Contemporary Electoral System

LEONARD CUPELL

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1ST EDITION

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DEDICATION

I dedicate this work primarily to God, to my parents Raphael Cupello and Saisyl Cupello, as well as my wife Luciana Cupello and my daughters Giovanna and Isabella.

SUMMARY

INTRODUCTION

The exercise of democracy in the sovereign State is based on the will of "collective ethical conscience" and this is materialized with the transparent and legitimate choice by the citizens of those who will govern, as representatives of the people, so that there can be an alternation of political power, in order to meet the expectations of development: social, economic, legal, etc. of a people: 'common good'. Thus, the corresponding “Electoral System” should have as a paradigm a set of subsystems capable of meeting the aforementioned 'common good' of a community and, in these terms, the following subsystems can be cited: «electoral juridical fact; value – electoral ethics –; electoral principles; public training policy; electoral norm; effective public policy; and common good». In addition, the barycenter of the 'Electoral Law' is highlighted, which is the 'Democratic State of Law', and also the 'collective ethical conscience' that interconnects all the legal subsystems of the aforementioned electoral model.

In this way, it is important to consider in the constitution of the electoral legal system its ethical and social composition, as a determining factor in the control of State power, in addition to emphasizing in a special way the perspective of State action in directing its public policy. Therefore, the objective of this study is to bring a meager scientific contribution through which it can translate into the necessary presence of the axiological subsystem in the formulation of Electoral Law and its effective service, depending on the interest of social conscience in pursuing its own systemic development in the foreground. electoral process and then or concomitantly with the development of other systems enshrined in the universe – economic, political, etc. –, arising from the full and constant communication between everyone.[1]

As an inspiring source in a first reflection, our proposal for adapting the theme is to propose the construction of an electoral legal system based on the examination of the definition of society and its ethical awareness in this political decision process that underlies the function and effectiveness of the ' Electoral Law' as to its legitimacy. By the way, through this mechanism of social communication it exposes the vices that may exist in some subsystem and the corresponding response through the autopoiesis of its necessary reconstruction. Next, examples of concrete cases of pathology in the subsystems and their dialectical relationship with the personal component of each subsystem will be presented, as the importance of undertaking the sense of equitable distribution of social justice - "the principle of equity" - is to find the balance - «principle of substantial proportionality» – between public order and the

fundamental rights of the citizen: in particular, *eg* , “universal suffrage, as well as direct and secret vote, with equal value for all”.[2] In this context, the fluency of the «technique of legal enforcement» with the «principle of efficiency» of the State becomes a means of meeting this process of galvanizing some subsystem in crisis for the purpose of its therapy – in view of its entropy – reflecting on the best peculiar orientation regarding the resolution of their dilemmas or risks that present themselves. Therefore, the composition of the electoral legal system will have in its framework of subsystems a factor that frequently changes its resolutions: "reality", from an ontological perspective, as it is a phenomenon of unstable nature and, therefore, is modified at all times , because of the social facts that happen over time. It is in this nuance that the social action of the State exercises its political power by triggering the introduction of new norms that may come to regulate the conduct of the citizen or even of the State itself.

In the development of this theme, it is important to highlight that the prominent social phenomenon becomes a reality when the ethical and collective conscience distinguishes its importance, in meeting its aspirations and as a corollary in the incessant search for the “ *common good* ”. Thus, it starts from the concreteness of a " *fact* " without social significance, it evolves into one that has relevant ethical-social effects - " *legal fact* " - and ends in the fact subsumed by the norm, calling itself, in turn, « *legal fact* ». Thus, the trajectory of the « *fact* » constitutes the evolution and meaning of Law: its profile fosters an interaction between the natural or even voluntary event of an individual since their formation, but has its social meaning linked to the influence of ethical awareness collective.[3] The role of society's values – accentuated axiological spirit – greatly influences the characterization of the fact as not being just a casual occurrence, but with future and historical effects that may or may not be permanent. Over time, society has contributed with its collective ethical awareness by emerging in the formatting of Law, imposing its modeling character by inscribing in each zetetic moment the formation of the State and, accordingly, how it should exercise power: if it will have or not a legitimate character, in tune with the yearnings of the people for which he represents him.

Highlighted in the « *trajectory of the fact* », there is the first examination in the realization of a *fact* that in a given historical moment has no social repercussion and thus its profile is improved in a model that only serves individual interest or events arising from nature and not collective.[4] In this meaning, the *fact* enters an isolated deontic process, resulting in its limitation as to its legal scope. In the opposite sense, the socially relevant fact has its own voice and light, radiating under the eyes of the entire community and which ultimately deserves to be promoted in the spotlight, as it is further typified by a norm: "legal fact", that is, it becomes a reference to be regulated

by the State. This juridical character spreads through the senses of the social body, resulting in the valuation of the creative and immanent spirit that suits everyone who pays attention to the importance of this social fact, as it will translate into improvements – or not – for their « *well-being* ». Due to the function of its existence, the social fact becomes an object of examination by the community: of its conjunctural complexities, because they have relevant future effects. Incidentally, its legal meaning has accompanied its cultural and ethical development since its origins, translated into the Latin expression " *ubi societas ibi jus* ". In the social reality, it matches the time and space that follow it, bringing groups closer or even distancing them from the purpose of the State in its regulation: fostering this proper mechanism of conduct adjustment by permeating with the Law the task of assuming their responsibilities, with all those who are under his empire. The social pact instructs as the right measure, making the incipient fact visible, in the eyes of everyone involved with their senses, natural or even gnosiological. From the knowledge of the fact - of the being - and going beyond its metaphysical valuation by the community, by providing a profile able to give it the assumption of a legal fact, with characteristic ontological repercussion, but brilliant in terms of its model of abstraction, denaturing its isolationist character of understanding. In the highlight of human geography, the psychological profile of the organic system, or cultural geography, contributes to the evolution of Law from the density of values present in the community, as they improve over time, contributing to the formation of a special meaning for that fact. of repercussion by which it determines the social meaning of the term. The electoral juridical fact matches the influences of the way of being, acting and feeling of a community, making up a collective ethical conscience aimed at the development not only material, but spiritual of a people. The equitable distribution of goods in the community comprises the dominant social interest, instructing as a substitute for the formation of roots in the relationship between the community and the power of the State. Therefore, the electoral legal fact becomes an element of evaluation of the community towards the State and the latter, in its political support guidelines, should reflect the legal fact in its actions: translated in line with accentuated social desires. The ethical-social catalyst character of the legal electoral fact comprises its essence, producing effects, especially in the relationship between the State power and Society. The human being, in turn, is not only a cause – except when dealing with exclusively natural causes – and an effect of the social fact, but also a generator of value judgments capable of influencing the fundamental political decisions of the State. In fact, from the anthropological perspective of the human being, in addition to being studied as a physical animal – *from homo sapiens to homo faber* – it is also studied as a social being – *homo loquens* – and human institutions should adapt their political decisions to the image of dominant ethical-social values. Social coexistence refers to the idea of justice for all and through the facts that

permeate public life, it exposes the common interest in meeting the collective ethical conscience. From the occurrence of the phenomenon of the fact, the juridical fact or also called social fact of ethical impulse and of legal prospective scope or of future normative expression comes to be highlighted. Society has its territorial space normally delimited by the State power, but its collective ethical consciousness is dynamic over time or changeable, depending on its effect, in view of the event – juridical fact – of each zetetic period. Thus, the social values of the community are not static and this understanding is justified, as the fact that arises every day emerges from the unexpected arising from the forces of nature or the voluntariness of human beings and produces effects on the community that is its object . The society's synergy in its dynamism comes from the valuation of its culture and ethical values that are transformed with each social fact that arises. In this context, it has been constantly informing the knowledge acquired through the information instruments provided by the State or produced by the organized society itself. This process of social evolution or involution, according to the paradigm and vision of those who hold state power or even what society reflects at that historical moment, has its concept crystallized in the ethical variations that reality sustains: ethical-social identification cycle surrounding from a fact recognized as legal. By agreement, we have, from time to time, a social transformation, but it is not always considered abrupt, as this political-social segment stores and fosters, with the passage of time, new ideas that translate into fundamental political will of the State or even the On the contrary, it sediments a political reality that makes it appreciable, if not for all, at least for the majority of members of society. In this regard, the sense of dynamic society is achieved through the involvement of reality in a process of constant transformation of understanding the likelihood of existing norms that influence the decisions of political institutions. However, there are also political decisions of the State that are not consistent with social reality, that is, in the event that the norm does not accompany reality in the formulation of a given legal fact that denies or contradicts the subsumption of the current norm. Furthermore, the profile of society greatly influences the definition of the legal fact and thus, its dominant axiological and cultural meaning at its core will define whether the current legal norm is in collision or not with the new legal fact that is available to succeed -there. In turn, in the event of a substantial change in the existential factors of the current rule as to its effectiveness, it will make the legal event able to carry out its effects and, which will have its path finalized in the emergence of a new legal rule: replacing the previous one and adapting the will of collective ethical consciousness to the paradigm of reality that was presented to it. In this tuning fork, from the birth of the fact without involving ethical-social density, passing through the graduation of the legal fact, that is, with prevailing ethical-social density and ending its cycle in the realization of the fact with dominant ethical-social intensity, transmuting, finally in legal fact, with cogent or

dispositive effects, depending on the nature of the norm, but always with emphasis on the making of the presuppositions of social legitimacy and abstract obedience to its precept.

The fact as an isolated event is opaque, but if it has a social recognition profile, it is historical. At every moment of our lives, we find that the facts are happening in an amazing way and by comparison, society also follows this succession of facts in order to value those that become more important in order to consider them social phenomena with bright ethical density. The question is to know: who defines and what is the opportune moment to promote the singular fact without social importance by transmuting it into the contemplation of the corresponding social phenomenon, that is, into a legal fact and subsequent formatting into a legal one? To conclude this question, it is necessary to assess the paradigm of society and State that is involved, but let's see: if society is supported by the legitimacy of its manifestations and the State government responds promptly to its claims, as *eg* , freedom is accentuated at all social levels, constituting a democratic process with a broad spectrum, thus erecting a harmony between the established government model and the community organically linked to it, a clear system based on the 'Democratic State of Law' is formed. In fact, given this system, where society, by having a solidary dialogue with the State government - "the principle of equity" -, and therefore there is a constant iteration of common ideals, make both co-responsible in the convolution of the incipient fact into a legal fact and in this in legal fact, in addition to being able to define when these transformations become reality. However, if the constituted State and society do not have this convergence or this integration as the model above and if the democratic environment is not effective, in the hypothesis, *ie* , of constraining the exercise of the right to freedom of expression or any other right and, in turn, demonstrates the absence of guarantees that ensure the full exercise of these rights when violated illegitimately, the conclusion that emerges is that it is a State without the content of 'Democratic Law' or a 'Rule of Law', and, therefore materially unfair.[5] In this context, who will define the course of the fact globally, that is, from the fact without significant ethical-social repercussions, passing through the legal fact until its formalization into a legal fact is the one who holds political power, whatever the power plenipotentiary constituted in the governance of the State, or even that which holds power through democratic elections, but when executing public policies, it does so in a discretionary manner without any effective ethical-social control. In turn, in the same way, it can be said that it will be up to the constituted government to define the historical epoch of the alteration of the fact without ethical-social repercussions in legal terms and of this in legal fact. Finally, the close or distant relationship between society - with its values and principles embedded in its current performance - and the State, with its constituted government, will represent in the course of the event whether it will be

harmonious or, conversely, it will have its meaning of imposition and linked by corollary to the decision-making temperament of the one who holds the state political power.

In the construction of this trajectory of the fact, it is based on the relevant social interest and on the control of political decisions that arise from the occurrence of each fact, from the legal point and, concluding with the legal fact or even at the time of replacement of the current legal fact , with the promotion of the legal fact that preceded it. This succession phenomenon is completed, given the dynamics that social reality is changing and the need to create new models of conduct or even modifying existing models.

With the realization of this trajectory of the fact and the enhancement of its social function, the present study in its evolution will adjust, for example, at first sight its performance in the formatting of the «electoral system» and the «legitimation of its structure»: very although the " *Communicating Legal System* " has its reach and its effectiveness in any specific "system", in addition to the "electoral one, such as the constitutional, civil, labor, procedural, etc. Thus, from the legal fact that society considers relevant - "social response" - comes the vital interest to start the process of "building a legal system" able to protect the legal good, object of the corresponding Law. By the way, this asset that has at its core the social defense through control: depending on the hypothesis of occurrence of the "shock" or considerable risk to the underlying ethical values and principles that society values as being fundamental in the construction of its legal system . There is an insurgency against legal facts that denigrate the prevailing ethical platform in the social environment and that it will be up, therefore, for the State to build a system that will accompany this social decision. In fact, the legal interest is not just an artificial State creation in order to demonstrate the expression of its political power, as well as providing a subjective right to sanction any person in its territory who comes to violate a legal provision that will protect it lo, but also and more influential – according to the hierarchy of levels of natural and ethical values – the realization of the essence of the origin of the right of state power and that this is dependent on the social legitimation factor that binds it. With the demonstration of the limits of the State 's *jus regulandi* presupposes the concrete will of society to determine which are the "principles and values" that the norm should contain as social expression and its effectiveness in obliterating the formation of a binary or anti-legal system and , by corollary contradicting the ethical conscience of the community that makes up its own material context to be respected, translated into the creation of sanctioning norms. Thus, regardless of the conceptual current of legal asset to be inspired - positivist, neo-Kantian, ontological or functionalist - the process of formation of social decision must be considered as to its stage of development and its corresponding legitimacy before the political power of the

State and that after all, it will be up to him to formulate norms that discipline this social decision and its context of justification, in time and space.

In sequence on this same scientific platform, the examination is based on the social integration of the 'Electoral System' and its rationality mechanism of the 'System' through an ethical-social control, mainly due to the illegitimate institutional violence that the State, most of the time tends to practice by instituting *v . g .*, a policy that does not meet the demands of society. By the way, importance will also be given in this essay, the example of "Electoral Systems" in various countries of the planet, thus configuring how essential it is to constitute a project of State political power, through the manifestation of the people, in the process of choice of their rulers.

Therefore, paradoxically, surpassing the criticism of this current ethical-social system, now proposed in this study, under the eyes of an Orthodox State, to reach an understanding of its foundation, in view of the objective of carrying out the 'Recomposition of the Electoral System', as a factor from 'Response and Construction of the Axiological Electoral System', by modeling a 'Normative Ethical Valuation Catalog', to its improvement in terms of replacing the application of sanctions by preventive ethical and social means that translate into a contemporary perspective of an 'Electoral System' aimed at eliminating or drastically reducing its illegality.

TITLE I - EPISTEMOLOGY OF THE ELECTORAL SYSTEM

The “Communicating Legal System”, including the 'Electoral System', has its epistemological meaning built on the knowledge of answers to formulated questions to be understood with the purpose of dignifying the production of a science capable of bringing to the discussion complex problems of social reality – ontology –, in particular to social, political, economic, etc. phenomena.[6] Therefore, in a deductive methodology able to resolve or even indicate a safe path that translates into maintaining the legal security of the electoral system itself, object of this study. Thus, we have the following questions to be answered: «where; When; like; and why (or reason)». Given this approach, the “Electoral System” has its primary environment in a 'Democratic State' – where –; in any historical period that is so identified, because this system has the legal nature of being dynamic and not static – when –. In turn, in the formation of the "Electoral System" it is characterized by the introduction of interconnected subsystems through collective ethical awareness, fostering a finalistic direction - as -, which is to meet the 'common good of society' - because or reason -. Finally, encompassing these factors when answered, it gives rise to the understanding of what profile of the State we are dealing with: by being consistent when we relate this to the "Electoral System", because this social and legal mechanism is aimed at meeting the expectations of the citizen in all its dimensions.[7]

CHAPTER I – COGNOSCTIVE AND DYNAMIC THEORY OF THE ELECTORAL SYSTEM

§1 Ethical Conception of the Electoral System

In examining the trajectory of the fact, it is appropriate to reflect on the meaning of society and its repercussions on the environment that involves man's personality. The uniform and solidary coexistence of men, interacting consciously to an end suited to their needs, aiming at the recognition and common values relationships that encompass their universe, represents the meaning of society, in descriptive terms. Thus, among its presuppositions, the collective ethical conscience is the one that comes from the integration between social values - axiology - and conscience or free will directed to its political, economic, cultural development, etc... Therefore, in the construction of a society inspired by a model of constant evolution, it necessarily involves the recognition of its common ethical values or at least accepted by the majority of the population and the effective co-participation or solidarity of its members in the search for results, whether they are met or not, ultimately representing the human portion of the state. However, to consider society as an entity with its own personality, it must be peaceful and focused on the purposes of the common good. By the way, it is in this social interaction that facts turn without bright social repercussions to those that contain this meaning, giving rise to the formation of legal facts. Although in the course of the State's progress, its environment should be favorable to the formulation of the legal norm and, therefore, the factual path from the appearance of the fact without emphasis on the ethical-collective conscience, passing through the legal fact should configure legitimacy as a driving element. In this approach, legitimacy comprises the influence of the community in the political decisions of the State, especially in the formulation of legal norms. The cohesion of the dominant ethical-collective consciousness, with the formatting of public policy, is also inserted in this context for the creation of legal norms, including those of an electoral nature. In the consistency of the set of emerging social facts – legal – it signals society's desire to enrich the legal system by revitalizing it. It is in this constant ethical-social control that the legislative process becomes permeable to the view of all and that it is up to the State to create the favorable environment for the interaction between its Institutions and society. As a matter of fact, the evolution of the electoral normative system becomes evident, if it more quickly follows the reality and, accordingly, the legal facts multiply and replace the current normative system in a dynamic context able to promote a demand that meets the ethical-collective conscience . Thus, to understand the legitimate character of the State Political Power comes from meeting the 'Decision Making' (DT) of the "Ethical-Collective Awareness (CEC)" and which proposes to make it capable of producing its legal effects . In this regard, the “Public Policy Subsystem” exercises its function of selecting the fundamental “Principles and Ethical Values (Law Subsystems)”

that society considers important, at a given historical moment. Thus, the purpose is the conciliation between the political will of the State and the social interest, according to its 'Decision Making' (DT).[8] By the way, it is important to minimally define “Public Policies” as being “planned interventions of the public power with the purpose of solving problematic situations, which are socially relevant (legal fact)”. There are, therefore, in this definition, three expressions laden with meanings. They are: planned interventions, public authorities and socially relevant problematic situations. With regard to the first expression, the existence of a "Public Policy" presupposes the legitimate existence of a minimum planning capacity in the State apparatus, whether from a technical point of view (management capacity, in a broad sense), or from the political point of view (legitimacy). With regard to the second expression (public power), its existence would also depend on a republican structure of the current political order, that is, coexistence and independence of powers and the validity of citizenship rights. This “component” element of the definition is extremely important for considering the third expression, since the identification and delimitation of what is socially relevant depends on a certain collective capacity to formulate public agendas. It also depends on the existence of a State capable of responding to social demands, on the formalization and institutionalization of citizenship rights; and the existence of a political culture compatible with these principles.

