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TODA JOIA, TODA BELEZA!
FINDING WHAT IS LEFT IN THE MARGINS
OR
REGIME COLLISIONS:
A PLURALIST TAKE ON MANAGERIALISM

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&
Alfonso Javier Encinas Escobar

1/2011

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Abstract

This paper has two authors, two titles and is written in the form of a dialogue, rather than conveying a unitary voice, as one would instead expect of a co-authored paper. The reason for this is that the articulation of the authors' disagreement, despite the identification of each of them with "the left", is precisely the object of inquiry. After briefly introducing the problem on which the authors' discussion takes place, namely regime collisions, and the clash of approaches that are available to (decide whether to) deal with them, a dialogue follows, in which the authors' voices are clearly separated as they discuss the specific issue of the measurement of quality as a (managerialist) proposal to "solve" regime collisions, and contrast that to more openly politicised views of approaching regime collisions. In the end, the main features of such discussion are examined in such a way as to bring forth the peculiar self-consciousness that pluralist spaces give rise to, weakening and downsizing every point of view that appoints itself as the "higher" vantage point from which to describe the world and enumerate problems, and stimulating a constant oscillation between perspectives. This commitment to a pluralistic confrontation and the ensuing hybridization of perspectives is, we argue, at the heart of the idea of "the left" which we both identify with.

Biographical Note

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Introduction

This paper¹ has two authors, two titles and is written in the form of a dialogue, rather than conveying a unitary voice, as one would instead expect of a co-authored paper. The reason for this is that the articulation of the authors' disagreement, despite the identification of each of them with “the left”, is precisely the object of our inquiry. Our shared assertion of a common belonging, in the face of a marked divergence in our positions (one of us being a radical ecologist, the other a Calabresi-style² progressive), has challenged us to subvert the common structure of academic discourse in order to accommodate dissent, as well as the non-linearity of personal conversation, as it unfolded in the wiki which we have used to co-write this work.

The hybridization of academic discourse with a sprinkle of narrative has therefore freed us from the temptation to identify the idea of “the left”, and what it means to belong to it, with a particular intellectual position, and instead allowed us to elaborate a common structure within which to voice our different views. The presence of spaces enabling the hybridization of narratives and discourses, allowing each to become aware of its boundaries and limitations, is – we submit – at the heart of the leftist project, and what gives this work the peculiar quality of marrying both our strategy and our tactics,³ as it implements exactly the type of hybridization experiment it eventually supports. This marriage between strategy and tactics, however, blurs into the absence of such distinction the moment we practice nothing less than what we preach, and preach nothing more than what we practice, eliminating the temporal hiatus between a practical dimension centered in the present and a future normativity.

Realizing that spaces of discussion and contestation are not purely procedural tactics in view of a monolithic strategy, but themselves a strategy that is susceptible of immediate implementation, has, we believe, a profoundly empowering effect, in that it turns what is often deemed a weakness of the left (its lack of a unitary voice) into its principal contribution. To use an aesthetic allusion, this is tantamount to reclaiming – in the playful celebration of a renewed ability to appreciate the ubiquity of colourful diversity: “*¡Toda joia, toda beleza!*” (Roy Paci & Aretuska, 2007) – what has all too often been regarded as something “*que rambla perdida*” [that wanders lost] (Roy Paci & Aretuska, 2007), namely the proposal of “an alternative mode of relating” (De Angelis, 2004, 591) in addressing divergent standpoints.

¹ Both authors are indebted to an anonymous referee for the feedback provided on a previous version of this work, to Saki Bailey for introducing them to collaborative writing, to Gunther Teubner, Luca Pes, Fabian Muniesa and Talha Syed for their inspiration and to John D. Haskell, Giuseppe Mastruzzo, Rodrigo Miguez and Ugo Mattei for their support throughout. The usual disclaimer applies.

² See, e.g., Calabresi (2011).

³ On the distinction between strategy and tactics, see Knox (2011).

As the discussion that we have carried out in the following sections shows, however, negotiating boundaries and hybridizing languages is not as easy as it may at first seem, at least if one takes seriously Lacan's (and Žižek's) assertion that – in language – someone always has the upper hand, as language is more of an imposition than a co-creation, so that the opening of spaces for discussion and contestation is not so much a static achievement, a releasement of tensions in an oasis of “egalitarian intersubjectivity” (Žižek, 2008, 61-62), but a process that requires constant renegotiation: a reiterated turning of the table to escape from the corner a particular choice of language might relegate (meaningful) problems to, lest falling prey to a merely superficial celebration of:

[T]he diversity of participants, but only to the extent that they are brought together through a process that is defined in a particular manner – vertical – and that is ordered by a certain discourse. (De Angelis, 2004, 593)

This being said, the following Section briefly introduces the problem on which the discussion in Section 2 is later centred, namely regime collisions, and the different approaches that are available to (decide whether to) deal with them. As anticipated, Section 2 is then structured as a dialogue, in which our voices are clearly separated as we discuss the specific issue of the measurement of quality as a (managerialist) proposal to “solve” regime collisions, and contrast that to more openly politicised views of approaching regime collisions. In the conclusion, the main features of the discussion carried out in Section 2 are then examined in such a way as to bring forth the peculiar self-consciousness that pluralist spaces give rise to, weakening and downsizing every point of view that appoints itself as the “higher” vantage point from which to describe the world and enumerate problems, and stimulating the constant oscillation between perspectives that has been aptly described by Philippopoulos-Mihalopoulos (2010, 13-29).

