Relativism and Human Rights

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A Theory of Pluralistic Universalism

Springer

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This book is dedicated to M. Teresa, Cristina and Caterina who are all fighting in different ways for their rights.

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Introduction

When he finished writing, he raised his eyes and looked at me. From that day I have thought about Doktor Pannwitz many times and in many ways. I have asked myself how he really functioned as a man; how he filled his time, outside of the Polymerization and the Indo-Germanic conscience; above all when I was once more a free man, I wanted to meet him again, not from a spirit of revenge, but merely from a personal curiosity about the human soul. Because that look was not one between two men; and if I had known how completely to explain the nature of that look, which came as if across the glass window of an aquarium between two beings who live in different worlds, I would also have explained the essence of the great insanity of the third Germany.

> PRIMO LEVI [*If this is a man*, pp. 111–112,
> in, *If this is a man and The truce*,
> trans. S. Woolf, Abacus, London, 1987]

If all propositions, even the contingent ones, are resolved into identical propositions, are they not all necessary? My answer is: certainly not. For even if it is certain that what is more perfect is what will exist, the less perfect is nevertheless still possible. In propositions of fact, existence is involved.

> LEIBNIZ [*Sämtliche schriften und briefe
> vol VI pt 4* Deutsche Akademie
> der Wissenschaften, 1449A VI 4]

We live in a rule-constrained world. Even our most insignificant practices are somehow dependent upon a socially agreed standard regulating their structures, procedures, and general goals. We can, for instance, appreciate our neighbour's ability to keep her garden tidy and in good shape, but we can also observe the unusual combination of ingredients in the preparation of an exotic dish, or be impressed by the refined style of Chinese pots. We can discuss and disagree about whether our moral judgments are sufficiently argued and produce well-founded contrasting arguments. What happens in all cases is that our diverging opinions are defended on the basis of compliance with a rule, a standard which we consider as deserving priority over alternative considerations. If, in contrast to the experiential pervasiveness of norms, their appreciation were restricted to certain domains of human action, there would be little resistance to the idea of a social construction of reality. My

argument, instead, is that the entire domain of human understanding is sensitive to rule-governed practices based upon what I will term as "experientialism". To claim that understanding and meaning are strictly embedded within social practices does not amount to say that world's objects do not exist independently from our cognitive activities. Indeed, too often ontological issues, as those concerning the very existence of an external word, have been confused with the epistemological ones. While ontology is existentially independent from our knowledge, this latter always projects classificatory standards to ontological independent objects both institutional and non institutional.

Standards, as well as values, arise on the basis of social practice. To say that something is a value is to implicitly affirm that there is or that there has been a social practice supporting that something. And yet, while admitting this general background condition, some have advanced the hypothesis that there is still room for at least some "enabling and facilitating values" not subject to any sort of sustaining practice. But even in these cases, one must come to see that "enabling and facilitating values" can *at least partially and indirectly be considered as dependent* upon a social practice, and that their aim is to "[. . .] enable the pursuit and realization of others [values], and, to the extent that the others are socially dependent, so are they, at least in their point and purpose" (Raz, 2005, 34–35). This introduces an important notion defended in this work, which takes the form of both the idea of *cognitive structures as emerging from experience*, but not of a direct categorization of the experience itself in its cognitive version, and the form of *experiential normative* conditions of validity, as far as its moral-political side is concerned. Throughout the work, I will show also how these conditions bear relevant connections to the notion of contingency and context dependence, as well as how they are connected with the notion exemplar universality.

