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PERSPECTIVES ON THEORY OF LEGAL INTERACTIONISM

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Abstract:

To clarify the nature and existence of the norm, we need to be aware of the domains through which it can be analysed. Wibren van der Burg, through the theory of legal interactionism, considers that the study of the norm, construction and its effects must be achieved through three main areas: legal sociology, legal philosophy and as a measure of completion and uniformity, the legal doctrine.¹ An interdisciplinary approach leads to the best conclusions;² otherwise four debates have emerged between the three disciplines in the understanding and interpretation of the norm. First of all, the distinction between the norm written (institutional) and the norm practised (interactive). Philosophers and lawyers support institutional norm theory, while sociologists embrace the interactive norm.³

Rezumat:

Pentru a clarifica natura și existența normei, trebuie să fim conștienți de domeniile prin care poate fi analizată. Wibren van der Burg, prin teoria interacționismului legal, consideră că studiul normei, construcției și efectelor sale trebuie realizat prin trei domenii principale: sociologie juridică, filozofie juridică și ca măsură de completare și uniformizare, doctrina juridică. O abordare interdisciplinară conduce la cele mai bune concluzii, altfel au apărut patru dezbateri între cele trei discipline în înțelegerea și interpretarea normei. În primul rând, distincția dintre norma scrisă (instituțională) și norma practică (interactivă). Filosofii și juriștii sprijină teoria normelor instituționale, în timp ce sociologii îmbrățișează norma interactivă.

Keywords: rule of law, legal philosophy, legal sociology, legal interactionism

Cuvinte cheie: statul de drept, filosofia juridică, sociologia juridică, interacționismul legal

1 General aspects

Legal Interactionism involves addressing and analysing issues of the rule of law, legal pluralism, and other concepts and theories found in many specialised doctrines, both French and German or Anglo-American. However, in this article I would like to present a general overview of the theory of legal interactionism as found in the Dutch doctrine, through its representatives, Wibren van der Burg and Sanne Taekema, that is only a part of a more complex personal research. Thus, in this paper, I will analyse the oppositions between legal philosophy, legal sociology and legal doctrine regarding the interpretation and analysis of the role of the norm. These objections primarily address the perception of the three areas in relation to written norms (or the norm adopted by legislators or by courts, supported by legal philosophy and legal doctrine) and the practical norm (the norm or custom, sustained by legal sociology). The second opposition is between monism supported by philosophers and jurists (analysis of the role of the norms through the role of the state) and pluralism (acceptance of several systems and actors as normative creators supported by legal sociology). Legal scholars and philosophers see the norm as a static phenomenon and sociologists as a flexible concept that is constantly adaptable. Also, the instrumentalist view, supported by some philosophers, jurists and sociologists see the norm as an instrument to achieve the goals, and some of them are non-instrumentalists who perceive the norm as a guarantor of values.

2 Theory of legal interactionism

The theory of legal interactionism considers, first of all, the distinction made between philosophers, sociologists and legal scholars, between the adopted (state) norm and the non-state norm based on interaction. In order to be able to perform the best analysis and to apply it contextually, offering the best interpretations and solutions, legal interactionism offers a theoretical approach to both the adopted norm and to the interactive norm. The theory of legal interactionism accepts the role of both variants, which allows for an interdisciplinary, complete and precise analysis. I will first discuss the approach and the arguments of legal interactionism theory, as presented by Wibren van der Burg, in relation to the two types of norms: adopted and interactive. Later on, I will present the position of legal interactionism and relative pluralism presented according to the theory. What Wibren van der Burg argues, is a theoretical approach that transcends ‘non-productive oppositions between the norm adopted and the interactive norm’.⁴ The supportive arguments for the legal interactionism theory are built on Lon Fuller's principles from his *Anatomy of Law* in which he ‘attempted to combat the opposition between natural law and legal positivism’ and to identify the common elements between them in order to obtain a symbiotic formula. In his analysis, Lon Fuller makes a distinction between the ‘made’ norm and the ‘default’ norm, that is, between the customary⁵ and the legislative.⁶