I. REGIME COLLISIONS: A VERY SHORT INTRODUCTION

Talk of “regimes” in international law – understood as complexes of principles, norms, rules and decision-making processes around which expectations converge - is the outgrowth of “regime theory”, an approach to the study of international rules and rule-making that attempts to make sense of the growing complexity of the international sphere, through the springing up of new actors beyond nation states, thereby making law no longer a matter *inter-nationes*, but a veritable trans-national process involving all sorts of different actors, even down to individuals (Brown & Ainsley, 2005, 129-133; Koh, 1997, 2624). Within this broader discourse, the methodological stance that is adopted in approaching the problem of regime collisions in this paper is Luhmann's (and Teubner's) theory of functional differentiation, due to its ability to single out different “autopoietic” regimes – thereby making room for regime heterogeneity -, and then trace out their inter-relations – and

hybridizations - in a web comprising core-nodes, selective openings and in-between spaces.⁴ It is precisely in the light of this starting assumption of “operative closure” of different regimes - affording an easier inroad into the understanding of “selective openings” - that we have preferred this framework over others, like transnational legal process (Koh, 1997, 2645 ff.), that – while similar in substance – appear less suited for the type of analysis this paper aimed at (though more suited for other explanatory purposes; see, e.g., Koh, 1997, 2649-55).

The presence of multiple transnational regimes, understood as “complexes of norms and institutions” (Koskeniemi, forthcoming, 1) comes bundled with the possibility of multi-dimensional clashes between the different rationalities informing each of these specialised regimes. So, for instance, conflicts between trade and health, trade and development, trade and environmental protection, trade and human rights⁵ are the stock-in-trade of the contemporary presence of multiple conflicting global regimes. These conflicts don't only occur at an abstract level. Throughout the twentieth century and more intensely in the last decades, there has been a multiplication of transnational institutions with rule-making faculties, which constitute and update their own legal framework. In many cases, they are also endowed with dispute settlement bodies that allow stakeholders to bring claims related to their area of expertise. However, in contrast to what happens at the nation-state level, the stakeholder's role is less prominent in the process of rule-making, so there is little room for the balancing of interests.

As a result, conflicts of jurisdiction and incompatibilities between rules are commonplace in the transnational sphere, which cannot be settled through the same methods nation-states use when such problems take place before their domestic courts. Given the specificity of the international order by virtue of its lack of an overarching binding authority and a clear-cut and fairly uncontroversial hierarchy of norms and judicial authorities, as well as the more or less narrow sectoral focus of the policies pursued by different international organizations, these conflicts of norms and jurisdictions require a more creative approach that goes beyond the traditional reasoning a nation-state-centred approach to legal hierarchies would mandate (Fischer-Lescano & Teubner, 2004, 1007-08). In fact, the decision to tackle a case as one belonging to a specific functional regime (and not another, e.g. as a problem of trade and not environmental protection or human rights) has to be

⁴ In this respect, although the sociological take of functional differentiation comes with its own language and framework of analysis, it is submitted that the Teubnerian understanding of functional systems as network-like structures (see Fischer-Lescano and Teubner, 2004, 1017-18) does not make the present discussion on hybridization between different regimes (which Luhmann already understood as separate realities that enact themselves autopoietically) inaccessible from other standpoints, such as John Law's concept of *assemblage*, which he already borrows from Deleuze (see Law, 2004, 41-42). In particular, the following view of assemblage appears eminently compatible with the process of hybridization which we describe later:

[A]ssemblage is a process of bundling, of assembling, or better of *recursive self-assembling* in which the elements put together are not fixed in shape, do not belong to a larger pre-given list but are constructed at least in part as they are entangled together (Law, 2004, 42, emphasis added).

An in-depth discussion of the possible points of contact between the two approaches, however, surely deserves more than a footnote, and lays beyond the scope of this paper.

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The debate between Petersmann (2002) and Alston (2002) offers an interesting take on this.

undertaken in a de-centralized fashion by national courts and transnational instances of conflict resolution that act without previous consultation. Most importantly, the sectoral specificity of the different sets of rules and institutions that one finds at the global level, where the non-subject-specificity of state jurisdiction is splintered in specialised functional regimes (Fischer-Lescano & Teubner, 2004, 1008-09), causes regime collisions at the transnational level to acquire the dimension of veritable conflicts between rationalities (e.g. science vs. technology vs. environment) rather than conflicts between the policies of organizations and nation-states, requiring that a degree of compatibility be established among said rationalities:

[T]he fragmentation of law is the epiphenomenon of real-world constitutional conflicts, as legal fragmentation is – mediated via autonomous legal regimes – a legal reproduction of collisions between the diverse rationalities within global society (Fischer-Lescano & Teubner, 2004, 1017)

That such collisions ought to be a problem, however, is – as this paper aims to show – itself open to debate. Indeed, Fischer-Lescano and Teubner (2004, 1003) warn against the risk of problematizing regime collisions all too soon, as this may lead to an excessively swift reduction of collisions to a “technical” legal or economic issue, or to their equally one-dimensional politicization. Nowhere are these two extremes better elucidated than in Martti Koskenniemi's forthcoming chapter (Koskenniemi, forthcoming), where he reviews a series of attempts that purport to provide a “neutral” solution to regime collisions, and then contrasts the managerial posture embedded in such attempts with a different reading of regime collisions based on the concept of hegemony. Koskenniemi eventually concludes that there is no “value free” way to resolve such conflicts, and that these ought actually to be translated in open political terms in order to avoid cluttering the debate with the misguided assumption of value neutrality that underpins managerial discourse, which has the ultimate effect of making hegemony become invisible, but no less present (Koskenniemi, forthcoming, 17).

