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Doctoral Thesis

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The role of ethical norm in international relations

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Summary

The socio-political dynamics we live in is making the ethics increasingly invoked in protecting certain rights or interests. Ethics has become synonymous with compromise and, implicitly, with the settlement of debates of what politically correctness means. In a digitized world, ethics are continually transforming and needs a continuous assessment to determine the evolution of our interaction. The present paper represents the projection of my research so far on the field of philosophy, law and political studies.

In order to analyze the ethical norm in international relations, I started from the following assumptions:

- morality has both individual and universal valences and determines an ethical character for each existing norm;

- the ethical norm is not institutionally created, it is not necessary to be guaranteed by any authority, being the result of interaction between individuals or actors.

The research objectives are:

- O1. To demonstrate that morality has an ascending path from the individual to international relations;

- O2. To establish the rules by which they can identify an ethical norm from the other types of norm;

- O3. To identify the role of ethical norm within a state in order to see the influence it has on its foreign affairs;

- O4. To understand the role of the ethical norm at international level.

The purpose of the work is to identify and to know the limits of ethics and how it has come to influence international politics.

The methodology used was focused on the theoretical relationship between the epistemological approach and the deductive reasoning regarding the revision of the specialized literature; and also ontology perspective with inductive reasoning, regarding the individual-system relationship. For this research I have taken into consideration the principles of complementarity, correspondence and immeasurability in the field of social sciences.

PART I, *Construction of the norm*. The startpoint of this part is regarding the dynamics and flexibility of morality, where I try to find out whether moral is instinctual or accumulated through experience (i), the relationship of moral and norm in the main debate theories: natural law vs. legal positivism vs. legal interactionism (ii) contexts in which ethical norms can be identified (iii) international ethics and fundamental human rights as the only limits to it. In this part, I have chosen to deal with what is norm&ethics, and how they overlap and become one concept. To do this, I had to demonstrate the definition and originality of each term and how they come to relate.

Chapter I, *Moral Construction of the Norm*. In order to achieve the proposed objectives, I considered that I must start in the first chapter with discussion on morality as a universal concept and a source of social behavior. To demonstrate the construction of the ethical norm I started from the hypothesis of Lon Fuller, who expresses in his writings *Anatomy of the Law* (1968) that the internal morality of the individual, along with his ability to relate to others individuals are able to determine, through interaction, the construction of the norm. To confirm this hypothesis I reviewed and evaluated the specific doctrine in philosophy, first in order to demonstrate the characteristics of morality, how it evolved over time and how it is placed in the current social context. Another startpoint is the idea of Friedrich Jodl (1891) who said that the evolution of morality is identical to that of the individual so that I can see how morality evolves from personal conveying to social construction.

Section I, *About morality, moral norms and moral systems*. In this section I want to demonstrate that morality, as an element of human psychology(as defined by G. Shaw Charles - 1903), must be studied in the light of the introspection process. Thus, each individual analyzes, judges and responds to a certain internal or external behavior from the perspective of his own beliefs, standards and values. Once these elements are considered, they can be developed or polished in a social environment because, like Richard Joyce (2004) said, the *moral man is the good man*. Behavior toward others involves discernment and reason, as moral requirements are rational requirements. The effects of morality must also be assessed as being of human nature, a creation of circumstances, destined for one's own person and also for the others (K, 1809). Moral evaluation is accomplished according to purpose and means and will always be conditioned (Notes and Abstracts, 1907).

Using the reason-filter and the adaptation of moral instincts to different contexts, it proves that the intuition and instinct of moral values are constantly polished through sanctions. The complexity of social relationships allows for the development, assimilation and awareness of values that often replace or complement the values already attained. This change from one generation to another implies that there must be a set of values that remain constant, but which are adapted to the needs and demands of the new generations. In this case we no longer rely solely on instinctual morality, but we are talking about the morality of the group to which the agent belongs. This is a political morality, different from what is individual morality. The difference is that the individual morality expresses only personal values, while the political morality is able to account the common values found in each individual which together form a social entity. Individual morality represents subjective beliefs that are based on comfort and self-esteem, as the political morality, represents moral values that are specific to a group, society, or even the international community (Mark R. Amstutz, 2013).

Political morality determines rules to justify legitimate power and authority in a society. From the ontological point of view, Nicholas Onuf identifies social rules as the environment from which norms will be further developed (Onuf, 2013). The moral norms of a community originate in individual, subjective morals and values, being the result of common beliefs found at every member of the community. Political morality is actually the external reflection of inner morality. Those are the beliefs the individual chooses to share with others. Even if it knows more stages of evolution, political morality becomes even global/ international. It has other tools, but generally the same purposes and effects. I cannot be neglected the role the individual has had in international relations, where human concerns are moral preoccupations. The existence of these concerns reflected internationally through certain behavior, requires the existence of methods and tools of coercion or sanction to justify them, established through training, construction and application of rules.

