THE UNIVERSAL AND ITS OTHERS: DIALECTICS AND CONFLICT IN COMPREHENSIVE PLURALISM

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INTRODUCTION

Since the release of Rawls's *A Theory of Justice* in 1971,[1] discussions on the role of groups, redistribution, and symbolic recognition have gained unprecedented attention in North America and Europe. How can we ensure equal recognition among groups and foster equitable access to goods in a way that provides fair distribution not only among groups (plurality) but also within groups (the singular) so that all are politically and socially included on a common shared basis (the universal)? While the approach to this question differs between America and Europe— think of French republican universalism and the historical evolution of the concept of nation, along with its recent impact on secularism—it has also been diversified by third world perspectives. "Provincializing

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1   JOHN RAWLS, A THEORY OF JUSTICE (1971).

Europe," to borrow Dipesh Chakrabarty's book title,[2] also means provincializing a certain universal affirmed as globally valid while denying the plurality and singularities that resist it, or, indeed, other discourses on the universal, other universals. To reconceptualize the minimums of justice and establish a more inclusive universal, it is also crucial to integrate not only postcolonial critiques but also perspectives that have been historically overlooked, such as those of women, sexual minorities, and the subaltern, within this overarching universal framework. Despite the Western-centric focus of Michel Rosenfeld's book, *A Pluralist Theory of Constitutional Justice*,[3] as highlighted by Daniel Bonilla Maldonado,[4] it offers a sophisticated conceptualization of the universal. This conceptualization provides an original and fruitful approach to articulating the relationships between the three key elements—the singular, the plural, and the universal—ultimately allowing for the development of a comprehensive pluralist theory within the context of liberal democracies.

The approach through which Rosenfeld develops his theory deserves to be highlighted for its ability to transcend certain intellectual divides. The formulation of his theory of comprehensive pluralism and the essentials of justice combines a critical dimension with a normative one. This articulation is a strength in Rosenfeld's thinking, challenging the established notion in philosophy and legal studies that these two perspectives must remain separate. Typically, critical work aims to unveil forms of power and domination—such as class, race, and gender—to denounce them, while normative perspectives construct projects for social, political, and legal transformation. The normative perspective is theoretical: it elaborates a theory of justice, which, most of the time, is an ideal theory. But this division of intellectual work is questionable. On the one hand, critical theories necessarily require a normative standpoint: the critique of inequalities of economic redistribution, lack of cultural recognition, or failures in political representation, to borrow from Nancy Fraser's framework of "scales of justice,"[5] necessarily needs a substantial and normative concept of equality, and, more broadly, parameters of justice without which it cannot denounce social practices and structures as unjust. The articulation of a normative standpoint with a critical one

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2 DIPESH CHAKRABARTY, PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE (2008).

3 MICHEL ROSENFELD, A PLURALIST THEORY OF CONSTITUTIONAL JUSTICE: ASSESSING LIBERAL DEMOCRACY IN TIMES OF RISING POPULISM AND ILLIBERALISM (2022).

4 Daniel Bonilla Maldonado, *On Comprehensive Pluralism: Two Pluralistic Deficits*, 45 CARDOZO L. REV. 1493–512 (2024).

5 NANCY FRASER, SCALES OF JUSTICE: REIMAGINING POLITICAL SPACE IN A GLOBALIZING WORLD 12–29 (2009).

can also be found in Max Horkheimer's project of developing a type of critique aimed at social transformations.[6] In other words, critical theories must uncover the parameters that make critique possible and the kinds of transformations they aspire to: critical theories are thus conditioned by a normative theory, both in their principles and purpose. On the other hand, normative theories of justice lose their relevance if they sever all connections to praxis, the reality of social relations, and the forms and structures of power that produce and reproduce injustices. In this sense, theories of justice must integrate a critical dimension, understood as a constant means of adjusting normative statements and establishing a specific relationship to social experience. Theories of justice need, therefore, to incorporate a transitional dimension that reflects how to achieve justice ideals in nonideal contexts. This implies that political philosophy and social philosophy have to be understood as inseparable.

