# The Pluralism of *Identities* as a Challenge to Law's and Legal Theory's Claim to *Comparability*

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**ABSTRACT**

The aim of this paper is to discuss the impact that a critical-reflexive experience of marginalized identities and *forms of life*—opening the path to a plural ensemble of *outsider jurisprudence(s)* and their *particular* (*incommensurable) ways of* storytelling — may have in our understanding of law as a specific practical-cultural *way* of creating and institutionalizing communitarian meanings. Should this impact be reduced to a contingent prescriptive statutory assimilation of plausible answers? Should not instead this impact be reconstituted under the possibilities of Fish's *interpretative communities*, or, in alternative, as an opportunity (explored in the "thematic level" of Greimassian semiotics) to confront different "narrative typifications of action" (Jackson) and the corresponding *sociolects*? Doesn't this experience of the margins impose however a more drastic reflexive challenge? I would say it does, not only as a possibility to discuss the impact of *narrative rationality* in law's construction of meaning (in counterpoint with other types of rationality), but also as an opportunity to discuss law's and legal theory's *claims to comparability*, which means returning to Duncan Kennedy and to the specific gaping wounds that *Feminist Jurisprudence(s)*, *Critical Race Theory*, *Lesbian, Gay and Transgender Legal Studies* or *Postcolonial Law Theory* opened in *Critical Legal Studies*.

**KEYWORDS**

juridical comparability; counterstorytelling; Robin West. Critical Legal Studies; Outside Jurisprudences; narrative; universalization; identity-based theories; FemCrits

## I. Introduction

This chapter presupposes a diagnosis that I have already summarized in the first issue of *Undecidabilities and Law* (Linhares 2021: 13 ff., 18-21).

Such a diagnosis concerns the so-called discourses on *marginalised identities* (sometimes even on *marginalised bodies*[1]) which in the last quarter of a century have vigorously challenged (if not *wounded*) Legal Theory — not only when we consider its *traditional* paths but also when we identify its *critical* developments (including, *et pour cause*, the main trend of *Critical Legal Studies*). Using the well-known formulae proposed respectively by Mari J. Matsuda and Richard Delgado (Matsuda 1989: 2320 ff.; Delgado 2000: 60 ff.), we can in fact say that the core of those discourses is exemplarily composed of narrative *outsider* jurisprudences and *community-building counterstorytelling* (one of the thematic poles of this third special issue).

With the purpose of ensuring the coherence of the reflective path that follows, even at the risk of repeating some sections of the previous *exposition*, I will thus return to that diagnosis, which concerns a remarkable multiplication of perspectives (and academic fields) and which is, first and foremost, an exercise in *acknowledging*… and *recognising*: as if we were simply testifying to the *search* for community or communities (if not explicitly *forms of life*) in which all those narratives heterogeneously participate.

Let us begin with the well-known *fronts* that, whilst denouncing the *masculine identity* and/or *colour blindness* embraced both by *liberal* theorists and *critical scholars*, have significantly parted from the main trend of *Critical Legal Studies*: I mean certainly *Feminist Jurisprudences* and *Critical Race Theories*. The current blossoming of identity-based theories has in fact immediately to do with a process of internal differentiation (and subdivision) affecting these two *fronts*: whereas *FemCrits* contribute however to this multiplication simply by exploring the infinite possibilities of their own *cultural*, *radical* and *postmodern* paths[2], *RaceCrits* intervene decisively here on one hand by strengthening the specificities (if not the autonomy) of their basic

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[1] The *International Journal for the Semiotics of Law* has recently proposed a special issue with the title *(Re)imagining the Law. Marginalised Bodie /Indigenous Spaces* (Ben Hightower, Kirsten Anker 2016).

[2] Whereas *symmetrical* liberal feminism (with its assumed commitment to formal equality of rights) occupies a position which seems fundamentally external to these identity-centered discourses, the same happens to some extent — albeit for different reasons (concerning the concept of *gender* as artifact and the need to overcome the power of stereotypes) — with certain eloquent voices included in the *postmodern* trend. In order to *map* the main possibilities involved in those different paths, it is productive to conjugate (and overlap!) the exemplarily distinct syntheses proposed by Gary Minda (1995: 128-148), Sarah Elsuni (2006: 163-185), Katharine T. Bartlett (2000: pp. 266-302) and Gerald Postema [2011: 213 ff., 217-220 ("Law as Patriarchy"), 240-257 ("Oppression, Objectivity and Law")], not forgetting the absolutely indispensable "Jurisprudence and Gender", by Robin West (whose *mapping* will be used *infra*).

"sub-disciplines" (African-American, Chicano(a)-Latino(a), Asian-American, Indian or Tribal *Legal Studies*)[3], on the other hand by claiming (and projecting) an authentically globalized (and inter-disciplinarily conceived) *Critical Philosophy of Race*[4].

This diagnosis would, however, be incomplete if we failed to venture beyond these established fronts to consider the explosion of other (irreducible) *identities* (and the corresponding promises of community-*experience* and community-*visée*). I mean certainly the identities explored by *LGBT-GNCcrits* (*Gay, Bisexual, Transgender and Gender Non-conforming Critical Studies*)[5], as well as those constructed by *TWAIL* (*Third World Approaches to International Law*) and its "re-imagination of the law of nations"[6], and by *Postcolonial Legal Theory* (inventing the Fourth World as a certain *South of the North*[7] or reconstituting- "the epistemologies of the global South" as the cultural legacy interrupted by colonialism[8]). All this in addition to the possibilities of the so-called *New Social Movements* going from the Brazilian *Landless Workers Movement* (MST) to the globalized *#MeToo,* which reconstruct the identities of the *homeless* and *landless* throughout the world, whilst also considering the specific conditions of disabled people, refugees, asylum seekers and sexual violence survivors[9].

Simple allusion to this process of division and subdivision is, for its part, sufficient to enable us to understand that it is very difficult to conceive of (far less be in a position to reconstitute) all these "community"-promises (of gender, colour, sexual orientation, economic condition, social status, geopolitical territory or practical-cultural memory), even when simply invoked *in fieri* (as emergent possibilities for new perspectives-*subject*) as closed (*watertight*) *ways of life*. The intertwining and overlapping that inevitably interrelates them when we consider their legal relevance is, however, less an opportunity

[3] Concerning the discussion of the Black-and-White binary paradigm, see Deliovsky/ Kitossa, (2013: 158-181), Robert A Williams Jr (1997: 741 ff.) and the indispensable ensemble of essays proposed by Delgado/ Stefancic 2000 (part X: "Beyond the Black-White Binary").

[4] This means certainly moving beyond the parochial ground that made Critical Race possible: see Robert Bernasconi 2011: 551 ff.

[5] A diagnosis of current problems and possibilities is proposed by Adler Libby (2009). See also Elvia R. Arriola (1994: 103-143).

[6] See the indispensable Makau W. Mutua (2000: 31 ff.). See also B.S. Chimni (2006: 3-27).

[7] The words are by Amar Bhatia (2012).

[8] To say it with Boaventura Sousa Santos (2014).