The “constitutional” delimitation of the reciprocal relationship between conflicting regimes is often not a product of a peaceful re-entry sought by an influential managerial expert; rather, the constitutional moment comes, more frequently than not, after a social catastrophe or near-catastrophe caused by the expansionist tendencies of a specialized cognitive field (Teubner, 2011, 9). It is the task of legal pluralism, therefore, to raise awareness of the dangers involved in framing issues as the “competence” of a single field of knowledge, and by extension, of experts that have been trained to see the world through a unidimensional lens and attach value to a very narrow set of consequences. In the face of the growing phenomenon of functional differentiation in the transnational layer of world society, Koskenniemi therefore seems to suggest that the self-understanding of specialized functional regimes should shift to take into account the political aspect of managerial pseudo-neutral decision-making.

These two narratives, the “technically neutral” (which Koskenniemi criticises)

and the “openly political” one (which he prefers), we seek to play out in the following Section, where we look at a peculiar managerialist way of addressing regime collisions by introducing a “calculus of quality” to enable some sort of cost-benefit analysis to guide decision making. In the conclusion, we look at what the dialectical dance between the different approaches considered there tells us about regime collisions, and at whether that very dance tells us something more interesting about regime collisions that goes beyond any of the “entrenched” perspectives – i.e. “technicalization” and “complete politicization” – which we will be discussing below.

II. QUALITY AS *LINGUA FRANCA* FOR ARTICULATING REGIME COLLISIONS: A DEBATE

In relation to regime collisions, Doria (2009) describes the possibility for discourse about “quality” to act as an enabling device, i.e. as a “code for connecting and integrating different actors and spheres of action” (Doria, 2009, 144 & 160-61). This property is – for Doria – inherent in the *indeterminacy* of such discourse (Doria, 2009, 161), which allows it to accommodate and contrast different sector-specific variations (e.g. environmental quality, commercial quality, regulatory quality), thereby acting as a kind of *lingua franca* for the purpose of regime collisions (Doria, 2009, 161). Of course, this (theoretical) neutrality of quality casts the separate problem of retaining its contestability in (the practice of) quality discourse and appraisal, so as to avoid the latter's capture by a specific rationality: this seems clear when Doria concedes that, on the one hand, “the technologies of quality [appraisal] appear to display a tendency to reduce the political space and to produce a particular form of de-politicization” (Doria, 2009, 163), while simultaneously being “constitutively open to contestation processes, which may engender new networks and coalitions.” (Doria, 2009, 163)

To restate the point, quality discourse appears to be especially amenable to accommodate the co-existence of separate realms of the social. However, its function to act as a bridge between different communicative worlds, positing itself as a *lingua franca* to enable the reciprocal acknowledgment of different rationalities, is underpinned by an underlying idea of all-comparability of the social. “Quality” and the discourse centred around its appraisal (what Callon and Law (2003) call “qualculation”)⁶ seem, in other words, to answer to a peculiar imperative revolving around the mobilisation of all of life towards performance (Doria, 2011) by making it available through language. (Doria, 2009, 166-67)

Which leads to the question from which the following debate sets off. Namely, whether the assumption of all-communicability underpinning quality discourse (as a tool to facilitate regime collisions) does not, in and of itself, fail the test for “neutrality” or “indeterminacy” on which Doria appears – instead – to justify the refusal of “a merely oppositional attitude towards contemporary quality discourse” (Doria, 2009, 165), urging to “distance oneself from the position that traces the problematic character of the matter [of the “calculative”

⁶ On calculative practices, see also Callon and Muniesa (2005).

practices around quality] to the risk of a technocratic degeneration of *quality management*".(Doria, 2009, 165)

[LR] Indeed, it is submitted it does fail such test, and is actually "over-determinate" to such an extent that it is inseparable from a social engineering posture and the managerialist approach to regime collisions that is poised on the former. The story, it will be attempted to show, is not that quality is theoretically neutral, and only exposed to capture by a particular functional rationality as a matter of practice. Instead, quality, and the practices of "qualculation", are all based on a precise value-judgment that sees – to quote Doria – the "mobilisation of life towards performance" (Doria, 2011) as somewhat of an unconditional good, but which (even on a theoretical level) is far from uncontroversial. As a matter of fact, Callon and Muniesa (2005) provide clarification of what is involved in the practice of "calculation":

First ... the entities taken into account have to be detached. A finite number of entities are moved, arranged and ordered in a single space.

. . . .

Once they have thus been sorted out, the entities considered ... are associated with one another and subjected to manipulations and transformations

. . . .