Starting from what the ancients said, especially Aristotle and Plato, I reviewed the perception of some representative philosophers such as Hart, Schoppenhauer, Hume, and others who saw morality as a social element. I have also tried to propose comparative aspects, to be able to evaluate morals and other similar systems (Chinese, Japanese, Indian, Muslim, etc.). I did not insist very much in the first section devoted to morality in the evaluation of these systems, because, unlike the Greek philosophy that underpinned the formation of secular European

philosophers from the 17th and 18th centuries, the other types of approaches are more religious, and their profound analysis would not have helped me in the first section to demonstrate the role of morality in the social environment. The more religious perspectives of these systems would have led me to the type of individual-spiritual morality, and not to a social morality as the Europeans have promoted, to which moreover, I am interested in this thesis. To clarify Fuller's theory, i have analyzed the evolution of morality from the individual to the collective, trying to capture the difference between man's inner morality and collective morality. In the past, morality was not coercive, it was regulated only if it was intimately related to religion. Max Horkheimer said: "What could be called moral in the past were forms of conduct that could be guaranteed by religion, tolerated and desirable from a social point of view, but also essential for social conduct, but were arbitrary and not imposed by law". In the section below, I want to present how the moral values merge with normative principles, how they influence one another and what is the relationship between the two.

Section II, *The moral relevance of the norm.* To demonstrate these aspects, I considered in the second section of the first chapter, the comparative presentation of the two great theories that were highlighted in the analysis of the relationship between morality and norm. Thus, the theory of natural law and the theory of legal positivism, to which I added a new perspective brought by the theory of legal interactionism.

The relationship between norm and morality is strongly debated by the theory of natural law and legal positivism. The debate is shaped around key themes: first, it raises the hypothesis whether the two concepts, moral and normative, must be interpreted, evaluated and applied separately or together. On this regard, I will present both theoretical views and later I will demonstrate, on the basis of the theory of legal interactionism, that this separation can not exist. Following the admission of the relationship between the two concepts, the second hypothesis of analysis, in the debate between the two great theories, is to determine whether this "relationship is necessary" (Wibren van der Burg, 2016).

The theory of natural law sees the relationship between norm and morality as indispensable. From the point of view of naturalists, the norm is created on a moral basis. The perspective of the theory of legal positivism rejects the necessity or conditional connection between morality and norm. However, there are certain approaches to positivism that do not reject the role of morality in building norm but do not give it a fundamental role. This is why

several approaches have developed in the positivist theory. *Exclusive legal positivism* argues that the formation, existence and application of the norm "is not moral dependent" (Matthew H. Kramer, 2004), morality is not a "condition of validity and existence of the norm". It is formed according to the legislator and the legal system in which it is built (Michale Giudice, 2008); and *inclusive legal positivism*, states that moral involvement in the construction of the norm "must not be either excluded or included, being conventional" (Robert Alexy, 2010).

From the perspective of legal interactionism theory, the interconnectivity between morality and normality determines a full recognition of norm authority in relation to agents. In the interaction between the norm and the citizens, the interconnectivity between norm and morality can be even stronger. Wibren van der Burg argues that this symbiosis between the two must not be interpreted and appreciated as a situation in which the two concepts are confused with one another. The moral element legitimizes the norm in social interaction and determines that it is "recognized and accepted". Because it should not be confused with the norm, morality must be recognized as objective. This moral character allows it to be "out of the norm" without being considered "a stage or a particularity of it". It does not just imply a moral and normative condition. The difference must be made in the sense that "legal arguments refer to moral arguments, not to moral deeds, the relationship between the two being both conditional and necessary" (Wibren van der Burg, 2016).

Ideals are also important to establish and maintain a balance between morality, norm and politics. In the view of the theory of legal interactionism, interaction is the main process leading to the birth of the norm. Interaction of actors and doctrine analyses, lead to the creation of the norm. Legal interactionism theory argues that "no legal order can be completely separated from morality because it is necessary (...)". The relationship between norm and morality is "empirically variable" and "conditioned precisely because the degree of interconnectivity varies". Wibren van der Burg argues that these two are not always connected to one another, this connectivity being contextual, with situations where the two are less conceited. In today's societies, individuals are no longer satisfied with a "Hobbesian survival," so the norm can work well "if it incorporates moral, even partial elements of it" (Wibren van der Burg, 2016). The theory of legal interactionism is not a combination of the two theories presented above, but a theory by which we actually accept the various approaches and we recognize that we can not afford to limit the interpretation and application due to the dynamics and complexity of social

relations. The theory of legal interactionism makes it possible for practices to be recognized, and not only admitted or rejected, on the basis of some theoretical criteria.

Chapter II, *Character and Limits of Ethics.* The strategy was to first clarify the differences between morality and ethics, as I have discovered that in many researches these are taken as synonyms. Morality, as presented in the previous chapter, is defined as a set of "norms and principles" that regulate "human activity." Ethics, on the other hand, is "a critical reflection on morality," meaning morality is "the subject of ethics" (Evandro Agazii, 2004). Both morality and ethics refer to "good or bad" conduct. Through morals we understand values found at individual, internal, and human instincts. Ethics refers to rules established by human factors, behaviors and activities.

