

**DIALOGUE BETWEEN CONSTITUTION AND INTERNATIONAL LAW:
INTRODUCTION TO THE CONSTITUTIONAL WEB THEORY**

Paul Hugo Weberbauer²

ABSTRACT

This article is a product of the author's initial attempt to develop a theory trying to describe the insertion of the idea of Constitution in the international Environment. The main idea is that the relationship between Constitution and International Law is, in fact, a relationship between pluralities, plurality marked between the interaction of different national order (Constitutions) between themselves and the common goal in obtain a broader Law, the International Law. Therefore, the latter having an obligatory cosmopolitan spirit, commonly absent in the national Laws under a Constitution. In the author minds, this situation can be described as being like a “spider web”, whose “spider” that spins the web is the Conflict of Law (or Private International Law). In other words, this “web spinning” is where we can find the dialogue between Constitution (National Law) and International Law. Therefore, the understanding of this “web spinning” process only can be achieve when considering not only the Law of Treatises (Public International Law), but also the rules of the Conflict of Law, when analyzing the relation between Constitution and International Law.

Keywords: Constitution; International Law; Dialogue; Conflict of Law.

**DIÁLOGOS ENTRE CONSTITUIÇÃO E DIREITO INTERNACIONAL:
INTRODUÇÃO À TEORIA DA TEIA CONSTITUCIONAL**

RESUMO

O artigo é produto inicial da tentativa do autor em elaborar uma teoria procurando descrever a inserção da Constituição no plano internacional. O estudo procura desenvolver a ideia de que a relação entre Constituição e Direito Internacional é, em realidade, uma relação entre uma pluralidade de Constituições produtos de diferentes ideários nacionais que interagem entre si formando um Direito mais amplo, denominado

² Professor Adjunto de Direito Internacional Privado Membro do Grupo de Pesquisa: Integração Regional, Globalização e Direito Internacional. Contato principal para correspondência. Faculdade de Direito do Recife – UFPE

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de Direito Internacional, situação que define a obrigatoriedade deste último ter um espírito cosmopolita, comumente ausente nos Direitos nacionais. Essas interações formariam uma espécie de “teia” cuja “aranha” que fia é o Direito Internacional Privado. Trata-se de um estudo que procura demonstrar que a inserção de um Direito nacional no plano internacional ocorre não só pela concepção do Direito Internacional Público, como também pela estrutura que o Direito Internacional Privado assume naquele Direito.

Palavras-chave: Constituição; Direito Internacional; Diálogo; Direito Internacional Privado.

Introduction

1 Introduction

One of the most ancient and traditional conceptions of Private International Law is that constitutional rules are, *per se*, components of a country’s international public policy (?), i.e. the rules held in Constitution are the first line of defense of a specific legal order against the application of a foreign Law.

Few times on juridical literature the level of defense that these rules possessed has been focused. Would they be absolute enough to fully exclude foreign Law or would they be relative, not excluding, but serving as filters for the national Law to apply certain foreign law?

With regard to this issue the present theory – or better expressed, the present draft of a theory – about a constitutional network (or constitutional web) was forged. Its goal is to demonstrate that in the current world the absolutist vision that the idea of ordre public attributed to constitutional rules should be replaced by a relativist vision, in the sense of a filter.

On this context, this study aims to introduce the premise of this constitutional network from a dialogue scarcely used in Brazilian doctrine: between International Law and the Constitution. In a first moment, involving Public International Law and the conception of Constitution; and in a second moment, understanding the role of Private International Law in the centralized legal structure of a Constitution.

To achieve this aim, the study will recover a forgotten theory in the debate about the relation between national and international Law: the pluralist theory, developed in the 19th century. It targets in demonstrating that despite figuring as the peak of the national legal system, the Constitution does not imply an isolation regarding the current legislative diversity in the contemporary world.

The article structure begins by the analysis of the legal monism and the path that led to the constitutional supremacy dogma, to then exploit the pluralism (or dualism) in order to prepare the ground to the exposition of the main object: the idea of a constitutional web.

It is important to outstand that the present study is an introduction to the idea of constitutional web. Therefore, it will not resort to an extend and exhaustive series of quoting, even less will consider the conclusion offered as a final mark in the subject for there still are numerous spaces to be explored in it.

2 The Monist contribution

The legal monism is derived from the conception that both international Law and national Law are part of the same legal system. To summarize, it is an assortment of theories derived from the debate about the relation between internal Law and international Law, that carry the vision there would be only one Law – being both internal and international Law parts of this one Law – as a main premise.

It is interesting to notice that the monist legal thread has gained strength to the extent that the national state figure solidified as a socio-politic organization model of nation.

The onset of national State, associated to the ascension of Law as an autonomous Science, finalized the bipartition of Law in two initially distinct fields: on one side, national Law centralized in the figure of the State; and, on the other side, international Law.