[9] See the complementary diagnoses proposed by B. Rajagopal (2000) and Maria da Glória Gohn (2008).

to recreate a coherent whole than (paradoxically?) an openness to new divisions. Why? On the one hand, undoubtedly because significant possibilities for connection (or at least overlapping) are due to the (more or less) *external* influence of transversal (much broader and not necessarily critical) *interdisciplinary perspectives*, concerned not only with the positive-explicative and normative treatment of *legal pluralism* and the corresponding models (involving so different paths as those explored by Teubner and Boaventura Sousa Santos), but also with the possibilities of narrative as the archetypal form of practical rationality (which includes "humanistic" movements such as *Law and Literature, Law and Music, Law and Performance, Law and Image, Law and film, Law and Emotions,* and *Law and Culture*) — perspectives which (on account of their internal complexity and the heterogeneity of the leading voices) certainly generate new *foci of incommensurability*, if not new academic thematic specifications (such as *Feminist Literary Criticism*[10], *Race and Cinema*[11] and the *Queer Politics of Emotions*[12]). On the other hand, it is because storytelling in itself, experiencing the "multidimensionality of oppressions" ("what happens when an individual (…) is both gay and Native American, or both female and black?"[13])[14], faces the permanent challenges of *intersectionality* or *"intersectional" persons*[15]. These challenges are certainly an opportunity to examine the "combination" ("in various settings") of "race, sex, class, national origin, and sexual orientation" (and of fighting against race or gender or class *essentialism*(s)[16]), but also an inescapable source of subdivision (generating academic fields such as *Critical Race Feminism*[17],

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[10] See exemplarily Ian Ward 1995: 119 ff. ("Law, Literature and Feminism"), 119-124 ("Feminist Literary Criticism: an Overview").

[11] An indispensable ensemble of essays is proposed in Daniel Bernardi (ed.) 2007.

[12] See exemplarily Leslie J. Moran (2004) and the essays by Martha Nussbaum and Chesire Calhoum included in Susan A. Bandes (ed.) 1999: Nussbaum (1999: 17 ff.), Calhoum (1999: 217 ff.).

[13] Delgado/ Stefancic 2001: 51.

[14] What happens (we could exemplarily add!) when an individual living in the Third World is simultaneously female, lesbian and homeless?

[15] Delgado/ Stefancic 2001: 51. For a development, see the essays collected by Richard Delgado and Jean Stefancic (Ed.), 2000, 249-287 (part VII: "Race, Sex, Class, and their Intersections"), not forgetting the indispensable Kate Crenshaw (1989).

[16] "[A]ntiessentalism raises such questions as whether the concerns of women of color are capable of being addressed adequately within the women's movement, or whether Hispanics and African Americans stand on similar footings with respect to the struggle for racial equality. Are black Americans one group, or several?" (Delgado 1993: 742-743). An indispensable development concerning CRT is proposed in Richard Delgado and Jean Stefancic (ed.) 2000: 289-319 (part VIII, "Essentialism and anti-essentialism").

[17] See Adrien Katherine Wing (ed.), 2003.

*Black Queer Studies*[18] and *LGBT International Law Theory*, eventually with the promise of a specific *TWAIL*[19]).

The notes which follow do not claim to reconstitute this astonishing *vertigo* of hyper-specialized critical possibilities and its precious mass of data, far less to discuss which "standards" should be used to evaluate the merits of their contributions (and to distinguish between their voices, especially when they use narrative resources)[20]. The aim of this essay is instead to reflect globally on the impact (or the *levels* or *platforms* of the impact) that these proposals — in their narrative intelligibility[21] and, as such, as exemplary attempts to find (or capture) the fundamental "atom of community"[22] — may have on our contemporary experience of law (and the corresponding discourses). This leads me to distinguish three plausible levels or platforms of *interference*, the first one involving a dogmatic perspective [II.], the other two justifying meta-dogmatic (differentiated) approaches [III. and IV.].

## II. The impact of identity-based discourses on a dogmatic-prescriptive (contingent) level

This first level considers the amount of new *data* as an immediate opportunity to rethink or re-evaluate the legal relevance of specific problems[23] and to propose or prescribe plausible answers. It is a level or platform which combines a legal dogmatic (doctrinaire) assimilation of emerging (increasingly specific) *quaestiones* with an explicit conversion of the corresponding answers (as tentative theories or practical-normative criteria) into effective *authoritarian* solutions, objectified in precedents and statutes. Given its programmatic

[18] See E. Patrick Johnson, Mae G. Henderson (ed.) 2005.

[19] See exemplarily Manuela Picq and Markus Thiel (ed.) 2015.

[20] About these "friendly and unfriendly (...) calls for standards" concerned with the "evaluation of outsider narrative scholarship", see explicitly Delgado 1993: 746-753, 756-760.

[21] This certainly means introducing a simplifying device. We shall however abstract from the differing weight that storytelling has in this huge number of proposals (which is considerably greater in *Critical Race Theory*).

[22] Delgado 1993: 743.

[23] Obviously problems involving those identities, such as discrimination against pregnant women, pornography, sexual harassment, same-sex marriage, homophobic victimization, racial discrimination, postcolonial survival of *subalternity*, etc.

anticipation of the future and the immediate political-ideological dimension of the corresponding *policy*, this latter kind of authoritarian response plays a very significant role here, giving this level its decisive character. It is as if we were measuring the impact of outsider jurisprudences by explicitly considering the contingent prescriptive answers (depending on a legislative *voluntas*) that their particular diagnosis (or their singular view) of the problems generates (without excluding instructive *negative* attention to the political *resistances* they provoke and the corresponding arguments). More precisely, it is as if we were considering the identity-based *counterstories* (and the problems they explore) as an opportunity (more or less extensively grasped) to sustain a *new* Politics of Law or a new branch of Politics of Law, the distinctive feature of which would be an explicit sensitivity and responsiveness to the pluralism of the margins (i.e. "to the lives as experienced under law by the most marginalized among us[24]").

However, the understanding of this sensitivity (and its voluntaristic contingent pursuit) admits at least two different configurations:

(a) a *pragmatic reformist* one, which may be exemplified using Libby Adler's distributive *decisionism* ("driving toward commitment to tangible law reform tasks"[25]);
(b) a *deconstructive/reconstructive* one which, following Derrida, may be identified as considering the "interminable" process of "juridico-politicization" as it is (and has been) constantly pursued beyond its "identified territories" (i.e. opening up "areas" that "at first can seem like secondary and marginal")[26].

The first of these configurations presupposes the absence of any plausible "meta-theory" to justify the use of *cost/benefit analysis* and to defend a contextualized (local) consideration of people living *in the margins* (a consideration which may be able to generate law reform proposals as a kind of realistic ensemble of "dispersed" possibilities)[27]. The second faces the challenges of *otherness* by defending an ethic of unconditional and unlimited respect for

[24] Adler 2011: 1.
[25] Adler 2011:.11.
[26] Derrida 1992: 28-29. We should not forget that this text has been first presented and published in English...
[27] Adler 2011:18

singularity whilst simultaneously accepting the burden of an unavoidable *aporia* — corresponding to the abstract typification (or violent synchronic *thematization*) of the concrete problems, but also to the conclusion that each "advance in politicization obliges one to reconsider, and so to reinterpret the very foundations of law such as they had previously been calculated or delimited"[28].