According to the theory of legal interactionism, the adopted norm⁷ is carried out as a result of a procedural process of legislating and adopting by an authority, legislator or judge. In addition to this, there would be other legislating entities that are involved in drafting regulations, decisions etc.,

such as university senates, forums, conventions, etc. In modern societies, van der Burg argues, the norm adopted takes the form of a 'black letter' containing a set of rules. Under the doctrine of the rule of law, the adopted norm is explicitly done by the authorities and results, as I have mentioned, from a vertical relationship between the legislator and the recipient(citizen). Of course, this position of verticality can be stressed by demonstrating the indirect influence that the recipients have on the construction norms based on the electoral vote granted for the governance program, implications in debates, etc. However, the basic idea is that this legislative authority, which deals with the adoption procedure, is designated, and once the norm is adopted, it is offered to citizens with a binding character, without leaving opportunity for negotiations. This suggests the *hartian* concept of a 'union between primary and secondary norms'⁸ or an institutionalised system of authority.⁹ However, in order to understand the adopted norm, its mechanism must also be considered outside the positivist framework.¹⁰ The rule of law or the positivist approach has evolved, thus, in well-consolidated democracies, this verticality tends to become one of horizontally. Fuller promoted the idea that the adopted norm has come to be built through 'the interaction of citizens, legal scholars and other officials.' Creating this horizontal relationship urges and forces us to see its results, that is, what the interactive norm means.¹¹

Sanne Taekema and Wibren van der Burg propose the existence of a 'gradual process of interactions' in which a 'behaviour is seen as creating obligations'. This process determines the creation of the interactive norm, and this can only be based on the existence of a 'predictability of actions of individuals or the state'. This predictability imposes a certain pattern to follow in our behaviour and allows us to reach a goal.¹² Social interaction implies

‘relative and stable mutual behavioural expectations’¹³ that stem from time to time from a ‘common process of accommodating and adjusting expectations and action from interacting agents.’¹⁴ It is the continual practice that determines the interactional norm, having an implicit character at the beginning, then being explicit by their formulation and materialization in written form.¹⁵

The theory of legal interactionism states that the norm has a social character, is determined by common understanding. Mark Antaki argues that the rule of law is the result of these understandings, supporting the idea of a ‘community of practices’ in which the ‘link between norm and shared agreements’ is established.¹⁶ Interaction and reciprocity in a community of practices leads to the emergence of the interactive norm.¹⁷ Interactive normative analysis can not only be done practically, as it remains strongly anchored in the practice of its origin; therefore a theorisation of it is necessary in order to make a clear separation between the implicit and explicit norm.¹⁸ Through this interactive approach, we no longer focus on the procedures, implementation and legal formalities, but it is intended to promote ‘inclusive processes’ and ‘cultivate the preconditions for legitimate law-making’.¹⁹

3 Major oppositions

Four oppositions are to be considered between legal philosophy, legal sociology and legal doctrine, and pass them through the filter of legal interactionism. Wibren van der Burg first overrides the need to analyse both the *interactive norm* and the *adopted norm* but also any other source that can be considered as creating rights, obligations, and values. Legal interactionism theory is intended to analyse both types of norms since the

norm is both the 'interaction between legal actors and practices' from which it may result, but also the 'legal doctrine resulting from these practices.' The binding force of the interactive norm results from the interactive pattern in which it is formed, a pattern in which an adopted norm should be imposed. Therefore, before being adopted, consideration should be given to the interactivity of the norm. This does not mean that the mandatory force of the adopted norm is reduced to one of an interactive norm, since 'both can generate a binding force once adopted'. Taekema and van der Burg do not promote that legal interactionism can be the only basis for the adopted norm, but they consider the binding force of the two when establishing a connection between the interactive norm and the 'black letter' characteristic of the adopted norm.²⁰

However, the adopted norm must be found in the form of interactive practice, so the legal system can not reflect the realities that have been built. The adopted norm does not have such legal force if it is not related to the interactive norm. This is why we can say that the interactive norm has a 'primary character' because it is the first to manifest itself.²¹ For the adopted norm, procedural implications that can not be found in interaction are needed. There are different ways of adopting, so, first of all, it takes interaction and then procedures, regardless of whether we look at them vertically or horizontally. There can not be a norm adopted without interaction. Even though both types may develop different and parallel legal orders in which there may be a congruence or conflict.²²