Soon the doctrine that understood national Law as ensconced in the sovereignty of the national state power would solidify. It established the creed that State would be

composed by territory, people and government, besides establishing that the legal system would be monopolized by the state authority.

The explanation of international Law base lingered to be stabilized and, even so, could not pacify the subject. The doctrine understood it as a Law ensconced in the will of the States in community, i.e. not deriving from a central authority but from the consensus of international community members.

This debate on the basis of international Law will give birth to both the monist and – its antonym – pluralist threads. But to comprehend them, it is crucial to analyze the debate between internal and international law.

Strictly speaking, it can be assured that the lessons about State from the philosopher Georg Friedrich Hegel were the starting point to the birth of the “national and international Law” debate. When Hegel casts the conception of the State as a “being”, the so-called rationalization process of State dawns.

People as State is the spirit of its substantiated rationality and its invariable reality, in this means the absolute power over the Earth; a State consequentially, before the others, is a sovereign autonomy. In such case, to be a being before other, i.e. be recognized, is its first and absolute right³.(Hegel, 1999, p.284) .

It is important to warn that Hegel’s influence on the legal reflection as so profound that one of the results was the chasm of the international relations from international Law. However, it was not Hegel the responsible for the chasm of Law in national and international; this separation is positivists’ legacy.

The historicist (or ‘romantic’) strand of nineteenth-century thought represents to some extent, an evolved version of natural law - but evolved to the point of being transformed nearly out of recognition. It was natural law decked out in a historicist garb, whose principal philosophical tailor was Georg Friedrich Hegel. Hegel agreed with the positivist that the fundamental unit of study was the nation-State. If anything, he was more dogmatic on that subject than the most

³ Free translation from the german original: “Das Volk als Staat ist der Geist in seiner substantiellen Vernünftigkeit und unmittelbaren Wirklichkeit, daher die absolute Macht auf Erden; ein Staat ist folglich gegen den anderen in souveräner Selbständigkeit. Als solcher für den anderen zu sein, d.i. von ihm anerkannt zu sein, ist seine erste absolute Berechtigung”

doctrinaire positivist ever as - seeing the State primarily as the political vehicle for the cultural and psychological aspirations of peoples. This historicist and romantic mentality played a major role in nineteenth-century thought and politics generally, but only a minor one in international law. (Neff, 2003, p.47)

Nevertheless, it was from Hegel's State idea that positivism developed the rationalization of the debate between internal and international Law, whose result was monism pervasiveness.

This positivist legal rationalization process of the debate "national and international law" begins with John Austin's lessons, which following Hobbes' thought that laws would be commands, casts the basis of the idea that legal order would be composed by superior and inferior laws, as explained

Law and other commands are said to proceed from superiors, and to bind inferiors (...) Superiority is often synonymous with precedence or excellence. We talk of superiors in rank; of superiors in wealth; of superiors in virtue: comparing certain persons with certain other persons; and meaning that the former precede or excel the latter, in rank, in wealth, or in virtue. But, taken with the meaning wherein I here understand it, the term superiority signifies might: the power of affecting others with evil or pain, and of forcing them, through fear of that evil, to fashion their conduct to one's wishes. (Austin, 1861, p. 35)

Deriving out of Austin's doctrine, the arising of two new factors in legal heed can be perceived. The first is the insertion of the use of strength as a compelling characteristic of the term "legal". I.e. only norms originated from a superior power capable of forcing its execution would be "legal".

The second factor was the realization that in the own legal system there would be superior laws in relation to others, converging in the elaboration of an hierarchic criterion, which would develop the doctrine of the legal system cohesion on the basis of the submission of one rule over the others.

In such case, it is demonstrated the motivation that led Austin and the first positivists not to consider international Law as being Law but only a written morality. International Law did not hold a centralization of power and a jurisdiction to execute capable of bestowing the character of legal to international rules (Shaw, 2003, p.3).

The denial of international Law was the first thread of legal monism: the monism of total supremacy of national Law. It consisted on a thought grounded on jurisdictional monopoly of national State, which was based on the force criterion to define the difference between Law and morality.

The State, as being exclusive in its sovereign arenas of domain, would establish the existence of a sole Law arising from the legal monopoly of the state authority. The surplus would belong to the morality field and natural obligations.

Despite that, this thread of denial of international Law was not able to satisfactorily explain the cases where international rules were respected and, in such way, guaranteed by a coercive structure different from the national coercion.

The idea that international sanction coerciveness would not dwell on the imposition by a superior authority was developed. Rather, it would dwell on the legitimation by the international community on the retaliation conduct to be taken by the State that suffered damages. This reasoning, added to the conception of the existence of treaties immediately binding (or auto-binding) forming *jus cogens*, resulted on this monism's thread obsolescence.

Even facing mutations and particularities that would emerge from international Law, the monist reasoning developed its main thread to venture the issue on the relation between internal and international law: the normativist monism.