## III. The impact of identity-based discourses on a meta-dogmatic (interpretative) level

The second level is already a meta-dogmatic one, exposing us to a kind of a global "protestant" *understanding* of legal materials (in the same sense that Levinson identifies the plural and heterogeneous "protestant" belief in the "real" Constitution[29]), or, more accurately, exposing us — whenever *reasoning about law* and (in particular!) whenever *reasoning according to law* (i.e. whenever identifying *valid law* and settling legal disputes)[30] — to the challenge of *incorporating* the tools of understanding, if not explicit canons (canonical narratives and canonical examples) formed in different settings or situations (or addressing different audiences). This means presupposing a constitutively reciprocal intertwinement (if not an authentic dialogue) between *communities of jurists* and *communities of non-jurists* — it being certain that the former offer a relatively limited number of possibilities, distributed amongst the different "professional" arenas[31] (judges, lawyers, academics) or the different steps of (dogmatic and metadogmatic) legal discourses, and the latter allow (or promise) an indefatigable subdivision of *perspectives* and *ways of life* (confronting the "silences in the law" as "virtual absences of noise"[32], with the voices of those who live in the margins). Whenever *reasoning about law* and *reasoning according to law*: I would insist on these two different (albeit complementary) paths. The second path, which focuses on judicial lawmaking, emerges both when one considers the

[28] Derrida 1992: 28.

[29] "A protestant view of Court's authority (...) assuming the legitimacy of individualized (or at least non-hierarchical communal) interpretation" (Levinson 1988: 29)

[30] The formulations are obviously by Raz 2009: 376-379 ("The Autonomy of Legal Reasoning").

[31] In the sense justified by Fish (1999).

[32] The words are by Randall Kennedy (2000: 219).

specific (and relatively restricted) possibilities of the so-called *"discrete and insular minority" model* — as a device for constitutional interpretation, if not directly as the exercise of "an antimajoritarian check" on "legislative powers" (associated with the duty to defend "social groups that can be visibly identified"[33])[34] — and when one critically explores the global (and unlimited) argument for indeterminacy (or, more precisely, a "strong" *indeterminacy* or *undecidibility thesis*, if not an authentic "strong" *rule-scepticism*) — which means confronting the problem of the "conflict" or "polarity" or "gap" that opposes ""the law"" (or the "common perception of "the law"") with the politically progressive treatment of concrete controversies (sensitive to its unrepeatable singular *hierarchies*), a problem continually recognized in critical thinking and clearly expressed in Duncan Kennedy's understanding of judicial *discretion* as strategic behaviour[35]. Whereas the second path represents a relatively well-explored *topos*, the first does not seem to be so obviously and consciously pursued. The most common (more or less explicit) response to this path is perhaps the one which emerges from a concretely contextualized concurrence of different orders or different constructions and reproductions of legality[36], i.e. a response that emerges from an assumed legal pluralism (or a pluralist *source thesis*)[37]. However, another view of *plurality* (including, among other contributions, those which distinguish *outside jurisprudences*) seems possible, given its direct link to the problem of *identifying* and *determining* valid law. This view treats the identity-based movements or groups as recognizable *interpretative communities*[38] and/or plausible *sociolects* (if not *communications sociales restraints*, as opposed to *communications sociales généralisées*[39]) whose practices and discourses

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[33] To say it with Arriola (1994: 111).

[34] See also Robin West, distinguishing the "adjudicated constitution" and the "legislated constitution" (West 2009: 79-91).

[35] We shouldn't however ignore the distance that separates the understanding of *HIWTCO* in the early "Freedom and Constraint in Adjudication: a Critical Phenomenology" (directly quoted in the text) [in Boyle (ed.) 1992: 45, 46, 86] from the exploration of strategic interpretation developed in "Strategizing Strategic Behavior in Legal Interpretation" (Duncan Kennedy 1996: 785 ff.) , an essay which is the basis of chapter 8 in *A Critique of Adjudication (fin de siècle)* (D. Kennedy 1997: 180 ff.).

[36] Such as the concurrence that, from (under) the perspective of a concrete legal dispute about property rights, opposes for example State Law with Favelas Law, or State Law with Landless Workers' order...

[37] In order to clarify the possibilities of what we may call the *"new"" legal pluralism*, see the collection of essays proposed by A. C. Wolkmer, Veras Neto and Ivone Lixa ( 2010).

[38] Naturally in the sense that Stanley Fish's *pragmatic conventionalism* proposes: see exemplarily the exploration of this category developed in "Change" (Fish 1989: 141 ff.).

[39] The formulae are evidently by Greimas (1976: 45 ff., 53-60).

provide heterogeneous ways of problem-determining and problem-solving, whilst constructing incommensurable codes and canons and stabilizing them (on a certain "thematic level") as unmistakable "narrative typifications of action"[40] — so that it may be possible to determine these communities and narrative canons as contextual elements of *legal reality* — in the certainty that the experience of *law in action* which identifies this *reality* is here unambiguously inscribed within the practices of an open, multi-dimensional *legal system* and, moreover, is treated as an authentic *stratum* (among the *strata*) of this *system*[41].

## IV. The impact of identity-based discourses on a meta-dogmatic legal theoretical level (concerning the possibility of inter-discourse and the claim to comparability, if not universalizability)

Presupposing the problems and possibilities opened up by the previous levels, the third level takes the impact of outsider jurisprudences to its most significant meta-dogmatic consequences. Once again, two core issues must be considered.

### 1. The role of narrative rationality

The first issue is less specific since it corresponds to an impact that could also easily be claimed by the so-called *humanistic discourses* (and by those that lie within the full range of its spectrum and, as such, extend far beyond the possibilities and intentions of the discourses of *marginalized identities*). If this issue has to do with the role of narrative rationality in counterpoint (and frequently in confrontation) with other types of theoretical or practical rationality commonly attributed to legal discourses, it may, in fact, be recognized that defending a *narrative mode of speaking* (or defending *institutional situations* in which the corresponding *performance* may be justified

[40] In order to clarify this concept see Jackson [1995: 154 ff. (8)].

[41] I allude here to the specific conception (and experience) of the *legal system* proposed by Castanheira Ne*ves' jursiprudentialism* (Neves 1995: 7881, 152157, 188196, 278283; Neves 1995a: 95 ff.)

as indispensable) is here invariably associated with the need to do justice to the plurality of languages or codes that must be taken into consideration, if not with the heterogeneity of the elements and the multilayeredness and incommensurability of the discursive practices involved in legally relevant concrete disputes — particularly in terms of disputes that wound us as authentic *différends* (which is certainly the case when two different identities clash and this difference is not sustained and/or compensated by an effective "double consciousness"[42]). More precisely, this defence and the need to reflect on it (developing the possibilities of narrative theory) seem inseparable here from the challenge to legal theory to consider (if not critically reproduce and denounce) the convergence of all these elements and discourses in specific individual or local *events* (which would not be intelligible without the more or less persuasive coherence-generating *ultima verba* that storytelling imposes). It may, in fact, be said that this challenge opens a "window onto ignored or alternative realities"[43] whilst simultaneously confirming the unique (trans-pragmatic) strength (or at least the incomparably less fragile nature) of the narrative genre and its microscopic homogenizing organization of time[44].