Overall, the naïve opposition of objectivist and idealistic understandings of physical and social phenomena is here seen through the lens of the notion of "experience" as an interpretive concept capable of conjoining the two above-mentioned adversarial positions. Intuitively, when one speaks of her own experience, she is immediately readdressed to an idea of privacy which in principle implies incommunicability. This is not how I define the notion of experience and language in general in this work. Wittgenstein offered extensive proof of the inadequacy of the idea of a private language in his *Philosophical Investigations* (1953) and I take his arguments in favour of the idea that experience depends on public use of language – as well as on publicly-agreed practices – and what I try to do is to indicate how certain domains of cognitive categorization are primarily sensitive to the specific characteristics of our bodily interaction with the environment, so that cultural variability and different conceptual schemes remain within the constraints of inter-linguistic partial commensurability and epistemic accessibility. In short, I will speak of the embodiment of our minds.

If this element facilitates the task of producing convincing arguments against a strong form of cognitive, linguistic and epistemic relativism, the reliance on partially commensurable conceptual scheme variations looks much more vague when applied to possible moral inter-cultural comparisons. I will argue, therefore, that one

can show that neither an absolute incommensurability nor an absolute commensurability between competing moral systems can be proved to be at all convincing. Indeed, if persistent moral conflicts upon the goods can be paired with a selective form of reasonable pluralism, then the refusal to surrender to moral relativism is possible only once certain conditions oriented to mutual understanding are satisfied. Such conditions for purposive agency in general, and for communicative agency in particular, are what I will term as human rights.

Understanding the conceptual implications of a notion of human rights appears as one of the most promising research fields for contemporary political theory. Recent literature on the subject has been largely devoted to the impact that any theory of human rights has for the notion of a global theory of justice, development, overpopulation, famine, war. Yet, even if the extension of applied studies in human rights has acquired great relevance – and certainly urgency – nowadays, proportionate attention to the assessment and justification of the conceptual status of fundamental rights has been lacking.

One of the main tenets of this study is that the two spheres of analysis cannot be easily separated and that the extent of application of any normative model is to be seen as strictly dependent upon its modality and degree of justification. This work is an attempt to analyse these two aspects and to construct a normative theory of human rights as dependent both on a model grounding our cognitive and linguistic possibilities and on a model validating our moral principles and claims. Indeed, both cognitive and moral elements play a role in human rights judgments, therefore implying, moreover, the necessity of their functional differentiation and asymmetry. This differentiation is certainly an ambitious task, which would ideally require a separate monograph expanding and more fully justifying each chapter. As it stands, however, this work has the advantage of providing several relevant background notions and arguments for a theory of validity of human rights.

The first chapter is oriented precisely to the characterization of the universal validity of truth-claims through the challenges posed by the notion of relativism in accordance to its different dimensions: semantic, epistemic, ontological.

As far as the cognitive-linguistic dimension is concerned, it is possible to find a justificatory route for inter-linguistic translatability and epistemic partial commensurability on the basis of conceptual bridgeheads, as in the case of colour and spatial categories. The first chapter, indeed, addresses the issue of cognitive-linguistic relativism, in particular through the Davidsonian considerations concerning partial incommensurability. On the basis of an extensive use of the discoveries coming from cognitive linguistics a thesis of the embodiment of concepts and of the image schemas is proposed. This allows the defence of partial inter-linguistic commensurability which, unlike the "anti-schematism" of Davidson, can rely on the idea of conceptual schemes as "bridgeheads" universally sheared.

In particular, then, the topic of the metaphoric status of thought and of the processes of categorization is addressed. This cognitive aspect is useful for the criticism of philosophical objectivism, and in particular for the criticism to all those linguistic and philosophical theories that have seen in the idea of correspondence

of names to external objects a valid model for the explanation of the cognition and of the propositional truth. The central idea is that notwithstanding that conceptual schemes do emerge directly from experience and do remain dependent upon bodily structures in their environmental interaction, they are organized in cultural and contextual terms.