The second position in the relationship between philosophers, legal scholars and sociologists is that of the existence of monism and dualism/pluralism. These differences are specific to theoretical debates, especially in Europe.²³ From the point of view of legal interactionism,

pluralism must be analysed by recognising a wide range of conflicts and the interaction between several legal systems (official or unofficial). Pluralism must not disregard the fact that in most systems most of the norms adopted are by the legislator. These legislative authorities are important for both interactive and adopted rules, as they play a role for publicity and opposition. However, as the state plays an increasingly smaller role, these mechanisms become clumsy and more difficult to respect. More and more *actors* have the opportunity to set their own rules without taking into consideration state's authority.²⁴ The important thing is that once we accept other sources of norms, pluralism seems to be inevitable. The greater the interaction between the agents, the more the interactive norm can appear gradually. The example given by the authors is that of *lex mercatoria*, the international norm, but also all the interactive norm that have emerged outside the state order. They propose, that in a globalised dynamic, online exchanges, properties, cryptocurrency etc. can be the subject of such interactive norms.²⁵ That is why legal interactionism, in accordance with Lon Fuller, accepts a wide variety of legal orders.²⁶

Although legal pluralism is recognised and spread, it is rather relative. The reason for this relativity is that there is no autonomy of the legal orders, despite the interaction between them and the forms of collaboration/completion or contradiction between them. Being retrieved and incorporated into a legal network, they can only have a relative character, precisely because they are relatively autonomous by their partial opening to other orders. If there is a continuous addition, permanent transformation, then they can only have a *relative* character, because 'their autonomy or openness may vary'. For example, the authors support the relationship between the EU and the Member States can be considered as a 'semi-

autonomous network of legal orders' embedded in the 'community legal order'.²⁷ Relative pluralism promoted by legal interactionism has the advantage of an opportunity to be open to the changes that take place in the legal order, without getting withhold down in theorisations. Relative pluralism fosters a broad analysis of pluralism and openness to new legal orders and or competing transformations. Juggling between these orders can give more attention to the philosophical and legal debates and put them in touch with practice. Thus, relative pluralism allows us to 'accommodate the great variability of legal orders'.²⁸

Concerning the third opposition between the three areas, regarding the static or flexible nature of the norm, the theory of legal interactionism introduces 'variability and dynamics' without disregarding the general characteristics of a norm. Legal interactionism combines the analysis of 'legal orders (legal pluralism) with the understanding of the concept of law (conceptual pluralism).' Interactionism argues that norms should be investigated by opening up to change or to 'the wealth of legal phenomena,' rather than focusing on its properties. If we choose to perform all legal phenomena according to the properties of the norm, they can not be analysed in their complexity. The construction of the norm does not mean just abstract concepts, so we have to consider the changes that take place in its formation and transformation. Interdisciplinary, comparative, historical analysis, etc., can provide us with specific features. That is why the emergence of new types of interactions may lead to the emergence of new types of norms. That is why legal orders can be changed, constitutional law is replaced by international law, or other types of norms created virtually that diminish or remove bureaucratic rules and regulations. The legal interactionism does not provide a clear concept of the norm but rather opens the way to a theory that wants to

activate the theoretical rigidity according to practice. Thus, there is a general set of features, very dynamic and contextual. We can not delimit a norm according to legal interactionism, but on the contrary, we want to avoid a clear delimitation precisely because one could not justify one of the most important traits and features of the norm: its gradual understanding of ‘underlying the emergence or decline of a legal order.’ Accepting the variation of the norm allows us to achieve its best variant. Selznick said that the norm is a ‘normative practice aimed at the ideal of legality, ideal justice, or simply and ideally, like democracy.’²⁹

However, what happens to the authority by which the norm is adopted or at least fined, respected, sanctioned, etc.? Anyone could say that there must be these mechanisms by which ‘the content of the norm is determined’ because everywhere the norm will have to be in ‘black letters’ irrespective of the type of regulation, public or not. However, legal interactionism does not insist that these state implementation mechanisms guarantee the phenomenon of the norm. The theory, however, argues that there must be secondary mechanisms of recognition of the norm, which denotes that there is no need for a connection with the state. The norm being a ‘normative order embedded in a practice of legality’ has its mechanisms of sanction, or these can be absent if they are out of the norm. If we do not have an explicit model for formulating and forming the norm, we do not need to have any sanction. Thus, everything is arbitrary when it comes to the interaction norm seen through the theory of legal interactionism. Even if we do not define the norm, its purpose and context can be clear.³⁰ Interactionism allows the inclusion of opinion of all values, principles and definitions of comparative and interdisciplinary models. What can be called definitions and features are general but can not be considered universal. Sanne Taekema and Wibren van

der Burg argue that the norms are currently general, in nature, allowing some interference or change, but they must be carried out on a regular basis. The main feature of the norm must be its continuous remodelling. It is true that there is currently a tendency to build the norm with a timeless or non-static character, but these are just 'temporal and functional sketches' that put 'these changes in brackets.' We must recognise 'the possibilities of unexpected change of the norm' to understand 'its variable phenomena'.³¹