A third step is necessary to obtain an accomplished calculation: a result has to be extracted. A new entity must be produced ... that corresponds precisely to the manipulations effected in the calculative space and, consequently, links ... the entities taken into account. This resulting entity ... has to be able to leave the calculative space and circulate elsewhere in an acceptable way (Callon & Muniesa, 2005, 1231)

In light of this, it is difficult to see how – if by quality we mean "singularity" (Doria, 2009, 145) – it becomes at all possible not to lose it considering the very appraisal of "quality" requires a disembedding from the context in which "singularity" obtains, in order to arrive at something else that, while allowing comparison, has lost its original continuity with the surrounding environment, only to be rendered as "auditable quality" (Doria, 2009, 152). In the assumption that the quality of an embedded presence can be translated "unconditionally" (i.e. after its abstraction – and extraction – from an underlying socio-cultural texture) a specific policy stance can be seen lurking, in relation to the manipulability of the human (and other-than-human) world, which is quite far from being "neutral" or "indeterminate", but actually very close the social engineering posture mentioned earlier, which hides an essentially managerialist, economically-driven outlook on the world.

[AE] Although the previous point about quality discourse being inevitably linked to a "social engineering posture" (a hyperbolic term which – it is submitted – is used only to cast any policy-suggesting posture in a negative light) is clear, there is – however - a merit in attempting to find a common

language that allows comparisons across relative regime goals and objectives. Without such comparisons, the possibility of contesting any “social engineering posture” quickly evaporates, as there can't be a room for critique if there is no identifiable or intelligible value that is affected by the object of critique (otherwise, how is the above argument a contestation to Doria's?).

However, regardless of whether Doria's view implicitly privileges “economic” quality or not, it is still difficult to see how his proposal would qualify as a useful tool to overcome the problem of regime collisions. Even if one takes Doria's theory of quality at face value, the very idea of a theoretically neutral concept that facilitates communication among different functional systems is problematic, because it assumes it is possible to fine-tune conflicting rationalities present within society in a universally acceptable way.

This fine-tuning is possible within a territorial space where interaction can be smoothed by the presence of certain conditions. Within units where functional specificity is not the defining element (e.g. the nation-state, a rural community or a household), the presence of common values and long-term goals is the prerequisite to resolve rationality conflicts without recurring to violence or other political means.⁷ In the functionally differentiated transnational space, the absence of these common values and goals is what forces managerial experts to strive for hegemony through the mainstreaming of their vocabulary, which would allow them to not have to choose between integration or separation (Koskenniemi, forthcoming, 18-20). Policy positions regarding specific fields of knowledge – if they are to be communicated – have to be sensitive to circumstantial changes in the social realities in which they are set to be applied, otherwise they risk political or violent rejection.⁸ To ignore this is nothing short of denying the social dimension of the different fields of knowledge.

In societies where the functional criterion is not the dominant principle of societal differentiation (e.g. indigenous communities) and the success of a functional system over another has little political significance, collisions between functional systems are not problematic because the lack of separation between them makes the development of a *lingua franca* unnecessary.

[LR] This last response and critique of Doria's “quality calculation” as a tool to enable regime collisions by virtue of its (supposed) neutrality and (equidistant) in-betweenness vis-à-vis specialized sectorial rationalities appears not so concerned with Doria's attempt to find a common language (which it seems to accept), but with the fact that such common language is presented as “neutral”, thereby hiding precise political aims. To some extent, it is possible

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For instance, in several nation-states, it is likely that achieving high economic growth with low inflation and unemployment, while at the same time preserving good labor and environmental conditions could be fairly uncontroversial long-term goals; thereby making economic performance, social justice and environmental protection the values that determine political stability within their national borders. For a – perhaps naïf - attempt to locate common values even at the level of the international community, see Kwakwa (2003, 33 ff.)

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Mainstream positions gain their mainstream place in society because they adapted to a certain social circumstance. For the mainstream to be challenged, there has to be a change in that social circumstance that justifies it.

to sympathize with this and – indeed – Koskenniemi also appears to be alive to the danger inherent in the assumption of a “higher” vantage point from which problems may be neutrally solved (Koskenniemi, forthcoming, 4). Where the foregoing view still appears problematic, however, is the moment it assumes that – in relation to units where functional differentiation appears less pronounced – the different rationalities can be “fine-tuned” due to the existence of “common values and long-term goals”. This position, it is submitted, fails to see the issue of collisions as it is present in the parts as well. Let me explain this a little bit further.

John Law highlights different types of discourses about complex systems.⁹ On the one hand, he spots the tendency – in a certain type of discourse about systems – to locate complex emergent behaviour only at the global level, somehow “essentializing” all other components as the simple cogs of a machine:

[T]o grasp a reality which emerges out of interaction between its components ... it is necessary to treat those components as conformable in one way or another, similar in kind (Law, 2003, 3).

On the other hand, however, a feature of complexity is its being present not only at the global level, but also within the parts (Law, 2003, 8). All this to say that a “retreat” into what are presented as simpler realities that are located below the “functionally differentiated transnational space” (i.e. the locus of complex emergent behaviour that gives rise to regime collisions), and finding them as repositories of “common values” which enable to “fine-tune” regime collisions hides the plural nature of such realities under the cloak of political consensus. If one is to be serious about pluralism, the refusal to acknowledge the “other” using fictions of a unity that is not there is the very denial of pluralism.