Rosenfeld's book integrates these two perspectives. It engages with our contemporary, nonideal, and even tragic context marked by tribal politics, globalization, fragmentation, global terrorism, and inequalities. It also puts forth a normative proposal, that of a comprehensive pluralism articulated with essentials of justice that allow for the conceptualization of a pluralist, inclusive constitution. Identifying the minimums of justice makes it possible to formulate a plural universal that integrates the concept of equality in a specific way: equality transforms conflict or disagreements inherent in postmodern societies into a factor of inclusion and freedom, provided that overcoming conflict is perceived as temporary. In other words, the strength of Rosenfeld's thesis lies in generating a concept of a plural universal, or a pluralization of the universal, while acknowledging conflict as unsurmountable since it is inherent to democratic dynamics.

In Part I, I will highlight the uniqueness of Rosenfeld's method, which leads him to make conflict the central legal-political element of his conception of justice, unfolding from a mid-level pluralism. Then, in Part II, I will focus on the concept of the universal that Rosenfeld develops by complexifying it, considering its internal contradiction from the viewpoint of its relationship to the singular and the plural, and, in Part III, considering its external contradiction in the form of competition between universals. Finally, in Part IV, I will formulate the hypothesis of a metauniversal by considering equality as the principle that makes the comprehensive pluralism inherent in constitutionalism, as advocated by Rosenfeld, possible.

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6 Max Horkheimer, *Traditional and Critical Theory, in* CRITICAL THEORY: SELECTED ESSAYS 188 (Matthew J. O'Connell et al. trans., Continuum Publ'g Co. 2002) (1968).

I. THE UNIVERSAL AND THE SINGULAR GRASPED THROUGH MID-LEVEL
PLURALISM

Rosenfeld's method avoids two pitfalls. The first is to adopt a monistic conception as a starting point, that is, to begin with the universal and to deduce what a theory of pluralism ought to be. This approach is often dismissed as irrelevant because it is incompatible with the modern or postmodern condition of social life: a condition characterized by plurality in terms of identities and conceptions of the good. In the context of liberal democracies, a consistent normative perspective can only advocate for political and legal measures that protect individual liberties, forms of life, preferences, and various incompatible conceptions of the good. Therefore, any normative perspective on postmodern societies must integrate this fact of plurality, which amounts to articulating the concept of liberal democracy alongside that of pluralism.

Nevertheless, thinking from the universal to construct a theory of justice does not enable us to grasp plurality and thus develop a pluralist theory. Because it is monistic, the universal tends to deny or even annihilate this plurality—still less can this plurality become a normative parameter of justice. This monism destructive of plurality is not only found in the language of the universal; it is also present in some theories of pluralism, such as that of Isaiah Berlin, as Michel Rosenfeld notes.[7] Berlin advocates for limited pluralism and aims to avoid relativism.[8] However, Berlin does not provide criteria for what can be included or excluded in this type of pluralism, making his conception perhaps simply monistic.

While the top-down approach constitutes a first pitfall, the bottom-up approach constitutes a second one. Conceptualizing a theory of justice in the form of comprehensive pluralism by proceeding from the singular—that is, from the individual—to derive norms from different forms of singularity can be done in two ways, both of which remain unsatisfactory. The first way corresponds to Hegelian logic, which asserts the singular only to negate it and surpass the negation in the universal, in a movement of sublation (*Aufhebung*).[9] But this dialectical movement

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[7] ROSENFELD, *supra* note 3, at 231.

[8] ISAIAH BERLIN, THE POWER OF IDEAS 14–17 (Henry Hardy ed., Princeton University Press 2002).