The epistemic use of the reflective judgment, then, relaunches an inter-subjective-dialogical notion, on the basis of *experientially constituted* conditions, for the construction of meanings and propositional truths. In contrast with previous models, the peculiarity of the present proposal is that cognitions dialogically tested are connected to inter-subjective constructions of propositional validity at an intermediate level, one of which is in between the subject and the object: the experiential interactional processes of categorization. In this case, as it will be for the practical sphere, the notion of truth, far from being considered in terms of its *criteriological* role, is adopted according to its *regulative* function. If the *criteriological* perspective considers truth as based upon a correspondence with the world, the second makes use of a model where the validation of subjective claims is to be measured "as if" it had to be valid for the entire community of fellow human beings.

The second chapter, then, discusses the notions of moral relativism and of objectivism. The initial section offers a general structural picture which distinguishes between descriptive, normative and metaethical relativism. The three spheres can be combined in various ways and, for instance, when integrated by universalist methodological elements it is possible to formulate a theory which is normatively relativist but remains universalist at the metaethical level. Thus, a general perspective is offered on the different possible articulations within different moralities, which integrate universalist and relativist elements. Some specific positions are then presented and criticized both on the side of ethical relativism and on that of the universalism.

Considering Harman's position, it is claimed, among various objections, that he misses to consider both the relevance of the principle of recognition and the normative/factual distinction towards the "ought-can" implication. In the case of Nagel's universalism, the impossibility is observed of constructing an objectively valid paradigm which can rely on a supposed "view from nowhere". But the abandoning of a form of classical universalism does not necessarily commit us to a defence of a revised form of relativism as the one recently defended by Wong. This allows to elicit some options and to prepare the ground for the form of validity of human rights which will be presented in the third chapter: the idea of an exemplary validity contextually situated and constrained by the experiential presuppositions of communicative action. The result is that of a reformulation of the initial conditions of deliberation as presented by Rawls in terms of primary goods within an original position under the "veil of ignorance", in terms of avoidable "enabling conditions" of communicative action: the right to an equal system of freedoms. The third chapter, in particular, provides a critical evaluation of the Habermasian idea of human rights as presuppositions of the communicative model. Notwithstanding the many advantages of the discursive model resulting from an extremely proceduralized framework for the validity of the ethical-political argumentation, Habermas does not consider that,

within the pragmatic-discursive dimension, the always criticisable contextual pre-suppositions of communicative action do not provide a sufficient ground for reaching his principal objective of subordinating perlocutory functions to illocutionary ones. Such a point connects, within the cognitive aspect, to what is said in the first chapter regarding to the truth-validity of speech-acts as in terms of the experiential basis of the semantics.

The central dependence of purposive action to action aimed at achieving social coordination (communicative action) is also addressed on the basis Gewirth's argument on human rights as the universal conditions of purposive agency. From the difficulties emerging from both Gewirth's and Habermas's arguments, I reformulate the normative conditions expressed in the Habermasian model for communicative action and propose a model of justification taking into account the idea that illocutionary speech-act validity is dependent upon both a procedural standard of recognition among agents, leading to a formal system of equal liberties, and upon the satisfaction of the conditions of exemplar validity articulated along both epistemic and ethical dimensions.

Indeed, by moving from a system of liberties as a non-avoidable system of purposive presuppositions, I propose a model of judgement capable of mediating between the abstract universality of a system of freedoms and the multiple and partially incommensurable conceptions of the good spread along the multiplicity of conflicting comprehensive views. In this sense the purported project attempts at considering "the necessary disjunction as well as the necessary mediation between the moral and the ethical, the moral and the political" as well as answering the question: "How can one mediate moral universalism with ethical particularism? How can one mediate legal and political norms with moral ones?" (Benhabib, 2004, 119).