Section I, *Ethical Character of the Norm.* To demonstrate the ethical character of a norm I took into consideration the Kantian concept, that demonstrates an individually applied equation that can reveal us whether a norm is ethical or not. Although Kantian ethics have a special place in the study of ethics, I support and assume some perspectives or approaches to it, like the proposed kantian equation, since it has given me the ability to argue the possibility to identify the ethical character that any legitimate norm can have. I believe that identifying and, implicitly, quantifying an ethical norm can be achieved from Kant's distinction between "should" or "ought". This debate is resumed by Felix Oppenheim, analyzed and interpreted by Ian Carter, who tries to determine whether *should implies ought*. The purpose of the analysis is to determine to what extent "if you should do something, and you can do that, it means you have to do that." This determines the difference between an ethical norm and a non-ethical norm (Ian Carter, 2001).

Ethical principles are implemented in society through the rules and mechanisms that organize behavior, and these include culture, law, or continuing social experience "(Walter L. Battaglia, 2006). Continuing social culture and experience is important in creating the ethical norm and determine its empirical character. Not every international norm is an ethical norm, but it does not mean that it is stranger to ethics. The international norm is the link between ethics and interest, the major consensus that international policy makers may have, taking into account the entire architecture of ethical systems. The international norm is a design of the competition between culture and power, ethics and interest.

I personally believe that besides the rules of *jus cogens*, any norm that involves the equation *should + ought = must* can be considered as an ethical norm. Thus the dimension of ethical norms should not be restricted to fundamental human rights. The ethical norm is strongly related to culture, so the fields in which we can identify ethical international norms are those in which we find elements of the universal culture of humanity: from those that provide fundamental human rights to environmental protection, animal protection, cultural vestiges, etc.

Section II, *Limits of International Ethics*. There must be an integrative and common approach to behavioral analysis, and Sara Jhingran in *Ethical relativism and universalism* (2001) argues that all behaviors are part of a whole, so we can not make an individual analysis, but one of the whole. The culture of a community, Jhingran argues, is interdependent with other cultures, and they together form a whole, so that "a certain aspect of a culture can not be explained or understood without considering the whole cultural context."

Over time, international ethics or ethics in international affairs were of no major importance, and in most cases irrelevant. The dichotomy of human rights and interest&power has given rise to a major concern for how ethics can address some of the issues of the relationship between these elements in a world of pluralism (Paul Ronalds). From ethics of *fair war*, we have come to an international normative architecture where ethical relativism and ethical universalism are the most important themes of international ethics. Ethical relativism is determined by cultural relativism that is built through "the diversity of moral beliefs, customs, norms, or values found in a society, community, or international system." This cultural diversity led to the emergence of the theory of cultural relativism, which dealt with the differences in cultural values existing in different societies. In addition to cultural diversity, another concern of relativists was the analysis of "integrative capacities of cultures" or the way in which each culture "manages to assimilate aspects and characteristics of other cultures."

This process of borrowing and cultural assimilation determines "unitary and homogenous cultural system that integrates various autonomous cultures" (Sara Jhingran, 2001). For this demonstration, I needed to first assess ethical systems that have formed over time. Through a descriptive and historical presentation, I was able to account for the common elements of the formed ethical systems (Chinese, Indian, Japanese, Muslim, Christian), in order to assess the specificities of an ethical system and its boundaries, and whether they can be attributed to an international ethical system. This demonstration allowed me to establish the boundaries of

international ethics, and then, in the second part, to see the role of the ethical norm within these limits.

Unlike ethical relativism, a universal ethic takes into account those universal rights, *jus cogens* that I have analyzed in the preceding section and which lead to a universal ethical system. Theoreticians of universalist ethics argue that "contrary opinions that lead to moral misunderstandings are needed, precisely because of the lack of well-established knowledge." The theory of ethical universalism states that "identical actions can even lead to different effects in particular contexts." Other universalist have a stronger version of the approach, arguing that "individuals and cultures do not differ so much in terms of ethical goals." The most important feature promoted by ethical universality is that "the norm is rooted in human character" (Jan Gorecki). From my point of view, ethical relativism does not exclude the universal character of ethics, but it completes it.

Ethics in international relations refers to "the ability to identify, enlighten and apply relevant moral norms" so as to establish "rules, practices and institutions of global society," ethics is concerned with "the moral architecture of the international system" (Thomas Ward). It should be noted that there is a difference between how ethical perception must be perceived from the perspective of the foreign policy of states and its concerns at international level. Mark. R. Amstutz argues that the morality of foreign policy and, implicitly the ethical conduct of states in relations with other actors reflects their interest in the "role of ethical norms in international relations". But international ethics also takes care of "justice in global affairs, legitimacy and influence in international politics." External actions of states can be assessed as ethical or not (Mark R. Amstutz). For example, ethics in security field has had minimal implications. It was often an incompatibility between ethics and security.

The dynamics of international ethics is not always a quick process, and it takes time to introduce ethics into the behavior of actors, to have mechanisms and instruments through which ethics can be institutionalized. The process is irreversible and constantly evolving, as certain ethical criteria, once introduced, will attract others. "Institutionalization has two important consequences": first, the new criteria and standards will be taken into consideration for the next and future actions, so the analyzes will be carried out on them. Secondly, the ethical criteria introduced imply other ethical criteria, which are constantly changing, and once standardized, they will allow the introduction of new arguments. The receptiveness to ethical arguments is

given by the way actors "are aware of their own identity and the normative beliefs that are brought to them" (Neta C. Crawford, 2002). Therefore, the ethical consciousness of humanity can be transformed when it experiences changes or risks, being a universal and material principle of ethics (Enrique Dusse, 2013).