## 2. The argument about comparability (if not *universality–universalizability*) regarding legal subjects

The second issue is certainly much more specific but, given the complexity (and even the reversibility) of the arguments and counterarguments involved (and the changing dimensions with which they overlap), it is particularly difficult to formulate it globally and even more difficult to synthesize it convincingly. The core of the question has, in fact, to do with the way in which *identity-based approaches* interfere with (and integrate into) the practices and discourses they reconstitute and rethink (which are virtually all those that share the *signifier* "law"). Is the fragmentation of meanings and semantic values and also performative models (provoked or aggravated by those approaches) compatible with the claim for an integrating context? Is the impact of this experience of fragmentation —on account of the unavoidable

[42] The words are by Delgado/ Stefancic (2001:.39–42). See also Alpana Roy (2008: 318 ff.)

[43] See Delgado/ Stefancic 2001: 39.

[44] In the sense that Lyotard helps us to recognize [Lyotard 1983: 218 (nº 219)]

incommensurability of the perspectives-*visées* determined by genre, race, sexual orientation, poverty, geopolitical provenience, health, mental and physical disability, health, etc. — that of preventing or frustrating the attempt to recognise an authentic *inter-discourse* and, with this, the aspiration to treat *law* as the intentional context and practical-historical correlate of this attempt? More specifically, do *outsider jurisprudences* cross the threshold that deprives law and legal discourses (and the practical circle they constitute) of a plausible claim to (or vocation for) *comparability* relating to the status of legal subjects? Do the *discourses of the margins* allow us going beyond the level where narrative *identities* impose separate perspectives in order to recognize the possibility or the pertinence of reconstituting (either from an internal or an external perspective) the normative centre of autonomies-rights and responsibilities-duties that is (or should be) globally attributed to each subject as a *party* in a practical legal controversy? In other words, is the celebration of narrative incommensurability — whilst renouncing to the relevance of a successful experience of universalizability (*relativizing* the involved subjects) or to the corresponding *tertium comparationis* — still compatible with the significance (or the productivity) of an inter-discursive reference to the *status* or *dignity* of *sui juris* — the latter certainly not as a self-subsistent *hypostasis* but as a specific, historically determined, practical-cultural *artefactus* (inseparable from the claims of *audiatur et altera pars*)?

Given the wide spectrum of discourses and proposals that must be taken into consideration, a categorical global answer is certainly impossible. I will try, however, to allude to the problems involved, concentrating on the exemplary scission introduced into *Critical Legal Studies* (more than forty years ago!) by the emergence of *FemCrits*…

### 2.1. Understanding the *scission*

In order to understand the plural dimensions involved in this scission, Robin West's well-known *Jurisprudence and Gender* (1988: 1-72) is certainly still an indispensable *guide*.

1) First of all, her essay proposes a successful systematization of *differences* which, notwithstanding the recent proliferation of perspectives, seems still capable of offering both a productive *structuring map* for *Feminist Jurisprudences* and a stimulating constructive exemplum to all other

*outsider jurisprudences*. The need to *identify* the two "camps" of "masculine jurisprudence" ("liberal legalism" and "critical legal theory"[45]) as divergent accounts of a common "separation thesis" (offering subjective experiences of masculinity justified by the *celebration of autonomy* and the *longing for community,* respectively), as well as the need to distinguish between the "two" camps of "feminist jurisprudence" (*cultural* and *radical*), contrasting their "accounts" of "subjective lives" as two different interpretations of a common "connection thesis" (the first valuing "intimacy", the second "integrity" or "individuation")[46], in fact determine an analytical outcome (an analytical web!) which may be recognized as a challenge (and mobilized as a tool) in all emergent *identity-based theories*. It is as if these theories have had to impose themselves (i.e. had to justify their autonomy as academic fields or interpretive communities) fighting on a dual front against the traditional ("official") and critical ("unofficial") dominant trends and this has not only meant internally reproducing (in an implacable game of correspondences) the *binomial tension* justified by those trends, but also, and mainly, attributing *en bloc* to them (or to the "common ground" which they share) a kind of constitutive label (identifying masculine, heterosexual or homophobic *visées*, but also *white race*, *northern hemisphere*, *First World* and even *landowner* or *homeowner* constructions…) — a label which the new external *binomial opposition* will necessarily incorporate as one of its poles (the one which plays the dominant role). For the identitarian theories in question this certainly also means accepting (more or less a-problematically) that the place of an autonomous *discourse of the margins* depends constitutively on the totalizing distribution imposed by the latter binomial (and its logic of dominance and subordination) — a dependency that is not problematized even when the theory in question accepts (as is often the case) that the exercise of *labelling* should avoid the risk of *essentialist* simplification.

2) Robin West's essay is also exemplary on account of her specific proposal for a constructive *continuum* between "feminist" and "humanist" jurisprudences (the latter taken seriously as a "genuinely ungendered jurisprudence"),

[45] "One deriving from the tradition of Western liberal political philosophy, the other deriving from the radical philosophical ideas underlying the critical legal studies movement": to say it with Martha Nussbaum (2008: 985).

[46] West 1988: 4-44 ("Masculine Jurisprudence and Feminist Theory").

envisaging a "post-patriarchal" (although not an "androgynous") "world" and, as such, demanding an explicit transformation or overcoming of "masculine jurisprudence"[47] (a *conversion* which will certainly be much easier when the masculine trend is already a critical one). The *exemplum* that interests us here has however less to do with the characterization of this "jurisprudence 'unmodified' " (as an alternative to the typical *cultural* and *radical* feminist trends), than with the way in which this deliberately "utopian" vision, presupposing the inadequacy of law's cultural metadogmatic *artefacta* (namely those concerning the mask of *sui juris* and the corresponding claim of *dignity as rank or status*[48]), establishes (defends) an ethics of unconditional celebration of "differences between people" and infinite respect for "all forms of life" (recognizing "life affirming values generated by all forms of being")[49]. This ethics is presented in fact as if it should be directly responsible for the construction of *the* "goals", namely the goals that "law and politics" (or "law as politics"), as ongoing exercise(s) in *voluntas-potestas* (helped by a dogmatic reconstruction[50]), instrumentally pursue. Independently of the developments that will enrich Robin West's proposal (namely those which explore the counterpoints between the "economic man" and the "literary woman"[51], the masculine "ethics of justice" and the feminine "ethics of care"[52]), the reflexive experience achieved with *Jurisprudence and Gender* may, in fact, be mobilized to try (to risk?) a global answer to one of our key questions: are the discourses of the margins necessarily incompatible with an authentic *inter-discourse*? The answer is a negative one: they are not. It is however indispensable to add that — given the basic binomial opposition from which these outside jurisprudences are built up[53], and, more significantly, the presupposition and treatment of law as an instrumental institutionalization (compatible with any material response justified through legitimate or legitimised power) — the possibilities of this inter-discourse

[47] West 1988: 58 ff. ("Feminist Jurisprudence"), 71-72.

[48] In the sense that Waldron helps us to recognize: see *infra*, note 86.

[49] West 1988: 72. Martha Nussbaum critiques the limits of these formulae (2008: 986).

[50] A dogmatic reconstruction that is more or less conscious of its "utopian" or "apologist" political side: see West 1988: 71.

[51] West 1993: 251-264 (Chapter 5: "Economic Man and Literary Woman: One Contrast").

[52] West 1997: 22 ff. (chapter 1). West dialogues here with the well-known proposals of Carol Gilligam and Nel Nodding considering the "oppositional virtues" of justice and care (35-36).