For the fourth opposition to instrumental or non-instrumental character, I stated that it is specific to each of the three areas of a norm analysis. Philosophers, sociologists or legal scholars can be both instrumental and non-instrumental. To evaluate how both variants are accepted, the authors start from those mentioned by R. Cotterrell who argue that 'the instrumental approach of law researchers has been involved in legal sociology projects.' Cotterrell criticises legal sociology as 'too worried to appreciate the social (and legal) aspects of it, exploring it in diversity.'³² B. Tamanaha expands this critique of socio-legal studies claiming that in legal theories it is assumed that the norm is a 'tool for extra-legal purposes' (political, economic, etc.).³³ This instrumental approach subordinates 'legal order to external purposes' and the norm is evaluated according to these purposes. Invoking legal in different areas allows juggling with principles in agent behaviours. Or the norm should not have this role, because from its perspective 'any kind of purpose that is served by norm is generated out of the norm.' Instrumentalism is easy to argue from the outside perspective of a norm, although these things look different from within. In this sense, Dworkin argues that legal norms and political morality must be interpreted as an integral whole,³⁴ and Fuller speaks of the internal morality of the norm,³⁵ which denotes that the norm 'serves first and foremost then the external ". That is why it manages to

provide external stability and guarantees. The legal interactionism embraces both variants, thus evoking a pragmatism that leads to ‘scientific research, systematic examination of conditions and consequences; problem-solving, goal orientation, flow, change and adaptability.’ Pragmatism, unlike instrumentalism, is focused on identifying goals and reaching them. A purpose somewhere can become a means elsewhere. Therefore, the purpose of the norm is contextual, because the norm may be a means at a given moment. This involves criticism and evaluation, so pragmatism does not agree that ‘the result should be accepted as it is, but the consequences of adopting that goal should be taken into account.’³⁶ For the theory of legal interactionism, the norm ‘is not an instrument for independently determined purposes’, but a ‘tool that serves a variety of purposes.’³⁷ The pragmatism of the theory offers the possibility of critical assessment given their contextual practicality rather than the rigidity of the theoretical abstraction.³⁸

Variations and changes are essential, and pragmatist theory, according to Selznick, states that goals and means are instrumental, both of which are valuable in themselves, and ‘the determination of a goal depends on an assessment of the means necessary to achieve it.’³⁹ Norm through pragmatism filter is instrument and purpose, and interaction allows for a variety of agents. Instrumentalism sees the norm as strictly at the expense of the politics, but pragmatism finds that anyone can use the norm as means and purpose. It is a democratic perspective that the norm is used by all, and thus allows a description of the ways to create and use interactional norms.⁴⁰ The norm must be a social instrument, because interactions are primary, being oriented towards the various objectives of the agents ‘as it links social goals to legal values.’⁴¹

Proposals made by the theory of legal interactionism would suggest that debates on the definition and nature of the norm might be endless. However, it is precisely the interactionism that does not claim that there must be a consensus. It is precisely the contextuality character of interaction that allows for consensus to be achieved on certain precise points, even if it does not constitute unanimity. Satisfaction with all parties involved is a political issue. The theory of legal interactionism, in relation to the certainty and predictability of the norm, analyses this aspect from two points of view: ‘epistemic or certain doctrine’ which presupposes knowledge of the text of the norm and which comes at the expense of legal interactionism. Theorists support the idea that this is a form of the second dimension: ‘practical legal certainty’ which refers to the predictability of the behaviour of officials and citizens. However, this is already determined by existing practices, so there is no need for these traits.⁴²

The theory of legal interactionism attempts to overwhelm the four major oppositions in the field of study of the norm, to respond to the challenges faced by the two great legal theories, the rule of law and legal pluralism. Even though it may be seen that there is a greater openness to the principles of pluralism, interactionism theory does not remove the rule of law, but, on the contrary, argues that it is necessary for certain areas.