Preliminary assessments. Ethics is heavily rooted in culture, so ethical norms born from different systems can have different effects. If morality determines a moral norm that tells you not to harm others, ethics in the various ethical systems can establish and define the mechanisms and tools through which you "do not harm". Also, the realization of good can take different forms, all of which are determined by culture. This is the major difference between morality and ethics. In order to achieve the proposed goals, the present work had to analyze morality and moral norms as a basis for ethics and ethical norms just as the latter can be elucidated to understand the role of ethical norms in international relations. As I have shown, dealing with cultural relativism, we are dealing with both ethical relativism and a universal one. The subject of the research convinced me that it was necessary to establish how and by what means this norm is built to see what role it can have. Given the multitude of cultures, the ethical norm can be considered as different, and of course, its role may be different. However, the construction of the ethical norm is universal, because it determines *a possibility* that *needs* to be solved if it is *possible*. The differences between ethical norms do not consist in its technical construction (should + ought = must), but in the cultural fingerprints that it takes into account for its construction.

PART II, *Role of ethical norm*. There are many situations where moral rights are confused with legal rights, where ethics is confused with the law. That is why the discourse about the two must be differentiated. The plea of sustaining an ethical norm is certainly different from the pleading of sustaining other kind of norms, such as the positive norm. According to Joerg Chet Tremmel, there are three specific situations that can characterize the relationship between ethical and positive norms, in which they differentiate or overlap. First there is the situation of those ethical norms that are not embedded in positive norms. These situations are contextual, as cases may arise where some ethical norms have a legality character, which means they overlap with the positive norm. In such a system, some norms remain ethical, and the other norms overlap with positive norms. The second situation is with ethical rules that become laws. In this case, I argue that the ethical norm is law, and law is an ethical norm. Tremmel's third

case is that of norms that are neither laws nor ethical norms, but only legal norms (e.g. apartheid) (Joerg Chet Tremmel, 2009). By this we are aware that the ethical norm is not a separate entity, which is in an independent legal system and which is referred to when the situation imposes it. On the contrary, the ethical norm is involved in the legal order, being the foundation and the basis of positive laws or norms. As Tremmel said, some ethical norms remain stand-alone and others take the form of laws. That is why I want to start in the first section of the third chapter with the doctrines on the legal organization of the state and of the systems of *rule of law* and legal pluralism, from where to find out the role of ethical norms from these perspectives and their influence in the foreign policy. Thus, I will be able to advance in Chapter IV to their role from the point of view of international relations theories.

Chapter III, *Challenges of Pluralism*. Both the *rule of law* doctrine and legal pluralism focuse exclusively on the state, their analysis and criticism are exclusively related to the role of the norm in relation to the state. That is why in the first section I am presenting the centric approaches, *rule of law* and legal pluralism. After, I will discuss about the *critical legal pluralism,* as a form of legal pluralism, that focuses exclusively on the role of the legal subject in drafting the norm. As a result, I also refer to *global legal pluralism* as a method of analyzing legal pluralism, by representing the ability to integrate several types of norms and to analyze the interaction between them. According to global legal pluralism, there is a continuous system between the "sub-state" and "above-state" norms, which are later supplemented with elements of the theory of legal interactional theory in the second part of the chapter.

Section I, *Centric Approaches*. Before considering a role of the ethical norm in international relations, I considered that I need to check this role within the actors in international relations. I started with the position of the state, considered the main actor in international relations, to determine to what extent the ethical norm affects domestic affairs, which is reflected in the external behaviors of the state. To be able to demonstrate the position of the ethical norm in organizing a state, I needed to go through the doctrines that defines the organization of the state as a legal entity. For the beginning, I had to analyze the position of the ethical norm in the doctrine of the *rule of law*, specific to the contemporary states. The *rule of law* is seen as the doctrine that imposes the law as a landmark, foundation, source, and purpose in social-political activity. Thus, I have presented features of the *rule of law* doctrine to see if we find a *rule of law*

at the international level and how the ethical norm is perceived in an institutional law-making state architecture.

In most of the countries and Western Europe, we find a legal, specific and dominant liberalism, which states that "the rule belongs to the law", which represents or determines an "ethical attitude by which people do something or should do in their relationship within the community" (Scott Veitck, 1999). In order for this ethical conduct to take place, it is necessary to establish "predetermined, clear and general rules" (legalism) seeking to promote moral values of "independence, independence and interdependence, respectively independence in the community (liberalism)" (Scott Veitck, 1999). In order to analyze the relationship between ethics and rule of law, respectively the role of the ethical norm, the distinction between legitimacy and legality must be clarified. As an example, we turn to historical experiences, from which we realize that not all the political systems that were formed were both legitimate and legal. Extremist political systems have always invoked the norm and the law to confirm their legality, but that does not mean they were representative, and therefore they did not have the legitimacy. Vesselin Popovski proposes to think about the definition of norm or law in a narrow or broad sense. In the narrow sense the norm and the law are precisely defined by what it transmits, "procedural duties and legal limits" specific to the *rule of law* doctrine. Defining the law and the norm in a broad sense means actually including those "substantive rights on which it is based " and in this definition the link between "*rule of law* and ethics is crucial." Taking into account the role of ethics in supporting the law, we realize that "the law can lead, but also ethics" (Vesselin Popovski, 2014). At national level, the *rule of law* is rooted in a position where it does not exclude ethics, but on the contrary reigns with it. Ethics helps the law to be interpreted, being more contextual than this. In new situations, which the law has not foreseen, it is ethics that intervenes, the one we refer to when we want to find out what the law meant, on a case-by-case basis. Thus, ethical norms at national level, whether they are transformed into laws or not, have the role of assisting the law in organizing and leading the state.