Just to simplify, whereas liberals, on the one hand, have favoured liberty rights as individual rights claimed against the state, and communitarians, on the other hand, have favoured community rights against individual reason, the relation between liberty and participatory rights is here understood in terms of a deep interconnection and mutual interrelation between private and public freedoms. Drawing on the Habermasian theory of communicative action, the notion of communicative agency adds not only a substantive constraint to pure proceduralism. It also conceives, on the one hand, the liberties of the private sphere as themselves justifiable on the basis of an ideal community of agents and, on the other hand, the deliberative outcomes of participatory liberties as delimited by respect for the rights to life, security, and freedom of expression. The liberties of the moderns cannot be taken, then, as defining in an autonomous way a private sphere without of a shareable public notion of justification, nor can public deliberation overrule the basic constraints of the purposive agency. More specific considerations of the characteristics for a theory of human rights are then advanced by connecting the deontological element of human rights with a consideration of the maximization of rights in the case of internal or external conflict among rights. Such a point is strictly connected to the principle of the "finality of rights" previously posed at the normative justificatory level.

It is precisely when individuals can freely reach a form of self-understanding based upon a universalizable frame that human rights can ground a community of right-holders. This is not to deny that variations and specificities can be maintained across self-determined communities and groups. Human rights as principles are, indeed, abstractions which, even if universally justifiable, point to specific interpretive applications taking into account both the political context of implementation as well as the specificities of the cases to which they are applied. If a general and an independent model of human rights can be provided, its validity claims must also be tested by the strategies of application it brings forth. Therefore, a view must not only recognize some rights as fundamental but also combine a deontological perspective with a form of goal-oriented maximization. In so doing, variability can be admitted only in so far as different equilibria for the maximization of core rights can be achieved through the balancing and eventual restriction of respectively attached duties, introducing, in so doing, an element of contextualism within a universalist paradigm.

By considering that even within a political community conflict on human rights is unavoidable, I have then turned to the construction of the conditions of deliberation in the public sphere that would better favour agreement in pluralistic societies. The imaginative interpretation of the constraints of freedoms by the constructive activity of the reflective judgment pluralizes the forms of acceptable public reasons within a system of equal cooperation. The result is therefore a pluralization of the public sphere which calls for possible redefinitions of exemplarily agreed forms of civic coexistence. This process of continuous tension and revision of publicly valid plural judgments refers to what I have termed as second-order exemplar judgments. Since the formal system of liberty-rights grants a plurality of publicly valid exemplar judgments, each system needs the possibility of redetermining the conditions of mutual understanding in accordance to the reflective use of judgment. This new form of exemplar universality, by taking into account all the reasonable and yet conflicting views confronting each other at the public level, is then recognized by the competing parties as representing a new construction of the political identity of the socially interacting subjects themselves. Second-order reflective judgments do create new political identities by reframing, exemplarily, those same conflicting views satisfying the conditions of reasonableness.

Finally, in the fourth chapter, I consider the legal dimensions that human rights bear both in the domestic and in the international domain. In order to elucidate this issue, I consider the relation between law and morality and propose a distinction into four according to the following criteria: internal/conventional, external/conventional, internal/normative, external/normative. The subsequent section, then, reconsiders the issue of variability of the juridical codifications on human rights from the perspective of a common moral justification of fundamental principles as deduced in the previous sections. It is once again underscored, that, even if the concepts of the good can remain partially incommensurable, from the perspective of the juridical interpretation and articulation of the fundamental conditions of agency, it is possible to advance an idea of *partial commensurability on balance* which, even if contextually sensible to the socio/cultural environment of reference,

does not impede a possible horizontal revision (interstate relation), of the juridical codifications.

To claim that a form of partial commensurability on balance can be advanced without infringing the political autonomy to self determination of community of citizens, does not amount certainly to provide rationale for "forced processes of democratization" as advanced by individual states in the name of a liberal *ethos*.

For this reason, while defending the conceptual possibility of mutual cooperation among states in matters of legal reforms, in section 4.4 the wide-spread idea that international peace and stability can be granted simply by increasing the number of democratic states and coalitions is rejected. Democracies have been capable of exhibiting external behaviours that are as aggressive as non-democracies, even in situations of no threat to their national security. Also, war and democracy are very complex terms to define, and certainly the so-called democratic peace theorists have not done much for their clarification. While democratic institutional configurations are necessary conditions for the achievement of international peace, they are not sufficient elements. What is required is the development of conditions of regional coordination *within the medium of law* which can bind – internationally – both democratic and non-democratic states. But such external mechanisms of political rationalisation, in order to avoid a form of legal imperialism, would have to rationalize democratic external behaviours under the condition that the maintenance of a multilevel constitutional dialogue is granted. Constitutional confrontation and functional differentiation remain the core point for granting pluralistic self-determination at the local regional and international level.