More importantly, the foregoing explanatory key for regime collisions also appears to put too much weight on politics. In this respect, it is not too far from Koskenniemi (forthcoming, 22) the moment he advocates the translation of clashes between specialized functional rationalities in political claims, so that every conflict is ultimately reduced to a political conflict. If every conflict is political, and if politics is based on power play, then why do we keep talking about conflicts despite the fact that one of the two sides to a regime collision may enjoy more currency than the other, i.e. one of the two sides is politically stronger? If power play were what defines and decides regime collisions, then we couldn't even articulate the concept of regime collisions, as these would be buried underneath the fist of the politically stronger side.

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By complex system, it is here meant the following:

A system is a set of things—people, cells, molecules, or whatever—interconnected in such a way that they produce their own pattern of behavior over time. The system may be buffeted, constricted, triggered, or driven by outside forces. But the system's response to these forces is characteristic of itself, and that response is seldom simple in the real world (Meadows, 2008, 2).

My view, in other words, is that the assumption of all-contestability inherent in political discourse misses the point about regime collisions: two functional regimes collide because each regards itself and its prerogatives as non-negotiable. We mustn't forget, after all, that specialized functional systems are characterized by a "one-track mind" whereby they act on the world based on their unidimensional understanding of it. This is why different regimes collide, and this is also why – it is submitted – what defines regime collisions is not politics, but rather the specific rationalities of the regimes involved, each of which does not see itself as being up for grabs in political power play.

To go back to the main topic – pluralism within regime collisions – the idea that one ought to develop a common language is often misunderstood as one regime having to accept the tradeoffs of another; tradeoffs which might – however – discount the other regime's prerogatives in a trivial manner. Saying that the common language is to be imposed by political consensus is, however, hiding pluralism behind a fiction. "We're more than you are" is not an answer to the non-negotiable instances that make a collision a collision, and that characterise it as a collision between regimes (e.g. trade versus health or trade versus the environment), and not as an exercise in counting the reciprocal camps.¹⁰ For there to be a pluralist space within which to play out regime collisions, the different regimes involved must be able to "see" each other. In the language of Luhmann, the two systems must become selectively open to one another and try to grasp the non-negotiable instances of the other.¹¹ This, of course, is not a static process. Instead, it involves a constant "turning of the table", namely the reiterated challenge to the unilateral framing of the problem by one of the sides involved, along with the opening of parallel sites for contestation.¹²

[AE] Three comments can be made on this. Firstly, functional regimes in the real world are not monolithic structures, as they have all been hybridized to some extent by historically contingent circumstances. The thought of a functional system as a pure structure is only an abstraction that is analytically useful for the purposes of this discussion. There is equal simplification of the realities at play in the regime collision the moment one depicts specialized functional regimes as being "characterized by a one-track mind with a unidimensional understanding of the world." However, what allows us to even speak about regime collisions is the fact that the degree of their hybridization still permits the identification of a predominant functional system, which several legal pluralists assume the moment they speak about one in

¹⁰ This would be, in other words, a denial of the possibility to see "enemies" as "adversaries" (Schiff Berman, 2006-07, 1192 *quoting* Mouffe, 2000, 13).

¹¹ This is the meaning attached here to the "selective process of networking" which Fischer-Lescano and Teubner (2004, 1017) refer to.

¹² Once again, this should be nothing new. Teubner and Fischer-Lescano (2004, 1018) already suggest how inter-regime conflicts take place "in the absence of collectively binding decisions, centralized competences and hierarchically ordered legal principles", these being replaced by "a sequence of decisions within a variety of observational positions in a network; a process in which network nodes mutually reconstruct, influence, limit, control, and provoke one another, but which never leads to one final collective decision on substantive norms."

particular.¹³ This does not deny that the identification of separate systems blurring into a hybrid is always tentative: perhaps, it is not possible to take a vantage point that will permit to grasp the identities (which may well be very complex systems in their own right) of the regimes that form a hybrid in their full variety, beyond a mono-cultural understanding of function, or even of the hybrid itself. In fact, the concept of functional regime – and the notion of hybridity that assumes clashes between different regimes - is biased in a way that prevents different regimes from fully meeting one another, because functional regimes are unable to conceive of a perfect union between themselves and their environment, therefore the distinction between functional systems is bound to persist so long as we decide to use them as analytical tools. Philippopoulos-Mihalopoulos puts this clearly in his discussion of law as paradox:¹⁴

Every observation is a distinction, and every distinction divides the marked from the unmarked. The unmarked always includes the observer ... the observer cannot see *the* unity – he can only see what remains after the unity has been severed. What he sees may well be *a* unity, but it will not include himself. He remains in a *blind spot*, namely the point of observation that enables observation to take place. (Philippopoulos-Mihalopoulos, 2005, 127)

Secondly, the emphasis on the political dimension of regime collisions has to do with their origin, which defines the natural boundaries of any communication between different functional systems. It appears difficult to see how a functional system can be acknowledged by (or “become selectively open to”) another if it doesn't make itself visible by appealing to values that are politically significant¹⁵ for the relevant stakeholders. From the vantage point of whom has been called “the social engineer” and whom I prefer to call “the policymaker” (who basically is the person that is trying to figure out what the hybrid structure should look like), there are two moments where an acknowledgement of the political is crucial:

1. At the moment we decide whether there is a regime collision (e.g. can a functional regime keep its course of action without making any compromises and get what it seeks without diminishing it?). In deciding this, one is implicitly gauging whether one of the seemingly

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Pierre Schlag (2009, 51), for example, warns against overstating the power of de-reifying processes - which in this context we call hybridizing processes - since the differentiation of certain functional systems (like law and the social) are “ideationally perspicuous as well as socially real and effective”.