[9] G.W.F. HEGEL, THE ENCYCLOPAEDIA LOGIC: PART I OF THE ENCYCLOPAEDIA OF THE PHILOSOPHICAL SCIENCES WITH THE ZUSÄTZE 154 (T.F. Geraets, W.A. Suchting & H.S. Harris trans., 1991) ("At this point we should remember the double meaning of the German expression 'aufheben.' On the one hand, we understand it to mean 'clear away' or 'cancel', and in that sense we say that a law or regulation is cancelled (*aufgehoben*). But the word also means 'to preserve', and we say in this sense that something is well taken care of (*wohl aufgehoben*). This ambiguity in

amounts to producing a monistic universal that annihilates the singular instead of giving it its place and, in doing so, remains incapable of conceiving plurality as an insurmountable reality and pluralism in a normative manner. The second way of proceeding from the singular involves not denying or surpassing it but preserving it and consequently admitting an indefinite plurality of singularities. However, this perspective aligns with relativism: considering that the singular can serve as the foundation to derive criteria of justice implies accepting an indefinite set of justice criteria, all valid because anchored to the singular or a form of singularity. Such a perspective prevents the establishment of common norms, a minimum of shared identity or parameters of justice. Some liberal theories seek to overcome this relativism by establishing a consensus on fundamental principles of justice. But what makes them possible is also what limits them: they enable us to think of consensus on protecting individual liberties and rights, but their concern for distributive justice, reciprocity, and something that would pertain to a common good still needs to be expanded. Paradoxically, these theories are also abstract: even though they start from the singular, they describe the latter in a very abstract way—de-singularizing the individual (i.e., making it lose precisely what constitutes its individuality).

The uniqueness of Rosenfeld's approach becomes apparent when considering the comprehensive pluralism developed from a mid-level pluralism. This approach combines two elements: it proceeds from the middle (neither from the top nor the bottom), that is, from plurality, and it understands this plurality not only as a fact—that of the postmodern condition—but also as a norm, that of pluralism. Rosenfeld's thesis is that pluralism enables us to adequately ground the essentials of justice that should be incorporated into liberal constitutions. Comprehensive pluralism, which can be directed upward and downward, contains minimal antipluralism. However, this minimal antipluralism makes maximum pluralistic openness possible. Minimal antipluralism tends toward monism. However, as it enables maximum pluralistic openness (within the limits of compatibility with comprehensive pluralism), it also leans toward the singular while avoiding relativism. Relativism has the drawback of contradicting the very idea of the essentials of justice.

The originality of this approach also lies in conceiving the universal through conflict and the temporary nature of its overcoming. The Hegelian dialectic is thus bent towards a perpetual reiteration of conflict, breaking with the idea of a definitive overcoming into a higher totalizing

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linguistic usage, through which the same word has a negative and a positive meaning, cannot be regarded as an accident nor yet as a reason to reproach language as if it were a source of confusion. We ought rather to recognise here the speculative spirit of our language, which transcends the 'either-or' of mere understanding.").

form: a resolved conflict is only the path leading to another conflict due to the fundamental nature of plurality within a totality that would incorporate and overcome it.[10] The overcoming of conflict does not end contradiction (i.e., negation), just as the advent of liberal democracy did not mark the end of history: the conflicts that produce postmodern liberal societies generate the history of which they constitute the insurmountable fabric. In axiological terms, no conception of the good could build a consensus that would end conflict. Rosenfeld even emphasizes that such a consensus would not be desirable since plurality has intrinsic value for political, moral, epistemic, and even aesthetic reasons.[11] Conflict is, therefore, something more than a mere negative moment to be overcome by a monistic and universalist vision.

Rosenfeld's approach focuses on conflict at the intermediate level of mid-level pluralism. To extend and question his analyses, I argue that conflict exists not only within the universal but also between universals, given that they only exist in the form of plurality. Therefore, conflict must be understood from a dual perspective, internal and external to the universal.