The normativism, rather Hans Kelsen's Basic norm theory, would reinforce the monism as a determinative thread on the analysis of national and international law since the abstract character of the fundamental norm conception would provide the required flexibility for monism to adapt to the variation of international reality.

In the light of legal rules' abstract world, the normativist monism not only evolved but also included as a possible thread the previous monisms. It conceived the possibility to hold three monism categories represented on the image below:

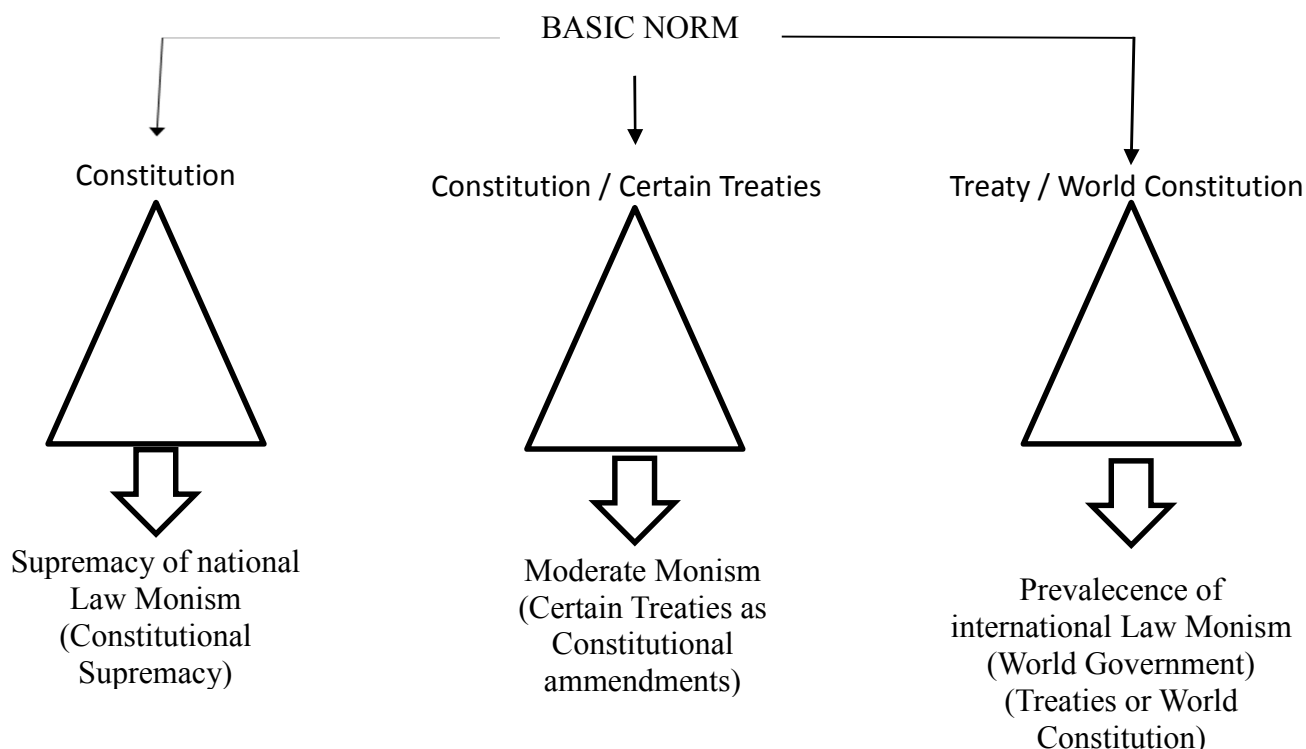


Image 1. The tree varieties of normativist monism.

It is conspicuous that constitutional supremacy monism represents merely one of monism's varieties. Nevertheless, apart from international law supremacy monism, in the other two threads the Constitution stands as the apex of legal pyramids.

At legal monism, the dominant usage of normativist ideas prevails. Furthermore, the regard of the basic norm as a premise to legal system outstands. Under this assumption, it is possible to analyze how Constitution has assumed this position .

The historical landmark that determines the beginning of Constitution's surmounting to the top of the normative pyramid is – by one of those historical

coincidences – the same as the one where the legal monism starts to develop: the 19th century.

The idea of Constitution as constitutionalism itself can be distinguished before the 19th century. But only with the constitutionalist ideology and – as Flávia Lages de Castro (2004, p. 245) asserts – since the 1815 Bourbon Restoration, a country without Constitution could not be conceived.

It is essential to notice that one should resist the temptation of conceiving the same role from the contemporary Constitutions, which are the legal order's gravitational center. The late 18th century Constitutions born from the constitutionalist ideology possessed a more formalist feature inclined to structure the State more than serving as a proper guide for the legal system(?).

In 1868 several distinct meanings associated to the term Constitution endured. There was a consensus that State urged a Constitution, a specific delimitation on what would be this Constitution lacked, though.