Given this definition of 'Public Policies', it is perfected when the 'Public Power', aware of the socially relevant situation (legal fact) in a legitimate way, that is, according to the 'Decision Making (DT)' of the “Consciousness Collective Ethics (CEC)”, intervenes with efficient planning in the formulation and execution of democratic environments conducive to the execution of the 'attitude', according to the 'Cognition Process' established by the prevailing social interest. However, when the 'Public Power' acts deformed to this 'Decision Making (DT)' of the “Collective Ethical Conscience (CEC)”, that is, its decisions are characterized by the nature of being 'Illegitimate', it is formed the “Binary Subsystem” and, therefore, its political reconstruction ('autopoiesis') constitutes the means of eliminating the configuration of this addiction.

In the context of "Cognitive Psychology", "Decision Making (DT)" can be considered a fundamental cognitive function for a satisfactory interaction of the individual with their social context. Every day, people are required to decide between different courses of action, where the most favorable option is not always evident. This requires from the human being not only acumen when solving such everyday dilemmas, but also flexibility when considering each situation individually, its characteristics and consequences, in a present and future time (Palmini, 2004). Thus, within the cognitive paradigm, DT is defined as a complex function that involves the choice between two or more options, demanding the analysis of the characteristics of these options and the

estimation of future consequences entailed by the choice (Ballesteros Jiminez & Garcia Rodríguez, 1996; Eysenck & Keane, 1994; Medin & Ross, 1992; Plous, 1993; Tversky & Kahneman, 1974). According to Antonio Damasio (1996), the decision process assumes that the individual knows: (a) the situation that requires a certain decision, (b) the different possibilities of action, and (c) the immediate and future consequences of each one. of these actions. Thus, this decision of the individual must be rational and therefore also requires the requirements of 'expectation; motivation; encouragement and attitude'. In this importance, each action must generate an 'expectation' of a future result that reconciles or is even adequate with the decision taken. Presenting the action 'motivated', based on the knowledge of the situation that has arisen and which requires a decision. The 'incentive' of decision making: closely linked with previous assumptions and aimed at the expected result, after the decision made. And, finally, the 'attitude' that consists in the materialization or concreteness of the action of the decision then known.

Based on this "Cognitive Psychology" of the individual of "Decision Making (DT)", the present study will transport itself to the particular examination of "Decision Making" of the "Collective Ethical Consciousness (CEC)" - as a link of link between the Subsystems of Law – from the study of the “Theory of Systems” and the “Binary System”, with the aim of understanding the “Social Control” exercised by the State, in the formulation of norms, in the protection of legal assets.

In turn, with regard to the "Social Control" of the State, it is linked to the 'Decision Making (DT)' of the "Collective Ethical Conscience (CEC)", since it is up to society to choose which legal assets should be protected , in a certain place and important historical moment. Thus, for example, whether a fact is deemed illegal (Binary System) for "Conscience Collective Ethics" in which considerably affects their "Ethical Values and Principles" (Subsystems Binaries) fundamental to the point in the final *ratio* , the affected legally protected interest has that to be protected by the formulation of a norm, there is a good idea to establish a 'Punitive Control', but that not only meets the 'Decision Making (DT)' of the “Ethical – Collective Conscience (CEC)”, but also does not rule out the compliance with the 'Fundamental Rights' inherent to the agent who committed the illicit fact considered by the 'Public Power' and, in line with the 'attitude' of society, according to its 'Cognitive Psychology Process'. Thus, what matters is that there is a 'Proportionality' in the execution of "Public Policies (Law Subsystem)": especially when they are in situations opposed to the 'Punitive State Power', such as, for example, the 'Individual Rights of agents' enshrined in their defense in the “ *due process of law* ”". In fact, the latter are located in the barycenter or nucleus of the “Law System” and must be supervised by the State. Therefore, this political decision must also comply with the 'Decision Making (DT)' of the "Ethical Conscience - Collective

(CEC)", as this has in the rigid "Principles" of 'Democracy', one of its duties: a defense and respect for “Human Rights”.

§2 Communication of the Electoral System

The valuation of the human being comes from the State's interest in creating a political system capable of achieving social “ *welfare* ” and, for this purpose, respect for ethical and social values is the mainstay of harmonizing the legal system itself. Therefore, in the eagerness to create a normatively enforceable model of conduct, the State should support its political decisions primarily on the ethical-social value and the reason has been found since the emergence of the fact recognized by the community as relevant to becoming a substrate of integration to the order. legal. Thus, the idea of ethical-social value is embodied in the social « *well-being* » and which may have a broader dimension if we consider that the social system is a living system and is based on human values, that is, on the formulation of recognized bioethics.[9] Therefore, it is in the actions of man in society that makes the implementation of the legal system possible and the evolution of Law consolidates this dependence. By the way, in Electoral Law, various manifestations of collective ethical consciousness emerge that serve as a substitute, such as the choice by the people of their rulers, with ethical transparency or even their removal, according to the popular will, when they do not meet their expectations . In fact, moving away from exclusive 'formal justice', even if it is at least 'static', is an argument to be reflected upon, however, the distinction between the three elements of justice cited by Perelman is highlighted: " *the value that underlies it, the rule that announces it and the act that it performs* ”.[10] [11] Value comes from choosing the “ *collective conscience* ”; the rule that announces it amounts to “ *static justice* ”; and the correct application of the norm consubstantiates in “ *formal justice* ”, by which logic has its best concrete instrument. In this way, we can agree that the norm (including electoral) is the result of a process of choosing ethical values arising from the « *collective conscience* » - ethical-social vector -V^1 - and that with its valuation contributes to the emergence of « *static justice* » - regulation vector - V^2 - in order to meet the consolidation of the norm's intent: « *formal justice* » - V^3- application vector - . By acting, therefore, this triple-integrated dimension builds institutional justice – JI – which makes up the evolutionary dynamism of the norm. Therefore, the axiom is given: JI ($V^1 \rightarrow V^2 \rightarrow V^3$). Finally, the parameter of institutional justice has these elements disposed to the relationship between the relevant social proposal and the achievement of the objective result of the norm.

The formulation of a theory is based on the presupposition that its governing principles are adequate to the sense of legitimation that converges with the proof of a doctrinal formula in its formal and also substantially concrete sense. The

reason is to establish a link between the scholar's merely private interest to the socially relevant interest. In this vein, the schools of the study of Contemporary Law have been creative in the scope of their dogmatic propositions. By the way, especially in the study of legal sciences, reflection on a particular institute highlights the possibility of building a diversity of reasoning that adjusts or tempers its legal meaning. In this understanding, for example, the valence of the substratum of the legal good and its relevance for understanding the dissemination of the norm segment vectors capable of instructing and making the model of social conduct that is repugnant to the « *collective conscience* ». Therefore, we must emphasize its ethical-social ideal in the State, justifying its creation, and in view of the reality in which it lives, they erect means – with democratic volition – capable of pursuing a trend of advancement in their various areas of activity. In fact, the legal technique used to achieve this objective varies between the different States and its implementation will depend on the political will and legitimacy of its proposals to be received by the population. Thus, we do not believe in the dissociation between the theological, moral or political thought of the State with positivism implemented directly or indirectly by that group or individual who holds power. Isolating the legal system from their social life is to make it distant from their ethical conscience. Thus, the model chosen in the formation of the State Institution creates the concept of government that intends to be exercised and the preservation of democratic principles will depend on the emergence of social phenomena that will influence the subsequent political decisions of its leaders. By the way, the question is: but what technique would have the power to reconcile, *eg,* between the ethical-social thought and the will of the leaders? The answer to this question comes from discovering the essential values that society considers unavoidable to be discussed. If the common effort is to achieve social " *welfare* ", it is believed in the undeniable submission of the individual will to the benefit of the collective will. However, the program to be instituted in favor of society must have in its context the ethical sense in order not to underestimate the subjective universe of the human being. Cooperation between the various organized sectors of society – « *equity* » – will provide the essential information for instilling a program that politically enables the construction of a legal system that meets the collective will and, therefore, requires the importance of the commitment of each person per itself, taking into account the single goal: " *from individual performance aimed at common development* ". The task is to achieve social stability and individual sacrifice is natural, but there are limits to the rule of collective will. From the investigation of the behavior pattern of individuals, there will be the selection of social actions that avoid producing effects contrary to the fundamental values rooted in the community itself. The social function is to value the facts and adapt them to the solidary behavior of people, providing the State with « *efficiency* » in the execution of

its political decisions. On the other hand, the social life experiment creates an interdependence between people in order to make each fact a matter of general consequences and the abstraction of the scope of this political decision will depend on the consideration of all involved. Faced with this articulated social phenomenon, it generates the fundamental political decision for the creation of the State. In States where they opted to concentrate this political decision in a single document: the written Constitution is a reflection of the political decision of those who represent, at a given historical moment, the will of a people. From then onwards, ethical-social values are impregnated throughout the context of the fundamental Charter, enabling each citizen to interpret the exercise of their solidary participation. As a matter of fact, each State lives with its social reality and its legal orientation plan – ideal model – is the substitute for the permanent valuation of the facts that are presented and the emergence of these ethical values comprises the result of this valuation. Among these ethical values valued " *in concrete* " by the legal system, emphasis is given in this article to the protection of the legal good. Therefore, from the natural order and the valuation of the human being and respect for the values essential to their own existence in the universe that surrounds them and the regulation of this development that goes beyond the individual-subjective sense, reaching the collective that leads us, after all, to agree on the conversion of natural value into an ethical-social value to be protected by the normative order. By the way, the foundation of the protection of this ethical-social value is concentrated in the vision of defense of the legal asset, objectively providing a social well-being enshrined in an imperative global order. In this sense, the highlighted ethical evolution presupposes the influence of the natural right to the positive law, thus enabling the establishment of an effective coercibility in the protection of this material right. We then have the configuration of a legal asset protected by the State, containing in the normative context the corresponding coercibility: valuing the ethical-social interest to the individual right, and this one with the naturalistic causal connection. The seat of this approach extends to any established legal panorama, considering the principle of the « *rationality of legal orders* » established by the logic and harmony of normative standards and adopting the teleological sense of law: without a *jusnaturalist* basis the criteria of normative option of the constituent or of the legislator would become illegitimate, making the State's objectives in meeting the common good ineffective.[12] Therefore, regardless of the " *theory of imputation* " - " *the State as the 'convergence center' of all acts qualified as state and with independent reflection of the person who issued it in view of its abstractly considered legal autonomy* " - emphasis is given , however, the result of normative regulation and not the natural or moral source that emanated it. If, for example, the legislative act belongs to the Government Institution – a moral source – or a person – a natural source – realizing the governmental power, it doesn't matter, the legal order must

impose « *rationality* » in its actions. The genesis of the State focuses on its particular reason for being: if we think that the State is an end in itself and the individual is in the collectivity to exclusively serve the State and his subordination is unlimited, he understands, after all, its foundation in a subjugated reason to « *pan-statism* ». However, on the contrary, recalculating the State's determination to act not to meet itself, but to meet the needs of the person in society with the sole purpose of making them happy, we believe that we aim at an ethical-social sense embodied in this determined purpose. Thus, the present sociological meaning of the State becomes the driving force for conducting its performance in the directive plan of « *efficiency* ». In turn, in the legal sphere, it consists of a social institution that is committed to imposing standards of conduct and regulating interests in benefit of « *efficiency* » - technique of legal enforcement - intended for the well-being of the collective entity: without, however, it can be neglect at any time the protection of individual rights. As a matter of fact, these fields of scientific action of the State are interpenetrated all the time, flowing in a single achievement of meeting the « *common good* ». Thus, the norms formulated by the State have their informative support fundamentally at the levels: sociological, historical, cultural and political, and when studying social facts, a perspective of legal improvement is recommended, based on this information, making the dynamics concrete of political society.

When examining the content of the legal norm, be it substantial or even instrumental, its ethical-social valence must be determined, impregnated by the values that were influenced by the will of the " *collective conscience* ". Thus, the rule, upon being enshrined in the legal system, has a defined action plan that predisposes to declare, institute or extinguish a situation of fact or law that the social interest requires - except, exceptionally, directed to personal interest or personal effect prevalent – and its realization transforms or even clarifies reality, contributing to the satisfaction of the collective entity. Thus, if the purpose of the norm is to serve the " *common good* ", it must be interpreted according to the substantial formulation of accentuated social genesis, with its own regulation and manifestation capable of producing effects. In this magnitude, the legislator must base himself on the institution of the norm, the synthesis of the will of the « *collective conscience* », providing legitimacy in the valuation of its reach. The norm is a reflection of the concretely manifested public interest, as it will be up to the State to institute a system of government able to reconcile the universe of the person, with the transmission of legal security to the social body and, consequently, providing « *efficiency* » in its actions. Incidentally, compliance with democratic principles as a concept of government will depend on the social phenomena that have emerged that will influence further political decisions made by its leaders.[13] Thus, it starts from the assumption of cooperation between the various organized sectors of the

community by providing essential information that generates a social program that politically enables the construction of a legal system that meets the collective ethical will.[14] Finally, the norms to be formulated by the State are subject to this information that comes fundamentally from the levels: sociological, historical, cultural and political. Therefore, after being selected by the legislator, they reach a guideline of surrounding ethical-social interest. In this profile, normative ethics leads " *specifically to the study of rules for human behavior. It takes into account all other knowledge, traditions, uses and customs, but its objective is to state the rules within which human beings must or can develop. Thus, normative ethics responds not only to an individual will, but above all to the social will* ".[15]

In this sense, it is concluded that, in the set of this social work, the State-Legislative must advocate, according to the development goals in the areas of action, the imposition of norms that correspond to the will of the « *collective conscience* » and the way to meet this objective is be guided in an action permanently focused on the ethical-social content of the norm.

In understanding the various perspectives of substantial valuation, the electoral norm stands out in its analysis - *eg* , natural, ethical-social, cultural and political - they propose a mission: to meet the protection of the " *legal good* " which is to ensure the effective exercise of democracy. Thus, in the examination of legal property, the first idea comes from the century. XIX, as to its substratum, corresponded to " *a right that is damaged when an offense occurs, and the law acted in defense of the external order and not for the internal improvement of the individual* ".[16] Birnbaum, however, obtains by disposing that "he *did not see the legal good as a right, but as a natural good guaranteed by the power of the State, which could correspond to both the individual and the community and which was conceived as vulnerable in a naturalistic sense . Thus, the illicit, attributable to man, according to the nature of things, is the injury or endangering a determined asset uniformly guaranteed to all by the State* ".[17] In this sense, a perspective of dogmatic vision of the concept of protected legal asset begins, as this had its concept in the norm itself. In fact, developing this premise, Binding, when pondering the essence of legal positivism, proclaims that " *the legal good is not recognized by the legal norm, but rather is established in the legal norm, being part of it. Thus, there would be no separation between legal norm and legal assets, since the norm would carry its own legal asset* ".[18] In this positivist conception, we can also highlight Rocco and Liszt. Rocco elaborated the « *object theory of the protected juridical asset* », establishing the distinction between « *formal and material object* ». In the « *material object* » included a subdivision: in generic and specific. The « *formal object* » in the norm defined as being the construction of the norm according

to its precepts. According to this classification, the « *generic substantial* » is the interest of the State in ensuring the conditions of community life, that is, in its conservation. In the specific substantial, the legal asset is confused with the interest of the victim of the tort: the taxpayer of the material legal relationship. In fact, in the hypothesis at hand when the electoral offense arises, the legal asset that is affected in a *broad* sense is the democratic regime instituted by the State, according to the desire of its people.[19] However, this subdivision of the material object was contested by Carnelutti when stating that the generic material object is not an object, but a presupposition of the standard, as it comprises the very reason for the existence of the standard: " *the interest in creating a «good -being» social is the foundation for the creation of the norm and not object of legal protection* ".[20] In turn, Liszt builds " *a critical dogmatic legislative political system around the notion of legal good* ", as Professor Paulo Vinicius S. de Souza has pointed out and adds: " *According to Liszt, this translates as a limit concept of abstract legal logic. The material antisocial content of the illicit is independent of the definition considered by the legislator. The legal norm, instead of creating the legal good, finds it* ".[21]

In sequence, in a positivist-sociological view, Enrico Ferri argues that "to *admit that the tort is merely an injury 'of a public interest' and that individual legal assets are protected by the norm 'as they are the interests of all' is to serve only the abstract reason, by virtue of which the norm was imposed; but it is to forget that it protects – and not only 'reflectively, mediately' but in a concrete and direct way – personal rights and goods, as they are attributes and conditions necessary for the social life of each individual* ".[22] On the other hand, in the task of diffusing the legal interest in a different perspective, that is, regarding the teleology of the incriminating norm and the close connection with the object of legal guardianship, it highlights Honig's vision: " *The singular objects of guardianship they do not exist as such, they only come to life when collective values are expressed for us as the object of the end of legal provisions* ".[23] Welsel, however, finds in the valence of social value the fundamental assumption in the construction of the legal good: "it *corresponds to any desirable social state that the Law wants to protect from injuries* ".[24] Hassemer, also in a social view, adds that " *legal goods are not the product of natural processes, but of social agreement based on experience" and adds that "goods do not exist, but are produced* ".[25] Furthermore, currently, in this social perspective of the protected legal asset, the " *theory of the protection of functions: directed towards the ends of the norm* " has been discussed . Thus, the focus of attention is shifted from the protection of goods-interests to the protection of the " *functions of the norm* ". Jakobs, when adopting the concept of " *legal asset* " as a functional unit, states: " *not every object of regulation of a standard consists of a legal asset, but only one that performs a function*

for society, or for one of the subsystems, including the citizen (...); the relevant anti-legal behavior is not characterized by injury or endangerment of legal assets, as this is also caused by natural disasters, animals, etc., but rather by its meaning. This meaning has to be ascertained through an interpretation that starts from the general understanding and proceeds, in this sense, in an objective way. Only then will the conclusions reached be understandable in social life ".[26] From this legal dogmatics, the « *theory of objective imputation* » was boosted and that Claus Roxin is one of its main trainers in the defense of this conviction and in dealing with this theme: « *legal asset* », counters Jakobs: " *the binding of Law in the protection of legal assets does not require that there be punishment only in case of injury to legal assets, being sufficient to put legal assets in danger. Likewise, the fact that the Law, through its prohibitions, intends to ensure the values of the action (such as respect for the life, property of others, etc.) does not remove the requirement of protection of legal assets to which they refer* " and finally , concludes: " *social evolution and ensuring the future in the face of the risks that certain behaviors bring to life in society will be an object of great importance for 21st century Law and, therefore, it should be called to intervene in this field of social relations , as it is not possible to abandon the reference to the legal interest and the other principles of the Rule of Law, and where this is not possible, the Law must abstain from intervening* " .[27] In summary, when evaluating these doctrinal interpretations regarding the meaning of a legal asset protected by the norm, we have a clear understanding of its vital importance, as an ethical-social value, given the option of the « *collective conscience* » to transform it into a legally relevant interest and hence result from the socio-political requirement addressed to the legislator to include this value as a protected object in the regulatory norm, in order to justify its functionality or the meaning of the norm and by corollary, in parallel, seeking to obliterate the injury or danger of injury, taking into account the legal order and social peace.