II. First Paradox: The Universal as Conflictual

It is relatively easy to grasp how a Hegelian-type conception of the universal applied to the framework of liberal democracies leads to the denial of plurality by absorbing the singular (i.e., by excluding it or relegating plurality to forms of singularities to be overcome). The universal then results from negating the internal contradiction produced by the singular, understood as negativity, to borrow from the Hegelian dialectic.[12] This contradiction arises from the linguistic nature of the universal. As Étienne Balibar observes, the universal exists in the discursive field. It does not exist as an entity or essence but as a being of discourse and can be found nowhere else but in its conditions of enunciation. However, merely speaking in the mode of the universal, uttering it, immediately places one in the position of the particular since no utterance is detached from its time and place (i.e., its conditions and determinations). Therefore, the universal creates conflict also at the level of utterances and discourses. Uttering the universal constantly imbues it

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10 *Id.* at 125 ("With regard to its form, the logical has three sides: (a) the side of abstraction or of the understanding, (ß) the dialectical or negatively rational side, [and] ('Y) the speculative or positively rational one.").

11 Rosenfeld, *supra* note 3, at 227–48.

12 *Id.* at 229.

with singularity.[13] But the specific nature of this universal is to deny this singularity to define itself as an overcoming in a higher synthesis. The universal negates the very act of its enunciation as necessarily particular and situated without breaking from its nature as a discursive statement.

Moreover, this internal conflict within the universal reveals itself through the exclusions it generates. In doing so, it contradicts itself when the universal claims to present itself as a totality that can only be achieved by including elements that resist it (i.e., negativity). This internal contradiction within the universal can be found in the Declaration of the Rights of Man and of the Citizen of 1789.[14] The Declaration proclaimed the universal while conditioning these rights on citizenship: by including citizens universally, the Declaration excluded those to whom citizen rights were denied from enjoying human rights. This effectively meant excluding women, as well as enslaved and colonized people. The collusion of abstract universalism with discrimination has also been criticized precisely because this universal excludes in the name of equality: equality is confined to a circle beyond which it excludes. The question is, who can be part of the circle of equals?

This paradox can be seen in Seyla Benhabib's way of rooting the process of inclusion-exclusion in Kant's cosmopolitanism. Kantian cosmopolitanism defines human beings' moral obligations toward each other. These obligations imply a right to refuge, which Benhabib interprets as the obligation not to deny the right to have rights.[15] The Kantian theory is understood by Benhabib from an Arendtian perspective that considers the right to have rights as the fundamental and universal right to a political condition, the sole condition that makes realizing and protecting subjective rights possible. However, if the right to hospitality seems characterized by its openness, it also defines a closure that results in an operation of exclusion: Kant denies the moral claim to permanent residency as the freedom to offer oneself for community or membership[16] does not imply the right to remain within the borders and acquire citizenship rights, at least not without a special pact that depends on the sovereign's will. This structure of openness and closure constitutes the paradoxical matrix of liberal societies that simultaneously include and exclude, both considering their external or internal frontiers and the

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13 Étienne Balibar, Address at the Penser (avec) l'universel Conference at SciencesPo (Mar. 16, 2023).

14 DÉCLARATION DES DROITS DE L'HOMME ET DU CITOYEN [THE DECLARATION OF THE RIGHTS OF MAN AND THE CITIZEN] Sept. 30, 1789 (Fr.).

15 SEYLA BENHABIB, THE RIGHTS OF OTHERS: ALIENS, RESIDENTS, AND CITIZENS 49 (2004).

16 Immanuel Kant, *Toward Perpetual Peace, in* TOWARD PERPETUAL PEACE AND OTHER WRITINGS ON POLITICS, PEACE, AND HISTORY 82 (Pauline Kleingeld ed., David L. Colclasure trans., 2006).

unequal access to rights for citizens and aliens. Benhabib shows that for Kant and Arendt, "there is no escaping the historical arbitrariness of republican acts of founding whose ark of equality will always include some and exclude others."[17] The universalist moral right is politically and judicially so circumscribed that every act of inclusion generates its term of exclusion. It is a characteristic inherent to the universal, constantly reproducing itself, and can be analyzed, as she does, with Derrida's concept of iteration.[18]