In a society characterized by moral, religious and political pluralism, the rule of law is hard to maintain without violating the fundamental principle of the state by which it must remain neutral on issues of value and significance to human life. Three major arguments exist in the critical literature on the inapplicability of the rule of law: the first argument is that there can be no "neutral state position for the application of the norms" in a moral, political and religious

system characterized by pluralism. The second argument is that there can be no "neutral process of interpretation" and the third argument refers to the liberal conception that "to maintain the neutrality of the legal process, there must be a distinction between norm and politics." But in order for politics to distinguish what is good or bad, it must abandon the very principle of neutrality. Thus, paradoxically, "in order to institutionalize this principle, it should disregard it" (Andrew Altman, 1990).

In order not to be accused of placing the state at the heart of my analyzes, I have also approached the legal pluralism and its versions as a doctrine that would be an alternative to the rule of law and which takes into account more than the state authority of the rule adopted by the specific rule of law, but the involvement of all actors in the elaboration of the norm, through an interaction mechanism meant to lead to the construction of the norm. In order to argue "the role of legal pluralism in terms of constitutional rights", a distinction is made between external legal pluralism (multiple rule) - which highlights the limits of constitutional instruments in interaction with other legal systems; and internal legal pluralism (the incoherence of the norm) - which emphasizes how the constitutional doctrine tends to be characterized by disorder or anarchy (Gavin V. Anderson, 2001). Once the state is no longer perceived as a source of the norm, the multiple systems that coexist interact, so accepting at least two systems assumes that we are all pluralists (Harm Schepel, 2013). Any attempt by the state to reject foreign legal systems to protect its rule of law, only "highlights that legal pluralism exists and is everywhere" (Brian Z. Tamanaha, 2008).

For *legal critical pluralism*, the hypothesis from which it starts does not refer to the establishment of a legal (state or non-state) legal order that would have jurisdiction over the subject, but instead asks the question: "In which of the legal orders is the subject found?" (Gavin V. Anderson, 2001). Critical legal pluralism as a methodological and theoretical formula advocates the "construction of the norm by legal subjects," understands the norm as the result of the way legal subjects understand themselves, or how they understand the norm (Martha Marie Kleinhans & Roderick A. MacDonald, 1997) and have their own diversity and plurality (Margaret Davies, 2017).

Global legal pluralism, as opposed to legal liberalism(rule of law) and legal pluralism, provides a model of both descriptive and normative analysis. Global pluralism disregards the role of the state as it maintains that legal policies are made by individuals "presumptions, ideas about

justice, conceptions of global politics, and moral principles." These analytical processes of individuals determined by the "legal conscience" lead to the emergence of non-state norms, which will later be institutionalized through the state. Unlike legal liberals or legal pluralists, the global legal pluralists do not consider differences between norm, custom, law, but the purpose of this theory is focused on the individual.

In the legal pluralism, and its newer version, the global legal pluralism, the ethical norm is the most important, since from the perspective of this legal theory, the norm is formed from culture, and culture denotes needs and desires. In the rule of law, the adopted norm of the state (the state norm) is the one that completes the ethical norm. In the legal system promoted by pluralistic legal theories, unlike legal liberalism-rule of law, normality is created from what is correct, that is, ethical (Nancy Fraser, 2004). In a comparative way, I wanted to see how the ethical norm is seen in the two types of doctrine, respectively from the perspective of the adopted norm and the interactive one. These two presentations helped me to understand the role of the ethical norm within a state, both vertically (from the rule of law) and horizontally (of pluaralism) and whether or how such visions exist or are projected into foreign affairs, respectively international relations.

Section II, *Relative Pluralism of Legal Interactionism*. Theory of legal interactionism, firstly takes into account this distinction between the position of philosophers, sociologists and jurists regarding the adopted (state) norm and the non-state (interactional) norm. In order to be able to perform the best analysis and apply it contextually, providing the best interpretations and solutions, legal interactionism offers a theoretical approach to both the adopted norm and the interactive norm. The theory of legal interactionism accepts the role of both variants, which allows for an interdisciplinary, complete and clear analysis. The arguments put forward in support of the interactionist theory are built on the principles stated by Jon Fuller in *Anatomy of Law* in which he "attempted to combat the opposition between natural law and legal positivism" and to identify the common elements between them in order to obtain a symbiotic formulation. Sanne Taekema and Wibren van der Burg propose a "gradual process of interactions" in which "conduct is seen as creating obligations".