This book collects and organizes all my recent enquiries into human rights and cultural diversity of the last five years. While initial seeds were contained in some of my previous works, here I offer a systematic philosophical framing for a post-metaphysical conception of human rights.

Part I

Chapter 1
Cognitive Relativism and Experiential Rationality

In the attempt to defend a notion of pluralistic universal validity of human rights, the first, perhaps unintuitive step consists in the rejection of possible relativist claims regarding the cognitive-epistemic possibilities of our faculties. The relevance of this starting point lies in two reciprocally interconnected reasons which compel any research into the philosophical justification of human rights to consider the challenge of cognitive-epistemic relativism. The first reason is related to the Habermasian difference between "mutual understanding" (*Verständingen*), as a form of understanding the subjective reasoning of an interlocutor which is valid only for her, and "agreement" as a mutual acceptance of a validity claim (*Einverständnis*). Any form of agreement must presuppose a pattern of mutual understanding which can either proceed to justification, or to a suspension of a process leading to agreement. In practical discourses, the possibility of rejecting contrasting beliefs depends upon the satisfaction of a preliminary condition oriented to the construction and definition of the cognitive context which validates judgments, and in order to achieve a commonly shared definitional context, agents must be capable at least to clarify and exchange, mutually, the very semantic frames that are adopted for the justification of their opposing beliefs. This implies that the option of an absolute form of cognitive incommensurability be ruled out, and that with the overcoming of such theoretical distance, the requirements of understanding presuppositions are satisfied.

The second reason concerns the same possibility of epistemic certainty that becomes particularly crucial in the assessment of the reasons pertaining to opposing moral standards of evaluation and in particular the balancing of the different principles of human rights when implied in the judgmental activity. Let's take for instance the case of the recent debate in bioethics in genetic research, in environmental law as well as that concerning the health risks presented by certain cultural practices such as genital mutilation or, for some, the forbiddance of blood transfusions. The relevance of the interconnection between our epistemic and moral dimension, together with the presumption that certain standards must be satisfied, constitute the general theoretical presuppositions for the grounding of a non-relativist account of human rights judgments. These cases do not exhaust the spectrum of possibilities which should be assessed and epistemically *agreed upon* before any *reasonable* political

debate can take place in the public sphere. Another interesting research laboratory in which historical truth acts as a precondition for the reconstruction of democratic and peace processes is that which is today known as transitional justice. Transitional justice encompasses all those institutional and non institutional changes which are required for the democratization of a non-democratic state or for the internal conflict resolution of purely procedural democracies. Within these contexts, there is no chance to rebuild the democratic functions of a country characterized by conflicting groups without a prior assessment of past violations through trials, truth-telling processes, historical reconstructions and collective recognition of individual and group responsibilities.

As is evident from such cases, it seems that in order to move from a situation where collective decision making has collapsed into a stage where it is rehabilitated, a long process of collective truth consolidation is required before the boundaries of legitimate public discourses within the new born public sphere can be re-established. In other words, the use of public reason, contrary to some sceptical implications of the Rawlsian notion of the "burden of judgment" later discussed, requires a *minimum amount of shared cognitive truths* for the production of *reasonable public disagreement* on moral and political issues. On the basis of which criteria and constraints are such truths consolidations possible? Is truth simply a matter of correspondence to facts or does it follow a socially constructed procedure? I will defend this latter option and claim that coherence of moral and political views with scientific models entails neither a form of naturalistic reductionism nor pure cultural hermeneutics. Nor does it imply a form of subordination of the practical domain to the epistemic one. Both epistemic and ethical spheres remain separate even if publicly argued views of ethical validity must be seen as internally connected with – or "coherent with" – one or more models of epistemic validity and vice versa. With this, it is not my intention to claim that the validity of ethical theories depends on empirical facts – such a relation of corresponding fact with ethical principles does not exist. What I claim, instead, is that the practical activity of judging something to be the (morally relevant) case is sensitive upon the (pre-) understanding of its truth conditions.

