Moral Relevance of the Norm

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Abstract: 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 socially, but also essential to social behavior, 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.

Keywords: morality; norm; system; conduct; behaviour

A first idea from which I start is whether morality can be found in every individual, being instinctive or being acquired through social dynamics. From the *selfish man* of Hobbes (Leviathan, 1651) to the *adaptive man* of Rousseau (Discours sur l'inégalité, 1775), we find that we are means and purposes for each other. The *hobbessian evil* can be seen in the most everyday examples: from social manifestations to commercial activities. Instead, moral behavior is often identified with altruistic behavior (careful, responsible and cooperative). But this altruistic behavior can be, or is sometimes realized, to the disadvantage of one's own interests. Is altruism really the foundation of morality?

Firstly, an appreciation would be that from a historical point of view, morals have an evolution identical to that of the individual. For this reason humanity can be perceived (with pride or shame) regarding the way in which certain moral values have been dealt with throughout history (Jodl, 1891). Whether these were interpreted subjectively or were the result of events, we find that morals are constantly changing. This phenomenon occurs either as a result of the contextual experiences of everyday man (social, historical, cultural, economic etc) or maybe because this man is constantly discovering what is actually ... moral.

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About Morality

Looking at the way morality was seen or understood, how it came to define certain values of behavior, we are curious about its origin and purpose. Everyone is born morally? Or does become moral once he/she develops within the community it belongs to? Morality as an integral part of man or an experimental acquisition can explain the evolution of man or humanity to the present. Essentially, morality represents everything that is beautiful, true or free, undoubtedly being given the *value of good*. Anyone wants a state of well-being, so anyone can be moral. Morality is a landmark, a foundation or a source of activity for the individual, the community, society or humanity as a whole. Several fields have tried to explain or individualize morality, as a theory or as a necessity, as a source or instrument. Thus, principles or theories, the sources of morality and its impact on individual or collective, have developed in many practical branch (psychology, sociology, religion etc).

Regardless of how it is represented or defined, the obligation to consider moral as a main vector, as the primordial, generic and intrinsic element of the individual and implicitly of humanity, must be assumed. When it comes to morality, the distinction between what is *good* and what is *bad* is always taken into account. This antithesis immediately leads to the interpretation that we will always keep in mind that an action, a thing, etc., can be positive or negative. "Not always what is moral is valid as there is a big difference, for example, between telling the truth or not telling a lie" (Woolf, 1915).

Harry Redner writes about rights claimed in a community or society on account of good faith, being the result of "interactions and transformations in that society." He mentions about how they are transposed, "from personal to institutional", a process through which the values are materialized in the form of a norm (Redner, 2001). I also think that they have to go through a process of evolution from moral values to their "institutionalization" in the form of a norm. Morality is the foundation of those values that are subjective and personal. It then identifies those values that are common to other individuals in the group, community, and society. Once the common values are discovered, it is inevitable that they are respected in a mutual way, since the consideration and recognition of the moral values of an individual is in fact the recognition of their own moral values by issuing the claims of mutual respect. This brings the generalization of common values, their transposition into common practice, which are considered to be rules of conduct, being in fact ethical principles. But not all moral values are transposed into a norm, because not all moral values require formal recognition. That is why the relationship between norm and morality is very important. Because moral values and ethical principles are those that are materialized in the form of norms. Norm is the one that manages to exploit them, because in the absence of the norm, moral values and ethical principles remain unguarded by the mechanism of *institutionalization* and without a capacity of sanctioning, constraints and limitations.

"Morality does not receive a formal recognition, this is attributed to the norm." The reason morality does not formally receive recognition is because its nature is to manage values. Not all moral values have to be formalized, as having a personal character, many of them do not even become ethical principles. Moral values underlie the construction of the norm, but let us not fall into another extreme to consider that the norm is merely a moral sanction, because we will see that these two are different concepts. Having a personal character, "a moral claim may be left unanswered, which proves that there is a go-between norm and moral or ethics: the more norms we have, the more we need less ethics" (Redner, 2001). Norm takes the place of those personal beliefs and organizational customs once it is established. This is not to be considered in the sense that norm takes the place of morality, so moral values are lost. On the contrary, they are valued meaning that they already have a certain pattern of behavior.

To act honorably, altruistically, if the conditions are met, moral values and ethical principles cease to be moral or ethical, but become norms. Consequently, ethical conduct may be different from legal conduct precisely by the fact that the way they are treated differs, but also the effects they produce. This process is important because the norm plays an essential role in "stability, organization" and the ongoing transformation of society. What follows from the establishment and application of the norm is a functional legal system with the role of "imposing and establishing the rights and obligations" of everyone within the community and society to which it belongs. "The norm, protects, offers solutions, and sanctions, but morals does not formally receive any legal recognition" (Redner, 2001).