They take into account the oppositions between legal philosophy, legal sociology and legal doctrine, and pass them through the filter of the theory of legal interactionism. Wibren van der Burg first overrides the need to analyze both the norm and the adopted norm but also any

other source that can be considered as creating rights, obligations, and values. Legal interactionism theory is concerned with the analysis of both types of norms, since the norm is both "the interaction between legal actors and the practices that may result", as well as the "legal doctrine resulting from these practices." The adopted norm must be found in the form of interactive practice, so the legal system can not really reflect the realities that have been built. The adopted norm does not have such legal force if it is not related to the interactive rule. That is why we can say that the interactional norm has a "primary character" because it is the first one to manifest itself. For the adopted norm it is necessary the procedural implications that can not be found in the interaction level. There are different ways of adopting, so first of all interaction and procedures are needed, whether we look at them vertically or horizontally. There can be no norm adopted without interactivity even if both types can develop different and parallel legal orders in which there may be a congruence or conflict relationship.

The second position in the relationship between philosophers, jurists and sociologists is that of monism vs dualism/pluralism. These differences are specific to the theoretical debates, especially in well developed democracies, as we have shown in the first section. From the point of view of legal interactionism, pluralism must be analyzed by recognizing a wide range of conflicts and the interaction between several legal systems (official or unofficial). Pluralism must not disregard the fact that in most systems, most of the norms are adopted by the legislator. Concerning the third opposition between the three areas, regarding the static or flexible nature of the norm, the theory of legal interactionism introduces "variability and dynamics" without disregarding the general characteristics of a norm. Legal interactionism combines the analysis of "legal orders (legal pluralism) with the understanding of the concept of law (conceptual pluralism)". Interactionism argues that norms should be investigated by opening up to change or "the wealth of legal phenomena," rather than focusing on its properties.

For the fourth opposition to instrumental or non-instrumental character, it is specific to each of the three areas of the norm's analysis. Proposals made by the theory of legal interactionism would suggest that debates on the definition and nature of the norm might be endless. But it is precisely what legal interactionism does claim: there's no need for consensus. It is precisely the contextuality character of interaction that allows for consensus to be achieved on certain precise points, even if it does not constitute unanimity. Unanimity is political matter. The theory of legal interactionism, in relation to the certainty and predictability of the norm, analyzes

this aspect from two points of view: "epistemic and certain doctrine" that pretends to be familiar with the text of the norm and comes at the expense of legal interactionism. Even though it may be seen that there is greater openness to the principles of pluralism, interactionist theory does not remove the rule of law, but on the contrary, it argues that it is necessary in certain areas.

What remains to be said is that these functionalities of the norm are determined by the interaction between the agents and leading to the "ideal of legality". Ideals are essential, especially as normative architectures are anchored in culture. The dynamics of social, business, domestic or international relations, NGO activity, etc., determine the "continuous interpretation and reconstruction of the norm". If in the case of the rule of law the ethical norm supports the positivist norm in the organization and functioning of the state, and in the case of the pluralist theories we find that ethical norm is supported by the positivist norms, in the case of the legal interactionism theory the evolution that it proposes would be that the interacted norm, in which it is formed and imposed, is and remains in the form of an ethical norm. This ethical formula means that ethics remains the only right variable in the creation and existence of the norm. We have seen in the previous sections the analysis of the relation between norm and ethics from the perspective of naturalist / positivist theories, and now this relationship in the structure of the organization of legal systems and states, through the comparative presentation of rule of law, legal pluralism and legal interactionism. In the second part of the chapter I want to consider the presentation of the ethical norm from the perspective of the theories of international relations and to find its role in the relation between the state and the international structure.

Chapter IV, *The ethical norm in the agent-structure relation.* This chapter focuses on the role of the ethical norm in international relations, and for the demonstration of this role it was natural to take into account the vision of international relations theories. Lisbeth Segerlund argues that the process of constructing international norms is a process full of challenges coming from the sovereignty, which leads to a complex mechanism of elaboration and implementation of international norms. Lately, international civil society has played an increasingly important role, demonstrating on numerous occasions that social mobilization can build and change norms (Lisbeth Segerlund, 2010). Goldstein and Keohane have argued that ideals, national norms and international norms "play a fundamental and permanent role in international relations, and not just a causal one" (J. Goldstein, R. Keohane, 1993). In the last decades, identity and culture have

become more and more debated as an image of emancipation and assertion, considered in competition with sovereignty, seen as limitation and isolation.

Section I, *Rationalist Theories vs Sociological Approach*. I have presented these perspectives of the international relations theories with insistence on the specific and dominant social-constructivist approach in international relations. To demonstrate this position, I started from classical realists, such as Tucidide and Machiavelli, continuing with Morghenthau and neoliberals and finally social-constructivists authors such as Finnemore, Katzenstein and Onuf helped me identify the position of the ethical and international norm and the growing role that it has. This allowed me to propose a cyclical demonstration in which to go back with the analysis from where I started and to capture the mechanism of integrating the ethical norm found in international affairs, within the framework of the internal environment of the states. This allowed me to conduct a vertical analysis of the influence of the ethical norm found internally on the international environment, and vice versa, the role of the international ethical norm on the internal structures of the international actors.