In the year of 1868 Held distinguishes four recurrent meaning associated to "Constitution": 1) each situation referent to the unity of the State organization with the influence of correlated non-legal moments; 2) the addition of previsions and determinations of Constitutions; 3) the portion of constitutional Law the constitutional elaborations belong to; 4) a fundamental written constitutional law added to all novels from the same character. He even adjoins: this latter meaning is the least used in the constitutional thought. Behind the currency of its usage is acknowledged that with the 1848 revolution the constitutional State had ultimately strengthened⁴. (Grimm, 1991, p.136-137)

⁴ Free translation from the german original: "Im Jahre 1868 unterscheidet Held vier geläufige Bedeutungen des Ausdrucks ›Verfassung‹; 1) Den ganzen Zustand der organisierten Einheit des Staat mit Einschluss der dazugehörigen nicht juristischen Momente; 2) die Summe der Verfassung betreffenden Rechtssätze und Einrichtungen; 3) jenen Teil des Verfassungsrechts, welcher die konstitutionellen Einrichtungen enthält; 4) ein geschriebenes konstitutionelles Grundgesetz samt allen ihm mit gleichem Charakter beigegebenen Novellen. Er setzt dann hinzu: In dem letztern Sinne wird der Ausdruck wenigstens auf dem Kontinent gewöhnlich angewendet. Hinter dieser Gewöhnung steht die Tatsache, dass sich mit der Revolution von 1848 der Verfassungsstaat endgültig durchgesetzt hat"

From such four mentioned concepts, the one that conceived Constitution as a fundamental written law – basis of national State’s legal order – was enhanced by legal normativist monism.

Notwithstanding, until this point was reached, Constitution exercised a different role for it was not a document establishing premises for the legal system. Instead, its main duty was limiting the State’s power. Therefore this constitutional State resulted from the 1815 Restoration was, in fact, the monarchist State in which Constitution was the document that restrained the sovereign’s activity.

This Constitution role in the monarchist State is properly exemplified when the 1871 Constitution of the German Empire is analyzed. Within it, it can be noticed a prevalence of rules that determined competences, reinforcing that imperial law would prevail over local law. It is convenient to bespeak Germany’s particularity at that age: it was an empire superimposed over the German principalities and Bavaria and Prussia kingdoms.

For instance, a brief inquiry on articles 2 and 4 from that constitutional text perfectly portrays how Constitution had a duty to delimit imperial’s activity with regard to the principalities. Article 2 determined that imperial law would only be effective in the moment it was published on the empire’s official journal, while article 4 established exclusive jurisdictional competence of the Empire in particular issues (customs, citizenship, currency, patents, spiritual property protection, etc.)⁵.

This Constitutional model with the assignment of structuring and delimiting State power might be regarded as the ideal legislative document to take the apex of the legal pyramid, since it structures the main actor of Law-making through the positivist point of view: the national State – also known as the modern State.

The modern State has brought to itself the exclusivity or the monopoly of the law-making, as a way of evaluating the overcoming of legal localisms of medieval, stratified culture with a privilege system. This is

⁵ The entire text from 1871 Germanic Empire Constitution is available at <http://www.dhm.de/lemo/html/dokumente/verfassungkai/index.html>

one of the most important features of modernity in the legal field.
(Lobo, 2002, p. 336)

Nothing could be more natural to the normativist monism thread than the apex of the legal system being the Constitution, as the legal document that limits State's activity automatically sets the rules to the composition of the legal order emanated from the legislative activity of such State.

On this concise evolution of Constitution being the summit of the normative pyramid of a State, it additionally lacks to make three relevant observations.

Firstly, this Constitution concept – understood as the first legal norm derived from the fundamental norm – is the so called liberal Constitution.

The Constitution, in the liberal context, represents a technique to maintain individual freedom against the arbitrary power of the State. The reasoning was to guarantee, by a written text distant from the customary medieval inheritance, citizens' rights. To achieve this purpose, however, the Constitution must be rigid and inflexible, meaning that the rules represent the hierarch apex of State positivation, being unable of modification by ordinary legislative power and never interpreted in a larger form. (Simeão, 2008).

It does not consist on a document provided with programmatic rules, rather a piece that aimed to clearly delimit State activity and its structure (such as form of government, governance and competence boundaries).

Secondly, it is advisable to enlighten the relation between sovereignty and the Constitution that results from this positioning in the legal system. Constitution, at this "liberal" historical moment, is born as a manifestation of what can be called as people's will in limiting monarchist absolutism. Not to be confused with people's eagerness to overtake the monarch's past sovereignty for it was not the case. The aim was to limit the absolute character over his subjects.

Regardless, with nationalist movements from the late 19th century, there was a change of sovereignty concept itself, due to the transformation of international relations' structure among European nations. It consisted on the passage from the closed European

public law of the monarchs to the conception of Public International Law. It was transference in the scope of monarch's sovereignty to nation's sovereignty.