What kind of relationships must exist between social groups or what kind of community perceptions are necessary for a norm to occur? If the norm arise, moral systems turn into legal systems? These conditions of organization and consciousness must differ from one culture to another. One of the great debates in the field of legal philosophy refers to the relationship between norm and morality. In the following I intend to present and analyze this relationship between morality and norm. Joseph Raz said that this relationship "can not be concluded by a single answer." Often, as Raz said, explaining such a relationship or explaining one of the two concepts is done "from a personal point of view" (Raz, 1996). Everyone can understand or perceive according to their own values, what is moral, what is norm, what is their role and what kind of relationship exists between the two.

It is clear that the individual morality found in every human agent is also found in a group, community, state and international relations, transposed through different mechanisms and instruments. In this section I want to highlight the role that morality plays in building norms. Even though this issue or dilemma has been clarified in some doctrinal theories, in today's social dynamics we can see that many of those perspectives are no longer reflected in reality. The analysis of the moral relevance of the norm is important because we see that perception on morality itself is constantly

changing, has special connotations and specific features. The way in which the norm is built, based on its relation to morality, is a matter of major concern, since both norms and morals change their essence with the development or transformation of the social mind from one generation to the next.

In a digitized world, where morality has particular connotations, the norm is formed through interaction, and the consideration for some other theories which limits the analysis, interpretation and approach of the two concepts (morality and interaction) is incredulous. I want in this article to reflect on the two major approaches to the relationship between norm and morality. Firstly, the theory of natural law, which supports the moral foundation of the norm and the theory of legal positivism that disregards the role of morality in creating the norm. Finally, I present the theory of legal interactionism, which deals with the symbiotic conceptualization of morality and norm. The theory of legal interactionism is not a novelty in the philosophical or juridical doctrine, but its sociological perspective fits into the contemporary theories of social sciences. However, even if the theory of legal interactionism has started from some socio-legal-philosophical perspectives in the previous years, Wibren van der Burg's new approach allows us to carry out much deeper analysis to seek explanations where most of the time, they remained without solving by any theory or methods of analysis. To begin with, I want to review the perspectives of the two fundamental theories, natural law and legal positivism, so that at the end I can identify the answers to hypotheses and interpretations through the theory of legal interactionism.

Natural Law vs Legal Positivism

The relationship between norm and morality is strongly debated through the theory of natural law and legal positivism. The debate is shaped around three main themes: first, the assumption is whether the two concepts, morality and norm, must be interpreted, assessed and applied separately or together. On this hypothesis, I will present both theoretical views, and later on I will demonstrate on the basis of legal interactionism that morality and norm cannot be separated. The second hypothesis of analysis is to determine whether their relationship "is tangential or necessary." What I'm aiming for is to establish the degree of interference between morality and norm. In the construction of the norm is there a mandatory condition of morality or is it relative and can be applied occasionally and contextually? After analyzing the two theories, I will expose the premises of the theory of legal interactionism that supports both the variants taken into account: that morality is constant and also contextual in the construction of the norm. The third hypothesis in the debate between naturalism and positivism calls into question whether the norm, with its character of institutionality, has a "moral value or is morally neutral". Throughout history, there have been periods and societies that have been marked by the existence of norms that seriously questioned the link to morality. The dictatorial interests of

some leaders may weaken the legitimacy of the norm, which may become immoral. Thus, what is legal or illegal has nothing to do with what good or bad is, right or wrong. In this sense, two theories have maintained the debate on the relationship between norm and morality: theories of natural law and legal positivism (van der Burg, 2016).

For a better understanding of the theories, I would like to mention some of the definitions that have been given, first of all, to the theory of natural law. The characteristics of natural law theories are described or interpreted in many ways or dimensions. Natural law is seen as a "human conduct" (Curran, 2013) or as an "unwritten law that is superior to the norm made by man" (Bertram, 2012). Natural law would be an "architecture designed to supplant a common identity to people as a universal set of rules that are valid regardless of place, time, or culture" (Chemilo, 2013). For Costa Douzinas, "natural law is a constant in the history of human rights ideas" and Robert P. George describes natural law as "reflexive criticisms of the welfare of individuals within their community." For him, the theories of natural law propose moral principles of action" (George, 2008). John Finnis defines natural law as a "set of principles to conduct behavior in a community" (Finnis, 2011). Thomas Aquinas defines natural law as "a judgment made for the common good by the seeker of community welfare." Norm has the role of characterizing those "actions done for the common good", the latter being the one that "defines and characterizes the norm". The perspective of Aquinas, as analyzed by Jean Pierre Torrell, is that "the norm must not be characterized or defined by coercion", there must be no sign of equality between norm and constraint, because sanction can not be the main feature of the norm. "Coercion can only be in accordance with the norm, but it is not the norm in itself" subject to the existence of a legitimate, legal and competent authority to carry it out, promulgate it and apply it (Torrell, 2005).