[53] An opposition which enables West to argue that "men's narrative story and phenomenological description of law is not women's story and phenomenology of law" (West 1988: 65).

are necessarily sought out and pursued *beyond law* (assimilating material intentions from ethics, political ideology, philosophy and aesthetics), if not by explicitly denouncing the impossibility (the ideological mystification) of a coherent (unity-generating) i*nternal* perspective (and its development as a genuine *collaborative* praxis[54]).

3) This brings us to a third exemplary mobilization of Robin West's essay, namely the way in which she identifies *masculine jurisprudence* (and its *separation thesis*) with modern jurisprudence and the rule of law — directly, if considering its *official* story (celebrating autonomy), and also indirectly in recognising its *unofficial critical* story, notwithstanding the proclaimed scepticism and "longing for attachment or connection" that distinguishes the latter ("the values that flow from women's material potential for physical connection are not recognized as values by the Rule of Law, and the dangers attendant to that state (…), [which are] separation [and] invasion-intrusion (…), are not recognized as dangers by the Rule of Law…"[55]). Why can we see here an example that is extensible to all identitarian scholars? The answer is simple: the dialectics between dominant and subordinated, centre and periphery, core and margins (and sometimes also between inner majority and outside minorities) which sustain the binomials of *identitarian jurisprudences* not only a-problematically presuppose that law's cultural answer to the problem of *life in common* (or at least law's *de-constructible* answer to the institutionalization of social order) is reducible to one of its historical cycles or stages — the modern cycle, more or less reconstructed retrospectively through the *Enlightenment vision* or 19th century *formalistic* consolidation — but also (drastically) displace or decentre the acquisitions of this cycle, considering only its political-ideological features (or the simplifying assimilation that these features pragmatically demand). It is as if we were condemned to reducing the Western construction of an autonomous *sui juris* to *contractualist tradition*[56] — the tradition which invented the "individual

[54] In the sense of Dworkin's *collaborative interpretation*. One should in fact pay attention to the way how Dworkin denounces the effective (even tough not to be confessed) overlapping of *explanatory interpretation* and *collaborative interpretation* in *CLS*: "[I]f the proper goal of a demystifying explanatory interpretation is radically to change opinion and practice, then it might best achieve this by wearing collaborative clothing…" (Dworkin 2011: 144).

[55] West 1988: 58.

[56] Sometimes even to *contractarian tradition*, closer to Hobbes than to Rousseau or Kant.

as materially separate from the rest of human life" and justified *societas* as the *artefactus* simultaneously capable of granting its "discrete" *socii* the "upside" of this separation (identified with "autonomy, freedom and equality") whilst protecting them from its "downside" (identified with "vulnerability" and the danger of "annihilation")[57] — and also as if we should inevitably confound the institutionalization of this autonomy with the defence of a *formal* (*a-teleological*) *non interference* in the "materiality" of choice-*Willkür* ("my ends are my ends" and "I can form my own conception of the good life, and pursue it…"[58]), if not with the political-ideological legacy of the 19th century *Demo-Liberal State*…

## 2.2. *Hearing* Duncan Kennedy: *opening* a Pandora's box?

However, in order to understand the possibility and limits of the *non-juridical* "inter-discursive" treatment of *identities* that the *discourses of the margins* seem able to admit (exemplarily identified in Robin West's proposal for *jurisprudence unmodified*), we must still *hear* the arguments of *mainstream Crits* (those who inhabit the "inner-circle" of "progressive" masculine, white, heterosexual, first word "scholarship"[59]!). I would simplify these arguments by invoking two basic (although not always explicit) critiques and the way in which they denounce an intrinsic constructive *contradiction* that attacks *outsider jurisprudences*, whilst also considering the possibility of a conciliatory integrative (politically correct?[60]) solution. The indispensable *guide* is here Duncan Kennedy's *ultra-theory* (as an expansively eloquent development of a *left/mpp project* justifying a *post-rights perspective*[61])[62].

The critical arguments are, in fact, very-well known and concern two risks or dangers that *identitarian scholars* have presumably reintroduced into the critical tradition, the first relating to an a-problematic hypertrophy of the *language of rights* (extending beyond the mere programmatic intention

[57] West 1988: 7, 9, 19.

[58] West 1988:.6.

[59] To say it with Arriola (1994:105, note 6).

[60] "In many ways, Kennedy's work is a model of political correctness…" (Joanne Conaghan 2001: 727).

[61] D. Kennedy 1997: 1-19, 265-296, 339-376.

[62] If we had mobilized Unger's *super-theory*, the answer would certainly be a significantly different one. About the differences that separate these two critical "agendas" (*super-theory* versus *ultra-theory*), see Altman 1990: 164-181.

of "law reform"[63]), and the second concerning the temptation of a "totalizing" dogmatic discourse (favoured by the use of *binomial masks*)[64]. These are risks and dangers whose probability determines that the fragmentation that has been opened up (or at least aggravated) by the *third* generation or stage of critical scholars[65] (even when trying to avoid *essentialism*[66]) cannot be understood as the promised advance to a new stage of unconditional respect for *singularity*, but rather as a remarkable retrogression. Possibly a surprisingly *contradictory* retrogression in terms of the importance attributed to *narrative genre* or to the constitutive (*non-heuristic* role) that this genre plays in a huge number of outsider discourses, I would add. This question involves in fact considering the additional risk of transforming more or less persuasive *counterstories* into stereotyped narratives, with characters and roles that are implacably pre-determined[67] .

What about the conciliatory solution? We may recognize it in Kennedy's *Critique of Adjudication*, albeit less as a global position on identity doctrines than a direct exemplary response to *FemCrits* (a response which could, however, easily be generalised to include these doctrines). In fact, this conciliatory solution has to do exclusively with a very simple qualification: without ignoring gender issues (and even making significant "efforts"[68] to integrate them into his own critique), Kennedy treats feminism as *ideology* and tries to "locate" it in relation to other possible ideologies (in an ensemble of possibilities which are parochially dominated by the core *liberalism/conservatism*)[69]. It is worth emphasising the implications of this exercise in qualification: on the one hand, feminism is presented as a "universalization project of an ideological intelligentsia"[70] whilst, on the other hand, it

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[63] D. Kennedy 1997: 327 ff. ("The internal disintegration of left rights rhetoric").

[64] About the rejection of a "totalizing theory" (and its claim to "rightness") assumed by Kennedy's *pink theory*, see exemplarily D. Kennedy 1997: 265-296, 339-376.

[65] *Third* according to Minda's reconstruction (1995:123 ff.). Reserving a place for an initial *neo-Marxist* trend, Frankenberg distinguishes *four* stages (corresponding the *fourth* to the explosion of *FemCrits*, *RaceCrits*, etc) [Frankenberg 2006: 101 ff.].

[66] On account of a more fluid understanding of sexual orientation (and its construction), *GayCrits* would be perhaps the group less vulnerable to the binominal dynamics and its stereotyped constructions.

[67] As if one excluded the possibility of a concrete microscopic situation where the *capillarity* of *powers* and *resistances* (in a genuine Foucauldian sense) would attribute the subordinated position to a certain straight, healthy, white, protestant, middle or upper class's, first world's male...

[68] J. Conaghan 2001: 723, 725 ff. ("The Gender Dimension in Kennedy's *Critique*").

[69] D. Kennedy 1997: 39 ff, 187 ff., 258-263.