From this transfer of the idea of the sovereignty of the people to the international stage the conclusion was drawn that a nation should not only govern itself in respect of its domestic affairs, but also that it should decide its own fate in the outer world freely and independently. National sovereignty could not tolerate any superior authority - except a collective security alliance restricted to mutual protection. Each obligation of the State could only be based on its own free will. All of the law of nations therefore had to rest on an agreement of will among States. (Grewe, 2000, p. 416)

This situation culminated on the later insertion of Sovereignty idea in the Constitution idea, once sovereignty – being able to be understood as one of the qualities of State's activity – would be placed in Constitutional text.

Thirdly, from this framework, the last relevant observation is that State and Constitution have entwined in such a way that, under many aspects, they have become equivalent institutes. To this study's matters, the greatest consequence of this State and Constitution "union" was to establish a perfect Law paradigm: Law ruled by a centralized authority and structured under a fundamental law. It is the contemporary structure of national Law.

Hence, laying national Law as the perfect Law paradigm led the legal study to nationalize the comprehension of international phenomena and to establish the national solutions as suited to international problems, heading harm to the comprehension of international Law as an autonomous field (Hart, 2001, p. 232).

In brief, despite the monist legal thread being flexible enough to adapt to both national and international Law structures, in the moment that State and Constitution have united, the possibility of a supranational structure was lost, as well as the binding power of international norms.

3 The Pluralist contribution

The pluralist History initiates in the late 19th century, when in 1899 the jurist Heinrich Triepel published the book *Völkerrecht und Landesrecht* (International Law and State Law). He asserted that both fields were in fact different Laws.

It consisted in a critic to monism centralized in national State. He intended to demonstrate that, indeed, International Law could not belong to the same Law as national Law.

In brief, the distinction between both Laws dwelt on the scope of the national State, once in national Law a sole State stood as a sovereign entity and primal source of Law. It created a centralized structure of coercion management and a real authority to employ it. On the other hand, international Law was Law resulting from the will of different States members of international community. It did not establish itself in a centralized structure of coercion management, rather marked by the inexistence of Legislature and Judiciary compared to the national State model. It likewise had an own and singular meaning for sanction.

Taking those discrepancies into consideration, it was impossible to conceive that both Laws were one and only. What existed, certainly, was a pluralism composed by unmistakable Laws autonomously interacting with themselves and international Law.

This reasoning was mistakenly labeled as Dualist thread, through Alfred Verdross' analysis that reduced Triepel's theory to the generic national and international Law segmentation, as it was possible to blend in an abstract arena the diversity of national laws in one single side and international Law on the other. Soon this misunderstanding was abandoned and the correct labeling would be used anew in the middle 20th century (MELLO, 2004, p. 122).

In general, this was the core of Triepel's pluralist reasoning: to settle that it was not possible to unite in one single Law what was in fact composed by different Laws, each ruled by a different State and relating to a distinct Law provided with singular characteristics in comparison to these State laws. Unfortunately, the lack of study of

Triepel's work likewise contributed to this reduction, since the pluralist thread was forgotten in comparison to the monist thread logic prevalence.

All in all, to this work's matter, this pluralist essence answers the purpose of a starting point, which, in an adapted form, will serve as an instrument to the elaboration of the constitutional web theory, beginning by the illustration offered by Wagner Menezes:

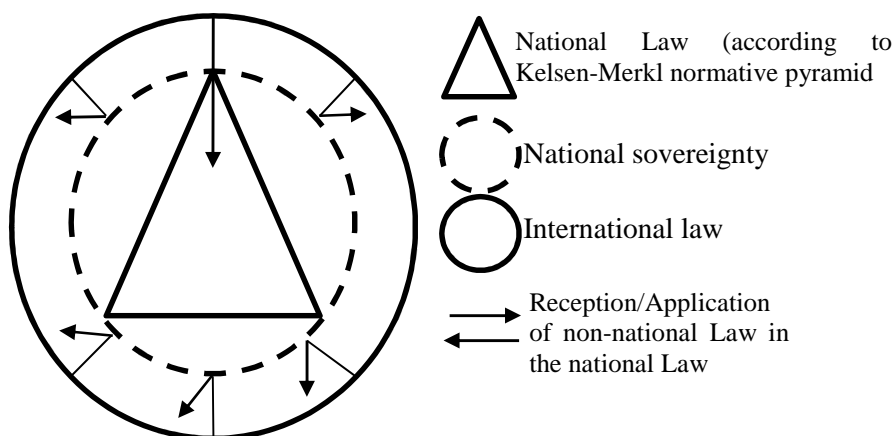


Image 2 The pluralist thread according to Wagner Menezes (2005, p.237)

The illustration does not provide a regard of pluralist reasoning as its creator portrayed, it depicts perfectly the pluralism reductionist into dualism as Verdross did, though. It delimits the analysis to merely an interaction between a uniform – and imaginary – national Law and an abstract international Law.