The paradox of the universal's simultaneously inclusive and exclusive nature in the Declaration of the Rights of Man and of the Citizen is illuminated in another way by Claude Lefort through his critique of Marx's interpretation. According to Marx, the Rights of Man and of the Citizen delineate and protect the sphere of interests of civil society, identified with the market sphere of private interests to which the State becomes subordinate. In contrast, Lefort emphasizes that these rights, through freedom of expression, the press, opinions, and beliefs, open a nonmarket civil society separated from state power. The Rights of Man and of the Citizen creates a political space for claiming rights for those deprived of them (like enslaved people, women, and workers), a public space for democratic inclusion, and contesting exclusions. However, Lefort can only conceive political inclusion based on the universality of the Rights of Man because he conceives the human being of these human rights as undetermined, as a "center of uncontrollable legitimacy."[19] This implies that he is aware that any determination of the universal paradoxically entails exclusion, that every determination is a negation. In other words, the Declaration proclaimed the universal, but the universal is both excluding and including.

The first paradox of the universal is that it cannot establish itself without excluding (i.e., without involving a negation that is a form of contradiction). Therefore, it cannot establish itself without opening itself to contestation by those who are excluded and who can turn against this excluding universal principles on which it is based. This universal is inevitably exposed to what Jacques Rancière calls the part of those that have no part and have been kept outside the consideration of the common good or the general will, outside the voices of citizens, that is, those who count and are counted—despite the promises of equal freedom.[20] It is important to emphasize that this conflict is not, for Lefort as for Rancière,

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17 BENHABIB, *supra* note 15, at 66.

18 *Id.* at 179.

19 CLAUDE LEFORT, THE POLITICAL FORMS OF MODERN SOCIETY: BUREAUCRACY, DEMOCRACY, TOTALITARIANISM 239–72 (John B. Thomson ed., 1986).

20 JACQUES RANCIÈRE, DISAGREEMENT: POLITICS AND PHILOSOPHY 30 (Julie Rose trans., Regents U. Minnesota 1999) (1995).

a conflict among others: it is the very nature of the political, that is experienced in multiple struggles for rights by those who are dispossessed, that is, by those who are not included in the universal.

The question of whether the dual process of inclusion and exclusion that shapes the concept of the universal and inherent in the political itself can be addressed to Rosenfeld. Indeed, one may wonder if the dialectic he places at the core of his conception of comprehensive pluralism is not, after all, another name for the political—prompting a reconsideration of liberal theories from a perspective of conflict that aligns them with theories of critical republicanism.

III. SECOND PARADOX: CONFLICTING UNIVERSALS

The conflict inherent in the universal is not limited to the particular; it delimits and excludes or absorbs and denies. The universal excludes not only the particular but also other universals, competing universals against which it constitutes and defines itself, or even rival enunciations of the universal. The critique of a universal always takes place by mobilizing another concept of the universal. Thus, the affirmation of a religious universal competes with another religious universal, or with a republican conception of secularism that claims universality, or even with a legal-political universal (such as the nation-state). This legal-political universal can, in turn, conflict with a cosmopolitan or global constitutionalism type of universal. The Declaration of the Rights of Man and of the Citizen presents itself as a secular universal that opposes, notably, the universal of the Catholic Church that prevailed until then. Another significant example of competition between universals is Joan Scott's analyses of the republican discourse arising from the French Revolution.[21] Enlightenment's universalism promised civil and political rights, a new status for the individual, and a new principle of political legitimacy based on the equal freedom of abstractly identified individuals. Nevertheless, the gender difference erected as a universal based on nature produced a principle of particularization, separation, and exclusion of women, justifying a sexual contract along with the social contract.[22]

In this array of conflicting universals, each constructing and defining itself in opposition to another universal, one can distinguish universals that institute (like the Declaration) from those that are instituted (when institutions preexist: the state, justice, etc.). However, as

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[21] JOAN WALLACH SCOTT, ONLY PARADOXES TO OFFER: FRENCH FEMINISTS AND THE RIGHTS OF MAN 13 (1996).