[70] D. Kennedy 1997: 39, combined with pp. 56-57 ("Liberalism capitalized").

is incorporated (as a kind of "subideology") into the "liberal camp"[71]. The first implication presupposes an explicit understanding of *universalization* (assimilating, through Habermas' concept of "practical reason", the Kantian legacy[72]!), to the extent that it deprives the *identity-conformation* of its autonomous relevance (reducing it to the simple consciousness, common to all ideologies, of acting ""for" a group with interests that conflict with those of other groups"[73]). The second celebrates an authentic inter-discourse and, with it, the integrant mediation of an extended horizon. This is not only the horizon which, in an initial step, is offered by liberal ideology, but one which aggregates (or overlaps) this ideology with conservatism to recognize the "larger unit" or "centre" that may be called "liberalism capitalized" (i.e. the "abstract normative" core which is "made up of the theoretical commitments that liberals and conservative share")[74]. It is as if feminism has found its place whilst assimilating a globally shared legacy ("including rights, majority rule, rule of law, Judeo-Christian morality" and even "regulated market"[75]) which, paradoxically, is precisely the legacy that its community-generating interpretation denounces as irretrievably *masculine*!

Is this, however, a convincing conciliation, if not domestication? Apparently, it may be said that it is. Kennedy's *ultra-theory* allow us in fact to consider all these implications from a microscopic contingent unity-giving perspective and this perspective is the one we acknowledge in *adjudication* (i.e. in the argumentative tissue that *judicial law making,* in its *decision-situation*, is able to produce): after all, "ideologies are themselves just 'texts' that the individual judge will have to interpret before he or she can decide what is 'required' by his or her presupposed political commitment"[76]. This last point is, however, a troubling (reversible) one, since it highlights the importance of the "common ground" shared by *identity-based jurisprudences* and *critical ultra-theory,* as if these movements represented only two plausible steps (or flights) in a continuous vertiginous staircase, i.e. two distinct levels of accentuation of a common basic attitude towards the *significant* law or the discursive practices that use this *significant*. Both critiques in fact

[71] D. Kennedy 1997: 189.
[72] D. Kennedy 1997: 382, note 1.
[73] D. Kennedy 1997: 39, 41 ff. ("Ideology is universalization of group interests").
[74] D. Kennedy 1997: 56-57.
[75] D. Kennedy 1997: 56
[76] D. Kennedy 1997: 187-188

explore a constitutive identification between law and politics, both denounce the claim to a unified *signifier* (associable with law and legal theory, if not directly with the dignity of *sui juris*) as an ideological mystification, and both presuppose that this claim is reducible to (and deconstructible as) a specific resource of modern *formalism* or *normativism* (and its invention and interpretation of the rule of law). As if this were not enough, even the flaws (or retrogressions) attributed to *identity-based narrative approaches* seem to *wound* (even though with a less visible impact) the *mainstream* progressive critique. Doesn't the polarisation of ideologies persistently presupposed by Kennedy (opposing first *individualism* and *altruism*[77], then *conservatism* and *liberalism*[78]) inexorably anticipate the totalizing dynamic offered by *identity-generated* and *identity-generating* binomials (notwithstanding the constant appeals to a flexible strategic microscopic adjudication)? Yet, if this is the case, should we not conclude that the enthusiastic anti-totalizing and anti-theoretical defence of singularity justified by *ultra-theory* comes dangerously close to exhausting itself in a purely rhetorical celebration of the *political judge*'s *decisionism*? Is the discretion attributed to this *praxis of adjudication* not invariably determined as an ideological choice between two strategies, a dominant one and an alternative critical one — the first tending towards the conservative reproduction of "entrenched divisions and hierarchies"[79] (covered by the *formalist* mask) and the second committed to the progressive microscopic "moderation" and dismantling of these "divisions"[80]? We can indeed recognize that once *the* Pandora's box that celebrates the *partiality* of the *political judge* has been opened, it can never be closed, nor can the resulting *chain reactions* be halted — which also implies that the only choice left to legal meta-discourse seems to be to resist, as persuasively as possible, the seductions of the unlimited vertigo or, more precisely, the choice that creates (with varying degrees of conviction, although often in total *good faith*) an effective appearance of resisting. Unless this meta-discursive reconstruction rejects, from the outset, the "motto" *law is politics*…

[77] D. Kennedy 1976: 1713 ff.

[78] D. Kennedy 1997: 46 ff.

[79] See Roberto Mangabeira Unger 1996: 163.

[80] About the "relational" concept of *hierarchy*, see Kennedy 1992: 427 ff.

## V. Conclusions

A few words will suffice to sum up the previous *route* or *routes*. confirming, on the one hand, the undisputable importance of the current identity-based discourses *whenever we consider the two first levels* of relevance (dogmatic-prescriptive and methodological-interpretative) —i.e. when we mobilize the diagnoses of problems and contextual factors that these levels admit [*supra*, II. and III.] —, whilst recognising, on the other hand, that the impact considered on the *third level* concerns internally the legacy of *CLS* and should not be separated from the discussion of the possibilities and limits of its specific *(left) oppositionism* (this one as a specific assimilation of a more general philosophical-cultural critical theory)[81] [*supra*, IV.].

Regarding the arguments and counter-arguments that we have just introduced and very specially regarding the vertigo of *ideologies* and *identities* that a common understanding of *law as politics* (and/or a shared image of the *judge as ideologist)* unavoidably imposes [*supra*, IV:2.2.], what does this last accentuation mean? Does it mean recognizing, with Postema, that "by century's end, the critical dynamic of the *CLS* jurisprudential movement had largely been spent"[82]? Certainly not, just as it does not mean subscribing to the lapidary conclusion by Günter Frankenberg (highlighting the implacable conversion of *assumed ideologies* into *narrated identities*): "Are *CLS* dead? They live: *FemCrits*, Race*Crits, LatCrits, Intel, Postcolonial Theory, Nail, Twail…*"[83]. Beyond recognizing that the *trunk* of *CLSs* (with the leading voices of Unger, Kennedy and Balkin) preserves today its eloquent visibility — appearing very far from hidden by the proliferation of its (more or less direct) *branches* — it certainly means arguing that it is perfectly possible (if not desirable) to ascribe relevance to the diagnosis of problems and to the reconstitution of contexts explored on the first two levels —so that it may be possible to *listen* attentively to the contributions of narrative outsider jurisprudences

[81] This oppositionism represents in fact an extraordinarily fecund overlapping of heterogeneous *traces*, linking *radical legal realism* and *Deconstruction as philosophy*, aggregating data from interpretative sociology and psychoanalysis, using models from phenomenology and narrative semiotics, constructing arguments following Marx and Foucault and, last but not least, reuniting pragmatic strategic rhetoric and the commitments of a *radical ethic of alterity*. An attentive discussion of this heterogeneity is proposed by Ana Margarida Gaudêncio (2011). See also the synthesis that I propose in Linhares 2016.

[82] See Gerald Postema 2011: 258.

[83] "Die *CLS* sind tot? Es leben: *FemCrits*, Race*Crits, LatCrits*..." (Frankenberg 2006: 101).

and its responsive testimony of contemporary plurality) [*supra*, II. and III.] —, without succumbing to the political-ideological functionalization of legal discourses recognized on the third level [*supra*, IV.].