Aquinas makes a distinction between what natural right and human right. He states the necessity of an authority designed to ensure the existence of the norm by which natural law is achieved, but neglects the right of man to engage in the realization and construction of the norm (Maritain, 2001). From Aquinas' perspective, the existence of an authority that exploits natural law is an essential condition for the construction, existence and implementation of the norm. In a way I support the necessity of this condition, however, I do not think it is always a condition for the existence of the norm, as long as the norm does not become law. And even if I accept this condition, the neglect of the involvement of the agents to whom the norm is addressed can not be accepted. I claim that the beneficiaries of the norm must also be its initiators.

Legal Positivism

The perspective of legal positivism theory 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* claims that the formation, existence and application of the norm "is not moral dependent" (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 (Giudice, 2008); and *inclusive legal positivism* also claims that moral involvement in the construction of the norm "must not be either excluded or included, being conventional" (Alexy, 2010).

What these two theories attempt to accomplish is a structure of an answer that explains the "validity of the norm or the source of its legitimacy". In order to have this answer, we can ask whether morality defines the legal validity of the norm. The answer of legal positivist theory is that the validity of the norm is not conditioned by morality. Positivists argue that we are referring to the validity of the norm and the conditions of its existence only in relation to the procedural conditions in which the norm is adopted. Positivists exclude morality as a fundamental condition of the norm's existence, but focuses on those formulas that lead to its creation. The procedural adoption criteria are those that matter when defining the validity of a norm. Conversely, theoreticians of natural law uphold the moral standard for the validity of the norm, "a norm being valid only if it fulfills the condition of morality in its adoption" (Moka-Mubelo, 2017). From my point of view, this does not mean that naturalists reject the necessity of the procedural conditions that lead to the validity of the norm, but argue that until the instruments by which a norm is adopted, the condition of its creation must be realized. Naturalists argue that a norm is not valid only by a procedural adoption mechanism, the latter being just a stage in the existence of the norm. Natural law theory claims that firstly, the conditions for forming a norm must be met, so that it can subsequently be adopted. The validity of the norm is prior to its adoption, the latter process is only a mechanism that determines that the other steps (implementation, modification, etc.) exist.

Unlike naturalists, positivists believe that in a legal system, what "the norm *is* can be achieved" without considering "what from a moral point of view, the norm *should be*". As a result of this interpretation, taking into account these aspects, it may appear "the risk that norm and its authority may be disregarded in the human mind about its nature and purpose, but also the risk that" norm replaces morality as a model of conduct. The *utilitarians* have supported this separation between what is the norm and what the norm should be, from a moral point of view. They also support the fact that the two concepts intersect more historically, because they have mutually influenced their development. At some point in history, the social context allowed the development of legal systems with the influence of moral values. At the same time, moral standards "have been strongly determined by the development of the norm". Being a reciprocal relationship in which each helped to build and develop the other, elements of each are found within the other, thus forming elements and common features of the two concepts. Critics were brought to these utilitarian

perspectives for separating the two (morality and norm), but utilitarian theorists appreciated this possible distinction "on the background of the vocabulary specific to each concept but also of the authority that the norm has" (Dyzenhaus & Reibetanz, 2007). This perspective of utilitarianism will be resumed at the end of this section, where in the presentation of the theory of legal interactionism one can find that there are some approaches from this utilitarianism theory, in the sense that there is a relation of reciprocity between norm and morality through which they have been built each other.

Another element I intend to highlight on legal positivism, and which helps me to confirm the theory of legal interactionism, is that "the norm is a sociological construction." However, the particular view of moral positivism lies in the fact that "the formation of the norm is achieved by excluding moral debates" which we will see is not the case in applying the theory of legal interactionism. In support of this positivist perspective, theoreticians considered several reasons: "the priority of sovereignty, the existence of structures that change the norms or the availability of methods to apply the norm to different cases". As some positivists have shown, they consider the possibility that morality may play a more important role (or not at all) in adopting and building the norm, but naturalists insist on the definitive, categorical and absolute role of morality (Dyzenhaus & Reibetanz, 2007).