The fortunate insertion of the normative pyramid and its distinction from the sovereign field is to be praised, as it portrays a growing phenomenon in legal thought: enlarge not only State's actions as well as the Constitutional role itself – as it will be scrutinized in the next topic.

Bearing this illustration in mind, the re-adaptation of the pluralist reasoning is able to commence, taking as a premise that international Law can be segmented into different levels, premise pointed by one of the greatest normativism representatives, Hans Kelsen

As international law we understand only the general international law but not the particular international law. General international law is a

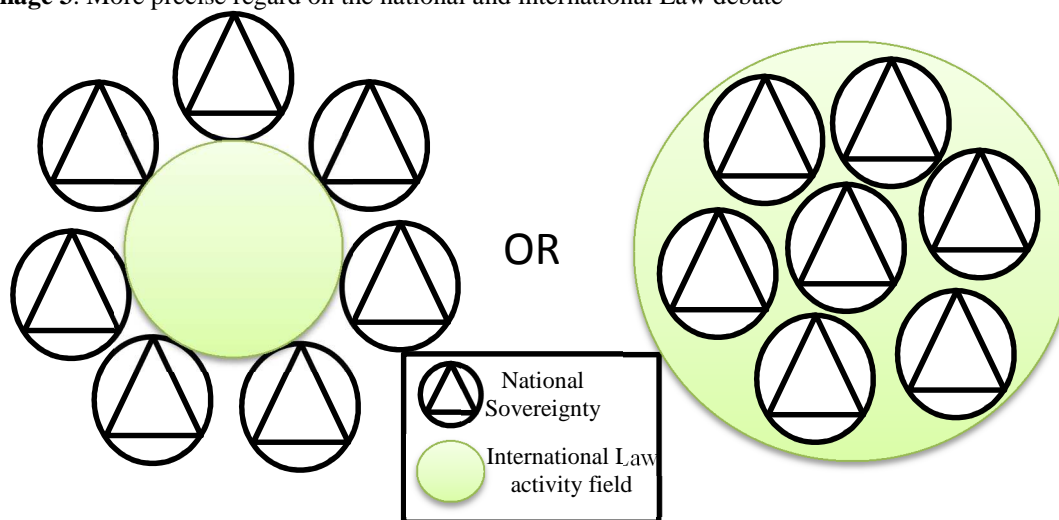
customary law created by the usual behavior of States in the international community, whereas particular international Law is nothing but the created and applied rules by certain States. By treaties that bind only the contracting States⁶. (Kelsen, 1953, p.28).

Currently, to this regard it can be added the regionalized international Law, whose major icon would be Community Law.

However, this classification of international Law carries a common denominator: regardless of being particular, regional or general, the rules emanated from international Law are not limited to only one national State. I.e. for the legal norm to be considered as international, it must be applied in two or more national States. Otherwise, it is not an international Law rule.

It should be added that each national legal order (?) will react in its own way to that international rule. A more appropriate regard on the pluralist reasoning on national and international Law interaction can be portrayed as the following image:

Image 3. More precise regard on the national and international Law debate



⁶ Free translation from the French original: “Par le droit international nous entendons seulement le droit international général et non le droit international particulier. Le droit international général est un droit coutumier, créé par le comportements habituel des Etats appartenant à la communauté internationale. En revanche le Droit international particulier ne vaut que pour certaines Etats et il comprend notamment les normes créées. Par des traités valables seulement pour les Etats contractants”

Thus, clearly there can be two possible looks on the national and international Law issue. The first, following a pluralist tradition in establishing an international Law specific field surrounded by national Laws each of them interacting in an autonomous manner. On the contrary, it is also possible to conceive – surprisingly – a look with a monist tendency on this interaction, in which the normative pyramid is overcome by an exterior field forming one sole normative set.

Obviously, here it will not be addressed different implications of these forms of illustrating not only the pluralist reasoning as its re-adaptation with a monist flavor. The reason is that the leading objective is to demonstrate that the national and international Law interaction is not based on the interaction between two uniform fields; rather a diversified field (national laws) and a greater abstract field (international Law).

Thus, the reductionist danger instituted by monism on the legal reasoning about the relation between national and international Law is exposed. When associating the State figure to the idea of Law as a whole, it has forgotten that State itself varies according to its social organization. I.e. each nation, each people, has a State and, consequently, a national Law different from others.

If, on one hand the debate “national and international law” was cleared, on the other hand an explanation lacks on the reason why the State sovereign area is considered different from the normative pyramid. Basically, to explain how Constitution is acting in the legal system.

To comprehend how State sovereign area is associated to the Constitution is to penetrate in Private International Law – more precisely, the complex doctrine of public policy (aka *ordre public*). Since the election of the Constitution as the apex of legal system, there has always been a consensus that its rules are *ordre public*. If foreign law damaged any of them, foreign law would not be utilized⁷. Constitution is part of *ordre public* of a State.

⁷ In a legislative level, as established Bustamante Code, or 1929 Havana Convention on private international law, in its article 4 “Constitutional precepts are international public policy (?)”