The norm, in general, predisposes to infringe a dictate of immutable content in view of its comprehensive social meaning.[28] Therefore, in the assessment of the agent's anti-legal action, its discriminating meaning has its reason for being: the surrounding ethical-social repercussion that encourages the application of a " *punishment* " or sanction. The axiological content of the norm requires reflection on the reasons for its enthronement and its execution as a factor not only for the reason of justice, but also for " *efficiency* " as a preventive and also repressive measure imposed by the State. As a matter of fact, the challenge of the State is to make this mandatory legislative measure legitimate when it is accepted by the community in meeting the will of the « *collective ethical conscience* ». Thus, for example, the dispute between positive ethical and social values: public order and security, with the right to freedom inherent to the personality, comes as a result of the will of the public interest, but limited to the

ethical and social environment essential to the exercise of « *democratic rule of law* ». The material content of the standard regulates the scope of the implementation of its guideline and that, for this purpose, the State must be guided in the orbit of its teleology: meeting the ideal of social « *well-being* », without its interference in the personal plane. based on an unjustified motivation, considered as such by the preponderant social will. In this way, the substantial structure of the norm is the result of the conscious will of the human being - of the legislator - which, in turn, represents the result of the will of the « *collective conscience* » - natural value -, combined with the ethical value- fundamental social – to satisfy the common good – and in the exercise of the « *rule of law* » – political value –. If, on the one hand, the occurrence of damage allows the combativeness of its effects, on the other hand it generates the social responsibility of the legislator by wanting to impose limitation on individual freedom, providing tension in the relations between the State-Legislator and the full exercise of the personality rights of each individual in their social environment. In this sense, the critical judgment is the vector to be contemplated by the legislator when formulating the presupposed norm, erecting a moral standard capable of meeting the social requirement of meeting security and public order without neglecting respect for exceptional interference with inherent essential values to the person, such as " *freedom of conscience, the right to a dignified life and autonomy of will* " – vital three-dimensionality of the personality -. Thus, the aforementioned axiological contribution of the legislator is in the measure of the proportionality of the values to be considered in the material scope of the standard and as a result of the sensitive capture of the phenomenon guaranteeing social justice: the incessant search for balance between the relationship between people and between them with the state. For this purpose, there is a profusion of systematic division of natural and ethical-social values – taxology – and through which it materializes with the valuation of its degree of demand. If, for example, a candidate for any elective office disrespects the legislative orders to control the exercise of his democratic right to participate in universal suffrage, the legislator must pay attention not only to his electoral disobedience, but his degree of demand, as a generator of injury to be subsumed even by the electoral criminal rule. Therefore, the ethical-social valuation is in respect for the electoral system introduced by the collective awareness that all candidates in the electoral process will have the same rights and duties - *legal equality* - and the " *political* " vector : the implementation of norms enshrined by the legislature in defense of the legitimacy of the electoral election by enshrining this legal asset as being of vital importance in safeguarding the exercise of democracy itself, in accordance with legal dictates. This valuation constitutes a significant element in the substantial construction of the electoral norm and which has repercussions on the social environment, in addition to its effect in limiting the exercise of individual

freedoms in a justified manner. Finally, it should be considered that the norm is not limited only to the formalistic result that was instituted, but rather to adapt to the " *greater interest that is to create a social "welfare" that is the foundation for the creation of the norm and not subject to legal protection* ". [29] In this mission, believing that orthodox legal positivism responds to the standard's measurement as to its substance - dogmatic view - by treating it as an integral element of the norm without being guided by the influence of the vectors described above, it is concluded: it is to dismiss of the norm as being a result of the product of human will – legislator – and therefore involved with the permanent relationship with other people in society and with the institutions that surround it. [30]

The State, in the reading of socially relevant facts, has constantly imposed abstract, generic and coercive ethical-social measures to control individual freedom - norm - on the premise of sustaining public order, and thus with the scope of preserving the well-being of the community . The intention is to create a social environment conducive to the effectiveness of the « *right to object* » to the unfair or unethical fact manifested by the person in the performance of his « *autonomy of will* ». The illegitimate action of the person in his relationship with third parties or with the State itself is subjugated by social control and, in the formulation of a concrete action norm, presupposes a solidary society imbued with the primary purpose of removing from the politically organized environment those who act in disagreement with the substantial values rooted in the environment in which they live. However, in a demonstration of social maladjustment, the phenomenon of " *violence* " has its most visible face. Thus, there are various forms of « *violence* » - *eg* , those of diffuse origin: moral or ethical, institutional - economic or political - in the family environment, sexual violence, urban or rural - creating a sphere of intimidation to the social order finally promoting an ethical imbalance in the legitimate actions of the State. The attack on comprehensive ethical-social thinking in the community reflects the greater or lesser degree of repression instituted in the coercive measure implemented by the State with the intention of abstractly preventing the occurrence of this social phenomenon of universal scope. In this sense, the growing control of conduct by the State reflects the realization of this reality and the greater distribution of canons versed in limiting the freedom of the person exposes this trend. This multiplicity of mismatched behaviors gives rise to the formation of a veritable « *labyrinth* » that triggers the construction of a complex system of legal norms implying a constant valuation of the interpreter to conflicting values of an individual-subjective and ethical-social nature. Thus, the « *principle of proportionality* » in the graduation of sanctions becomes a necessary vector at the mercy of the legislator in the formulation of norms that reach a point of balance in the protection of the aforementioned values. [31] In parallel, the impulse to

violence builds a legal framework that tries to accompany it in its progress, but suffers from the State's slow action by carrying out an ethical-social policy of prevention and awareness of the community in moving away from the practice of illegal activities. Thus, it is not enough to repress with the formulation of stricter norms regarding the increase of sanctions addressed to those who practiced an anti-legal act to reduce « *violence* », with the objective that they move away from illegality - the recidivism: « *special or individual prevention* » - and that it can also serve as an example by intimidating other people, if they come to think of following this course based on the ethical and illicit disvalue of conduct - " *general prevention* " - but it is up to the State to also develop adequate public policies, obliterating the achievement of its own unethical fact: the principle of " *ethical prevention* " is the best argument regardless of the exclusive types of technical-legal prevention referred to in the legal sphere. Several known factors justify the widespread violence, *eg* , the huge inequality in the distribution of income among people in the community, the state's disorganization in the economic, political and/or social spheres, etc. However, the absence of an " *ethical conscience* " in the respective society puts the very power of the State at risk. The concern is to support the ethical values that sustain the State in its " *efficiency* " plan , and as a corollary of the influence of these values in the legal-constitutional order. Thus, the purpose is to elevate the ethical-social concept of a fact by considering it the main tonic in the legislator's valuation when he decides to describe the illicit conduct. The violence treated after all is illegitimate violence and unethical substrate to differ from that which " *substantially is synonymous with force insofar as it imposes a legitimate coercibility in the defense of a legally supported right* ". [32] By the way, the justification of the sanction according to Günther Jakobs' assertion consists in a " *cohesive factor of the political-social system due to its capacity to restore collective trust shaken by transgressions, the stability of the order and, therefore, to renew the fidelity of citizens with regard to institutions* ".[33] Furthermore, the Law objectively has a double protection of a proportional character when defending the sanction as a coercive measure, in the interpretative scope of Luigi Ferrajoli: *"it is on this basis that the two preventive purposes - the prevention of illegal acts and that of arbitrary sanctions - are, among themselves, related, since they jointly legitimize the "political need" of Law as an instrument of protection of fundamental rights, which define, normatively, its scopes and limits, as goods that are not justified to offend or with the unlawful or with the sanctions* ". [34]

After all, what matters is social pacification so that one can live perfectly with the macro-valent and cosmic idea of " *ethical prevention"* : anticipating the occurrence of the unethical illicit fact and in pursuit of social policy by establishing a process of legitimate and community, spreading the positive message of the

importance of non-violence. Thus, today's ethical communication in society must be ensured by the State so that it can preserve the democratic model to be exercised by political power, including in the formulation of its “Contemporary Electoral System”.

§3 Influence of Core Values and Principles

The person differs from other beings in the universe because he is a being able to demonstrate his sensitivity and because he evolves from his birth, making his uniqueness in an original way. It is with caution that its origin must be unveiled, but its *eg* right , life, conscience, morals, image and freedom must be preserved, guaranteeing its personality. These determining factors for the preservation of the human being that the Law is concerned at every moment to regulate the experiences lived by the person in their transformations arising from the circumstances of time and space, therefore it is up to Man to know how to interpret this volubility: reducing to thought, " *Homo sum , et nihil humani a* me *alienum puto* ”. In fact, in this harmony, every day a close relationship between Man, as an intimate being, focused on his reflections and actions, with the anthropological Man comes closer: to the position of social being, in a two-faceted view, in a reach outlined in the balance between their mistakes and successes, given their daily conduct. The characteristic of being involved and living in a community brings each individual their own vision and perception of reality, causing a personal and, at the same time, dynamic organization, aiming to achieve their goal of fulfillment. It starts with the unity of the whole and the social structure by which it imposes itself - " *collective will* " - by reflecting on the factual level the obedience to previously mentioned values, finally instituting a phenomenon guaranteeing social justice: the enthronement of the legal system as a regulatory vector of the relations between people and between them and the State. Thus, it is from a language known to all, people use exogenous elements, such as the shared search for socio-political development and a stable economy - valuing a stable ethical-social environment - that harmonize individual ideas, fostering a social unit with an autonomous structure, as it is supported by the sovereignty of its decisions.

At the beginning of humanity, the forms of evolution of the social role were rudimentary, but with the contemporary sense of life, the equation of the “ *common good* ” was shaped by the insertion of the State in the individual will. Thus, the vertical and hierarchical inspiration of the pyramid in the State Power was crystallized, turning itself into a growth parameter, but at the same time denying the individual and insurmountable content of the human being's consciousness and factor of intimacy at a lower level. The Law, in turn, has been the instrument capable of better

assimilating this interaction between the Public Power and the person. By the way, the experience lived between the interaction of Law with other Social Sciences, such as Sociology and Politics, has been constituting a benefit, as it expands the human content to be considered by Positive Law and, accordingly, the focus on controlling excesses arising from the actions of the State before the individual will constitutes one of the pinnacles established by the norm, by erecting logical conditions of behavior capable of transmitting reasonable and possible security between the parties involved. In this regard, it should be taken into account that the Law, in addition to being a social phenomenon, has in its complexity to promote a special characteristic as to its structure: its practice has the nature of being argumentative. [35] Thus, *eg* , there are those like Austin when advocating that legal authority is limited to a sovereign or a group of people who hold power and that everyone in society should bow down, however Hart refuted this opinion, as the foundations of Law translates into a stimulus superior to that admitted by Austin: " *social conventions grant an individual or a group of people the power of leadership and, accordingly, the creation of valid laws* ".[36] [37] It is in these theories of positivist genesis that the understanding of Law is involved by configuring as a substitute the particular examination of the present emphasis, about the superiority of the State over the individual or the inclination of the latter towards the former. However, those who defend the classic argumentation of natural law must be emphasized: morality is sometimes superior to legal propositions and, in addition, it becomes unacceptable to admit a legal proposition if it is not fair. If a certain law is silent, for example, not contemplating an individual right or even if it is transparent as to the intention of the legislator, but creating social unrest, the solution of this legal proposition will have to consider what is fair and ethical to be conclusive. For others, " *common sense* " appears as a principle to be followed for the purpose of justice. [38]

The configuration of the divergence on which will be the true argument to serve as guidance, among the legal propositions formulated, becomes a necessary and useful discussion for learning the legal science itself and its content, and the judge is responsible for interpreting the law to apply it. it, moving away from nihilism and therefore safeguarding the greater interest of public order. When questioning whether or not a law has the primacy in reflecting a social interest, in relation to the individual right, it is necessary to interpret its factual assumption and its real impact, in addition to clarifying especially the " *legal asset* " to be protected: if it has the characteristic of being public or essentially private. The objective law then configured generates subjective rights and duties that assume their role by the will of the State, however "it *makes the current man an easy prey of the dominant power structure, which under the pretext of giving him a good that he lacks or judges to lack , ends up castrating him in the essence of his human personality as well as the*

anthropocentralization of legal rules, of which the consecration of a general personality right is one of the most significant dynamics, as a matrix, reference and complement of special personality rights ". [39] However, it is vigorously that some States currently seek to signal in their legal systems the configuration of a " *general personality right* " formally harboring the conviction of certain human rights, as being inviolable and inalienable, although historically others, for in turn, they make their original will insufficient by acting materially in a discrepant way in favor of the interest oriented by that or the group of people that momentarily constitutes the representative authority of the State by performing certain actions that constantly violate the essential rights of the human personality, independently whether or not they are in a time of peace. [40] [41] Thus, the reservation and secrecy of " *private life* " comprise one of the spheres of the general right of personality which has at its core the respect for the dignity of the person.[42] It is with the unlawful offense the personality that the offended person will have the right to request the State-Judge its cessation, in addition, if applicable, to obtain a corresponding indemnity from the one who was considered the author, in view of the damage proven to have been suffered : generates in question the " *individual personality right* " of the offended party to seek compensation for the damage suffered. This merely privatistic effect of civil liability, in turn, becomes framed in a larger dimension, if perhaps the author of the illicit act is the State itself, thus erecting an emerging social insecurity. By the way, the State's obligation to protect the established legal order necessarily involves safeguarding the citizen 's " *general right of personality* ", justifying, finally, the reason for having been created and the purpose for which it is proposed, whatever. to attend to the « *common good* ». Thus, in this context, one can include, as an element of conviction, in the electoral system, for example, the defense of the voter's privacy right – core of the personality right – when choosing his candidate for an elective office. Thus, if the State influences this voter's freedom of choice, it will go against the model 'Electoral System' to be instituted, depending on the Democracy to be respected, fostered by corollary a 'Binary System' of action. However, in order to hold a State responsible for its actions, society must follow some evaluation principles, as we shall see, on its role in terms of the meaning of the assertion of justice. In fact, the idea of justice may generate a certain discomfort, if it starts from the perspective that relationships are complex between people in a society, given the existence of conflict between the will of all, pursuing an ideal of well-being, with reciprocal and mutual advantages. at the same time coming to the conclusion that goods are not for everyone, just for a few. In this sense, the distribution of justice will involve a thorny job of determining which interest will be satisfied and for this, people must meet the minimum mandatory rules of social coexistence: the institutions will be responsible for " *defining the appropriate distribution of the benefits*

and charges of social cooperation " . [43] In this sense, disputes over the interest to be satisfied are distressing, but we can say that they are natural, given the State's inability to meet everyone. The sense of balance between people's mutual coexistence with institutions generates " *social satisfaction* ", revealing the organizational stability of a given State by solving inequality issues and dealing realistically with desirable *efficiency* plans . The topic to be satisfied is, therefore, social justice and the basic structure by which the State must have to meet the population's expectations: the opportunities presented in front of a widely discussed project generating favorable conditions for an ethical-social, economic and policy based on freedom of action, although this is subject to certain rules of conduct that make it limited or relative. The set of rights and duties provided for in the legal system is an essential item for the purpose of social justice, but insufficient to be considered an advantage that can affirm that the State is fully developed in its operating principles. In the wake of a well-ordered society comes the State's willingness to seek to meet social demands and respect for human rights. Indeed, among them we can consider in a *broad* sense , in a 'Democratic System', the freedom of the citizen to vote and be voted in an election, observing the existence of universal suffrage. The meaning we want to give is the object of justice to be instituted by the State and the *status* considered to it, due to having a society formed by ethical people, in the expression of John Rawls: " *rational beings with their own goals and capable of a sense of justice* " .[44] After all, in this understanding, it is important to emphasize that it could lead to a conception of the ideal State without taking into account the vicissitudes that a modern society necessarily goes through, given the affliction of human beings in the face of increasingly lively intellectual and professional competitiveness. inequality of opportunities generated by the Public Power, but what we have or want is not always what we can have or possess and so it is reasonable to admit a social organization capable of meeting enough to meet the general and essential expectations of social justice capable of transmitting security to each citizen regardless of whether or not he is elevated to the category of lucky. Furthermore, what matters is for the State to have a legal framework and to follow " *ethical-social principles* " aimed at legitimizing the " *collective will* " and at the same time safeguarding the individual rights essential to the human personality, giving rise to the understanding that it is a State democratic and focused on the development of its actions, according to the expectations of its people.