[22] CAROLE PATEMAN, THE SEXUAL CONTRACT (1988).

Étienne Balibar observes,[23] the universal presents the paradoxical unity of logical opposites so that it exists only in the form of conflicting universals struggling to establish dominance. It is necessary not only to think of conflicts among universals but also to specify the type of universality that produces them by opposing them, depending on whether the universal aims to preserve an institution or oppose it in an insurrectional movement. The latter does not preclude transforming into an instituted universal since every insurrection, aiming to change a social context, requires stabilizing the new social situation through institutionalizing what was claimed in the insurrectional moment. In other words, the instituting universal can only operate by coming into being as an instituted universal—which, in turn, confers forms of legitimacy and stabilization of social and political claims. As a result, the universal not only defines itself in a conflictual relationship with other universals but exists at times in an instituted form and at other times in an instituting form that seeks to transform into an instituted form. The universal is far from being a concept that, from a Hegelian perspective, produces a higher synthesis between opposites: its fundamental mode of existence is that of struggle.[24]

Therefore, the universal is characterized by (1) the conflict and violence that it intrinsically entails, which manifests through (2) a double movement of internal exclusion of the singular and external exclusion of competing universals, and this (3) occurs according to the modalities of an instituting-insurrectional or instituted-legitimating process, notwithstanding the illusion we entertain regarding it when we think of it in terms of inclusion, thereby (4) overlooking its inevitable effects of exclusion and violence.

These characteristics offer some elements for extending Rosenfeld's analysis of the place of conflict in the constitution of the universal, and the temporary nature of its overcoming. One of his major contributions is to integrate reflection on institution and institutionalization into a conception of politics based on conflict by integrating into his theory key elements of critical theory, while placing them within a normative framework. Most critical theorists reject the reduction of democracy to rights—freedom of expression, association, the right to vote, etc.—and to the institutions it produces. Authors such as Lefort, Rancière, Chantal Mouffe, and Ernesto Laclau, however diverse, propose to reconsider democracy based on practices that go far beyond institutionalized forms

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23 Balibar, *supra* note 13.

24 ÉTIENNE BALIBAR, ON UNIVERSALS: CONSTRUCTING AND DECONSTRUCTING COMMUNITY 18 (Joshua David Jordan, trans., Fordham Univ. Press 2020) (2016).

of politics. [25]They reject the assimilation of democracy to a form of government or the State, the limitation of power by law, and the checks and balances of institutions. For them, democracy refers to the disorderly, egalitarian movement of multiple forms of contestation against institutionalized and legal powers, law being often reduced to mere instrument of power. Yet, if we understand forms of contestation as demands for rights or for public action to protect rights better, we also need to understand the claim for rights as the claim for the institutionalization of what at first appears to be an insurrection, a collective movement, what Lefort calls "a center of uncontrollable legitimacy."[26] Contestation of power and its social effects only makes sense if it aims for institutional transformation. This also means, contrary to Rancière's assertion that human and civil rights "are the rights of those who make them a reality,"[27] that democratic life is not independent of rights and their protection by the state and institutions: it develops both against institutions (in the affirmation of an instituting universal) and thanks to institutions (in the stabilization of claims to rights and their guarantee by the state). Critical political theories generally consider the first moment, while the second is often the concern of normative political and legal philosophy. Rosenfeld's approach articulates both the critical and the normative dimensions of the conflict within the universal and its temporary overcoming in stabilized but temporary constitutional forms. As I observed in my introduction, this is one of the significant contributions of his book.