Theoreticians of natural law are convinced that "a system of power can also be considered a legal system conditioned by the existence of moral elements" while the positivists have determined that "the norm is the command of power" (Hobbes) with the role of "encouraging behavior", for which the norm needs to be "supplemented by sanctions" (Jeremy Bentham) (Dyzenhaus & Reibetanz, 2007, p. 5). An important thing is to determine the origin of the norm. How can the norm be identified? And what is its link to morality? Unlike naturalists, positivists set out two important criteria regarding the social construction of the norm: "the norm is found within society as accepted rules of conduct through institutionalized mechanisms", and what "does not correspond to these criteria of authority can not be considered norm". So what is not a norm is automatically morally indispensable. According to positivists, duties and obligations "do not have the same connotation in norm and morality" (Honore, 2002).

Subsequently, in non-positivist variants, "any injurious or moral defect impedes the norm to be moral (the theory of *exclusive non-positivism*)". The valid norm is also morally valid. On the other hand, the *inclusive non-positivist* theorists argue that "undermining the validity of the norm by a faulty morality is only achieved if the threshold of extreme injustice is overcome" (Moka-Mubelo, 2017). The debate between positivists and non-positivists led to the consideration of two theses (Alexy, 2002). The *thesis of separation* promoted by positivists, which states that "there is not a necessarily link between legal validity or legal correctness and merit or moral correctness" (Alexy, 2008) the *thesis of connectivity* in which it is claimed that "the

norm must be defined in such a way that the moral elements are included" (Alexy, 2012). From the perspective of non-positivists, "any norm that does not take into account moral arguments can not be validated" (Moka-Mubelo, 2017).

The differences between naturalists and positivists have questioned the origin of the norm and its connection with morality. Depending on the views based on these theories, most of the arguments have led to extreme interpretations, neglecting the role of either norms or morals, or the impact they have on each other (Dyzenhaus & Reibetanz, 2007). Some authors appreciate the contrast between morality and norm as being given by the *responsibility*. When we consider responsibility as a benchmark for analyzing the two concepts, we actually consider "the concern for the effects produced by the actions" (Cane, 2002). To determine the differences between the two, namely to determine the nature of the relationship between norm and morality, Peter Cane chooses to analyze by presenting the differences between *legal responsibility* and *moral responsibility*.

For Cane, "law enforcement covers several cases". It is grander and tries to encompass all situations or cases that may occur. The legal nature of responsibility is constantly transformed as it always tries to adapt to new situations in practice and social activity. In addition, legal responsibility is accompanied by methods and mechanisms of coercion that allow the punishment of those who violate them. For any social structure, legal responsibility is important because it sums up characteristics, dynamics and social behavior. This also establishes the limits of the rights and obligations that each agent has in relation to the institutionalized entities and to other agents with whom he comes into contact. Cane claims that moral responsibility, on the other hand, "is more vague, not supported by institutionalized coercion" (Cane, 2002). A moral responsibility can not be institutionalized, which is why it does not imply coercion or sanction. I would even argue that moral responsibility is more of a personal choice of free will, not subject to strict criteria such as legal responsibility. We can not compare a legal sanction with what can at best be called *a admonishment measure for non-compliance or violation* of moral responsibility. It is clear that the two types of responsibility have different effects so that the relationship between the two concepts, moral and norm, has a different perspective if we look at them in terms of the effects they produce and not how they are created.

In the above-mentioned considerations, the norm does not allow itself to be indeterminate, as is morality: "the relationship between norm and morality is grounded in the fact that morality is a source of fundamental values or purposes, while the norm is purely conventional." The conventional nature of the norm is given by the fact that there is a process of choice for it to be established, but once it enters into force, it is binding and general. Instead, morality has a universal character precisely because "the norm can be criticized in moral terms, but morality can not be criticized in normative terms, because morality is not obtained through

deliberations" (Cane, 2002). In the context of deliberations, subjective opinions are launched, therefore morality, unlike norm, will always be objective.