The State, when acting, must preserve some principles to meet the citizen's " *general personality right* ": *equity* (social cooperation) and *efficiency* (technical enforcement), with the aim of achieving the objectives already mentioned. In « *equity* » it symbolizes the cooperation of the different segments of society aiming at obtaining a mutual advantage: the object of justice within its reach

“ *social ethics (the science of definitive answers to the question “what should be done in society? ”) and the definition of the social optimum and what is right or good in society, which focuses on the conditions of human beings as individuals or in groups* ”.[45] In this context, the freedom of deliberation by the social body of the path to be followed translates into the theory of rational choice. It is based, therefore, on the assumption that the « *collective will* » has its own voice, but respects the will of minorities regarding their individual freedoms and not the classical *utilitarian* doctrine , which is based on social deliberation as an extension of the choice of only one human being. In this doctrine, its scope of justice consists in the sum of the happiness of individuals, even if its result is aimed at the sacrifice or unhappiness of others. However, the importance is to value the main themes of social ethics: " *the just and the good* " regardless of whether the first or the second has primacy.[46] Thus, the distribution of justice becomes relevant from the moment that the " *basic rights of man and of the citizen"* are primarily protected by the State and this commitment dignifies Hobbes' conclusion by basing natural law on a simple equation : “it *is human nature that every man, to the extent of his strength, comes to preserve and defend his body and members from suffering (right reason). The word right means nothing more than that freedom that every man has to use his natural faculties in accordance with right reason”* . [47] It is also concluded that this reasoning is addressed to society when using the " *legitimate defense* " to protect itself from the social evils that plague it. A society with the *animus* of safeguarding its own existence uses the necessary instruments to meet the purposes of justice and equity; Law, in turn, constitutes the necessary means to achieve this end. By the way, the common idea of Law brings with it the double understanding: " *if we see that the norm has a command in its wake and this, when transgressed, will be punished, it amounts to legal positivism, if, however, the search it is justice we have jusnaturalism”* . [48] however, instead of trying to find the best legal-philosophical orientation to be followed regarding the justification of the Law, it becomes more important to find an adequate solution to resolve the issue raised by the social system itself and which will possibly affect the rights inherent to the citizen: a pragmatic view in defending an adequacy between the legal axiom and the fair, establishing the notion of a common sense. Although it is emphasized that « *common sense* » tends to have different notions, depending on the historical context among the various existing social centers, the general principle of common law , *eg* , of “respect for human dignity” is enshrined in all civilized peoples. . Thus, the human being, before having the right to integration, the community has the right to dignity due to its own quality of being a person and it will be up to the State to safeguard this right. For this reason, the protection of the “Basic Rights of Man and of the Citizen” includes a “ *constitutional priority in all liberal democratic States* ”, as they represent the “ *basic needs* ” indispensable to the

existence of the human being.[49] " *Equity* " as a principle by consent will only have its merit assured if there is an appreciation of human dignity: it follows the principle that each person has his limitations in what he has, in relation to another person and their real possibilities; their freedom has symmetry with that of the other, although independent, yet it has equal potential. By the way, the parameter of global distributive justice becomes one of the factors for understanding the criterion of " *comparing the injustice of inequalities* " and " *equity* " therefore tends to be an instrument that better explains " *the priority of well-being over inequality* ", as it explains the adjustment between the benefits and burdens of " *social cooperation* ".[50] However, for a differentiated political-juridical-social examination, it contains the different meanings of justice, in face of each unilateral or fragmented view, such as *vg* , "to each according to his production", emanates economic liberalism; "to each according to his legal rights, it is said in the rule of law; "to each according to his merits", affirms the aristocracy; and socialism demands that "each one be treated according to his needs". [51] Thus, regardless of the orientation of Justice to be followed, a relative conception must be primacy for social development, however adequate to the individual's freedom of expression, distributing impartiality (*equity*) and refusing arbitration. The principle of impartiality consists in the " *fair settlement of disputes* ": not taking the person into account as such, thus distributing a formal or abstract justice instituted by the enthronement of the rule of conduct. In this task, the occurrence of two sub-principles must be assumed: the contradictory (manifestation of the parties involved) and that no one should judge in their own cause (exempt) for a decision to be taken. In the interrelationship of people, reciprocal obligations are taken into account: A ↔ B and for social harmony, it provides a resulting order of prominence, namely, « *coercion* » - "C" -, giving legitimacy to the formulated decision and safeguarding the valid rights over unfounded claims: "C → A ↔ B ← C". In this highlight, if the result of this meeting of resisted pretensions has positive application (+), it is concluded that there is an "Institutional Justice - «JI» -" formulated in a concrete standard of behavior, by which it was instituted by an "ethical perspective , insofar as men can attribute their recognition reciprocally": "{ C → A ↔ B ← C } «JI»".[52] If, on the other hand, he refuses (−) the application of "Institutional Justice", also abandons the distribution of impartiality (" *equity* ") and, therefore, the equitable division of goods and charges attributed to each one, making the State unjust.

The sense of " *equity* " favors, on the other hand, also as an instrument of interpretation in the search for a fair order, due to the uniformity of the idea of legal justice, becoming occasionally inefficient, in view of the occurrence of facts that refute of law enforcement or that even the legislator had not foreseen.[53] The following judicial syllogism is given as an example:

> *"A given law (L) generally gives citizens of a given country the right to vote and be able to stand as candidates for a public body, such as (P1), but later an issue arises not provided for by the legal system (S1): to the stateless person or even a foreigner – by which the State he was linked to did not exist a Convention or a reciprocity treaty with that country – would that right also be granted or not?".*

For reasons of fairness and distribution of Justice, the Judiciary Branch of this country decided to expand the aforementioned right: also granting foreigners or stateless persons the right to participate in the 'Electoral System', as it is a universal right and, therefore, it is superfluous to protect the dignity of the person. It is thus: (P1↔S1) «JI». In fact, the intention of the Judiciary was not to legislate even because its function is not this, but only to obliterate an injustice to those who have the right to personality, the reason for its existence and « *equity* » consisted in the mechanism capable of preserving the respective social order.

The *efficiency* , in turn, also includes a principle derived from " *full justice* " and that the state acts according to a premise: " *social satisfaction* ." The State, in instituting a government regime capable of creating a climate of collective " *welfare* ", must aim at the best possible distribution of justice. Thus, there is the implementation of public policies capable of creating more advantages than disadvantages: understanding the goal to be reached and, as a corollary, there is production of goods generating wealth, but there has to be an « *efficient equalization»* .[54] The *efficiency* of the State is closely linked to its legitimacy and for this it will have to be accepted by the recipients of legal norms.[55] However, on the other hand, the legal norms to be *efficient* (technique of legal enforcement) will have to be respected by the community by which they are addressed.[56] There is a two-way road, but with the sole aim of establishing legal peace and security. In this regard, the *stability* of institutions creates an important argument in a structure of social justice in which, in general, there are certain essential circumstances in the formation of a contemporary society: it is taken into account that people live with teleological disputes in the division of social advantages (subjective context), given the relative scarcity of resources (objective context).[57] Therefore, on the one hand, there is the State and its organization aimed at public services (maintaining internal order) and in the defense of its sovereignty (maintaining international order), as it is the one that holds political power and the other civil society exercising its role in the proper functioning of the democratic order. In addition to this social environment, there is a persuasive factor: in the achievement of its objectives, the State elaborates a framework of norms (positive

law) in which the practical sense of coercion is included in persuading society through the imposition of sanctions on those who break his commandments.

The Society is under the power of the State, which issues Rules of positive or even negative imposition that are addressed to everyone and if they are transgressed, the corresponding sanction must be complied with. The solidity or not of the direction of this legal order makes the State a strengthened or vulnerable entity, depending on whether society formulates greater or lesser restrictions on the political decisions made by the State.[58] It is up to each political decision of the State the occurrence of a controversy about its *efficiency* . The relationship of the State with other institutions will, over time, prove to what level of ethical improvement has become possible and whether it will happen to social justice, even with certain reservations. In fact, alongside the norms derived from positive law (legal order), they include the norms of justice that are simultaneously valid. [59] [60] The norms of justice as to the values by which they are constituted when they are applied presuppose, however, the norms of the order. Thus, if a person does not act in accordance with the norm of the legal system, such as, for example, an agent who commits an electoral criminal offense, one must then ask: is he also infringing a norm of justice? If we accept the "golden rule" whereby " *we must treat others as we want to be treated* " we could consider the argument that no one wants to be punished even if they commit an electoral criminal offense, and therefore that agent would not be punished for having committed the aforementioned conduct prohibited? However, when examining this theme, the factor to be discussed is that not everything that is good for one person is good for the whole community. [61] In this way, what prevails is the legal asset to be protected as to its social scope provided for in the norm -" *social justice* "-. Thus, if society needs to formulate rules that prohibit certain private conducts, with the provision of sanctions, in order to maintain integrity , it is necessary for the collective will to prevail over the individual will. The sense of social unity comprises, after all, the aforementioned *satisfaction* aimed at the *efficiency* of the State. In view of this conclusion, the norms of justice are not only literal in scope, if perhaps they are inharmonious with the norms of the legal system. It should be taken into account that “institutions define themselves with a regulation of behavior permeated by coercion”. [62] Society itself demands from the State the appropriate regulation and its integration into the applicability of the standard of conduct, however the social order will depend on the political will of the State leaders in their actions. Positive law consists of the pragmatic result of the political will of the State and the result of the accepted ideas of the various social groups that formulated it -« *stereotype* »-. The enthronement of enforceable norms comprises a system of self-preservation of institutions and legal security to be implemented and therefore the guideline is to make

visible the role of the State in causing a social environment favorable to the subsumption of the facts that occur, advocating an advance in its ideals of development to be translated into clear benefits directed at the community as a whole. Thus, the involvement of society at the governmental level makes the transparency of the constituted order more evident and that through legal techniques it makes positivism a universal and dynamic language that can be changed, if perhaps the phenomena of popular manifestation lead to other propositions hitherto in force. . This dissidence between what exists and the change advocated by the group or social groups flows into a change in values substantiated by the evolution of facts, generating an altercation between the present and the aspired future, but it will be up to each institution to overcome the eventual risk of fostering social injustice or its degeneration and faithfully believing in the legitimacy of the values to be earned and that are advantageous for the collective entity. In the context of modernity, what is expected is the fluency of the State in being able to spread an orientation to be highlighted in its legal system capable of meeting the expectations of its people and therefore having plausible recognition in the course of social transformations. The aspects of the State confer on the importance of " *democracy, the rule of law and the right to freedom, as well as the welfare state* ". [63] The State's willingness to advocate the distribution of social justice makes it able to face the difficulties of internal or external political and/or economic facts: given the tendency of integration of ideals between States, even admitting that they have a complex system of such different values, however globalization imposes proximity, and the reference is to intensify a program to adjust to the various interests involved, such as those of a commercial, political, religious or cultural nature. It is prominent with public policies aimed at the development of the various social groups that the State shows its *efficiency* and, by corollary, governs its determinism on a higher plane, in contrast to that State that merges its exclusive interest with that of the rulers or holders of power, ultimately overcoming the evolution of the social fabric and creating obstacles to growth between the different layers of society. By the way, the intense segmentation of different social strata is due to the deepening of issues of social injustice and the result is the segregation that still exists between the various sectors, causing a pale vision of development. In sectarianism, it supports disorder and moves away from *efficiency,* causing the prevailing mismatch between the various segments and translating into an institutional and values crisis, to the point where the use of force is the instrument triggered by those who want to " *ex proprio iure* " obtain or maintain political power, however definitely imponderable in reaching solutions that will bring serenity and respect for human dignity and, consequently, ensure the full exercise of the « *general and individual rights of the human personality* ». Thus, the *efficiency* of the State is interrelated with the defense

of subjective rights, as Luhmann warns " *a pure political system should not recognize subjective rights just because they collaborate to reduce the risks of positivity. It is much before human rights, which, understood as the legitimate claims of each man, demand that each legal order develop such "legal techniques" that "translate" pre- and super-positive claims into the positive language of law* ". [64]

Finally, in the democratic framework of a State, the principles *of* " *equity and efficiency* " corroborate the formatting of an " *integral social justice* " framing over time the actions of the State and highlighting the essential rights of human nature. Thus, in this context, the 'Contemporary Electoral System' of a State considered democratic must comply with these principles referred to when it follows the will of the collective ethical conscience in legitimizing, eg, the elections of a certain sovereign State, when choosing its agents of political representation: without the obvious influence of illegitimate actions that affect their electoral subsystems by erecting a vice or anomaly in any of them, ultimately replacing a 'Paradigm System' in a 'Binary System' of disastrous action.

CHAPTER II – BALLS OF THE ELECTORAL SYSTEM

§4 Formation of Electoral Subsystems

The State, when formulating its political actions, with the defensive support of social values, such as honesty, dignity of the person, political freedom, privacy and public order, provides the function of controlling the 'System' through the enthronement of norms capable of containing the antisocial behaviors of people. With the permanent communication of the subsystems of Law, the State starts to value with a greater or lesser degree of intensity the antisocial action: to the point of reaching levels of anti-legality, according to the thought of the collective ethical conscience when qualifying the agent's conduct, even though it will be up to the State, according to its legitimacy, to determine the qualified institutional violence translated into the preparation of the corresponding sanction. Therefore, the sanction constitutes the punitive retribution desired by the State after it has timely defined, through a 'Condemnation Judgment', its dissatisfaction with the action of the agent who fundamentally attempted against the subsystems: the value and principle that they are linked to the protected legal asset by the norm and, also in the face of the political interest inserted in the will of the general power of the State. The latter, in turn, has the power to impose its will, subjugating the author of the illicit act, including electoral law, to its specific power of coercibility, which is consistent with its proposed interest in the realization of its formal justice. As a matter of fact, the legitimate norm has its consecration in the axiological material character, regardless of its institutional empire. In this regard, its social function arises from its own 'System', which brings it reach not only because it is self-referential, but with the constant dialectic between each affected subsystem, producing a self-defense mechanism that guarantees its reconstruction. Well then, there is a combination of formal justice, with material justice, and these with its functional environment that gives it a contingency of dialogue or relationship between the various subsystems of Law, translated into collective ethical consciousness: as this influences changes normative order, considering this also a subsystem of Law.

The communication between the social thinking of a given historical moment and the 'Legal System' makes up its effectiveness and brings the dynamism of its integration as part of a universe that generates facts that are reflected in the composition of formal justice itself, given the values and principles – material justice – advocated by the collective entity. Thus, from the appearance of a fact, with involving ethical intensity - legal fact -: it is selected and described as such, due, for example, to its criminal, civil, or even electoral nature, given its serious hostility to the subsystems of Law, combining in its distinction, its nature of being founded on a binary perspective instituted to attack the 'Legal System' itself, so that it becomes vital, therefore, the

elaboration of mechanisms capable of bringing a suitable social satisfaction to produce concrete effects that justify this need to harmonize any irritation to be produced in some subsystem of the Law.

In the formulation of devices suitable to meet this reorganization of the 'Legal System', some signs of triggering the following means can be identified: presentation of the 'Society Values Framework'; historical contextualization of the fact under examination, in view of this 'Values Framework': hierarchical in character, influencing the definition of its standard of importance by establishing it as ethically relevant for the social entity; exposure of the culture of a society by instituting a material and non-material language that reflect the scathing criticism of the exsurgent fact considered illicit and, finally, the influence of "Cognitive Psychology", already highlighted in this study, when the 'Decision Making' of the " Collective Ethical Awareness", through its 'Rational Process' by motivating the definition of a legal fact to be instituted by the norm.

In this cognitive context, in order to identify the dynamism of the social organization, in its selection process of a legal fact, it occurs, for example, in the following hypothetical factual situation of electoral scope:

> *«* At a certain historical moment, the State classifies it as an electoral criminal offense and later ceases to do so. Therefore, the question is: what are the ethical factors that led the State to take this decision? *».*[65]

- 'First Factor: Ethical Composition' - based on the formation of a certain ethnic group, establishing its historical moment, it has in its conception an ideal of homogeneous culture in which facts arise that lead to the discipline of people's current behaviors as a means of attending the good coexistence and that expand until they are exhausted at the limit of their geographical context, making up a social construction capable of determining an ideal of common justice. [66] The bonding ties of this community that is built go beyond religious and social interests to achieve experiences of solidarity and knowledge development, seeking the assimilation of results arising from invention, such as beliefs, ideas, and judgments, codes and institutions , arts and sciences, philosophy and social organization. With the evolution of abstraction to a materialist perspective of reality, cultural language becomes existential with the indispensable objective of shaping each generation of human beings and in the concentration of influential ethical thought in each temporal space that presents itself as a sign of changes that have taken place. to come. Thus, in the interaction between culture and human society, it presupposes that these phenomena do not exist without one another, as if we

consider that culture consists of what members of a concrete society learn from their ancestors and influence with their activities to meet their needs. modify or add experiences already lived and to later transmit the knowledge obtained to their successors. In turn, society understands in its formation "the set of special modes of conduct: modes of conduct of the individual influenced by other human beings, present or distant, but taken into account, of the modes of conduct in which the agent guides your acting to another person; the modes of conduct influenced by the works of others, that is, apprehended from the sociocultural heritage, and, finally, the modes of conduct articulated with the behavior of other people". [67] Added to these phenomena are the values – ethics – that inculcate the model of conduct rooted in the social entity. As a matter of fact, it is in Miguel Reale's expression the sense of value that one wants to guide: "we do not live in the world indifferently, aimlessly or without ends. On the contrary, human life is always a search for values. Living is indisputably to choose daily, permanently, between two or more values".[68] In fact, in this process of selection of values, a system of its own is therefore configured that legitimizes the choice of Political Power, at the time of its decisions before society. In this way, these dimensions, «culture, society and ethics» communicate indefinitely, in order to identify the people, recipients of the result of this homogenization of knowledge and constant interrelationship between them, segmenting their characteristic 'gene' and determining thought reigning over the facts that arise in a constant dynamic.

With reference to the electoral crime previously enshrined in the legal system, the ethical foundation was the protection of the 'Electoral System' accepted by the collective ethical conscience at a certain historical moment. Thus, society considered the practice of this electoral illicitness such that the agent, upon having practiced this illegitimate fact, should suffer a robust sanction to be taken over by the State's criminal policy and, therefore, was legislated as such. Consequently, the greater rigidity of the collective ethical conscience in culturally valuing the devaluation of the agent's conduct in the practice of electoral offenses as being of a broad social spectrum, submitted this action to the criminal platform through a political decision of the State, instituting, as a corollary, justice formal when a corresponding penal rule is formulated. At that moment, the most vigorous social control was obtained, imposing to the conduct of this author of the electoral offense a social satisfaction condensed in the penalty established by the state power. In this tuning fork, the social control that presupposes the values and principles inherent to the social thinking of the time converges in the same nucleus of the penal rule and that should be preserved, with the adequacy of material justice and the combination of formal State control when expressing itself through integration the corresponding penal type in the legal system. Thus, it appears that although social control differs from formal state control, they may be in agreement when they are integrated into the same normative

core. Therefore, there is an ethical composition in the constancy of the penal rule when it becomes effective based on values and principles – material justice – ensured by the collective ethical conscience, as pillars of the prevailing social thought in its time.[69]

- 'Second Factor: Ethical Reconciliation' - In order to better explain the sophisticated legal system in order to make it less complex, due to the constant communication between its subsystems - as it is justified by the constant transformation of the reality that presents itself -, Based on today's changes in social values, it is important to highlight the trajectory of the facts, as already narrated above, when their passage from the fact 'without involving social ethical density' to the constitution of a legal fact, that is, 'with social ethical density prevalent': existing as a corollary a promotion of relevance regarding its ethical graduation. [70] By the way, in the same sense, it also occurs when this legal fact becomes a legal fact, that is, when the fact is carried out 'with dominant social ethical intensity': this, therefore, subsumed under a legal norm. However, if this legal fact, in turn, no longer has a prominent ethical position in society, it becomes hostile due to its undesirable presence, as it has been deprived of the core of the norm, that is, its material justice that it constitutes the social value that was previously preserved, however it is no longer so due to the will and decision of the collective ethical conscience. Thus, it must be concluded that any legal fact subsumed before the norm may, at a certain historical moment, lose its ethical magnitude, or may at least run the risk of losing its main attribute, which is positive social ethical recognition - contingency -: giving time to another norm that has the content adequate to the will of the collective ethical conscience and, by consonance, surpassing its predecessor.