One of the alternatives to this understanding – the one which I defend! -- is to preserve the *claim to comparability* (and the *universalization* it involves) as a distinctive feature of the *practical world of law*, whilst simultaneously (and without any paradox!) recognizing the practical-cultural specificity of this law as a *non-universal* autonomous *way of life*. This means considering a *certain* law or a *certain* practice of law — a certain response to the problem of *common life* — which, as a specific way of creating communitarian meanings (irreducible, as such, to other plausible constructions of *praxis* and practical rationality and certainly also to other forms of collective identity), is significantly *inscribed* in the deployment of what may be called the *Idea of Europe* (or the *heritage* of Western Text)[84]. This full historical-cultural contextualization of law's acquisitions, providing the opportunity to make the dynamic of these acquisitions correspond to an effective *argument of continuity*, forces us in fact to *return* to a specific *artefactus*, the invention of which is certainly due to the Roman *rise of the jurists*[85]. This *artefactus* is

[84] This is one of the most fruitful and challenging lessons of Castanheira Neves's philosophy of law: see, in particular, two key essays — "Coordenadas de uma reflexão sobre o problema universal do direito ou as condições da emergência do direito como direito" and "O problema da universalidade do direito ou o direito hoje, na diferença e no encontro humano-dialogante das culturas", both of them now included in Neves 2008: 9 ff., 101 ff..

[85] More directly and specifically to a certain structural element essential to this controversy. I refer here to the element which concerns the *position of the subjects-parties* in relation to the situation-*event* and the dogmatically presupposed context-*order*. We may, as a matter of fact, argue that the identity of the masks of *rights and duties* — masks that, as practical and cultural artefacts, are constitutively *assumed* (*buckled*!) by those subjects — depends on the *chance* and the *legitimacy* (which is also an institutionally consecrated *opportunity*) that such subjects have to consider *the same concrete situation* and to invoke *the same dogmatically enforced context-order*, building, expressing or defending *distinct* nuclear understandings of *the masks* in question and of the reciprocal connections that *inter-subjectively* relate them. This observation is less trivial than it sounds. In this possibility and the opportunity for *attention* or care that it institutionalizes (opening up a process of assimilation-treatment and submitting this to a *contradictory* dynamics), we should, in fact, acknowledge two basic (foundational) dimensions which help us to understand the experience of the problem-controversy and the recognition of the subject-person as two genetically *indistinguishable* components — to the point where perhaps we can say that it is this inseparability that provides us with the key to differentiating or autonomising that experience (of the problem) and this recognition (of the subject) in terms of their *strict juridical relevance* (identifying the meaning and limits that the *practical world* of law imposes on them). Which basic dimensions are these? *On the one hand*, the dimension which corresponds to the reciprocal *pragmatic respect* between the subject-parties (and to this *pragmatic respect* as a requirement for *hearing the other* and his or her arguments) and, *on the other hand*, the dimension which, mobilizing a promise of univocity and comparability, enables these arguments (and also the impartial

indeed the *case-controversy*: seriously taken as *prius* and as perspective of a *new* practical world, culminating as such in the experience of a unique, microscopically conceived, experience of comparability-*tribuere* (assured not only by the adjudicator-*third* but also by the *tertium comparationis* of a coherent *corpus* of *warrants* and *criteria*). It is in fact this experience which opens the path to an unmistakable process of *fight for recognition*. Why unmistakable? Certainly because concerned with the institutionalization of an experience of *dignitas*, which (with the unsuspected help of Waldron), we may say genuinely or intrinsically juridical (an "intrinsic", *non-contingent*, "legal idea"[86]): as the *dignity* of *rank* or *status* of an autonomous and responsible (inter-subjectively *relativized*) *subject-person*… who, invoking (implicitly or explicitly) the same order of *warrants* and *criteria* and addressing himself simultaneously to the other party and to the impartial third, demands a hearing, i.e. expects a rationally *judicative* treatment of the controversy. This is, however, another *story*, certainly to be told (and retold) in other contexts and stages[87].

## References


Adler, L. (2009). The Gay Agenda. *Michigan Journal of Gender & Law*, 16 (1), 147-216.

Adler, L. (2011). Gay Rights and Lefts: Rights Critique and Distributive Analysis for Real Law Reform. *Harvard Civil Rights-Civil Liberties Law Review*, 46 (1), available at: https://harvardcrcl.org/cr-cl-presents-a-colloquium-gay-rights-and-lefts-rights-critique-and-the-distributive-analysis/

Altman, Andrew (1990). *Critical Legal Studies. A Liberal critique*. Princeton: Princeton University Press.

Arriola, E. (1994). Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory. *Berkeley Women's Law Journal*, 9, 103-143.

Balkin, J. / Levinson, S. (2000). [Eds.] *Legal Canons*. New York: New York University Press.

Bartlett, K. T. (2000). Feminist Canon. In Balkin / Levinson (Eds.), *Legal Canons*. New York: New York University Press, 266-302.

Bernardi D. (2007). [Ed.] *The Persistence of Whiteness: Race and Contemporary Hollywood Cinema*. London: Routledge.


third's *adjudication*) to be taken seriously as plausible situated experimentations or realizations of a certain context-*order* (of common *warrants* and *criteria*) — a context which will later be significantly identified with the objectivation of a *legal system*.

[86] Waldron 2012, 2015.

[87] See the syntheses proposed in Linhares 2016a, 2020, 2021, 2022.

Bernasconi, R. (2011). Critical Philosophy of Race. In S. Luft and S. Overgaard (Eds.), *Routledge Companion to Phenomenology*. New York: Routledge, 551-562.

Bhatia, Amar (2012). The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World. *Oregon Review of International Law* ,14 (1), 131-175.

Boyle, J. (1992). [Ed.], *Critical Legal Studies*. Dartmouth: Cambridge University Press.

Chimni, B.S. (2006). Third World Approaches to International Law: A Manifesto. *International Community Law Review*, 8, 3–27.

Conaghan, J (2021). Wishful Thinking or Bad Faith: A Feminist Encounter with Duncan Kennedy's "Critique of Adjudication", *Cardozo Law Review*, 22, 721-746.

Crenshaw, K. (1989). Demarginalizing the Intersection of Race and Sex. *University of Chicago Legal Forum*, 140, 139–167.

Delgado, Richard (1993). The Inward Turn in Outsider Jurisprudence. *William & Mary Law Review*, 34 (3), 741-768.

Delgado, R. (2000). Storytelling for oppositionists and others: A plea for narrative. In Delgado, R. & Stefanic, J. (Eds.), *Critical Race Theory: The Cutting Edge*, Philadelphia: Temple University Press, 2nd ed., 60 ff.

Delgado, R. & Stefanic J. (2000). [Eds.] *Critical Race Theory: The Cutting Edge*, Philadelphia, PA: Temple University Press, 2nd ed.

Delgado, R./ Stefancic, J. (2001). *Critical Race Theory: an Introduction*, New York and London: New York University Press.

Deliovski, K. /Kitossa, T. (2013). Beyond Black and White: When Going Beyond May Take Us Out of Bounds. *Journal of Black Studies* 44 (2), 158-181.

Derrida, Jacques (1992). Force of Law: The "mystical foundations of authority" (1989). In Cornell/ Rosenfeld/ Gray Carlson (eds.). *Deconstruction and the possibility of Justice*. New York/London: Routledge, 3-67.

Dworkin, R. (2011). *Justice for Hedgehogs*. Cambridge Mass./ London: the Belknap Press of Harvard University Press.