Accordingly, in the first section, I will attempt at refuting several versions of relativism advanced within the cognitive-epistemic sphere in order to reach the broader objective of constructing an articulation of morally valid deliberations combining the validity of the epistemic certainty, drawn from the epistemic use of judgements with the validity of moral principles of human rights. As far as the notion of understandability is concerned, my argument relies principally on the development of some of the Davidsonian insights against the principle of "total incommensurability" while maintaining at the same time a universalist understanding of the idea of "conceptual scheme". Such schemes are part of our bodily interactions with the environment and do ground, from the cognitivist-epistemic perspective, our understanding of physical and social phenomena. It is important to clarify that this level of experiential interaction is somehow fictional, constructed by analysis without any pretence of reflecting the structure of our existing languages and cognitive frameworks. Rather, it intersects a "pre-cultural" approach to reality on the basis

of the notion of the "embodiment" of our faculties. Diversification of our linguistic systems occurs at a second stage, that is, when forms of social and environmental adaptations organize and reformulate this first level of bodily interaction. Partial commensurability of our cognitive faculties is thus the result of such common pre-cognitive grounding, so that the meta-condition of mutual "understandability" is defended.

As already mentioned, the second central idea defended in this chapter is that of "epistemic truth" as part of a broader framework of public reason. Relativism in truth can broadly amount either to the so called "standard-related" hypothesis or, to the "no neutrality" hypothesis. Here, the argumentative strategy which I have defended has been oriented, on the one hand, to the rejection of possible forms of solipsism as attached to the idea of an internal standard of validity conceived of as in principle private, and then to propose that the "no neutrality" hypothesis does not necessarily commit us to relativism. This point is defended through the critical discussion of several authors, such as MacIntyre, Rorty, Putnam. The conclusion is that while a contextualist approach can coexist with a non-relativist account of our faculties, the defence of a criterion of truth can be defended without an objectivist paradigm of explanation. The concluding remark points indeed to the idea that the standard-related hypothesis must to be understood in relation to a notion of truth based on the principle of subjective universalism and exemplarity. These two elements maintain the "situated character" with the form of an inter-perspective criticism considered in terms of adequacy to a subjectively universalizable standard of validity.

1.1   Beyond Cognitive and Linguistic Relativism

There is a version of the notion of relativism that must be considered in order to understand the epistemological difficulties involved in the notion of cognitive and linguistic relativism. Some of its most renowned representatives are Lyotard, Malinowski, Wittgenstein, Kuhn, Whorf, Herskovits and generally all those who have been interpreted, rightly or wrongly,[1] as proposing a notion of meaning, or an epistemic category, as strictly determined by the non-universalizable conditions attached to the contextual practice of a community.[2] According to this

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[1] For example, it is not clear at all that Kuhn can be read as proposing a strong form of relativism: Kuhn nowhere shows that meaning shifts are necessitated by paradigm shifts. His historical examples support only the weaker thesis that limited meaning shifts have occurred as paradigms have been replaced or transformed" Harré and Krausz (1996, 80). Later in this chapter I will provide a non relativistic/solipsistic reading of Wittgenstein.

[2] In the Italian debate over the issue, Zolo represents one of the most tenacious defendants of the incommensurability of values, when he writes: "Within differentiated societies, social complexity appears as a process of increasing semantic discontinuity among languages, knowledge, and values that are practiced within any social subsystem. The meaning of an experience lived in a specific