Within the scope of this reflection comes the examination of the ethical justification of the abrogation of the electoral offense from the legal system by the State, since with this political decision it is adjusting the new ethical perspective admitted by the new moment of social thought and, therefore, establishing a ' reconciliation with the social environment surrounding the legal system'. Thus, from the moment that society no longer considers an electoral criminal offense as being based on a value to be protected at the penal level, the only thing left is for the State considered democratic to accompany social thought by depriving its ethical importance.

In this understanding, it is right to expose that the 'Value Subsystem in the Legal System' has in the adaptation and selection mechanisms - complexity - as the means of self-reference its reason for being and acting in the process of internal autopoiesis of a subsystem, in special in its reproductive model. [71] Thus, in the current issue under focus - normative subsystem - was based on the value of the electoral offense previously in force and, through the influence of the social environment, had to adapt to the new reality by undergoing a 'reproductive autopoiesis process of the value subsystem

' which led to the reconstitution of the electoral criminal legal system when translated into its abrogation of the legal system. There was, therefore, in view of a new decision-making orientation of a social ethical nature, the occurrence of the subsequent manifestation of the 'Public Policy Training Subsystem - PP1 -' when selecting the fundamental values to be preserved in the electoral criminal sphere, detecting that, however, it no longer included in the structural functionality of the 'Legal System' the norm considered ethically outdated.

In the composition of the legal system there are subsystems that maintain the unit and that must be permanently observed internally in a reflexive way - self-referral - and that will be adapted, according to the changing reality in order to establish greater effectiveness of their actions in order to meet the its object, in the functional exercise of the very system that is now under examination.

Society in its constant learning process formulates its decisions in order to improve or even adapt to the reality that was changed by the injection of a new culture that was crystallized and valued as a new value to be followed providing, ultimately in social systems, for example, the legal system, its corresponding adjustment. The social environment that has constant and open communication with the subsystems of law is not an autonomous system, but a means of influencing in its decisions the adaptation of each subsystem to the new reality, in its process of self-referential reproduction of autopoiesis. Finally, it was in this context that society contributed decisively to the 'ethical reconciliation' reflected in the change, for example, of the electoral criminal legal system by eliminating the highlighted criminal type from its normative order, consequently following the nature of the social system. which it belongs, granting itself the functionality that is peculiar to it.

- 'Third Factor: Ethical Transparency'- The project of harmonization between the subsystems of Law necessarily involves the oxygenation of its democratic environment, through thought or social ethical awareness, which will consequently have an influence on the internal changes of these subsystems. In this way, the relationship of 'Ethical Transparency' becomes a vector of balance between the respective consecutive subsystems of Law, namely: “legal fact; value; principle; public training policy; standard; execution public policy; very common; and the nuclear: the 'Democratic Rule of Law'”.

In the 'juridical fact' subsystem, the presence of collective ethical consciousness imposes itself in its own formation by transmuting an opaque fact into a fact of important social influence and thus starting the process of integration between the other subsequent subsystems. In fact, this social thought is characterized as vital in this

trajectory of the fact, as it is identified in a free and transparent democratic process capable of producing further results that will legitimize its own existence. In the above question under examination, the 'legal fact' lies in the change of social behavior that considered the previously preserved value criminally irrelevant, as already highlighted in the example of the electoral criminal rule, which was abrogated for no longer having the social ethical effects involving past times. Thus, the transparent social communication relationship is crucial, as it injects the opposition with the aforementioned and necessary cause for the previous criminal classification, which will have, with subsequent effect, the " *abolitio criminis* ". In this sense, social thinking cannot, for example, be artificially propelled by the subsystem 'political power of formation', creating, accordingly, an ascent of another subsystem of Law over the original subsystem 'legal fact', giving rise to a disfiguration of the ' Legal System', of the asymmetrical kind in its ideal scope structure.

With reference to the 'value' subsystem, its meaning is allied to the cultural and social thought prevailing in time and its adequacy to the 'Legal System', since it becomes the *sine qua* condition to consider it suitable in the concept of constant dialectic, either within this subsystem, whether in the gradual increase of its limit with the external vector that translates into communication with the surrounding social environment. Thus, ethical transparency constitutes an essential attribute of this subsystem regarding its real validity, given the projection of its importance for the good performance of its social function within the System to which it belongs. In turn, in this particular view, in the present study of the issue of the electoral criminal rule previously in force, which is now applied in the following perspective: 'the extreme value to respect for democracy' was inserted in the "Electoral Criminal Legal System", however the social thought was altered by its cultural meaning, which ceased to exist for the purpose of criminal reprehension, in case it was transgressed. Given this authentic circumstance and that its alteration began within the 'value subsystem', with the influence of the social environment, it provided a new systemic result, namely, the spread of interest in eliminating the figure from the 'Electoral Legal System' of the criminal offence. Thus, the legitimacy of this interest established by ethical transparency pressured the subsequent subsystems of the 'Legal System' to establish a position of agreement to the point of triggering harmony in the entire functional context of the systemic logical structure and, therefore, preventing any friction between the subsystems involved. By the way, the greatness of 'ethical transparency' consists in stopping the occurrence of any entropy in the 'Legal System' that could establish a contingency or risk of serious proportions. In view of these considerations, the 'value subsystem' is inserted in the kind of 'material justice' and its primary function is to establish the degree of real legitimacy found by the State, at the time of its political decisions, in the exercise of its transparency.

In the 'principle subsystem', in turn, it has in 'ethical transparency' its positive qualification: the record of the intensity of its performance established by the predicate of its nature. This statement is materialized from the examination of its concept, in the conception of Humberto Ávila: “principles are not just values whose realization depends on mere personal preferences. They are, at the same time, more than that and something different from that. The principles establish the duty to adopt behaviors necessary to achieve a state of affairs or, invariably, establish the duty to effect a state of affairs through the adoption of behaviors necessary for it”. And he complements the aforementioned author: “principles are related to values insofar as the establishment of ends implies a positive qualification of a state of affairs that one wants to promote. However, the principles depart from the values because, while the principles are situated on the deontological level and, as a consequence, establish the obligation to adopt the necessary conducts for the gradual promotion of a state of affairs, the values are situated on the axiological or merely teleological level and, therefore, they only attribute a positive quality to a certain element”.[72]

In the 'Legal System' the 'Principle' becomes a subsystem with grounding, prospective and material integrative effectiveness functions of the subsequent subsystems: 'public policy in formation' and 'normative' and, therefore, its performance exposes the social thinking of a concentrated way of defining a behavior to be followed. Thus, in this context of the issue under analysis, of the 'electoral crime', this negative material dictate was highlighted, from the moment it ceased to be positively valued by the collective ethical conscience, the extreme value "resulting from the defense of Democracy" for effect criminal. In fact, this value precedes the 'Principle Subsystem' and according to the logical corollary of the legal system, its corresponding prospective material content, which is, in the species, of the “Principle of Criminal Electoral Legality” has become indifferent to the criminalization of agent's conduct and, therefore, signaled to the following subsystems mentioned that the “ *abolitio criminis* ” of this crime was a natural result, given the accentuated 'ethical transparency' of its causal link - or lack of this reason -: there was no longer an ethical cause to impose the "Principle of Electoral Criminal Legality", as the basis of a 'public policy choice of training and subsequent specific penal regulation' - subsequent subsystems -, in the opposite hypothesis of the maintenance of the electoral offense, in the respective normative order, for the purpose of limitation of the state's normative power. Thus, the power of the social ethical choice of the value of the 'extreme defense of Democracy' is effected, which was overcome and, subsequently, the emptying of the "Principle of Criminal Legality", when these proposals for the elimination of the "Criminal Electoral Legal System" were forwarded , of the aforementioned penal type, and the communication unfolded to the subsequent 'subsystems'.

Next, the 'public policy training subsystem (PP1)' is highlighted, which has its systemic nature linked to the State's formal process of selection of 'values and principles' to be contemplated by the subsequent standard that will determine its specificity , in behavioral control. With 'ethical transparency' it merges into a means of achieving the material justification to be considered when there is a decision arising from the selection process - complexity - of the 'Public Policy Training Subsystem - PP1 -' in its formal passage to the formulation of the 'subsystem normative'. In this sense, in the present case of the 'electoral crime', the 'public policy for the formation of a penal rule' was influenced by the collective ethical conscience when considering that in its function of selection of 'values and principles': 'the extreme defense of Democracy' which is the value protected by this crime and the 'Principle of Electoral Criminal Legality' which is *intended* to limit the " *jus puniendi* " of the State that derives from this value, have become obsolete in their social indignation, due to new thinking social ethics that went beyond the criminal sphere of protection, in order to persuade the emergence of the " *abolitio criminis* " and consequently remove the criminal type of electoral offense from the normative order.

In the 'normative subsystem' that translates into the formal imposing result of the "Legal System" by the will not only of the state power through its concrete action to support behavioral limits, but also the will of society that identifies in its 'values and principles' that they need to be protected – a material perspective –, including their 'ethical transparency': constituting, therefore, goods inseparable from 'public policies' and that these should be able to correspond to the dominant social interest. Thus, in the issue of 'electoral crime' under examination, the 'normative subsystem' had its specific function to formally and materially institute the elimination of this type of criminal law from the legal system – " *abolitio criminis* " – due to the absence of social and political interest. Lastly, by following the decision of the 'collective ethical conscience (CEC)' that disregarded the material parameters of the electoral criminal rule that regulates the criminal conduct provided for in 'electoral crime': 'the protection of the value of the extreme defense of Democracy' and the "Principle of Electoral Criminal Legality", the 'normative subsystem', in turn, expressed the 'ethical transparency' of its performance, in the reading of the event (legal fact) that gave rise to it, in the formation of the "Legal System", giving Finally, emphasis is placed on the formal and material abrogation of the electoral criminal tax law that existed until then.

Next, the 'Public Policy Implementation Subsystem (PP2)' is highlighted, which has in "ethical transparency" the concrete model for the realization of 'formal justice and material justice' that the State demonstrates in its actions, in defense of the real interest of society, in view of its manifestations. Therefore, with the current

and enforceable norm, the state order has the duty to build a social ethical environment conducive to the execution of this norm, whether in its formal perspective or in its corresponding material perspective. In this importance, the standard is the result of the combination of the aforementioned legal subsystems that succeed each other until its materialization and, thus, it will be up to the 'Implementation Public Policy Subsystem (PP2)' to expose this form of action, in the actual service of the 'collective ethical transparency'. Incidentally, in the present issue of electoral crime - which had its ethical and social repercussions elided and highlighted in the " *abolitio criminis* " - the fulfillment of this legal subsystem (PP2) - is highlighted by the subsequent court decisions that suppressed the application of the legal fact that was considered criminal when it was practiced by the agent, from the absence of the corresponding incriminating norm in the criminal legal system. Thus, the jurisdictional function of the State formally and materially declares - ethical transparency - that the aforementioned electoral offense is no longer supported by the "Legal System" and that a fact of this nature previously considered a criminal offense no longer exists and, therefore, its penalty also the outside.

With reference to the "'common good' legal subsystem", its nature is confused with the objective and the result to be desired of the "Legal System" itself since its inception: with the enthronement of the 'legal fact subsystem' and, from from there, it has been consolidated with the step-by-step construction of an 'ethical transparency', in consecutive communicating subsystems, able to achieve its social purposes of well meeting its needs and interests inculcated by events in time and space defined by the universe that surrounds it. . The 'common good' legal subsystem measures the degree of prosperity of the "Legal System", by composing its self-referential in order to be recognized as the target of its functionality regarding its performance, giving rise to questions about the real situation that the State in its dynamic relationship with social thinking, spread by its reflexivity and adaptable character, with an ethical-transparent nature, in the development of its complexity, as it is decisive in solving problems and overcoming crises in order to meet its purpose.

In the “common good” legal subsystem”, the “ *abolitio criminis* ” of the “electoral offense” has its “ethical transparency” stamped in the “Decision Making” of the “Collective Ethical Conscience (CEC)” that influenced the previous legal subsystems in determine the proscription of the "Legal System" this incrimination. Therefore, the ultimate goal of this "Legal System" was successfully met, since if the social culture was changed - a legal fact - to the point where the 'value of extreme respect for Democracy' and also the 'Principle of Electoral Criminal Legality' were overcome as its penal effect, and, therefore, through a selection of values and corresponding formulation of a rule, with formal and material content, following this same understanding - " *abolitio criminis* " -,

in addition to the subsequent occurrence of court decisions reflecting the reaching the 'will of collective ethical awareness', consequently concludes in systemic integration, with the fulfillment of the social 'common good' in its entirety: there is no longer ethical and normative adequacy in the 'electoral crime' under analysis to justify its existence .

Finally, the nuclear subsystem of the “Legal System” which is the “Democratic State of Law” stands out. The profile of this subsystem is in the fulfillment of “Fundamental Principles”, of a superior hierarchical nature, which provide nuclear support, in the creation of the “Legal System”, considered democratic. The role of “ethical transparency” in this legal subsystem is also a reflection of the constant communication between the subsystems examined above and which provide social and political stability to the State. The core of its development is found in the balance between political power ensured by the will of 'free and transparent collective ethical conscience' and the fulfillment of 'unavailable individual rights'. In this scope, the State finds 'the limit of its political power', for example, when it relates to 'the value of respect for the individual's freedom of the citizen as a result of his performance' to be preserved, as long as it does not exceed the limit of reasonableness protected by the social order, establishing in its essence parameters that cannot be surpassed under penalty of systemic implosion.

Faced with a full democratic context, the “Legal System” exposes its reasons for programming defense mechanisms, in support of its raison d'être, which consists in the construction of the following binomial: legality-citizenship. In the present issue of the “ *abolitio criminis* ” of the 'electoral crime', the State decided, with 'ethical transparency', to purge this criminalization from the normative order, so that perhaps its future inversion of action occurs - without the support of 'ethical conscience collective' – will become a binary action without ethical, political and legal justification, resulting in an arbitrary attack against the 'dignity' of those who suffer any undemocratic submission of a punitive-criminal character.

Furthermore, the "Legal System" must always be preserved, flowing in the logical direction of meeting the benefits it builds in its self-reference process, in its respective subsystems, and rebuilding, through autopoiesis, the subsystems that are under crisis, in the sense of meet the 'ethical transparency' of its functionality.

Consciousness is thinking about time and the link that unites the “juridical subsystems” and its dynamics comes from social communication in function of this awareness. The reality is changing at every moment and the decisions of the State have to be taken to meet the wishes of society and therefore, to achieve this objective, 'legitimation structures' are built to produce benefits that meet this expectation. The profile of the State considered democratic has underlying structures that consolidate the

will of 'collective ethical conscience', through 'social control' that combines with the “use of coercion, force, restriction or persuasion of one group over another, or of a group about its members or people about others, to enforce the prescribed rules of the social game”. In this sense, these 'legitimation structures' inserted in the legal subsystem of 'Public Implementation Policies', manifest themselves in three segments: a) ideas, values and *habitus* ; b) the agents; and c) the management of values and norms by agents.

a) Ideas, values and *habitus* – The 'ideas' correspond to the thought of knowledge and their visibility exposes the culture recognized by the people. Culture inspires 'social values' and, in turn, the pluralism of 'social values' demonstrates the degree of inequality or differences that stand out in the relationship between people, or groups of people and that they are introduced in the social pact of freedom of its manifestations. In the social context, objective structures are built – such as, for example, the “Legal System” – in which the aim is to provide satisfactory results for the social entity to which it is linked. Thus, to achieve this direction, they present in their composition the agents that represent them in their action and thought – *habitus* –, just as the practical objectives established to be considered by the 'Symbolic Power' instituted by the State are presented. In this sense, the content of this model of social structure provides mechanisms for dialectics between social values and the values of the aforementioned agents, so that the social objective is achieved. The relationship between the agents is found in a constant struggle of space – field –, with the purpose of meeting the 'Symbolic Power' for the purpose of its legitimacy of action. It is in the group of forces – capital – of these agents that the social structure demonstrates its ability to evolve in its performance, reproducing prominent mechanisms to overcome the difficulties that arise during its existence.

b) The agents: they represent the psychic factor of the “Legal System” because they are formulators of ideas and because they are agents with “social conscience” they identify with the “system” to which they are linked. The legitimacy of the actions of agents in their system is embedded in the values they defend and, therefore, they build with their personality the sense of moral justice and when expanded into "social values and principles" motivates the formulation of public policies, inculcating norms of ethical content and these, when well applied, turn into benefits for everyone involved.

c) The management of values and norms by agents: the 'Central Field' of this 'Social System', which is the "Law", is strengthened or not, given the performance of its participants or agents and that the constant struggle is found in each portion (or also between them – subsystems –) also called 'Integrated Action Subfield' that relates to agents in search of benefits consistent with the practical objectives to be met – *habitus* – . Thus, the best strategy is not to submit to the arbitration of any 'integrated subfield of

action' the unique scope of an advantageous result surpassing the others and consequently often becoming illegitimate, even because the other microcosms or 'integrated subfields of action' they belong to the same legal-social structure ('Campo Central') and must be at the same level of commitment to their own practical goals – *habitus* – so that everyone has the same intensity to be valued by the 'Campo Central' itself. In fact, this should be understood as a harmonic and uniform structure of duties, although each 'integrated subfield of action' or subsystem that composes it is distinct.