Despite of that, this doctrine was adopted by Private International Law in the era of liberal Constitutions, in which the almost only role of Constitution was limiting and structuring public power, situation that dramatically changed from the middle 20th century. More precisely in the end of World War II, there was a movement aiming for a transformation in Constitution's function in national Law. This process resulted in a growing broadness on the role of constitutional rules, leading to the most varied Constitutions by different States. This turned the constitutional phenomenon into an extremely complex process.

The plurality of Constitution models and the diversity of functions they keep in the current age make the comprehension of the present constitutional phenomenon more and more complex. There is a growing cognitive gap between those who assert the classic constitution theories reproduced daily on Law Schools and in Constitutional Law books and what in fact occurs in the real dimensioning on Constitutions' roles. (Galindo, 2006, p. 131)

In the search for a more "socialized" State intervention in society and in Law institutes, programmatic and open meaning rules have been more frequent. As precisely stated by Ingo Sarlet (2008, p.55) "it is not about, thus, freedom from and before the State, but freedom through the State".

This complexity situation of constitutional phenomenon inevitably causes alterations on the State sovereign area in the legal field, which Ordre Public is one of its maximum representatives.

In few words, establishing more and more programmatic set of rules makes the incidence of constitutional level rules on the private environment possible. The Ordre Public character of those set of rules have strengthened a State supra-normative sovereign field. It happens because – due to the openness of those norms – the interpretation of constitutional rules determinates if international public order will be applied or not.

The sovereign area of State in national Law has turned from legal literalness to programmatic rule interpretation. State sovereignty, in Law, was no longer attached to law's literalness, but to the interpretation of the openness that it possesses.

Hence, when picturing the sovereign field of State as a circle involving the pyramidal normative structure of national Law, it is made in observance to this mutation of the content of constitutional rules and its load as part of the doctrine of public policy.

What was exposed above is the first Private International Law (so-called Conflict of Law) manifestation on the national and international debate.

4 The constitutional web theory

Having overcome the introductory steps, the moment comes to outline what would be considered as the constitutional web theory and its impact on the current legal reasoning.

Initially, the theory here explored adopts the pluralist regard on the national and international law relation and international Law as being a group of sets inside a bigger set. It was likewise inserted a monist load on determining that both fields are indeed visualized as one sole Law, without sharing the idea that State would be the common point among these fields. There has been an attempt to separate the ordre public character from constitutional rules.

To that end, the belief that Private International Law possesses a fundamental role on establishing communication bridges between different national and international fields. These bridges allow the “dialogue” among different national Laws, settling the growth of harmonization and uniformization initiative of national laws for the benefit of a supranational law.

On this context, Private International Law can have its function associated – in its more modern thread – to a spider that sets a continuous and progressive weaving process with the purpose of tying national legal systems (flies) in an enormous and intricate web of intersections (international law). Portraying it:

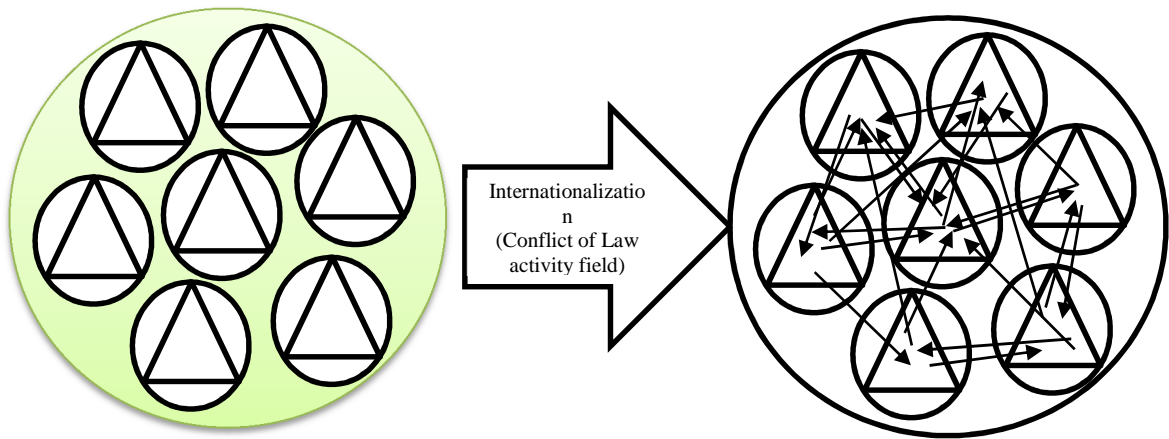


Image 4. The process of establishing a constitutional web.

From this entwining, it is possible to conceive the process of creation of a supranational legal system or even an international constitutionalism process aiming to establish a legal centralization in an international level.