4 Conclusion

What remains to be said is that these functionalities of the norm are found to be determined by the interaction between agents and leading to the ‘ideal of legality’. The norm has its autonomy, and in a network of practices, they inevitably influence one another. By this trend, the norm ‘contributes to

the quality of morality.’ The legal interactionism argues that the norm is not in a ‘societal vacuum’ and therefore stands against the West European *rule of law*.⁴³ Certainly the *rule of law* can bring criticism to the theory of legal interactionism by supporting the elements of constitutionality and other organizational features of the state, but what is proposed by the legal interactionism is not to limit ourselves to the analysis of the norm only by reference to the actions of the state or state arbitrage, because normative dynamics may have new valences if we allow it. This also means that the rule of law is no longer what it was, and in transnational transactions, the rigid model of the rule of law ‘finds its applicability increasingly difficult’. Just because legal interactionism does not require permanent consensus, it leaves room for later development of the norm.⁴⁴

Regarding the legitimacy ideal that agents want to achieve, Philip Selznick said he is conditioned by this reduction in arbitration, which allows other types of non-state norms to have influence in the social reality. The first advantage of interaction is that it allows the norm to be the exact reflection of social realities. The rule of law establishes out sets whose main objectives are to adopt norms ‘to regulate actions and to lead to a situation of normative certainty.’ The feature of the rule of law is that once these norms are adopted, the debate is closed and the outcome must be accepted by all participants, even if some of them disagree. Legal interactionism theory promotes that these debates not be concluded once the norm, or law, has been adopted, but rather continue so that there is a ‘gradual development of the norm’. As I have shown in the above, ethics and ethical norms support and complement the positive rule in the rule of law. However, if ethics completes this does not mean that it offers unanimity, so there are many cases where the positive norm, supplemented by the ethical norm, implies conditions or conduct that

may be of a general nature but can not be of a universal character in the sense that they may be cases in which the recipients disagree with the prerogatives of those norms or laws. In this sense, the most important aspect of the legal interactionism theory is the ideal, which after the continuous debate has the possibility to develop, to take the form of norms by constantly adapting to the ‘contextual needs and aspirations’.⁴⁵

Ideals are essential, especially as normative architectures are anchored in culture. The dynamics of social, business, domestic or international affairs, the activity of NGOs, etc., determines the ‘continuous interpretation and reconstruction of the norm’. Another important feature of legal interactionism is its contextual nature. It can be argued by analysts and researchers that some social and political constructions would not allow for the development of the norm in the dynamic presented by the legal interactionism. However, the theory of interactionism does not ‘give rise to claims of universality’, being ‘exclusively contextual’ may be of a general nature and applicability in a space-time framework, in a certain socio-political architecture. This contextual character of the norm is conferred precisely on its relation to morality, which, as we have seen, can be ‘tangential and variable’. The ideals on which the norm is built represent and actually promote the ‘reflection of the moral quality of it’.⁴⁶ The authors, Wibren van der Burg and Sanne Taekema in the debate in *The Importance of Ideals: Debating Their Relevance in Law, Morality, and Politics* argue that ideals are not the ‘source of pluralism.’ Historical development, specific characteristics, socio-political traits represent the sources of pluralism; in this relationship, the ideal ‘provides only a part of the explanations.’ The representation, description and design of ideals outline the ‘normative and moral dimension of a system’.⁴⁷

If in the case of the rule of law, the norm supported the positivist norm in the organization and functioning of the state, and in the case of pluralist theories we find that the norm its supported by the positivist norms, in the case of the legal interactionism we find that the evolution proposed by this theory would be that interacting, in the way it is formed and imposed, is and remains in the form of an ethical norm. This ethic-based approach means that ethics remains the only true variable in creating the norm.

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¹ The importance of the legal doctrine specializing in civil systems, considered as sources of the norm, was well defensible. The legal doctrine is very important as it creates the legal vocabulary and the ideas that the legislator uses later. The doctrine sets out how the norm should be interpreted and understood. Often, the legislator offers the expression and effect of tendencies developed in doctrine or adopted norms that were created by theorists in Rene DAVID, John E. C. BRIERLEY, *Major Legal Systems in the World Today*. For example, in the People's Republic of China, the doctrine is not considered the source of law. More details see in Jiangyu WANG, *Corporate Law in China. Regulation of Business Organizations in a Socialist Market Economy*, University of Singapore, Edward Elgar Publishing Limited, 2014.