Although international legal sociology has perspectives other than those contemplated by rationalist theories, we can say that in the field of international law, the way in which the state is perceived in some situations, international legal sociology has a realistic substratum, and there are some situations in which it has an interactive approach, the state being seen as a "source of norms" (B Landheer, 1957). From the perspective of constructivists, the norm would represent the expectations that individuals have in relation to themselves and to the others with whom they interact. These expectations generate a sense of "obligation and responsibility" (Jefrey Checkel, 2002). Norms would be used as "conceptual tools" reflecting the "social construction of international politics". Theo Farrell argues that the identities of states are those reflected in the norms created and sustained by them. That is why states are guided by these rules, precisely because they represent their image, and through them "define the formal rules and accept the practices of the international game" (Theo Farrell, 2002). Through the character of reflection on identity, rules are "a structural phenomenon", primarily internal because they come from the culture and identity of those who create and define them, but also externally because they provide guidance for transformation and evolution of identity. Both the external dimension and the internal dimension define the social construction of the norms achieved through the

interaction between the actors involved in the joint business. Norms are "born with goals, they constrain, give legitimacy, power, and define actors" (Mary E. Pettenger, 2016).

In relation to the other theories, in the dimension of the construction and the effects of the norms, there is a "juxtaposition" between the social-constructivist and the neo-liberal perspective on norms, understood as institutional constructivism. Institutional constructivism explains the influence of institutional norms, modifying, completing, guiding and eventually penalizing "states' behaviors and preferences" (Finnemore, 1996). Ideas, traditions and, implicitly, rules play an essential role in "modeling the actor's identity" as constructivists see rules as "behavioral identity standards for actors" (Finnemore, 1998). An important criteria of norms born of identity and culture is that they must be considered the interactions and practices by which they emerge. For the theory of interactionism to function, it must have the "expected effect", the proposed result and the planned success (Kenneth W. Abbot and Duncan Snidal, 2013). But a purely interactive, but mistaken, approach from the very beginning can offer a "incomplete norm since its origins" (Janina Dill, 2015).

The main critique of social constructivism, in its interactive version, is that it places both the interactional norms and those that come from reason foundation on the same place. That is why there may be situations in which both approaches are needed. Perhaps it is necessary to approach the differencies with a the contextual application, proposed in the theory of legal interactionism by Wibren van der Burg. There are some societies where people may not want to take into account the interactional norm emerging from the social framework and written on the basis of doctrine. That is why there is a need for the flexibility proposed by the theory of legal interactionism, where we do not exclude the importance of either of these two, but apply them contextually according to need and requirements.

Undoubtedly, the sociological approach offers more perspectives than rationalist theories. However, a great difficulty is its very inability to uniformize, and as Thomas Ward says, the sociological approach manages to support the presence of norms at all levels, but can not identify a solution to the so-called "shame of norms." This implies that within a system, even the international one, there are a multitude of norms that often conflict with one another. As we can see, the sociological approach can not explain which norms have greater force, and why. Another sociologist's failure is that it does not explain why the norms should appear, the analysis also being carried out in the relationship between interest and norm. At the same time, the

sociological approach ignores the power in analyzing the norms in the process of social and normative construction. The attention to interest and power in creating and operationalizing rules is important to provide a structure for sociological institutionalism. I want to present this relationship in the next section by suppressing the way in which the norm can be integrated by the state through its mechanisms, which is also the best example of the norm-power-interest relationship.

Section II, *Integration of the ethical norm.* In order to be able to dissociate the image of the norm from its origin and strength, that is, interest and power, I must put the international ethical norm to prove its capacity in relation to the two. Interest and power come mainly from states, so one of the great challenges to the state's interest and power is the ability and willingness of the international norm to impose upon them, by integrating it into the internal structures of the state. I understand from previous presentations that the international norm is a product of interaction and is the result of foreign policy formulated at national level. But the interest-norm-power relationship raises serious assumptions about how international ethical norms can be embedded at national level. Social-constructivists refer primarily to "rhetoric" and the discourse used by the national political factor about global business issues. The actors' strategy is to use the norm to pursue ideals but also to fulfill their interests. In this sense, states can establish institutionalized structures, procedural mechanisms or legal principles that allow the acceptance and integration of norms into national structures without their ideals changing their trajectory, or changing the material interests according to the rules of the norm.

For social-constructivists, the theory of the process of emergence and dissemination of the norm proposes and presupposes the existence of the "life cycle of the norm", which is made up of three important and distinct phases: in the first phase, the emergence of the norm referring to the issues already discussed in the present research, and which have more to do with the way the norm is built, the component elements or the environment that determines its appearance and construction. The second phase I proposed to call it the imposition of the norm or as considered in the specialized doctrine as a "cascade" through which the norm is promoted, acknowledged, better said the lobbying process towards the relevant actors in view consciousness of their value and acceptance by them. Imposition seems to me a better translation precisely because it actually surpasses a process of persuasion, through different mechanisms, of the recipients whose purpose is to subsequently impose their norm. The third stage is the internalization of the norm, a process

through which internal rules are transposed by specific mechanisms. According to the constructivists, each of these internships captures "different social processes of logic and action". These are characterized by different actors, different motives and "dominant social processes" (Martha Finnemore and Kathryn Sikkink (1998)).