To this article's limits, this portrait on national and international law relation as a spider web or communication network is relevant to two fundamental aspects on contemporary Legal Science: (1) the revision of the Constitutional role in national legal order (?); and (2) the possibility of a supranational hierarchical legal order (?).

One of the most important consequences to Law study of this present theory is to disassemble Constitution from State, rather, to remove the sovereignty load granted to Constitution and annihilate the idea that constitutional rules belong to a State doctrine of public police, relativizing its excluding-foreign-Law role.

Surely, this does not mean constitutional rules should be abandoned before international facts, or more precisely on the incidence of international or foreign Law. It does mean their interpretation should be relativized in a way that their incidence is not excluded but determined by the understanding attributed to such constitutional rules.

Once more adopting Private International Law, instead of maintaining constitutional rules as *ordre public*, they would be transformed in a variety of immediate

application norms⁸. Accordingly, they would not foreclose foreign Law's application, but adapt its application to what is considered national Law.

This softening of constitutional rule's hardness creates the possibility of a broader dialogue between national Law and the others national Laws. This dialogue provides the genesis of a uniform legislation and, perhaps, even unified in certain issues. In a long-term this would enable the reduction of Constitution's role in internal legal order and, in an extremely longer-term, moving from national State to a general international organization – the development of supranational constitutional culture:

The development of supra national constitutional culture enables to recover many of Rationalism and Enlightenment conquers, adapting them to a new reality and a new politic-legal conjuncture, from the theoretical "horizon displacement" of constitutionalism from State to supra-State legal entities. It also enables, as far as we are concerned, some answers to constitutional nihilism and to post-modern disenchantment, though the solutions are momentarily restrict to European constitutionalism. (Galindo, 2006, p. 130)

Another impact that calls attention is the Community Law issue and the other non-general international Law variations on this constitutional web structure.

As the picture must have portrayed, the web formed by the interaction of the distinct national Laws is inserted on a broader space that combines all national legal systems and its consequents entwinements.

As a consequence, it is clear that the main idea of the constitutional web theory is to allow the visualization that this supranational Law, originated by the interactions between the different national Laws inside the International field of activity, resulting in such high level of interaction that the national arena itself would be mistaken with the international arena.

This paper recognizes that to the current legal reasoning this is a utopia. It is crucial to outstand that initial interactions among national Laws of different States have a starting point with the initiatives to harmonize and uniform juridical matters. A special

⁸ For this study's concern, immediate application norms are those who are applied in space regardless the conflict of law system, being such concept an adaptation from Antônio Marques dos Santos (1991 ,p.1).

emphasis should be given to the Community Law, also considered utopic at the begging of the past century.

Despite the current crises at the Euro zone, European Community Law allowed to establish a web among different national legal systems creating a regionalized International Law.

Given this, Community Law can be considered the result of a mini-web that was formed among European Union members, demonstrating that it is possible to establish a conception of a supranational Law, not necessarily bound to States. The celebration of the Treaty of Lisbon and its designation as “Europe’s Constitution” is not meaningless.

Consequently, the constitutional web theory can be regarded as a product of the urge to foreclose the stagnation of the national and international Laws debate; being this stagnation that leads to a legal reasoning restrict to the idea of State created more than two centuries ago and no longer able to deal with the legal challenges that are outlined in mankind’s horizon.

5 Conclusion

It has been demonstrated that it is possible to conceive a legal system based on the norms cooperation, dividing them based on their application field. The subordination criterion and norms hierarchy itself were showed as one of the possible configurations of a juridical system.

The subordination criterion has become attractive in modern legal reasoning because of its powerful logic load associated to the flexibility that the abstract concept of fundamental norm has brought to the monist thread. Hence, the centralization of legal order around a Constitution resulted on a usance of a Law model guided by the authority of the nation-State, as being the Law paradigm to be reached in all fields of juridical studies. This situation caused damages not only to the variation of legal order structures as well as to the own comprehension of International Law.

The constitutional web, in its core, is the re-adaptation of the pluralist glance with monist glasses, establishing a better and more adequate comprehension of the relation between national and international law, aiming to emphasize the criterion of the normative incidence instead of normative systematization.

For this reason, the bipolarity built in modern doctrine – that reduces the issue to a national and international fields – is demystified. A multipolar analysis is proposed, highlighted on the multiplicity of national fields and on the diffuse nature of their relations on the international arena.

The Constitution is subjected to relocation on the juridical system, since there is no damage to its imperative nature once their norms are not considered obligatory as part of the *ordre public*, but a kind of filter that adapts the incidence of foreign Law. This equals to a new legal modality in the study of the immediate application norms existent on Private International Law.

Constitution must be regarded as a filter to society, not as a tool of State power, enabling a greater direct dialogue between infra-constitutional legislation and its equivalent in other foreign Laws.

At last, it can be stated that alterations in legal reasoning, specially the constitutional one, is only subject to modification once there is a detachment from the hermetic structure of national Law and, eventually, a comprehension of the International Law phenomenon with no damage to national concepts.

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