¹⁴ It follows from the above that the categories of functional systems and hybrids are, in this paper, better understood as heuristic tools to unveil the cycle of reification and de-reification which follows from the acknowledgment of selective opening, even from the – perhaps conservative – premise of operative closure. In other words, our interest in hybrids is more as an inroad to the understanding of a process than as an entity in themselves. There are, of course, alternative ways of conceptualizing hybridization beyond the “hybrid” Schlag-Teubner framework that is being used further on in this paper, though a full discussion probably falls outside of the more limited, process focus of this paper.

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In this context the “political” is understood to be the constellation of social concerns that enables a given tradeoff to be initially attractive and meaningful, and eventually stable in a given timescale and society.

colliding functional regimes is worthy of attention, which has a lot to do with our values and what we perceive to be the values of the stakeholder community. The outcome of this judgment call can be the start of the process of hybridization¹⁶ or the annihilation of the weaker regime.¹⁷

2. At the moment of bargaining between functional regimes. Here is where we apply the “grasping of the non-negotiable instances of the other” that was talked about, by placing special attention on the possible overlaps and compatibilities that might exist. If there are no overlaps, an acknowledgement of the degree to which one has the upper (or lower) hand will make the non-negotiables negotiable. A refusal to acknowledge might translate into the above-mentioned annihilation.

After this moment, our initial forecast of the functional synthesis will meet reality and its capacity to be politically stable will be put to the test, but until then this is the best we can do unless one believes there is a way to factor in the unknowable.

Thirdly, it has been attempted to highlight the levels (e.g. globe, nation-state, rural community) at which common values and long-term goals are identified because they determine the spectrum of stakeholders that must be taken into account. If one were to take the claim that a high degree of complexity exists even at smaller scales seriously, then one should also accept that the sum of the smaller highly-complex social units will be increasingly more difficult to fine-tune as the common values become harder to specify.

[LR] Some of the above points are rather meaningful. Indeed, the last answer can be a good inroad into the exploration of areas of convergence. First of all, in relation to the role of the political in regime collisions: whereas – from the perspective of Luhmann's sociological theory of society – power is concentrated in the political system, so that it is (by definition) absent whenever two systems other than politics collide,¹⁸ other scholars like Thornhill (2007) have objected to the conflation of the medium of power into the political system, and see a more ubiquitous role for power even in regime collisions:

Modern politics ... obtains its intensity in those exceptional instances where the intricately and plurally differentiated fabrics connecting society's systems begin to simplify themselves, and,

¹⁶ Which is what Poul Kjaer (2010, 522 citing Luhmann, 1997, 153) calls “the functional synthesis” when discussing the interaction of the political and legal systems.

¹⁷ Which, however, is clearly not an instance of pluralistic interaction (Schiff Berman, 2006-07, 1237).

¹⁸ “[Luhmann] insisted ... that no system of society can assume measurable priority over any other system, and, consequently, that politics cannot impute to itself responsibility for regulating areas of society which are not internal to its relatively narrow communications” (Thornhill, 2007, 503).

specifically, where one system begins to produce communications which are not reconcilable with the pluralistic format of society as a whole and reduce the freedoms constitutive of society's modern form. (Thornhill, 2007, 515)

In light of this, it appears that what has been suggested in the last response is substantially coincident with the representation of regime collisions as instances where “*structural knots*, or cases of concentrated over-layering” (Thornhill, 2007, 510) occur, namely instances of clash between the rationalities of different societal systems, *to which political power play also comes to be attached*.

The pronounced hybridity disclosed by this kind of scenarios of overlapping rationalities, then, leads to a second point, which has already been introduced in the last response by mentioning Schlag's work on *de-differentiation* (Schlag, 2009). In fact, talking about regime collisions takes us through various stages of and oscillations between reification and de-reification (Schlag, 2009, 51). So, for instance, it becomes necessary – in order to define regime collisions – to postulate stable identities for the conflicting regimes. And yet, as the systems become visible in each other's world and selectively open to perturbation, “not only might we expect the *relations* of [the conflicting regimes] to change but their *identities* as well” (Schlag, 2009, 43). Given two systems A and B – Schlag continues:

If the relations between A and B are dynamic, interactive, and dialectical, then we have no reason to suppose that A and B will retain any sort of conceptual or ontological integrity. On the contrary, we would expect all sorts of stuff to happen. Maybe A would be transformed into A₁ A₂ or A₁₀₅. Some regions or moments of A might fade into B. In turn, B might become more A-like. We would get some hybrids—some AB-things happening, some B within A within B within A things. And so on and so forth. We would get a lot of differentiation as well as a lot of entropy. The system is dynamic and being dynamic, the identities at stake (originally A and B) combine and change in a variety of ways. At some point, we would begin to think that A and B ... have become inextricably intertwined in multiple ways. At the very least, we would lose any confidence in our ability to deploy an A/B distinction. (Schlag, 2009, 43)