Furthermore, with affinity, the idea of an effective “Legal System” presupposes the realization of implicit factors that give it ethical validity: a- the very concept of “Legal System”; b- 'social integration' and its various forms of action; c- the historical-social continuity of 'social integration'; d- the organic connection between the agents; e- the concept of social heritage; f- the concept of society as an organic unit; and g- the multiple elements or subsystems of cognition from the making of a social fact.

The- The very concept of the “Legal System”: because it is self-referential, including its subsystems, and its relationship with its environment, giving it its own identity in its observation. Autopoietic in case of systemic crisis, due to the occurrence of the effect of some entropy. With the presence of agents who express the psychic factor of the “Legal System”, as they interact on their *campus* , according to their *habitus* , according to their reality. In fact, it is in the 'selection of values and principles', in the improvement of the “Legal System” itself, one of its main characteristics when shaping the reality committed to its ultimate goal of meeting the will of the collective ethical conscience. Thus, we consider that the “Legal System” has its permanent - open - communication through a common thread (synapse) with the social environment that interconnects its legal subsystems. Each of these has a membrane that establishes its limits, although there is an opening that is sufficient in the interaction with the social environment that surrounds it and establishes its relationship with space and time, in its orientation. The “Legal System” has its functionality highlighted, since its formation, with the introduction of its first 'legal fact subsystem', but it only attends to its real vitality, with the realization of the last subsystem: 'common good'. Thus, it was in this democratic panorama that the legitimization of the “Legal System” behaves when giving rise to its 'ethical transparency'.

B- The 'social integration and its various forms of action': men live in society and in their coexistence relationship the formation of two disparate processes, on the one hand associative and on the other dissociative. In the process of associative formation, forces of approximation appear that are translated in the

following ways: " *emotional solidarity – individuals who share the same emotions –; emotional participation – the individual sympathetically participates in the feelings of the other –; emotional attraction – admiration, attraction to another – ; interests – for convenience or for a superior ideal –; and an attitude of tolerance – if opposing positions and opinions are respected to give rise to the association* – ".[73] In turn, in its 'proceedings of approaching or approaching' individuals in society, behaviors that align with the idea of good coexistence are evident, such as: " *greeting or greeting respectfully, courting other people; admit to social treatment or another one is admitted; accompany, thank, applaud, demonstrate approval, acknowledge, confess, consult, etc.* ".[74] By the way, also in this 'association process' between individuals or groups, in social contact, species stand out, "adjustment process; accommodation process; transculturation process; assimilation process; and cooperation process". In the 'adjustment process' it finds its apogee in the agreement *between peers* , through the conciliation that attenuates the disparities of opinions and feelings between individuals, finally recommending an associative attitude. In turn, in the 'accommodation process' it appears to prevent the occurrence of litigation, calming differences, with the clear purpose of establishing points of contact, cooperation and harmony. In sequence, in this 'association process', comes the species: 'transculturation process' which consists of the symbiosis between cultures of different peoples in order to create a social environment conducive to coexistence suited to their needs. In the 'assimilation process', individuals or groups that were in disharmony or dissimilarities become appeased by identifying points that justify the association of interests. In fact, it has as its subspecies the 'integration, union or fusion process', which is the last cultural result of the reciprocal or plurilateral 'assimilation process' between different ways of life by incorporating different cultures into their *habitus* . Finally, mention is made of the 'cooperation process' which comprises the common activity of individuals or groups for the realization of common ideals or interests.

In the 'dissociative process', in the opposite sense of the 'associative process', it is identified by the rejection of an interpersonal or intergroup agreement and accentuates its disposition for the conflict of interests, with the fight for the opposition and properly the fight by triggering non-conformity regarding its resisted claim . Therefore, from this social dynamic, society builds its Social Systems of interaction between the phenomena that arise and the agents distributing legal goods, valuing their adequate functionality. Thus, as there are many more interests than assets, conflict arises in order to configure the dispute. In this relationship that forms the "Legal System" has its role to

regulate not only the conduct of individuals, but also to impose guidelines of dynamic social control, strengthening the interdependence of legal subsystems that communicate invariably to meet their goals and in one direction determined and preponderant that is the 'social peace' to be achieved. In fact, in this regard, the "Electoral Criminal Legal System" has its effect advocated by 'social peace' and the preservation of democracy when a court decision comes to settle a legal controversy or electoral dispute, either acquitting or convicting an accused for the practice of a electoral offense.

ç- The social-historical continuity of 'social integration': the dynamism that interweaves the legal subsystems is justified by the social transformations that occur over time. In this way, the 'legal fact' has its constitution established by social thought at a given historical moment that qualifies it as to its ethical density. The social values that correspond to the attribute of the 'legal fact' come from 'social interaction', unless the origin of the 'legal fact' is not through a natural phenomenon that has a clear social repercussion. The 'social interaction' has in its dynamism the actions of reciprocal influences between individuals or groups and is the result of the historical-social continuity - experience - of its cognition process. In fact, as Newton Fernandes points out: " *in social relations, human behavior is oriented towards people in countless ways. Men not only live together and share common opinions, values, beliefs and customs, but they also continuously interact, react to each other and shape their behavior by the behavior and expectations of others* ".[75] With the dialectic between men, the time factor will promote changes in behavior and that in turn it will be up to the State to translate into actions favorable to these changes, as only then will its legitimate character be assured. In this sense, for example, if a new penal rule is introduced in the 'Normative Order' it is because it must meet this contemporary social expectation of projection of 'values and principles' consistent with the thought of the collective ethical conscience that shapes the behavior of the individual disciplining it. o for the purpose of protecting the legal asset, in which the individual is tied.

d- The organic connection between agents: the social system is intertwined by agents that relate to each other, in order to constitute a unit that demonstrates a profile aimed at a result that meets the expectations of their environment, which each agent enjoys, as each one of them is able to play an important role in this gear, thus having social responsibility authorized by the collective ethical conscience. Thus, it will be up to the State to have the legitimacy to perform its role as a social instrument, given the appointment of these agents that correspond to the psychic elements that will translate the desire of society,

ultimately forming a harmonious whole aimed at the common good. However, if these agents act in an uncoordinated manner, or even in total lack of control of their actions: by permeating, for example, through the path of illegality and/or inefficiency, making the "Communicating Legal System" unable to meet its social function, it is urgent to erect a recomposition of its formation, with the aim of replacing this 'Binary System' (autopoiesis) instituted in a reformulation of ideas that seek a correction of route and performance, in order to meet the social norm desired by the collectivity.[76]

and- The concept of social heritage: the “Communicating Legal System” for being dynamic has its primacy belonging to the social universe of Sciences and, as a corollary, it has in the social heritage its experience of use in the relationships it produces. It is in this way that the collective ethical consciousness has its characteristic diagnosed at a certain historical moment, as its traditions and customs change over time. In this way, this social legacy produces the current reality, configuring a system model that fosters common thinking, by defining what is or is not important as an event, according to the ethical conscience of its people. Thus, given the various social factors that arise, such as political, economic, religious, ethnic, etc. and, which are changing over time: these ultimately contribute to the formation of a State that has the support of its own existence in the social heritage. In turn, the regulation of social conduct constituted through the norm, advocates a result that may or may not meet the collective ethical conscience at that moment to be considered, due to whether or not it has legitimacy of action and, consequently, the social heritage, now advocated , becomes necessarily involved in the decision environment that the State will transpire and execute, according to its political will, as long as it meets the wishes of society, according to the time of its emergence.

f- The concept of society as an organic unit: the thought of identifying society as a single unit stems from the wish that the collective ethical consciousness of a state has been identified as such. This characteristic is in place, if such an element in the 'Social System', is able to demonstrate that there are common interests above the interests of each person, and, therefore, if the values that built these common interests form an organic unit, then only in this way, the collective ethical conscience has its power to control the functionality of the “Communicating Legal System”. In this sense, the subsystems only communicate with each other if the collective ethical consciousness - *synapse* - becomes operative, according to their unit of action, giving rise to the configuration of a desired result by all involved, according to their environment and its existing self-reference, giving rise to the understanding that it is a progressive State or, on the

contrary, a disabled State, fostering at every moment the emergence of risks of occasional or permanent surrounding disturbances. Thus, erecting anomalies in the 'Communicating Legal System' and that society itself becomes hopeful of the emergence of autopoiesis, in the affected or affected subsystems, moving away from anomalies that may even have the character of implosion of this paradigm of social system, now under focus.

g- The multiple elements or subsystems of cognition from the making of a social fact: the social fact is more than just any event, it is a fact that has repercussions on the collective ethical consciousness of a defined people, in a proper and established State, which translate into the creation of a *start* in the "Communicating Legal System", becoming an initial subsystem in the process of formation of the 'Social System' recommended in this study. Thus, from it, one subsystem after another is built up to its final result - common good -, so that they all have in common being elements of cognition, however each with its own characteristics of evolution and distinct social function, in addition to of having diverse environments around them. Thus, it is the set of ideas that are produced from a relevant social fact and that stand out in the formulation of subsystems that are involved in a mechanism addressed to meet the collective ethical conscience. On the other hand, if this fact is antisocial, giving rise to a 'Binary System', giving rise to the formulation of deleterious effects to the already existing "Social Communicating System", it is vital to extirpate this anomaly, as this is the only way to preserve the will the collective ethical conscience and the formal and material justice that are found in the "norm subsystem" in force, including the 'Positive Electoral Law'. By agreement, the State must be aware, through its agents, in the examination of the legal fact, if it is, therefore, legal and legitimate, when deciding on its enthronement in the 'Social System' by which it is recognized as relevant .

§5 Baricenter in the Electoral System

The society considered democratic composes its essence in the formulation of solutions capable of minimizing its ills and that several factors lead to making the achievement of its purposes more agile or less agile in terms of its ethical, political, economic, legal and social development. Thus, for example, the institutional political program established by the State fosters the possible degree of development, but not always able to produce the necessary wealth to meet the needs of the community, which leads to a rougher path to be followed by the legally constituted government. and,

therefore, which often translates to the occurrence of a hiatus from what the government establishes and what the " *collective ethical conscience* " aims for.[77]

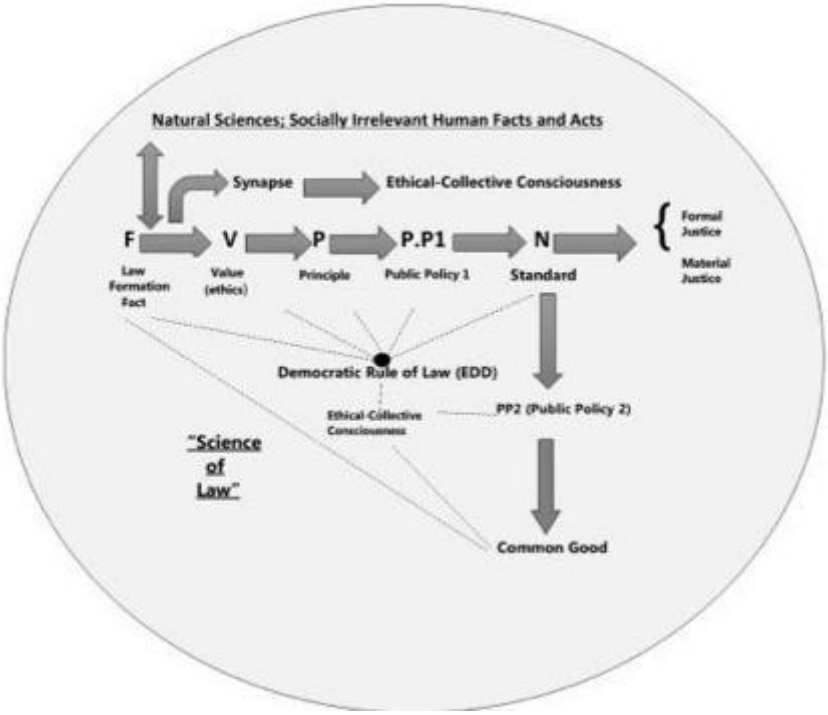
In this sense, the present chapter of this study has the power to bring an initial apothegm of the importance of each 'integrated field of action' that makes up the Law - "Central Field" - and therefore achieve its realization as an instrument for the development of a society. Its democratic roots are found in the interlinked formulation of several elements capable of meeting the " *common good* " that the State must meet in order to make its driving force, which is the construction of Law as synonymous with Formal Justice and Material Justice. Thus, in the formation of the synapse linked to these dimensions (integrated subfields of action) able to foster the legitimate character of its power as an institution, as it is in line with the will of its people. Thus, the Law ('Central Field') in a 'Democratic State' materializes with the realization of the following integrated 'subfields' of action: from a « *fact* » at the time estimated as being *juridical* by society, including in the electoral sphere, in other words, every phenomenon that the collective ethical conscience assesses to have relevant effects on the community. As a result of this temporal *juridical* fact comes the " *ethical value" that society is supported* : the dominant axiological profile of a people at a given historical moment. Added to these two subfields comes the " *Principles fundamental* " - 3rd subfield -: that according to our understanding ceased to be a secondary source of law to become a subfield to be explored and accepted as such by the legal community and which, moreover stands out, *eg* , in *the "Principles of Equity (social cooperation) and Efficiency (technique of legal enforcement), in addition to Equality and Morality as Principles of Social Justice".* [78] Then, the synapse identifies yet another subfield of Law, which are the « *Public Education Policies* » - 4th subfield - capable of assessing or selecting, among the wide variety of *legal facts that* occurred at a given zetetic moment, including *values and principles* , which is considered most *convenient and opportune* by the political class to formally transform itself into Norma, including electoral – 5th subfield –, thus translating the popular will. Furthermore, this chain of interconnected subfields of Law - *synapse* - and progressively promoted or qualitatively integrated, ultimately building a symbology capable of demonstrating what the standard should have in its most relevant content, which consists in the formation of "Formal Justice and Material Justice ". The Formal Justice of the Standard becomes immanent in its legal dogmatics constituted in the examination of the current legal system, with the preponderant and vital reflexes when its applicability. The Material Justice of the Standard, in turn, is fostered by the content of the Standard under an identity of the collective ethical awareness of a given people, that is, as to the "Values" - axiology - and the "Fundamental Principles" that were evaluated by the

society and highlighted in the construction of Law, placing them as vital subfields of its own existence.

In the end, after the Standard has formed its content (Formal Justice and Material Justice) its applicability is provided, at the time of making it adjusted to the social reality - zetectic moment - and that through the « *Public Policies of Implementation* ", grants the primordial adjustment to meet the “Common Good” of society. Thus, "Public Policies" act not only as the 4th subfield in the formation of Law, but also in a new perspective, which is to meet its political sense - of convenience - social option - and opportunity: being able to choose the historical moment of application of the norm – 6th subfield –.

In this context, a conclusion is formed to be reflected upon, namely: that since the emergence of the « *Legal Fact* » - 1st subfield of Law - until the realization of the "Common Good" - 7th subfield - by the State, it is essential that seven subfields referred to are interconnected - synapse: *ethical-collective awareness* - and that finally the "Public Policies", in the application of the Standard, are able to legitimize the will of society - symbolic power - and consequently produce its legal and political development , economic and social in all its reach. By the way, the ethical-collective conscience maintains a constant dialectic with the agents that represent the action and thought in each subfield, promoting the practical objectives - *habitus* - of its qualitatively integrated action with the other subfields that gradually become uniform until reaching the last – “Common Good” –. By the way, as foreseen in the “Communicating Legal System” the “Common Good” becomes reality when the “Electoral System” achieves its objective, that is, when the elections of the new rulers of a sovereign State are integral and, accordingly, legitimate so that the popular will is respected, in accordance with the democratic values and principles accepted by the collective ethical conscience.

Indeed, in the above formulation of the “Central Field”: “Law” and its 'integrated subfields of action', in essence, a geometric figure is created capable of identifying a better orientation for what is being advocated, namely:



F- Legal Fact; V- Value (ethics); P- Principle; P.P1 (Public Policy 1); N - Standard; Formal Justice; Material Justice; P.P2 (Public Policy 2); Very common; *Synapse* = Collective Ethical Awareness; Democratic Rule of Law; Natural Sciences; Socially Irrelevant Human Facts. [79]

At the core of this geometric figure contains its *barycenter,* which consists of the "Democratic State of Law" and which has the power to relate to all the "integrated subfields of action" of Law ("Central Field"), as well as the applicability of norm in serving the “common *good* ” of the community. Thus, the « *Democratic Rule of Law* » became experienced from the decay of the "Rule of Law" which was concerned only with "Formal Justice" or the so-called "Legalistic Justice": without concern for the axiological content and principle of the Standard - "Material Justice" -. Thus, “Formal Justice” is obtained with the yearnings of the ethical-collective conscience that links the Law to its 'integrated subfields of action', namely: «Legal Fact; Value (axiological sense); Principles; Public Policies (P.P1); and the Norm. By consent, making "Material Justice" an integral element of the Standard. As a matter of fact, regarding the Principles – 3rd integrated subfield of action –, it is given as an example, in the direct relationship with the “Democratic State of Law” - Baricentro do Direito – to those, *eg* , enunciated by

José Afonso da Silva, namely: " *Principle of Constitutionality, Democratic Principle, Principle of Social Justice, System of Fundamental Rights, Principle of Equality, Principle of Division of Powers, Principle of Legality and Principle of Legal Security* ".[80]

With regard to the elements that are external to the figures above, namely, in the upper vault of this Universe, the "Natural Sciences"; and "Socially irrelevant Human Facts and Acts"; and in its lower vault, Illegitimate or Illegal, it is important to highlight the following:

In the first case of the "Natural Sciences" or, the "Socially Irrelevant Human Facts or Acts", these are *facts* that appear without expression for the collective ethical conscience because they do not yet have legal repercussion and, therefore, are not of a *legal* nature , however, they may, in the future, be considered as such, if perhaps « *the ethical-collective consciousness»* legitimizes them and, thus, being qualitatively promoted to be a 'subfield' of Law. In turn, the "Illegal or Illegitimate" are the facts contrary to the "Formal Justice" and/or the "Material Justice of the Rule" - 'integrated subfields of action' of Law - forming a pathology and the very forces contained in the other integrated 'subfields' establish an incessant struggle until the contaminated 'integrated subfields of action' become healthy. Thus, for example, if the fact subsumed by the norm does not meet its « *content* », it becomes illegal or illegitimate and, therefore, contravenes the Law, making it removed from the *figure* highlighted above, constituting by consent an object of social repercussion to be corrected by the Judicial power. In the case, in particular, of electoral illicit, the relevant social character regarding its scope of collective ethical rejection becomes evident and, therefore, its harmful effects when its unlawful implementation - its illegitimacy contrary to "Material Justice" - and its contrary to the current norm – 5th integrated subfield of action –, in time and space – "Formal Justice" *in concrete* –. Therefore, in the examination of the proposed theme, it is based on the formulation of a Law - "Central Field" - which is concerned not only with the norm in its meaning of "Formal Justice", but also having in its content the "Material Justice" which presupposes in its essence the " *fundamental values and principles* " - "integrated subfields of action (2nd and 3rd)" - which emerge from the ethical-collective consciousness and which relate to agents in thought and in their actions, depending on the objectives practices established by the 'Symbolic Power' – *habitus* – giving it the character of legitimacy. Thus, for the materialization of this " *Ideal Norm* " for the benefit of the " *common good"* of society, "Public Policies" also constitute an 'integrated subfield of action (6th)' of Law that makes it effective, in the molds that society craves finally, fostering its development in all the extensions of its performance.