The assumption of attributions by the international norm of the national ones is an increasing phenomenon found in all legal systems or states and affecting all actors. It also changes the perception of internal rules, constitutional rights, which are often strongly supported, supplemented or even added to the national system. Thus, once internalized, the international norm enforces us to invoke it more often than the internal norm, which with the passage of time acquires less and less tasks. The role of the international norm is growing because it is inclusive and universal, and therefore it has the cause to the detriment of the national norm. The interaction between external and internal is always won by the outside, as it abolishes internal boundaries. National constitutionalism becomes a filter and not a source of rights, as it can invoke a new international constitutionalism that is captivating precisely because it offers more freedom and vast limits.

Preliminary assessments. We doubtless ask ourselves what contribution the ethical norm does in relation to international norms, and in order to respond to this hypothesis, we must take into account the limits of the international ethics on which the ethical norm is based. The presentation of international ethics helps us to realize the capacity of the ethical norm to produce changes, to bring balance in international relations. As I said above, the international norm is flanked by limits imposed by ethical norms such as *jus cogens*. Any kind of international norm is anchored in ethical criteria, as it must respect what is fundamental in international relations, moral values transposed into ethical principles, manifested by fundamental norms to which there isn't, can not and must not be any kind of derogation.

With the theory of legal interactionism we do not limit ourselves to which of the doctrines or theories we must relate. Applying a contextual model like the one proposed by legal interactionism, in which we do not exclude reference models, allows us to reach the maximum we want. I have seen that there are situations in which international organizations also consider legal pluralism in order to relate to entities from the international affairs, but the relation with the states must be made only through the doctrine of rule of law. Alternation is important, combined with the social-constructivist approach.

Final considerations. One of the great advantages in developing a research thesis in the field of legal philosophy is that it allows the launch of open questions, which can be the subject of complex, interdisciplinary debates that leave room for detailed answers, but never definitive and closed. The need to debate and analyze complex and sometimes delicate subjects requires that they be constantly evaluated to find the perceptions of change that take place. In fields so often subject to debate and argumentation, legal philosophy, legal sciences, or international relations require a constant review, but this also involves many limitations of research, but also few, but valuable personal contributions as a young researcher .

Limitations and future directions of research. As I said, being such a general, perhaps universal theme, the issue of the role of ethical norm in international relations was achieved through theoretical exposure, to the detriment of exemplifying and analyzing case studies. Moreover, for the same reasons, I did not allow myself to go into the analysis of tangential domains or to address subjects that could have explained the subject of research more complexly. Such a study requires elaborate research through contact with other systems, which can be costly both in terms of material and time, criterias that could not be allocated to this research. That is why I chose this thesis to expose the general theoretical approaches, which leaves room and obliges in the future to elaborate specific researches on the basis of some concrete examples in which the structure of the analysis envisaged here, but also the conclusions set out following this research.

Details of the personal contribution. First contribution is updating terms and concepts to allow ways for new research, reviews etc. Another important goal that I think that I have reached is reviewing the literature, doctrines and paradigms as a mission for every researcher to capture those elements of originality, which, even few, can be the subject of debates, analysis and interpretations by those who lecture or study the research.

I managed to add to this research the theory of legal interactionism which is worth exploring, because it is flexible and is able to further develop contextually applicability. I support this theory, with reservations about its applicability to systems other than the Western ones, because it has awakened the curiosity to find out with future research what its impact and effects of it on other legal or judicial system.

Conclusions. In a *foucoulian* style, I've chosen to start my research by reviewing and re-analyzing the position of man in relation to his environment, as man is the creator and the

consignee of what he is analyzing in the organization of the state or in international relations. I have placed interaction as a key concept of this research, starting from the idea that interaction is creation. Interaction between two or more people, up to the interaction between the actors of the international system determines the environment in which we lead our existence. And only we choose how to do it. Interactive process is the one that determines the occurrence of sources, action, analysis and interpretation. Without interaction, we could not realize what is right or not, what needs to be done, or eliminated. It has been found that in liberal democracies and societies, where states have left more freedom to civil society involvement in the organization of the state, this theory of interactionism has developed. It was therefore necessary for the state, the supreme element and the benchmark of analysis in all the applicable theories, to set aside and allow human interaction to continue to be creative. We mention in one of the preliminary conclusions that the presence of authority, which is involved in the adoption and instrumentalization of the norm, does not allow its interactive development.

At international level, we have nothing to do with supreme authority. This is why the evolution of this system has been achieved through interaction. Interactivity involves the design of culture and identity, which is a difficult process, especially at international level. And yet, interactionism has led to what is today the international system and global affairs: an environment in which the individual has gradually become a central role.

We have designed the international system with a concept like anarchy, and the lack of authority also implies an evolutionary freedom, unconstrained by an authority, but exclusively by all those involved as actors of international relations. In this way, I argue that anarchy is supported by interaction. For this interaction to work, there must be a common goal, an ideal. I believe that a community or society to build, resist and advance needs two things: a common ideal and means of communication. For this, in my view, the role of the ethical norm is to facilitate communication and establish an ideal, because ethical norm is an ideal but also represents means of communication for the fulfillment of that ideal. And this is done by constantly resizing ethical arguments.