While, as it has been correctly said in the last response, the above need not happen as a matter of necessity, Schlag's discussion of de-differentiation inevitably reminds us that – once we open spaces of contestation as a way to mediate regime collisions – the consequent hybridization might take us full circle to see the reification of the “functional systems” we started to begin with (e.g. economics, or law, or education, and so on). This, in turn, can lead us to see how stable identities are probably not the rule, but the exception, with hybrid spaces being the norm (Schiff Berman, 2006-07, 1234). Secondly, even if we acknowledge a certain degree of stability in the differentiations

between functional systems, this does not tell us how these might be affected by hybridization; to use Schlag's words: "the mere presence of a socially extant and effective differentiation says nothing about its durability, porousness, or lack thereof" (Schlag, 2009, 51).

This, then, is where there appears to be agreement between both the authors of this work, namely in the acknowledgment that *the hybrid spaces that are generated at the overlap of different "regimes" ultimately lead one to question the solidity of the very regimes the identity of which was uncontroversially assumed to begin with.*

Where, instead, there is still room for disagreement – but this is not essential to being at one on the peculiar self-consciousness that regime collisions bring to bear on "essentialised" social differentiations – is in the willingness to relinquish a strictly analytical, cause-effect approach to understanding regime collision in favour of a systems thinking perspective.¹⁹ My personal inquiry into regime collisions, in fact, is probably shaped by an awareness that:

To ask whether elements, interconnections, or purposes are most important in a system is to ask an unsystemic question. All are essential. All interact. All have their roles. But the least obvious part of the system, its function or purpose, is often the most crucial determinant of the system's behavior. Interconnections are also critically important. Changing relationships usually changes system behavior. The elements, the parts of systems we are most likely to notice, are often (not always) least important in defining the unique characteristics of the system—unless changing an element also results in changing relationships or purpose. (Meadows, 2009, 17)

For this reason, it's not questions of agency – political, social or otherwise – in the context of regime collisions which this author finds meaningful or illuminating, being rather more curious to look at the (communicative) dynamics of the generation of hybridity over time.²⁰ This, in turn, requires a shift from analysis and (to go back to Doria's paper) calculation (both of which postulate a disembedding, an isolation of the elements deemed relevant for decision-making) to the experiential (Schlag, 2009, 37) and the participative,²¹ that might be more conducive to an "embedded" analysis of

19 On the difference between the two, see Meadows (2009, 3).

20 Lange (1998) has attempted to show how "[a]gency is considered more problematic to achieve [in systems-theoretic as opposed to action-based approaches] and thus structures become a precondition for agency" (Lange, 1998, 459), rather than agency and structure being two terms that somehow exclude each other, so that "[a]n increase in social structures leads to a decrease in human agency" (Lange, 1998, 458). Moreover, Lange also shows that, even though systems-theoretic approaches retain notions of agency (Lange 1998, 458-61), they also problematize the possibility of "intervention" in a social system, which "has to take into account the system's own rationality, its codes and the nature of its self-referential processes" (Lange, 1998, 462).

21 Participation - as opposed to analysis - is, indeed, the catchword of the systems approach to relating with the environment, which is close - for instance - to the outlook of deep ecology. See Harding (2009, 39)

hybridization processes and regime collisions;²² however, this last point has rather more to do with personal methodological choice and topical focus than with the substantive issue of hybrids in regime collisions.

[AE] Indeed, the point of divergence of the opinions expressed so far has become clearer. On my part, there has been an attempt to engage with the problem of regime collisions so as to find an analytically rich way to tackle them with a view to getting a politically stable solution, which varies depending on the social context where they take place. In doing this, it hasn't been an aim to develop a theory that is receptive to all the feedbacks (past, present and future) that concern a particular collision; rather, a choice has been made to be selective with the feedbacks to be considered relevant to take a decision or simply to pass judgment on the proposed solutions. The tasks of policy-making and decision-making²³ require some degree of static abstraction because of the natural limitations the human mind has. The less abstract the analytical approach is, the harder it becomes to make a decision.²⁴

The disembedding and separation (in the abstract) of each contending functional system is necessary for analytical purposes. The complete and partial differentiations of functional systems enable analysis, but their total de-differentiation kills it. An "embedded" analysis is – it is respectfully submitted – hardly an analysis, and if one wants to engage in it then this only means the nature of one's interest in regime collisions is different from that of this author. Conversely, of course, this means that by choosing the former standpoint one is also beyond criticism for not performing something which he/she did not set him/herself to do in the first place.

Doria's theory about quality has been tackled, on my part, from an analytical perspective to evaluate whether it can shed some light on functional collisions; in other words, whether it can facilitate the conception of a politically stable hybrid. The other responses, on another hand, evaluated its ability to cast an image of an embedded social reality where functional systems would be hard to recognize, thus de-problematizing the functional collision. On the one hand, there was an attempt to see the pathway to a hybrid, on the other to see the wholeness that doesn't require hybridizing

22 As one of the characters of *The Man from Earth* would describe it: "We have two simple choices: we can all get bent out of shape intellectualizing or bench-pressing logic or we can simply relax and enjoy it. I can listen, critically, but clearly I don't have to make up my mind about anything." (*The Man from Earth*, 2007).