Furthermore, the realization of the "Theorem of the subfields of Law" is erected as the core of this foundation, which consists of the following statement: < *in any norm, as an instrument designed to serve the common good of society, according to its collective ethical conscience, it performs in the formal and material realization of its integrated subfields of action: legal facts, values, principles, public policies and the legitimacy of the norm, in addition to having as its center the constant improvement of the 'Democratic Rule of Law'* >.

In this context, the fact considered illicit by the electoral legislation in force when it arises comes not only against the 'integrated subfields of Law', but also against its core - barycenter - in order to become an affront to what society yearns for, and should occur , therefore, an internal struggle in the affected integrated subfields themselves (or even between integrated subfields) through a mechanism governed by its guideline that was deviated, that is, through a dialectic with the agents of the Judiciary Power - judges - whose purpose is to preserve the 'subfields' affected by the harm suffered and recovering them to meet the social benefit, this ultimately representing the primordial 'capital' of its “Central Field”, which is Law.

CHAPTER III - CONSTRUCTION OF THE ELECTORAL SYSTEM

§6 The social ethical function of the Electoral Legal Fact

The State has historically been advocating for an ethical-social ideal, justifying its creation, and in view of the reality in which it lives, it comes from means – with democratic will – capable of pursuing a trend of advancement in its various areas of activity. The legal technique used to achieve this objective varies between the different States and its implementation will depend on the political will and the legitimacy of its proposals to be obtained by the population. Thus, we do not believe in the dissociation between the theological, moral or political thought of the State with positivism implemented directly or indirectly by that group or individual who holds power. Isolating the legal system from their social life is to make it distant from their ethical conscience. The model chosen in the formation of the State Institution creates a conception of government that intends to be exercised and the preservation of democratic principles will depend on the emergence of social phenomena that will influence the subsequent political decisions of its leaders. By the way, the question is: but what technique would have the power to make compatible, *eg* , between the ethical-social thought and the will of the leaders? The answer to this question comes from discovering the essential values that society considers unavoidable to be discussed. If the common effort is to achieve social " *welfare* ", it is believed in the undeniable submission of the individual will to the benefit of the collective will. However, the program to be instituted in favor of society must have in its context the ethical sense in order not to underestimate the subjective universe of the human being. The cooperation between the various organized sectors of society – « *equity* » – will provide the necessary information to infuse a program that makes politically viable the construction of a legal system that meets the collective will and, therefore, requires the importance of the engagement of each person per se. , taking into account the single goal: « *starting from individual performance aimed at common development* ». The task is to achieve social stability and individual sacrifice is natural, but there are limits to the rule of collective will. From the investigation of the behavior pattern of individuals, there will be the selection of social actions that avoid producing effects contrary to the fundamental values rooted in the community itself. The social function is to value the facts and adapt them to the solidary behavior of people, providing the State with « *efficiency* » in the execution of its political decisions. On the other hand, the social life experiment creates an interdependence between people in order to make each fact a matter of general consequences and the abstraction of the scope of this political decision will depend on the consideration of all involved. Faced with this articulated social phenomenon, it generates the fundamental political decision for the creation of the State. In States where they opted to concentrate this political decision in a

single document: the written Constitution is a reflection of the political decision of those who represent, at a given historical moment, the will of a people. From then onwards, social ethical values are impregnated throughout the context of the fundamental Charter, enabling each citizen to interpret the exercise of their solidary participation. In fact, each State coexists with its social reality and its legal orientation plan – ideal model – is the substitute for the permanent valuation of the facts that are presented and the emergence of these ethical values comprises the result of this valuation.[81] In the course of the social function that the State has the duty to exercise comes the "fact" as a study of "Political Science" and the "values and norm" that "Political Theory" expresses in order to clarify the legitimacy of the State in its actions. Thus, in this process of dialectic between Institutions and society, the ideology to be followed emerges – an important factor of social cohesion in a contemporary society so atomized and divided, even if it is so abstract that its involvement is circumscribed in the constituted 'Political Power'.

The central idea of the State's 'Efficiency' as a political instrument to meet its social function is in its own characteristic that harmonizes with its ideological role as a model for exercising Power, even if it depends on legitimacy as a means of meeting the objective. of its structure, in obtaining the expected results. In this way, ideology is strictly linked to the correct way of organizing a society and conducting a policy, based on broader considerations about the nature of human life and knowledge, in order to know how to interpret the essential values that society is inspired by realization of its purposes.

From the knowledge of the fact and that through a political ideology, it is transformed into legal, in its trajectory of legal reach, through the issuance of norms, to be imposed by the State, with the democratic seal of society: in this constant dialectical mechanism and fluent, seeking a unique harmony that will change in the same proportion as new facts appear in time and that it will be up to the State to maintain integrity or not in its original ideology, in line with the Democratic System to which it belongs. As a matter of fact, in this context, in the “Contemporary Electoral System”, the legal fact stands out for the motivation of collective ethical consciousness by emphasizing an event that has the full exercise of democracy as a legal asset to be protected. Thus, if there is, *eg* , the election of a representative who will represent the people of a certain sovereign State, the corresponding 'Electoral System' must adapt to the historical moment the society is going through, that is, its ethical thinking social in time and space and, therefore, which citizens will be considered able to express their electoral choices - votes - and also those who have the right to be voted - suffrage - in the electoral scrutiny, and how they should do it: at the time and in the territory of the aforementioned elections. In this sense, some basic principles must prevail in a

democratic electoral process, namely: popular sovereignty must be exercised by universal suffrage and by direct and secret voting - although indirect and/or open voting may also exist in exceptional situations - with equal value for all, that is, without any discrimination – however, there may be an exception: *ie* ., foreigners and/or conscripts –.

Furthermore, the electoral legal fact will have its dominant social ethical character when the "Contemporary Electoral Process" follows the changes that society imposes: in its time and in the territorial space to be considered, and thus will have the desired result to change the 'Electoral Legal System' until then in force.

§7 Social Ethical Integration of the Electoral System

The human personality manifests itself in different ways, such as in the freedom to act, to feel or even to be able to exercise citizenship in an equal way. The positive law in a democratic State preserves as one of its dictates the legal equality of citizens, since it considers: " *all are equal before the law* ". Thus, regardless of the individuality of the natural person as to their qualities, race, political or religious convictions of their origin or social class, the social dignity of each citizen has its equality guaranteed by the State. Social justice, in turn, is concerned with the equality of opportunities that every citizen must have to achieve their personal achievements. It is up to the State to implement social actions capable of offering the means to the citizen in being able to build a « *dignified life* ».[82] The structure of the institutions must be geared towards serving the entire community without distinction and the reason is to meet « *social satisfaction* » as a prerequisite for earning the State its highest degree of *efficiency* . If for many there is a difficulty in obtaining goods and for others not, thus creating a social injustice, the State has the duty to promote actions capable of reducing social differences and bringing the less favored layers closer to those that the State has given more. attention, or that they made better use of the opportunities offered. Thus, « *social equality* » becomes an imposition given to public policies and the balance of the equitable distribution of wealth comprising one of the aspects of « *social justice* ». On the other hand, " *equality* ", also as an immanent principle of a " *Democratic State of Law* ", may also have several implications, such as, in the differentiation between legal equality and natural or naturalistic equality; that this principle constitutes one of the options of the substantive Constitution, thus prohibiting any privilege or discrimination (the negative meaning of the expression) in a procedural view, by assuring the parties involved the equal treatment of their postulates; or even when this principle has to be confronted with certain legal imperatives. [83] [84] [85]

The enthronement of the principle of " *legal equality* " in the legal system is generally found in the catalog of the fundamental rights of the person, in the various existing Constitutions, but its optimization focuses on the development of the right to individual freedom, in a proportionality distribution of advantages or burdens - prevailing justice - limiting only what is necessary to safeguard the freedoms of others. It is by embracing the idea of equal treatment, with the distribution of benefits or burdens that the rules are evaluated as fair or unfair. If, for *example* , a certain electoral norm (A) benefits a certain social class or race (B) to the detriment of other classes or races, it becomes an unequal distribution, if we take into account the parameters of a social justice of humanitarian genesis, with the inharmonious electoral effects due to the scope of the 'Contemporary Electoral System'. However, if we take into account that this prevailing norm (A) imposed by the majority or by those who hold power, being advocated by discrimination, it is our responsibility to accept it, as to its treatment, as being impartial, in view of of the political option exercised by the citizens of a given society, even though it may be unjust and capable of considerably affecting the core of man's personality right, which is his dignity? [86] Thus, the importance of this principle is to ensure the rules that regulate fundamental rights, including those of a constitutional electoral nature, making them " *rocky* " so that the other rules included in the legal system do not manifest themselves as materially unjust or ethically unequal in content. The principle of equality and justice are intertwined when the issue in question reflects on the impartial distribution of goods, seeking to inculcate in the State, through its norms, its sense of « *efficiency* ». In the regulation of the behavior of people in society by the State through the legislative process, it is urgent to build a proportional system of values that has the primacy of identifying the egalitarian rules of distribution. As a matter of fact, the obstruction of justice is corrected over time, but the principle of " *equality* " accepted by the State in its legal system reflects the benefits that will be expressed in " *social satisfaction* " and by converging converging with the security of individual rights. The inequality of the norm is not to be confused with the normative differences that have exceptional motivation and a non-discriminatory nature, given that it contains a reasonable justification, by urging a relationship of proportionality to the intended purpose.[87]

Furthermore, material freedoms in the Constitutions presuppose a common objective of equalizing social conditions, an objective to be achieved not only through the enthronement of norms, but also through the application of policies or programs of state action. [88]

Morality, in turn, comprises the set of immaterial values inherent to human life and it is up to the State to protect them. Among the dictates of conscience,

Man manifests himself through this moral principle: indicating his profile and qualifying the distinction concerning other living beings in the Universe. The breadth of the human being is made up of a logic capable of surpassing their actions, making up, in their most intimate degree of feeling, their greater or lesser magnitude to be valued: examination of conduct sometimes escapes the Law, but reflects in the ethical context the respect that each person should deserve. The legal and moral norms have clear differences in structure, but both coexist, since the legal norms have their legitimacy in the " *moral principle* ". Even in countries where societies have a religious pluralism, the established legal order must coexist with these various social manifestations as long as they influence the formation of a moral standard accepted by all. Although moral norms are not codified as they are, legal norms have a corresponding sanction in common. In morality, the sanction comes from the ethical judgment: either from the person who performs an immoral act when feeling remorse or from the people around him who repudiate his act. In turn, in legal norms the sanction is written - or according to customs - and addressed to anyone who disrespects its ethical content. The justice of the moral norm is addressed to the one who finds himself in the dilemma and the people around him, however the norms of justice in the Law and its decisions have immediate general effect in view of its wide dissemination. In the " *moral principle* " the attributes of each person are evaluated by the society to which they belong and thus that human being becomes sufficiently prosperous, with an evaluation capable of making him/her a person considered to be of integrity. Thus, honor and reputation are examples to be identified by the principle of morality and which are at the core of human personality. In case the State exceeds the limits of the application of the law, making its action against the person abusive, it will deserve the greatest repairs both at a material level, through indemnity, and at a moral level, thus repaying, if possible, the closer to the equivalent of the degree of moral damage suffered by the person. If *eg* a person is wrongfully arrested and convicted criminally, it is up to the State to repair, in addition to material damage, the emerging moral damages seeking to obliterate, after all, the suffering caused by judicial error. On the other hand, the standard in your information center should contain a high ethical content and morality is a principle to be contemplated in the manifestations of your will. The State's willingness to maintain balanced and efficient control over the actions of each member of the collective entity comes from its ethical sense that guides its political decisions, resulting in respect for human dignity, which the social order gravitates to. Morals assumes its role as a fundamental right addressed to everyone without distinction and in this particular of an inalienable (inalienable and inalienable) and imprescriptible nature. In this way, the restriction of freedom of expression, as the exercise of the citizen's vote, comprises a violent action and incapable of producing as

a result an expression of legality (« *efficiency* ») subject to valuation or even the benefit that may be intended.

Finally, it is concluded that not only in the introduction of the norm in the legal system, but also in its application, the ethical principle should govern the actions of the State, protecting the essential rights to the personality inherent to human dignity.

The profile of the social body is found in its identity, its raison d'être and the Ethics of 'Human Values' becomes transparent to everyone's eyes. Thus, the reach of the 'Human Values' of an anthropological nature that each society exposes constitutes a form of cultural expression and which identifies in a great way the Right to be advocated by the collective ethical conscience.[89] The symbiosis between "Ethics and Law" builds a binomial capable of defining the social environment through which the State finds itself and which reflects in the formulation of the 'Content of the Rule': the interaction between "Material Justice" - composed of the essential 'Human Values' and the resulting 'Fundamental Principles' - and the "Formal Justice", which is characterized by the current and enforceable legal system, as they make up the Standard that translates into the concrete result of moral, cultural, political, economic development and juridical of a certain people.

The Norm reflects social conduct stratified in time and space and its spirit or metaphysical meaning composes the exercise of popular will motivated by 'Values' accepted and considered relevant, as it therefore involves an incessant desire for “State Institutional” progress.

Based on a criterion for valuing the relevant social conduct - *legal fact* - by the ethical-collective conscience it exposes a 'Value' founded mainly on "Natural Law" - in any of its aspects: *divine, natural or rational* - even in the settlement of “Legal Sociology”, which becomes, in turn, useful from the enthronement of the Standard in the legal system promulgated by the State. Thus, the norm is integrated by a conduct that is valued for its ethical concept and which has the assumption of formation in the people's culture and that the dominant political power makes it suitable or useful so that it can be attended to by all. The judgment of the ethical quality of society ends in the action of the State that coincides with the will of the ethical-collective conscience and the benefit that it provides, based on the material content of the standard adjusted to its fundamental values and principles.[90]

The ethical values of society, as of Man, are not identical to the values of its existence – and those are changed, according to time –, therefore, in terms of the

fundamental political decisions of the State that are going on. The State coexists with the society that gives it existence and the ethical concepts of this society are associated with the idea of the spirit that gives life to the body or the space that projects it to the world.[91]

'Social Justice' comes from an ethical concept of state practice consistent with the interest of the society served, making up a path to be followed and jointly conquered. The freedom of action of the 'Democratic State' is directly proportional to the ethical foundations that society supports in the construction of its permanent cultural development. By the way, the historical data of the 'Positive Law' worships the " *idea that it has an intimate cause and effect relationship with social and political data and with many other factors. There is a reciprocal causal relationship"* even intrinsically with legal ethics, because if the norm is fair, it must have in addition to its aesthetics, but also its content to be legitimate and supported by the 'Essential Values' justifiable by the ethical-collective conscience, in time and in space.[92] Although I can say that there is no perfect and infinite legal system as to its validity, however, it is based on the thought that the legislator, like any man, has its imperfections and finite time of existence and, therefore, over time over time, the norm becomes unaccompanied by the reality that involves it, making it illegitimate or invalid, in the eyes and feelings of society, in order to consider it unfair. Thus, the idea of Justice has in its main plan the axiology, that is, in its material content having as its presuppositions: security, equity - social solidarity or in the ethical-collective cooperation -, and in its formal axiological plan, the institutional order established by the power of the State proportionately adequate with the fundamental rights of man, these supported by the essential values of the determined social body and, therefore, having as a concrete effect the subsumption of these factors with the norm, constituting finally the formulation of a conduct to be legitimately accepted by the community as a whole.

In the eagerness to build a profile of a State supported by a legal system aimed at the full exercise of Justice, with constant ethical training and as a corollary in meeting its responsibilities with the social entity, it is the opportunity for knowledge of the Law in a perspective evaluative based on new elements, in its primary content and, incidentally, including, as it could not but be “axiology”, as one of its members, in a dynamic vision and capable of becoming a significant dimension in this renewed legal universe. [93]

The society considered democratic composes its essence in the formulation of solutions capable of minimizing its ills and that several factors lead to making the achievement of its purposes more agile or less agile in terms of its ethical, political, economic, legal and social development. Thus, for example, the institutional

political program established by the State, including the "Contemporary Electoral System", fosters the possible degree of development, but not always able to produce the necessary wealth to meet the needs of the community, which leads to rougher the path to be followed by the legally constituted government and, therefore, which often translates to the occurrence of a hiatus from what the government establishes and what the « *collective ethical conscience* » aims for.[94]

TITLE II - SOCIAL ETHICAL CONTROL OF THE ELECTORAL SYSTEM

The position of the “Administration of Justice” before the State has been the subject of controversy, as for some it should remain independent from the other institutionalized Powers and, therefore, with jurisdictional action without any political involvement. Thus, it would be focused on the performance of the normative interpretation or the creation of jurisprudence, depending on the 'Legal System' implemented, be it "Positive Law" or " *Common Law* ", although in the latter, the "Administration of Justice" is exercised with the insurgency of political power, with more vigor than in the Legal System followed in Spain and Western Europe. In fact, the implementation of the division of powers in the modern State was decisive in avoiding abuses by the Government (Executive Power) and the Legislative Power in judicial decisions and, therefore, its independence is necessary for the maintenance of the Judiciary Power away from the uncertainties of the Political powers and, therefore, as an Institution demonstrates the ability to transmit security to society, due to the definitive effects of their decisions.