² Saane TAEKEMA and Bart VAN KLINK, *On the Border. Limits and Possibilities of Interdisciplinary Research* in Saane TAEKEMA and Bart VAN KLINK (eds), *Law and Method Interdisciplinary Research into Law*, Mohr Siebeck, Tübingen, 2011, pp. 8-9; Also see Douglas W. VICK, *Interdisciplinarity and the Discipline of Law*, 31(2) *Journal of Law and Society*, 2004, pp. 163-93 quoted by Sanne TAEKEMA and Wibren VAN DER BURG, *Towards a Fruitfull cooperation between legal philosophy, legal sociology and Doctrinal Research: How Legal Interactionsim may Bridge Unproductive Oppositions, Law, Society and Community. Socio Legal Essays in Honour of Roger Cotterell*, Edited by Richard NOBLES and David SCHIFF, Ashgate Pub., London, 2014, p.131.

³ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit. p. 131

⁴ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit., p. 132. The difference of formulation used by VAN DER BURG (a norm adopted and an interactional norm) as opposed to Fuller (norm made/made and implicit norm), consists in that the term used by Fuller, that of 'norm implied', would in fact suggest that the other type of norm is explicit. However, given that all norms are made/accomplished by individuals, the suggestion that the custom would not be the norm made or

accomplished is inappropriate. Also, FULLER, quoted by VAN DER BURG, uses the term 'interactive rule' in his book Lon Fuller, *The Morality of Law*, Yale University Press, 2nd Edition, New Haven, 1964/1969, pp. 211-237, but also 'adopted norm' or 'rule declared by authority' in the book Lon FULLER, *The Principles of Social Order. Selected Essays of Lon. L. Fuller*, Durham, Duke University Press, 1981/2001, p. 232.

⁵ Custom is a 'set of informal agreements, as a set of practices and social coordination that stem from informal understandings, without being imposed by a rule adopted by a legislative authority. Most of the times, customary habits are associated with natural instincts because they work sponge, automatic and tacit. *Cutuma* is a kind of second nature of man because it operates instinctively, only in the social context. Thus, the custom must be analysed through two distinct notions: custom and convention. James Bernard MURPHY, *Habit and Convention at the Foundation of Custom*, in Amanda PEREAU-SAUSSINE, James B. MURPHY(EDTS) *The Nature of Customary Law: Legal, Historical and Philosophical Perspectives*, Cambridge University Press, New York and London, pp. 54-55.

⁶ Lon FULLER, *Anatomy of the Law*, Praeger, New York, 1968, pp. 43-84 quoted in Sanne TAEKEMA and Wibren VAN DER BURG, op. cit., p. 132.

⁷ Unlike the analogy used in common law, the adopted rule is deductible in Steven J. BURTON, *An introduction to law and legal reasoning*, Third Edition, Aspen Publishers, New York, 2007. Also, in Chapter 4: Both common law and enacted law are designed to facilitate legally opposed, inflexible and intolerant legal structures.

⁸ Herbert Lionel Adolphus HART, *The Concept of Law*, Clarendon Press, Oxford, 1961/1994, p.65-74 .

⁹ Joseph RAZ, *The Authority of Law*, Oxford University Press, Oxford, 1979, p. 60-83.

¹⁰ Gerald J. POSTEMA, *Implicit Law*, 1999 quoted W. VAN DER BURG and Willem Johannes WITTEVEEN (eds), *Rediscovering Fuller: Essays on Implicit Law and Institutional Design*, Amsterdam University Press, Amsterdam, 260.

¹¹ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit., p. 132.

¹² Ibidem.

¹³ Gerald J. POSTEMA, op. cit, in W. VAN DER BURG and Willem Johannes WITTEVEEN (eds), op. cit, 257.

¹⁴ Ibidem.

¹⁵ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit., p. 134.

¹⁶ Mark ANTAKI, *Un-stanting Law*, in Shauna VAN PRAAGH, Lionel SMITH and Helge DEDEK (eds)., *Stateless Law: Evolving Boundaries of a Discipline*, Ashgate, Burlington 2015, pp. 34-75.