The objectivity of morality to the detriment of the subjectivity of the norm has three different notions: semantic (*as is the perspective of the one who observes*), ontological (*all are as they are*) and justifiable (*the existence of a single set of common moral values, so what is immoral is also illegal*). A big problem with these interpretations is that "they are made in such a way that the two concepts, morality and norm, are seen as distinct notions." The concept of responsibility must be considered in terms of both moral and normative content. *Responsibility* is the only filter through which these two can be analyzed, precisely because it incorporates both. The concept of responsibility is a "vast architecture" so that "morality and norm can not be analyzed in a separate way" (Cane, 2002). Responsibility is specific to each agent, in relation to himself, and in relation to others, that is why we can speak both of morality (self-responsibility) and legal (responsibility to others).

Even if a responsibility approach can bring "more dilemmas to the wide debate about morality," in this case the role of the norm is essential because it has the capacity, through institutional resources, to improve potential negative social effects from moral debates (Cane, 2002). I think that each of these two concepts can be useful to each other. The role of morality is to prepare the norm for social situations that may occur. Moreover, morality helps norm interpret situations, apply sanctions where there are gaps or where the norm is not applicable in a space-time context. It is true that morality has no means of coercion and sanction, but that does not mean that the norm can not use morality in interpreting and applying all kind of measures. Peter Cane captures this relationship very well: "being an interaction between the two, we can turn to morality to clarify what norm wants to be, or to norm to understand the purpose of morality" (Cane, 2002). Responsibility is, therefore, the bond and the link between morality and norm, being the mechanism through which the relationship between the two and the role they have can be analyzed.

In arguing that there is a difference between norm and morality, it is not taken into consideration the idea that "he norm has both the sanction and the character of moral obligation" (Honore, 2002). In a simplistic interpretation, one could say that the only occasion when we could discuss a difference between the two would be the situation where "moral values impose actions that are contrary to the norm" (Greenawalt, 1989). It is important to note that social perception on the norm is a positive one, when supported by moral interpretations. Norm's authority is emphasized if it has moral values. Norm, being a social construction, is sustained and promoted by moral values, and morality helps to improve the norm as a "permanent operative factor" (Honore, 2002).

Jurgen Habermas argues that there is a "relationship of complementarity between norm and morality." Both norms and morals are concerned with "ordering legitimate interpersonal relationships through justified rules". The role of both concepts is to

organize social relations, to establish conduct so that social groups, communities and societies have a harmony and well-being through interaction. Interaction in a socio-political entity is inevitable and necessary, and as a result every individual becomes a legal subject, and acquires all rights and obligations perceived in a community. Norm, in the social context, has not only the role of "solving the dysfunctions, but also the role of ensuring the integration of the valid claims of everyone within a community." The norm is validated, applied and transformed by morality, and for these processes to function, there must be a symbiosis between the two concepts. Symbiosis is justified by the fact that both norm and morality "share individual autonomy" (Moka-Mubelo, 2017). As far as I am concerned, we can not speak of two distinct autonomies, of two different concepts, but of a single one representing a common ground of the two.

In the construction of the norm will be taken into account the connection with morality. As mentioned above, the interpretation of norms is done using moral criticisms. Wibren van der Burg argues that norms, especially constitutional ones, regarding fundamental rights, legal order, separation of powers in the state, etc., must be passed through the moral filter when they are to be applied contextually. Interpretation and argumentation of the norm by using the moral filter is the "central factor in the interconnectivity between norm and morality." From Wibren van der Burg's point of view, the interconnectivity between norm and morality is contextual, determined by the way in which morals are perceived within different legal systems or practices and customs (van der Burg, 2016). I believe that once we admit that the interconnectivity between morality and norm is contextual, we actually recognize the legitimacy of each theoretical and practical approach to the relationship between the two. We do not exclude naturalist versions as we do not exclude positivist ones. Not only do we recognize the existence of these differences, but we accept and apply them just as they have developed. We have systems that are developed and inclined to embrace positivist approaches, where the role of morality is diminished or minimized, and systems where the role of morality is fundamental. By recognizing the interconnectivity of the two concepts, we require that we have an integrative approach that does not allow us to put limits on interaction and application, but only admit that differences are those that create unity.

For example, the interconnectivity of morality and norm, "in positivist cultures can be weakened by the literal interpretation of the norm, and in legislative practices, interconnectivity can be stronger, precisely because of the inclination to change and improve the norm." The interconnectivity between morality and norm determines a full recognition of norm's 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. "Symbiosis does not mean that each one loses its identity, so there is no clear separation between the two." The moral filter of interpretation

the norms is even more necessary because "the more important the norms, the more morality we need to interpret them." 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 objectivity. This moral character allows it to be "out of the norm" without being considered "a stage or a particularity of it". The difference must be made in the sense that "legal arguments relate to moral arguments, not to moral facts, the relationship between the two being both conditioned and necessary" (van der Burg, 2016).