23 Which in the context of legislation/adjudication are separated by a very tenuous line (Kennedy, 1997, 97-127).

24 Calabresi (1982, 56) illustrates this point very well in his discussion on whether administrative agencies or courts should be in charge of updating laws, which would apply perfectly to the managerialist problem-solving that interests this debate: "The point, then, is not whether institutions unconstrained by principle can properly update laws; obviously legislatures can, if they but will. Nor is it whether only legislatures can be permitted to do the job; we have traditionally employed juries to do it as well. It is, rather, whether administrative agencies are sufficiently responsive to the electorate so that we can trust *their* sense of what preferences and distinctions are appropriate, to serve at least as the starting point for legislative reaction."

because it was never separate.²⁵ In sum, it has been attempted on my part to provide an account – which has above been criticized as simplistic - for the *always partial* reification or de-reification of functional systems in real life (as mediated by the political component in regime collisions).

However, there appears to be a clear convergence in the refusal to believe in a managerial pseudo-neutral analytical tool to define the boundaries of each functional system, and in the acknowledgement that their core and periphery are hard to pin down. There is also an acknowledgement of the changing composition of the hybrids throughout and after the collision between the identities that integrate them.

CONCLUSION

In this paper, we have endeavoured to provide a pluralistic account of pluralism in the context of regime collisions, understood as conflicts between different rationalities (such as the economy, law, politics, education and so forth). After a brief introduction to the idea of a regime collision in the transnational level, we have engaged in a debate which set off from a discussion of “quality” calculation as a (managerialist) tool to facilitate regime collisions. Both authors rejected quality calculation as an approach to regime collisions that be fit to enable insights into the latter's inner workings and internal dynamics, either because of its assumption of quality as a neutral medium that hides the ubiquity of political (hence non-value-neutral) contestation at collision sites, or – alternatively – because of its analytical approach to regime collisions that, by “mobilising” through isolation a set of relevant elements, prevents a participative, embedded appreciation of system dynamics.

What did emerge from the debate was, instead, a common willingness to acknowledge plurality, not just in an abstract, static sense that assumes the lasting endurance of original identities and positions, but as a fundamental challenge to the very starting points, which recover their ambivalence as the *departure* towards an end, as well as a *parting* from a given perspective. Indeed, as conflicting regimes become visible to one another and generate common spaces for contestation, this enables in turn a movement, an oscillation within and without the perspective embodied by a particular functional rationality, which in turn promotes a particular self-consciousness in the use of otherwise uncontroversial differentiations (Philippopoulos-Mihalopoulos, 2010, 26-7). What pluralism seems to enable, therefore, is a repeated marking of ever-shifting distinctions, as well as a crossing to the other side of any such distinction (Philippopoulos-Mihalopoulos, 2010, 38-40),²⁶ through which a fleeting glimpse of a de-differentiated totality can be

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To use Duncan Kennedy's terminology, my responder could be seen as an “irrationalist organicist” that engages in a “dialectical transformation” narrative whereas this author is more of a “rationalist antinomian” with a “decisionist” narrative (Kennedy, 2001, 1155-58 & 1162-63).

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This we see to be substantially similar to Schlag's idea of the constant swinging between reification and de-reification (Schlag, 2009, 51).

experienced.

In other words, the peculiar self-consciousness that a pluralistic approach to regime collisions brings about prevents one from “[g]azing into the future in a problem-solving mode” (Koskenniemi, forthcoming, 22), which would prevent “asking the question about how it is that we are ruled by these languages, these men and women” (Koskenniemi, forthcoming, 22). The constant (critical) oscillation between perspectives that regime collisions enable prevents allegiance to a static formulation of issues and problems. Instead, as regime boundaries are challenged by “hybrids” and functional identities become more contested and entropic, so do the practices of “problematization”, that keep changing along with regime boundaries and identities.

As a matter of fact, this has been very much our experience in the debate presented in this paper. In arriving at a satisfactory formulation of pluralism by using a pluralistic method based on a shared space of debate and contestation, we have witnessed a repeated turning of the table, a reciprocal challenge to the other's framing of issues, which – in turn – promoted greater self-consciousness and, ultimately, a shift (and a convergence) in the designation of problems: from a debate on the role of the political in regime collisions, our discussion shifted to the critical reflection on the dynamic effects that regime collisions exert on the very self-identities of conflicting regimes, and on the reversal of the rule-to-exception relationship between regimes and collisions among regimes.²⁷ The commitment to critical revisitation of positions over time in light of ongoing hybridization at the edges is, in the end, what we can say connects both of us to the project of a pluralist, colourful left; one that is both joyous and melancholic, undefined yet emergent from entropic interplay; a left that savours the rich texture of mutual paradoxification in the folds of constant oscillation.

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Indeed, as regime boundaries become less clear-cut (or, at the very least, less identical to themselves over time) through repeated revisitation as they set themselves in a dynamic relationship with a colliding regime, hybridity eventually seems more ubiquitous than “purist” differentiations appear to be.

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