Elsuni, Sarah (2006). Feministische Rechtstheorie. In Buckel/Christensen /Fischer-Lescano (Hrsg.), *Neue Theorien des Rechts*. Stuttgart : Lucius & Lucius, 163-185

Fish, S. (1989) *Doing what Comes Naturally*. Durham/London: Duke University Press.

Frankenberg, Günter (2006). Partisanen der Rechtskritik: Critical Legal Studies, etc. In Buckel/Christensen /Fischer-Lescano (Eds.), *Neue Theorien des Rechts*. Stuttgart: Lucius & Lucius. 97-116.

Gaudêncio, A. M. (2011). .*Entre o centro e a periferia : a perspectivação ideológico-política da dogmática jurídica e da decisão judicial no* Critical Legal Studies Movement, Rio de Janeiro: Editora Lumen Juris.

Gohn, Maria da Glória (2008). *O protagonismo da sociedade civil: movimentos sociais, ONGs e redes solidárias*, São Paulo: Cortez, 2ª ed.

Greimas, A. (1976). *Sémiotique et sciences sociales*. Paris : éditions du Seuil.

Hightower, B. /Anker, K. (2016). (Re)Imagining Law: Marginalised Bodies/Indigenous Spaces. *International Journal for the Semiotics of Law* 29, 1–8.

Jackson, B. S. (1995). *Making Sense in Law*. Liverpool: Deborah Charles Publications.

Johnson, E. P. / Henderson, M. G. (2005). [Eds.].*Black Queer Studies: a Critical Anthology*. Durham: Duke University Press.

Kennedy, D. (1992). The Politics of Hierarchy (1983). In Boyle (ed.), *Critical Legal Studies*. Dartmouth: Cambridge University Press, 427-446.
Kennedy, D. (1996). Strategizing Strategic Behavior in Legal Interpretation. *Utah Law Review* 1996 (3), 785-825.
Kennedy, D. (1997). *A Critique of Adjudication (fin de siècle)*. Cambridge Mass.: Harvard University Press.
Kennedy, R. (2000). Race Relations Law in the Canon of Legal Academia. In Balkin / Levinson (eds.), *Legal Canons*. New York: New York University Press.
Levinson, S. (1988). *Constitutional Faith*. Princeton: Princeton University Press.
Linhares, J M. A. (2021). Law and the Janus-faced Morality of Political Correctness: an Introduction. *Undecidabilities and Law*, 1, 13-27.
Linhares, J M. A. (2022). Is Dignity a Non-contingent Autonomously Juridical "Idea"? A *Conversation Piece* with Jeremy Waldron. In: Linhares, J.M., Atienza, M. (eds.) *Human Dignity and the Autonomy of Law*. Cham: Springer, 259-275.
Linhares, J. M. A. (2016). A identidade na pluralidade dos *Critical Legal Scholars*. Um discurso da dialéctica *societas/communitas*? *Revista da Faculdade de Direito da Universidade Lusófona do Porto*, 8(8), 83-130.
Linhares, J. M. A. (2016a). In Defense of a Non-positivist Separation Thesis Between Law and Morality. *Rechtsphilosophie. Zeitschrift für Grundlagen des Rechts* 4, 425–443
Linhares, J. M. A. (2020). Exemplarity as Concreteness, or the Challenge of Institutionalising a Productive Circle Between Past and Present, Old and New. In Condello (ed.), *New Rhetorics for Contemporary Legal Discourse*, Edinburgh: Edinburgh University Press, 83-100.
Lyotard, J. F. (1983). *Le différend*. Paris : les Éditions de Minuit.
Matsuda, Mary (1989). Public Response to Racist Speech: Considering the Victim's Story, *Michigan Law Review*, 87, 2320-2381.
Minda, Gary (1995). *Postmodern Legal Movements. Law and Jurisprudence at Century's End*. New York/ London: New York University Press.
Moran, L. (2004). The Emotional Dimensions of Lesbian and Gay Demands for Hate Crime Reform. *McGill Law Journal* 49 (4), 925-949.
Mutua, Makau W. (2000). What is Twail? *American Society of International Law, Proceedings of the 94th Annual Meeting*, 31-38.
Neves, A. C. (1995). *Metodologia Jurídica. Problemas Fundamentais*. Coimbra: Coimbra Editora.
Neves, A. C. (1995a). *Digesta,* vol. 2. Coimbra: Coimbra Editora.
Calhoum, Ch. (1999). Making Up Emotional People: the Case of Romantic Love. In Bandes, S. (Ed.) *The Passions of Law*. New York: New York University Press, 217-240.
Nussbaum. M (1999). "Sectret Sewers of Vice": Disgust, Bodies, and the Law. In Bandes, S. (Ed.) *The Passions of Law*. New York: New York University Press, 17-62.
Nussbaum, Martha (2008). Robin West's "Jurisprudence and Gender": Defending a Radical Liberalism. *University of Chicago Law Review,* 75 (3), 985-996.
Picq. M./ Thiel, M. (2015). [Ed.] *Sexualities in World Politics: How LGBT Claims Shape International Relations*. New York: Routledge.
Postema, G. (2011). *Legal Philosophy in the Twentieth Century: the Common Law World* (vol. 11 in Pattaro, ed., *A Treatise of Legal Philosophy and General Jurisprudence*). Dordrecht/ Heidelberg/...: Springer.

Rajagopal, B. (2000). From Resistance to Renewal: The Third World, Social Movements, and the Expansion of International Institutions. *Harvard International Law Journal*, 41, 531–578.

Raz, J. (2009). *Between Authority and Interpretation. On the Theory of Law and Practical Reason*. Oxford: Oxford University Press.

Roy, A. (2008). Postcolonial Theory and Law: A Critical Introduction. *Adelaide Law Review*, 29, 315-357.

Santos, Boaventura de Sousa (2014). *Epistemologies of the South: Justice Against Epistemicide*. London/New York: Routledge.

Unger, R. M. (1996). *What Should Legal Analysis Become?* London: Verso

Waldron, J. (2012). How Law Protects Dignity. *Cambridge Law Journal* 71(1), 200–222

Waldron, J. (2015). *Dignity, Rank, & Rights*. Edited and introduced by Meir Dan-Cohen. Oxford: Oxford University Press (2015 is the date of the paperback edition).

Wing, A. K. (2003). [Ed.] *Critical Race Feminism: a Reader*. New York: New York University Press, 2nd edition.

Ward, Ian (1995). *Law and Literature*. Cambridge: Cambridge University Press.

West, R. (1988). Jurisprudence and Gender. *University of Chicago Law Review* 55 (1), 1-72.

West, R. (1993). *Narrative, Authority and Law (Law, Meaning & Violence)*. Michigan: The University of Michigan Press.

West, R. (1997). *Caring for Justice*. New York: New York University Press.

West, R. (2009). The Missing Jurisprudence of the Legislated Constitution. In. Balkin. J/ Siegel, R. (Eds.), *The Constitution in 2020*. Oxford: Oxford University Press, 79-91.

Williams Jr, R. A. (1997). Vampires Anonymous and Critical Race Practice. *Michigan Law Review*, 95, 741-765.

Wolkmer, A C./Neto, V / Lixa, I. (2010). [Eds.], *Pluralismo Jurídico. Os novos caminhos da contemporaneidade*. São Paulo: Saraiva.