John Finnis and Ronald Dworkin argue that the relationship between morality and norm determines that norm enjoys legitimacy, and so there is a "*prima facie* obligation to submit to any legal system." Joseph Raz proposes an evolutionary analysis from the nature of the norm to the legitimacy of an authority. Raz believes that "those legal systems that have extreme thinking lack the legitimacy of authority" and implicitly "can not be considered legal systems." Extremism in a political-legal system implies that those who hold power have a "legitimate authority and thus impose a *prima facie* obligation to respect that system." Can such a system be considered as having a moral foundation? Since once established, one can assume that moral values, as they are, have led to the creation of a legitimate legal system. How do we distinguish a legal system as a moral basis? Is any legal system also a moral system?

To answer these questions, Raz suggests analyzing and identifying reasoning and arguments. The first reasoning identifies a moral support of a legal system, and in fact means that the legitimacy of authority is morally guaranteed. The second approach in this reasoning would be about non-moral support, which is indirectly an extension of the moral one. Such a system, according to Raz, would have partial moral support. These confirm the justifications for the norm and legal system, which Raz claims to be assumed or not. The first type of reasoning is the one that "legitimates and is the main one, and the ones that are not assumed are found anywhere in every legal system" (Raz, 1997). We can see that Raz excludes the possibility of a legal system without a moral foundation, which I can support. Identifies moral reasoning and legal reasoning that is legitimate and essential. From Raz's perspective, non-moral reasoning is just an extension of the moral. Thus, there is a peculiarity and moral characteristic of legal systems constructed on the basis of non-moral assertions. What Raz wants to say is that some legal systems are built on the values found within that social context, or borrowed. These values at one point can be transformed or replaced.

Even though a legal system may have non-moral assertions, it does not mean that it is stranger to moral values, except that the latter are not rooted, sustained, or assumed. That's why Raz says it's just "an extension of the moral," because this extension allows those legal systems to build. But the effect of these non-moral claims is that it only helps to build the legal system, but does not help it survive. The

legal system can not survive without moral reasoning, non-moral ones are incapable of giving continuity to such a system. History provides us with the necessary examples to understand that extremist legal systems without a moral foundation have been established but have not survived. That is why Raz talks about the assumed legal reasoning, because these are the main ones and are the basis of the social order and organization, but also the unspoken ones, which the author asserts are found within each legal system. Here, Raz refers to those types of extremist judgments in systems that fail to impose themselves as legitimate, precisely because they lack a moral foundation. In a consequentialist argument, the presence of pure morality is impossible, being influenced by the preferences of individuals. The interdependence between norm and morality is even demonstrated by the hypothesis that "a moral evil will be imposed if a society does not have a legal order."

By *prima facia* force of the norms and moral principles, the "dogmatism of the separation of the two is avoided, since legal rationalists and moral principles have a common ground." For some authors there are two distinct types of morality: first would be "general and fundamental principles that ignore the validity of the norm." The second type of morality would entail "a balance between these moral principles and the values of the norm" by which the "link between morality and norm or the moral relevance of the norm" is established. This type of interaction by identifying two types of morality is able to promote both the authoritarian character of the norm and the moral balance. In a methodological analysis, moral balance is in some contexts seen as a last resort. From an epistemological point of view, one might say that this balance is inevitable, but the epistemological question would be whether it is justifiable or not. The interpretation born of this possible contradiction would be that there is a *prima facie* moral duty to obey the norm (Peczenik, 1999).

Hart proposes the "recognition rule" as the second legal criterion after *existence*, in a system. This is a "social norm, established as a common practice among those involved in legal affairs". And Hart argues that there are certain systems where morality is not a conceptual requirement, but rather a "criterion of legal validity, a condition of practices in that system" (Leiter, 2003). This statement argues the legal system of Hart "formed by main norms and secondary norms". In this system, secondary norms are the ones to influence the main norms, "this process being accepted by all parties involved." In the continuation of the above, according to the positivists, extremist regimes (Nazi, fascist, etc.) are legal, but not as strong as democratic systems, the criticism claims that they are not legal systems or are "incapable to support the dictatorial activities many times" (Dyzenhaus & Reibetanz, 2002).