Nevertheless, the question is whether the universal does not derive its reality from the conflict itself, and whether its function is not so much to produce a consensus or an ending (albeit temporary) to the conflict or, conversely, to produce conflict. Transposed to the context of liberal democracies, this is undoubtedly the case when forms of contestation are part of social and political life and a factor of freedom—as Philipp Pettit observes.[28] From this point of view, the constitutional pluralism that could develop in liberal democracies would tend to orient them toward forms of republicanism understood as a contestatory democracy. Another question addressed to Rosenfeld would then be to consider the articulation between constitutionalism—understood as a universal in the sense that it defines the legal order valid for all within a given space—and

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[25] ERNESTO LACLAU & CHANTAL MOUFFE, HEGEMONY AND SOCIALIST STRATEGY: TOWARDS A RADICAL DEMOCRATIC POLITICS (3d. ed. 2014).

[26] *See* LEFORT, *supra* note 19.

[27] JACQUES RANCIÈRE, HATRED OF DEMOCRACY 74 (Steve Corcoran trans., Verso Books 2014) (2005).

[28] PHILIPP PETTIT, REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT 121–22 (1997).

the conflict or contestation required to qualify it as constitutional pluralism: constitutionalism tends towards an instituted universal, while conflict, which must be seen as inherent to constitutionalism if it is to integrate pluralism, is a matter of asserting an instituting universal, that is, one that challenges the instituted universal of constitutionalism.

IV.   A Meta-Universal?

However, thinking of plurality as internal and external to the universal is unsatisfactory because it seems to preclude the possibility of enunciating not only universals but more generally normative propositions: the justifications for normative approaches are based on universal statements, if only on a concept of equality, for example. But if universals inevitably involve a process of contradiction and negation, then any universal proposition seems doomed to failure. This is the difficulty to which Rosenfeld wanted to respond.

Rosenfeld wants to resolve the contradictions of the universal by abandoning the idea of *Aufhebung* and the totality to which the dialectical movement (in the Hegelian perspective) is supposed to lead, he does so by asserting the temporary, and therefore transitory, nature of the conflict's overcoming. This element is affirmed as a democratic one, or at least as a constitutive element of comprehensive pluralism, in that it allows for the plurality of universals and their internal transformations. Pluralizing the universal is a way of removing its elements of domination and exclusion. In other words, to remove from the dialectic of the universal the negative element (that which is excluded or denied overcoming the contradiction inherent in the universal) is to introduce into the universal a principle of equality: the negative need not be denied and excluded, the contradiction need not be overcome, except temporarily, because the negative must be preserved in the name of equality. The negative now corresponds to a position recognized as equal, having the right to be maintained. This means that equality functions as an inclusive universal. Rosenfeld thus introduces an element that complexifies the reflection on the universal.

Yet, should we think of this universal of equality in the same way as other universals? This universal constitutes a meta-universal in Rosenfeld's thinking. Unless it contradicts itself, equality, thought of as inclusion in the universal in the name of plurality, cannot be assimilated to a universal characterized by internal and external conflict. This conflict would lead to the exclusion (however temporary) of an element in favor of overcoming and resolving the contradiction. In its noncontradictory form, the principle of equality is that it does not exclude but resists anything that stands in the way of inclusion in the sphere of equality or

the sphere of equals. The specificity of the concept of equality, which constitutes it as the meta-universal of constitutional pluralism, is thus that it is only open to the second type of conflict of the universal (against other universalist discourses, e.g., inegalitarian ones), not to the first type of conflict (the particular must indeed be included in the relation of equality).

Therefore, my final question to Rosenfeld concerns whether plural universals end the meta-universal and how they could play in his theory of comprehensive pluralism. Doesn't a coherent conception of constitutional pluralism require not only distinguishing different forms of conflict specific to the universal but also pluralizing the universal, to distinguish within the different universals equality as a meta-universal, which alone can eliminate the relationship of domination instituted by the dialectic of the universal? Equality may then be the only universal capable of resisting the paradoxes of the universal. For the conflict not to be reduced to a negative moment overcome by a universal that would thereby become monistic, it is necessary to pluralize the universal by integrating an equality relationship, which does not produce relativism but an inclusive universal. It may be under this condition that constitutionalism can form a coherent conception of justice.