossibility of an equidistant tertium comparationis) — but also in the specific projections that James Boyd White (justice as translation) and François Ost (le droit comme traduction) exemplarily open: the first highlighting a kind of a permanent movement (from ordinary language to

legal language, and from legal language back to ordinary language) —whilst exploring narrative as the archetypal form of praxis and practical thinking and whilst conceiving of Law as "a set of occasions and opportunities for the creation of meaning" ("a rather fragile piece of our culture, requiring those who live with it to remake it constantly, over and over") —, the second autonomizing three indispensable thematic cores and the exercises in translation that they demand, namely, the one which is required by the plural network of (national and international, state and non-state) legal orders, the one which the judge's modus operandi (interconnecting the world of practical controversies and legal materials) manifests and, last but not least, the one which this same judge develops whilst assuming his/her role as third ("le tiers qui triangule le différend opposant les parties [et qui traduit] (…) leurs discours dans le langage de la loi commune") — without forgetting that this thirdness (also as a fonction tièrce "internalized by legal subjects") is precisely the feature which distinguishes Law, its discourses and practices (Le droit ou l'empire du tiers).

2) On the other hand, we have the blossoming of a wide range of discourses on marginalised identities (sometimes even on marginalised bodies), the core of which is undoubtedly composed of narrative outsider jurisprudences and community-building counterstorytelling (to use the well-known formulae proposed respectively by Mari J. Matsuda and Richard Delgado). This remarkable multiplication of perspectives and academic fields (going from Feminist Jurisprudences to Critical Philosophy of Race and from LGBT-GNCcrits to Postcolonial Legal Theory) — which were opened up with the so-called third Critical Legal Scholar's generation and go on developing a search for community or communities flowing out in the experience of incommensurable forms of life (involving gender, race, sexual orientation, economic condition, social status, practical-cultural and geopolitical provenance, health, mental and physical disability, etc) — pose certainly specific problems —concerning the "standards" which should be used to evaluate the different uses of narrative resources (and the merits of the final outcome), the challenges of intersectionality or intersectional persons (overlapping diverse identities), as well as the risk of transforming more or less persuasive counterstories into stereotyped narratives (with characters and roles that are implacably pre-determined). They offer however also an unique opportunity to discuss Law's and legal theory's claims to comparability. Is in fact the fragmentation of meanings, semantic values and performative

models provoked (or aggravated) by those approaches compatible with the claim for an integrating context (and its tertium comparationis) or does, on the contrary, this fragmentation (in its narrative intelligibility) prevent or frustrate the attempt to recognise an authentic inter-discourse and, with this, the aspiration to treat law as the "empire" of thirdness?

What follows is actually an (explicit or implicit) exploration of both these lines of development and their internal possibilities, when not a direct consideration of their reciprocal intertwinement and their dialectical tensions.