From Fuller's perspective, the norm is "a system governed by two sets of standards: *internal* and *external* morals." *Internal morality* is the foundation of a legal system, and "violation of domestic morality makes the system no longer legal". Thus, a legal system can not exist if it does not fulfill the criterion or the condition of the existence

of internal morality within the norm. *External morality* refers to those principles and values that lead to the continuous transformation of the system. Once developed, it constantly adapts to social realities, which is why it is influenced by external morality. Internal morality remains constant, but external morality is dynamic. Fuller sees these types of morals as a "combination of duties and aspirations." An important criterion taken into account by both Fuller and Selznick is that of the *ideal*, which plays the role of strategy of a legal system that helps both "its achievement and its functionality". Dworkin clarifies that this functionality can be accomplished much easier by differentiating principles and rules within a legal system: "rules are inflexible, apply or not, while principles make the legal system more flexible." "The validity of the principles does not require formal recognition, and it is neither consensus, because the principles are both legal and moral" (van der Burg & Taekema, 2014).

For some authors legal systems differ from moral systems in the sense that there is "a set of sanctions imposed by a minority in power". C.H. Whiteley disregards a rule of morality in a society "if it is imposed". Moral norm and ideals are those that "have community support and approval" (Whiteley, 1976). The distinction between legal and moral systems is that legal systems "are born from a continual consensus made by the majority about what is good or bad." The moral system can refer to "a system of conduct, ethics and normative that raises questions about these good and bad understandings, generated and maintained in societies in a different way" (Alexander, 2009). Unlike other systems (political, economic, etc.), the seemingly moral system "has no agents to work for a common purpose." However, its morals and theories are "permanently built by human interaction and those working to build a system of moral conduct" (Agazii, 2004).

Ideals are also important to establish and maintain a balance between morality, norm and politics. Ideals can be analyzed taking into account "the phenomenon of pluralism (or the validity of unity), controversy and debate, and ultimately, development" (Agazii, 2004). According to Hart, quoted by Wibren van der Burg, it is necessary to have a minimal content of natural law that requires a certain pattern of society, contextually retrieved. Other societies, as I have mentioned before, have more positivist features depending on the socio-political-legal history. In response to this systemic pluralism, the theory of legal interaction would have a general character and not a universal one. In this sense, legal interactionism is a general but not universal theory (van der Burg, 2016). The construction of this section was considered as an argumentation of the theory of legal interactionism which is not a combination of natural law and positivist theory, but an assumption of the interconnectivity between norm and morality.

"The norm is always partially interconnected with morality, and partly autonomous." In the view of the theory of legal interactionism, interaction is the main process leading to the birth of the norm. Interaction of agents and experts lead to the creation

of the norm. Legal interactionism theory states that "no legal order can be completely separated from morality, being 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 it would not be permanently connected to one another, this connectivity being contextual, with situations where the two are less connected. In today's societies, individuals are no longer content with "hobbesian survival," so the norm can work well "if it incorporates moral, even partial elements of it" (van der Burg, 2016).

Positivists believe that the role of morality in the construction of the norm is optional, as there may be situations where morality may be missing from this construction. This, as stated by the positivists, and as I have shown, lack of morality does not affect the legitimacy of the norm. Naturalists claim that morality and norm are connected and these connections are more "variable and dynamic than conceptual". Legal interactionism is not an eclectic theory and does not make claims that its above the other two theories (naturalist and pozitivist) but attempts to visualize the relationship between norm and moral "as empirically not conceptually." The initiators of legal interactionism base their theory on human nature. Lon Fuller argued that "the internal morality of the law is not just a reference," and Philip Selznick sustains "the theory of legal naturalism. In Wibren Wan der Burg's view, legal interactionism should be *pluralistic, pragmatic and contextual* (van der Burg, 2016).

For Habermas, norm and morality are "inseparable, and the properties of the norm imply a moral dimension from which normality derives its legitimacy. The semantic form of the abstract and general norms can be justified in the light of moral principles. "Norm is seen as factuality and validity (Moka-Mubelo, 2017). From the perspective of legal interactionism, there must be *no* distinction between norm and morality. The interaction of moral or legal agents is a legal obligation and a moral obligation. This comes as a need for their involvement in social relationships, which, as I have shown above, once they choose to participate in these social interactions, becomes obligations for them. In the interaction, "the normative force of obligations is often not differentiated; there is simply a sense of obligation. They are two aspects of the same phenomenon" (Cane, 2002).

The intersection and interconnectivity of norm and morality does not mean that they are the same. The two have "a life of their own," legal obligations get a more precise and specific wording. As long as the legal order is based on interaction, norm and morality are closely interrelated (van der Burg, 2016). This relationship is given by "the interpretative and argumentative character of the norm". Ronald Dworkin claims that the norm is seen as "a discursive practice, the moral dimensions of the arguments are united in the discussion." The legal arguments, unguaranteed and unsupported by moral arguments, are incomplete. Therefore, "in legislative practices, political, moral and legal arguments merge when making decisions to change the law" (Dworkin, 1978).