¹⁷ Lee JING, *Preservations of Ecosystems of International Watercourses and the Integration of relevant rules. An interpretative Mechanism to Address the Fragmentation of International Law*, Leiden, Netherlands, 2014, p. 200.

¹⁸ Jutta BRUNNEE and Stephen J. TOOPE, *International Law and Constructivism: Elements of an interactional Theory of International Law*, 39 column J.

TRANSNAT'L, 2000, p. 19 quoted by Malgosia FITZMAURICE& Olufemi ELIAS, *Methods of expressions of consent to be bound by a treaty*, Eleven International Publishing, 2005, p. 269.

¹⁹Ibidem.

²⁰ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit., p. 132.

²¹ Lon FULLER, *The Principles of Social Order. Selected Essays of Lon. L. Fuller*. Duke University Press, Durham, 1981/2001, pp. 45-78.

²² Sanne TAEKEMA and Wibren VAN DER BURG, op. cit., p. 132.

²³ About legal pluralism in relation to the European Union, the Council of Europe or international law see Andre NOLLKAEMPER, *National Courts and the International Rule of Law*, Oxford University Press, Oxford, 2011, pp. 10-15; Nico KRISCH, *Beyond Constitutionalism: The Pluralist Structure of Post-National Law*, Oxford University Press, Oxford, 2010, p. 10.

²⁴ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit. 133.

²⁵ For more details on cyber-space interaction, see Robert J. BECK (editor) *Law and Disciplinarity*, Palgrave Macmillan, New York, 2013.

²⁶ Lon FULLER, *The Morality of Law*, 2nd Edition, Yale University Press, New Haven, 1964/1969, p. 125 quoted by Paul Schiff Berman, *Global Legal Pluralism*, *South California Law Review*, no. 80, 2007, p. 172.

²⁷ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit. p. 134

²⁸ Ibidem.

²⁹ Saane TAEKEMA, *The Concept of Ideals in Legal Theory*, Kluwer Law International, Hague, 2003, p. 190.

³⁰ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit. 135.

³¹ Ibidem.

³² Roger COTTERELL, *Living Law: Studies in Legal and Social Theory*, Routledge, London, 2008, .p. 21.

³³ Brian TAMANAHA, *On the Instrumental View of Law in American Legal Culture* in Francis MOOTZ III (ed.), *On Philosophy in American Law*, Cambridge University Press, Cambridge, 2009, pp. 27-34.

³⁴ Ronald DWORKIN, *Law's Empire*, Belknap Press, Cambridge, 1986, pp. 46-71

³⁵ Lon FULLER, *The morality of law*, op. cit. p. 125.

³⁶ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit. 136.

³⁷ John DEWEY, *Reconstruction in Philosophy*, in Jo Ann BOYDSTON (ed.), *The Middle Works, 1899-1924*, Volume 12, Carbondale and Edwardsville, Southern Illinois University Press, 1988 (orig: 1920), pp. 146-174.

³⁸ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit., p. 142.

³⁹ Philip SELZNICK, *The Moral Commonwealth*, University of California Press, Berkeley, 1992, p. 328.

⁴⁰ Jeremy WEBBER, *Legal Pluralism and Human Agency*, Osgoode Hall Law Journal, no. 44, 2006, p. 177

⁴¹ Sanne TAEKEMA and Wibren VAN DER BURG, op. cit. p. 137

⁴² Wibren VAN DER BURG, *The Emerging Interactionist Paradigm and the Ideals of Democracy and Rule of Law*, in Bart VAN KLINK, Britta VAN BEERS, Lonneke POORT (Editors), *Symbolic Legislation Theory and Developments in Biolaw*, Springer International Publishing, Switzerland 2016, pp. 8-51.

⁴³ Idem, *The dynamics of Law and morality(...)*, op. cit. pp. 155-176.

⁴⁴ Wibren VAN DER BURG, *The Emerging (...)* op. cit., pp. 37-44.

⁴⁵ Ibidem, pp. 8-51.

⁴⁶ Wibren VAN DER BURG, *The dynamics (...)* op. cit., pp. 155-176.

⁴⁷ Wibren VAN DER BURG and Sanne TAEKEMA, *The Importance of Ideals: Debating their Relevance in Law, Morality, and Politics*, Presses Interuniversitaires Europeenes, Brussels, 2004, pp. 17-22.