Conclusions

Interconnectivity is variable but indispensable regardless of the practice and system in which it applies (positivist or legislative) (Alexy, 2002). In addition to the practical part of interconnectivity, the legal doctrine is important "because it specializes in interpretation and argumentation thus succeeding in formulating the legal ideals" (Taekema, 2003) which can be analyzed as I have just mentioned in moral terms. There is a mutual and continuous construction and reconstruction of norm and morality, and the arguments of the two "can not be separated". Legal interactionism argues that the ideals of legal practice can be achieved by retrieving "dormant elements of morality within the norm", and to function properly, "the norm must at least partially achieve them (van der Burg, 2016)" I have shown in this section how the arguments put forward by both naturalists and positivists are legitimate. Each theory has its own approach, which is not wrong, because even theoreticians succeed in demonstrating that these theories have applicability. It is true that there are situations and systems in which we can see that morality does not play a fundamental role in creating the norm. Positivists are right in claiming that some systems can be considered immoral, but naturalists are right in claiming that some of these systems are not really true systems or are not made to survive.

This section has addressed the role of morality and norm on each other. We can not ignore their roles and as a result we can not agree which of the two is more applicable or legitimate. Doctrinal discussions are often broken by practice and social reality. That is why the best approach is the integrative one, in which we can not allow even at doctrinal level, to exclude serious arguments about the common role of morality and norm in social interaction. As I said, the theory of legal interactionism is not a combination of the two, but a theory by which we actually accept the various approaches, and we recognize that we can not afford to put limits on interpretation and application in the dynamics and complexity of social relations. The theory of legal interactionism makes it possible for practices to be recognized, and admitted or rejected only on the basis of some theoretical criteria.

From the perspective of the theory of legal interactionism, it is inadmissible to discuss morality and norm as two different concepts. This approach of interpreting and applying these two concepts implies theoretical and practical limits. Norm and morality are interdependent, and their role is to mutually influence each other. It is a continuous construction of each one made through the other. Such an approach justifies that naturalist and positivist theories are not excluded, but that they work together to find contextually the best applicability. The theory of legal interactionism is not a method of analysis, it is a theory by which the concept of interpretation is resized. Morality and implicit norm are born primarily from practice, from the interaction of agents, and the types of interaction can be numerous and different. Contextuality is therefore very important. There are cases in which morality has a

minimal or, on the contrary, a maximum involvement in the socio-political-legal context.

We will see in the following sections the implications of pluralism, systemic and normative diversity, but also the challenges that these social, cultural and legal realities bring to the construction and applicability of morality and norm. In each of the various cultures questions arise: Why should we have an institution like the norm? Why should citizens respect the norms? In Wibren van der Burg's analysis of Hart's arguments, he states that the norms are able to protect and secure the agents because if the norm "would not promote the minimum purpose of survival, human beings would have no reason to voluntarily obey to any rules, and thus, the law could not function" (van der Burg, 2016). To ensure this security, we need to acknowledge the norm, in do so, the principle of transparency of publication and critical debate of the norm requires a "minimal quality of normativity" and maintains an open relationship between all agents involved in social interaction.

Wibren van der Burg's approach refers primarily to systems developed in the West where the interaction between agents is supported by very dynamic legal ideals. In Western systems this agent interaction is supported and promoted. As I have said, the theory of interactionism is a general theory, but it has no universal value. I will try to analyze in the following sections, to what extent this theory can be applied in the context of legal pluralism and whether it is just a practical theory of the West or even if it has practical applicability in other moral and legal systems. However, in some democracies, "orientation towards certain ideals is an important feature of the norm and therefore contributes to moral quality." In order to make the legal interactionism theory applicable, these systems must be analytical, or meet the minimum of conditions that can make the interaction feasible. We can not make the theory of legal interactionism applicable to systems that exclude legal ideals, the substantial values of democracy and the rule of law. Wibren van der Burg speaks of "a minimum of accomplishment and the promise of a progressive interpretation." In his view, morality and norm can not be separated, not even analyzed separately, even if "degree of interconnection is variable". The norm must and always has in mind an ideal or more, that must be fulfilled by "promoting the moral quality of the law". "Legal interactionism, with its roots in pragmatism, provides a perspective on how to make justice to the core of truth, both in legal positivism and in natural law (van der Burg, 2016).

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