In the examination of the comparative Organizational Structure between the Administration of Justice in English Law (*Common Law*), with the Roman-Germanic *Law* , the distinct vision of the realization of justice stands out, depending on the diversity of values and to be verified from its origin, and thus with different perspectives to be appreciated over time. Thus, as they are distinct categories of the conceptual structure of Law, their Administrations are also so, making the exercise of each category focused on its legal particularity for which it was developed historically. In this way, the Romanesque Rights System is a relatively rational and logical System because it was ordered, considering the substantive rules of law, thanks to the work of the universities and the legislator (positive law). [95] English law, however, was characterized, without any logical concern, in the frameworks that were imposed by the process, although in a recent period – in the last hundred years – the old system having been abolished and, therefore, rationalizing with parsimony the your pictures. These progresses were visible, but the notions and classifications to which he was used to due to his long tradition remained. As an example , FW Maitland's recognized definition of *equity is* given as a body of rules that, were it not for the reform of the *Judicature Acts* , would be applied exclusively by special jurisdictions called *Equity* Courts . The English law of things, for example, is divided into *personal property* and real *property* : the latter considers the rights which, before the reform of the process of 1833, were guaranteed by the so-called royal actions; the *personal property* considers the rights that, before 1832, were guaranteed by the so-called personal actions.[96] The English notion of contract only

encompasses commitments formerly sanctioned by the action of *assumpsit* ; it does not apply to donations, to *trusts* , or to deposits that have been sanctioned in a different way in history. Finally, with these examples they demonstrate that the categories and concepts of English law could come to be totally different from the categories and concepts of Romance science.

The *Common Law* considers the process as a kind of tournament in which the judge plays a simple role arbitrator. Each party must provide its evidence, and neither party has any means of compelling the other to submit, for example, a document in its possession. The Chancellor's jurisdiction, if necessary, may also intervene here and order one of the parties, by a *discovery order* , to present such a document.

In turn, the Romanesque system of administration of justice turns to the substantial rules of its law (*substantive law*). The process is abandoned by them, as well as everything that concerns the evidence or the execution of the justice decisions (*adjective law*). This hierarchy of law and process dates back to Antiquity: already in Rome the distinction was made between the prudent, who were the only jurists worthy of the name, and the lawyers (orators) whose dignity and place were unchallenged inferior to those of the prudent. The training of jurists in universities reinforced this feeling: law appeared to us as linked to moral technology; the jurist is the one who has studied this model of reason that is Roman law and is opposed to the practitioner who knows the recipes of the process, the local regulations, but who does not have the general culture of jurists and who is a little despised if he is not licensed in law and not knowing its principles. Thus, English law is distinct, since it is neither a university law nor a principled law; it is the right of proceduralists and practitioners. The great jurist in England is the judge, coming out of the ranks of the practitioners, not the professor at the university; only a minority of jurists once studied at universities; none of the great judges of the nineteenth century held a university degree. Most jurists were trained solely by practice, listening to the judges' lessons and participating in the work of lawyers. Studying and knowing the principles would not have been much help for them. The essential was until the century. XIX, in England, to find a form of action that allowed to summon the royal courts and avoid the pitfalls that presented themselves, at each step, in a very formalistic process. However, the English process, over the past hundred years, has become simpler. English law, on the other hand, was considerably enriched in its essence and acquired a rigor comparable to that of continental European law (positive law). English jurists are increasingly attending university law courses in order to learn the principles that have been systematized in our days in a way totally similar to the principles of different Romanesque rights. However, the state of mind produced by a secular tradition is perpetuated in numerous institutions and remains alive in jurists.

The process followed in the Courts of Justice, for example, remains largely what was followed when it was normal for a jury to exist, although the presence of the jury is today, especially in civil matters, exceptional. The process is carefully prepared so that the points of disagreement between the parties clearly emerge and are fixed on the issues that could be answered yes or no, according to the practice we know in the only jurisdiction that operates in most European and European countries. Latin America with a jury: the criminal court. The process concludes with a public hearing, *the Day in Court* , in which the points of disagreement will be elucidated by a technique of entirely oral evidence - hearing of witnesses, who are successively questioned by the lawyers of the two parties (*examination-in- chief and cross-examination*): there is no process auto; everything must be done orally at the hearing, so that a once uneducated jury can form its opinion. The hearing must not be interrupted, and the decision on the matter must be made immediately. Therefore, English law is characterized by wealth and technicality, considered excessive, in relation to its right to evidence. Due to all these rules, the process has retained in England a considerable importance compared to the countries of the European continent, especially if one considers, in English law, its traditional parts, those that constitute what is called the law of jurists (*lawyer's Law*).

In addition, the following consideration is highlighted: the jurist of the European continent follows the system of administration of justice that has primacy in the law of constitutional principles (positive law), as they ensure social order and, accordingly, positive law seeks define them, improve them, such as those that establish the principle of political freedoms; that of social rights; that of the inviolability of property; and, of contracts, etc. Leaving aside, many times, the practical side of these principles are effectively guaranteed. However, the English system is different, since it is based on the following question: what is the value of the affirmation of a right or a principle, if in practice there is no way to apply it? All the attention of the *Common Law* 's Administration of Justice system has for centuries turned to the process; only slowly turns to the rules of substantive law.

CHAPTER IV- RATIONALITY OF THE ELECTORAL SYSTEM

§8 Universal electoral systems

When dealing with the Contemporaneity of the "Electoral Systems", the following comments are given in several countries, such as:

The “Electoral System” in the UK has the following fundamental characteristics: the British Prime Minister can announce elections at any time during his term, after asking the Queen to dissolve the House of Commons. This Chamber has a variable duration, limited to a maximum of five years. Elections take place in rounds only in each constituency and there are several¨: around 650 districts, including England, Wales, Scotland and Northern Ireland. Thus, the candidate who obtains the highest number of votes will be elected. Voters choose their Deputies, but not the prime minister directly. The party that achieves an absolute majority in the House of Commons – the 'Lower House of the British Parliament' – forms a government and in turn its leader becomes British Prime Minister. The 'Government System' is Parliamentarianism. Generally speaking, any British citizen who is 18 years of age or older can vote by registering with the relevant district. Voting is not mandatory. In turn, the House of Lords – 'The Upper House of the English Parliament' – does not have a fixed number of members, but currently has 792 lords. It is an unelected body made up of 2 archbishops and 24 bishops of the Anglican Church (Spiritual Lords) and 766 members of the British nobility (Temporal Lords). Spirit Lords remain in office for as long as they occupy their ecclesiastical functions, while Temporal Lords are for life.

In continuation, in the USA the American “Electoral System” presents itself with the following main characteristics: it is formed by an 'Electoral College' that elects its President of the Republic. The US Congress consists of the Senate (100 seats) and the House of Representatives (435 seats). Every American state has two Senators. The number of Deputies is what changes, depending on the number of the State's population. The American Electoral College is formed by 538 Delegates – corresponding to the numbers of the Congressmen mentioned – 535 and 3 Delegates from Washington DC: this one does not have Senators, but it has Delegates – and who meet every four years to choose the President. Thus, each American state is entitled to a certain number of delegates and is proportional to their representation in Congress. Thus, to become President of the Republic it is necessary to win the 'Colégio Eleitoral', regardless of whether a candidate received the majority of popular votes. Finally, it is highlighted in the American elections – for the occupation of the office of the Presidency of the Republic – that its electoral process is constituted in a dispute for the candidates to obtain, each one of them, the largest number of Delegates in the respective American States. According to

the candidate who has the largest number of Delegates in the country, the President of the USA will be elected.

With regard to the “Electoral System in Latin America” it translates, in short, into the following democratic framework: in most countries in the last twenty years it has lived with an unstable democracy, in the face of enormous social inequality, aggravated by economic crises. However, even so, over time, they moved away from the presence of the centralizing Executive State – authoritarian regimes – and, through the implementation of fundamental political changes, with the solid support of the collective ethical conscience, they erected their respective parliaments, with a new political dress, following a global democratic orientation, but with its own characteristics. In this sense, it was right to convene Constituent Assemblies, and accordingly, they instituted profound constitutional reforms, in addition to changes in ordinary legislation. By the way, this study will highlight the “Contemporary Electoral Systems” of some Latin American countries. In Argentina, for example, the main aspects to be considered, in relation to its 'Electoral System', are the following: elections are mandatory for voters between 18 and 70 years of age and optional for those between 16 and 17 years of age; In Argentina, elections are called open, simultaneous and mandatory. The primaries are intended to select candidates from each party. Deputies and Senators are chosen from a closed list. Thus, the parties decide before the elections the order in which the candidates should be found on the list. Thus, the voter cannot express preference for a particular candidate: “the seats that each party receives will be occupied by the first names on the list. Each Argentine electoral district has 3 Senators. The most voted party acronym in each party is entitled to two Senators; and the second, to one. In the Chamber, in turn, seats are distributed proportionally, according to the votes received by the party. Voting for President of the Republic of Argentina takes place in two rounds. The voter votes on the slate formed by an incumbent and a vice candidate”.[97] The presidential term of four years, with the possibility of a single immediate re-election. The Congress of the Argentine Republic is made up of 72 Senators and the Chamber of Deputies, which consists of 257 Deputies. Deputies are elected for a four-year term through the proportional representation system. In turn, Senators are elected for a six-year term. Two seats are reserved for the largest party or coalition, while one seat for the second largest.

The Uruguayan 'Electoral System' has the following fundamental characteristics: those over 18 are entitled to vote and it is mandatory. Those who fail to vote will have to justify their vote and present a valid reason why they cannot attend on polling day, or pay the corresponding fine. “ *The 'Uruguayan Electoral System' is governed by a system called “simultaneous double voting”. The voter votes for a set of candidates and not for a separate candidate. Each vote is represented by a list placed in*

the ballot box. Candidates on these lists are grouped according to different criteria within the party. Thus, before polling day, parties are required to publicize their lists widely so that voters can evaluate and choose the list of candidates they prefer. This electoral system is also used in Argentina and Honduras ". [98] In Uruguay, its 'Electoral System' is essentially multi-party and candidates representing the different parties are chosen in internal elections and they take place simultaneously throughout the country. These elections are mandatory for political parties, however they are voluntary for other citizens of the country. It is not necessary to be affiliated with a party to vote and the vote is secret. Every five years there are national elections for President, Vice President, Senators and Deputies. The Uruguayan Senate, also called the Upper Chamber, is composed of 30 members plus the Vice President, totaling 31 Senators. The Chamber of Deputies, or Lower Chamber, is made up of 99 members. Both Chambers together make up the General Assembly. Senators and Deputies are also elected directly and secretly. There are also Departmental elections, which are also held every five years, but these elections do not coincide with the year of the aforementioned national elections. Uruguay is divided into 19 Departments and each Department is governed by an Intendant – Governor – and a Departmental Board consisting of 31 members who act as the departmental legislative power. In departmental elections, the Intendants and members of the Departmental Boards are elected, as well as the municipal representatives of each city: the mayor and five councilors. Voting voters must present a single list of their departmental representatives and another list of their preferred municipal candidates. The national executive branch in Uruguay is made up of the President, the Vice President and the Ministers of State. The President is directly elected by secret ballot together with the Vice President. In fact, the Vice President also holds the position of first Senator, President of the General Assembly. In Uruguay, the President cannot be consecutively re-elected.

The 'Electoral System' in Brazil consists of three distinct 'Electoral Systems', namely: proportional elections for the Chamber of Deputies, extending this 'System' to the Legislatives at the state level – Legislative Assembly – and municipal-Municipality –; majority elections with one or two elected to the Federal Senate; and two-round majority elections for the President and other heads of the executive in other spheres of the Brazilian federal political system. Under the terms of art.14 of the Brazilian Federal Constitution of 1988, "suffrage is universal and by direct and secret vote, with equal value for all": a principle to be met in the three electoral systems referred to herein. Voting is mandatory for those over 18 and under 70 and optional for illiterates, over 70 years and over 16 and under 18. With respect to candidacy for any elective office, whether in the Executive Branch - President, Governors or Mayors – that is, in the Legislative – Senators, State Deputies, Federal Deputies, District Deputies or Councilors - party ties are required, and, therefore, independent candidacy is irrelevant. Possibility

of a single consecutive reelection in the Executive Branch; duration of elective terms: 8 years for Senators: the Federal Senate is renewed every 4 years in the proportions of one third in one election and two thirds in the next; and 4 years for other positions; and biennial alternation between municipal elections and federal and state elections. Regarding the 'Electoral System' for defining the result: majority with a second round for the President, Senators, Governors and Mayors – 200 thousand voters or more –; single-turn majority: for Senators and Mayors where there are less than 200,000 voters; and proportional with vote in caption and nominal in an open list: for federal deputies, state deputies and councilors. The calculation is by electronic means.

Chile's “Electoral System” has the following fundamental aspects: there are presidential, parliamentary and municipal elections. There is universal suffrage for men and women over the age of 18, regardless of their ability to read and write. The term of office of President: 4 years. The President is elected by universal suffrage throughout the country by an absolute majority of the valid votes – excludes null and white ones -. If no candidate obtains this majority, a second round between the two most voted candidates is held to define who will be the President of Chile by simple majority. The Chilean Congress is bicameral: Lower Chamber – Chamber of Deputies – and Upper Chamber – Senate –. The country is divided into 60 constituencies for the lower house and 19 constituencies for the Senate. Each electoral district or constituency elects two representatives, that is, 120 Deputies and 38 Senators in total. Deputies will have a 4-year term and 8-year Senators. Half of the Senate is renewed every 4 years. The Chilean Constitution establishes that parliamentary elections will be held in conjunction with presidential elections. There is a legal provision that authorizes the candidacy independently or within a list. The list is made up of up to the candidates by electoral district or senatorial electoral district. There is provision for single-party lists and multiple-party lists.

The “Electoral System of Mexico” is characterized by the presence of universal suffrage. Voting is not mandatory. The President is elected by direct and universal vote – by simple majority – to serve a 6-year term without the possibility of re-election. There is no second round. There is no Vice-President position, therefore, in the event of the President's incapacity, the Congress of the Union, through an electoral college, elects an interim incumbent for the position. In the event of the death, removal or resignation of the President, the position must be assumed by the Secretary of Government until Congress appoints an interim governor. Each of Mexico's 31 states elects a Governor who also serves a 6-year term. The Congress of the Union is composed of the Senate and the Chamber of Deputies (bicameral). The Chamber of the Union has 500 members: 300 are elected by district vote and the remaining 200 by proportional

representation in 5 States of the Union. The mandate of the Deputies lasts for 3 years. Consecutive re-election is prohibited. The Senate has 128 members, elected to exercise the “sexennium”, of which 96 are elected by district vote, corresponding to the 31 States and the Federal District. The remaining 32 are elected by proportional representation at the national level.[99]

In North America, Canada's “Electoral System” also stands out. Canada has a 'Political System' consisting of a representative democracy and a federal system represented by an elected parliament.[100] The leader of the political party with the most elected members in the House of Commons automatically becomes the country's Prime Minister. In Canada, generally, voters must be at least 18 years of age and have Canadian citizenship in order to vote. Two Canadian citizens cannot vote: the official head of the electoral chamber and the deputy chief of the electoral chamber (responsible for administering national elections). The Executive Branch is formed by the Head of State (Queen of Canada), represented by the Governor General; Head of Government: Prime Minister; and the Cabinet of Ministers. With regard to elections, the post of Canadian monarch, Head of State of Canada, is hereditary. The Governor General is appointed by the Prime Minister, officially approved by the Monarch, and serves unlimited terms, but in practice of up to 5 years in duration. After national (legislative) elections, the leader of the party with the most posts in the House of Commons is automatically appointed by the Governor General to the post of Prime Minister. The Legislative Branch has a bicameral system – the House of Commons and the Senate –. The Senate is made up of 105 members, appointed by the Prime Minister, and symbolically approved by the Governor General. Senators serve in their positions until the age of 75 years. The Chamber of Deputies currently has 308 members, elected by the country's citizens, and serving terms of up to 5 years. Furthermore, it must be stressed that the Prime Minister of Canada is held responsible for all actions in the House of Commons. If, for example, the House of Commons disapproves of an important amendment created by the most powerful political party – of which the Prime Minister is leader – or even, if the House of Commons decides for a ' *no confidence'* vote – vote of mistrust – and a majority of the members of the Senate support such a vote, the Prime Minister either renounces his position or asks the Governor General to dissolve the Parliament of Canada to start new elections.

In turn, the “Electoral System” of the European Parliament is replaced by the 'Provisions of European Law' that establish rules common to all Member States and by specific national provisions, which vary from State to State. With regard to common rules, the “Principle of Proportional Representation” stands out, as well as a series of incompatibilities between national and European mandates. By the way, for example, the mandate of Member of the European Parliament is incompatible with the

member of the government of a Member State, member of the Commission, Judge, and other positions that, according to their nature, may negatively influence their actions, or are, would affect their exemptions: in the exercise of the respective positions. With regard to regimes subject to national provisions that are imposed on the "Electoral System of the European Parliament", this translates into a polymorphic electoral system, such as limits on seats for each Member State; delimitation of constituencies, etc. As regards " *candidacies in some Member States, only political parties and political organizations can submit candidacies. In other Member States, candidacies can be presented if they are supported by the necessary number of signatures or voters and, in some cases, it is also necessary to deposit a deposit* ".[101] The right to stand as a candidate to the European Parliament has as the prominent 'Principle' of 'non-discrimination between nationals and non-nationals' and as a consequence of the right to free movement and residence in the European Union, although there are certain conditions to be met established by each Member State. The minimum age to stand for election is 18 years, as stipulated by most Member States.

In continuation, the relevance in this study is given to the European "Electoral Systems" in the following countries: "Germany; Portugal; Spain; Italy; and France".

In Germany its "Electoral System" is based on the following highlights: the Federal Republic of Germany is structured with the Federal State and Parliamentary Democracy. The Basic Law establishes that all state power emanates from the people. The people transmit this power to the Parliaments (Federal and State) for the duration of a mandate. The Federal President is the highest representative of Germany in terms of protocol. In second place is the President of the Bundestag. The representative of the Federal President is the President of the Federal Council, a position held by one of the governors in a one-year rotation. Chancellor's office holds the greatest political power.[102] Electoral processes have two formats: majority and proportional, and they take place every 4 years. Voting is mandatory from the age of 18, but optional from the age of 16. Ballot boxes are not electronic. The mixed German 'Electoral System' is divided into two phases: The first phase is simple majority: the voter votes for his local politician of choice and the one who gets the most votes wins the election. Importantly, Germany is divided into 299 electoral districts. The second phase of this electoral process is proportional. Citizens must vote for a Party – which does not need to be the same as the politician chosen in the first phase –. " *The votes destined for the subtitle go to a closed list of congressmen and are equivalent to the number of congressmen who will occupy the Parliament (Bundestag). The closed list forms a package of congressmen and the first on the list, most of the time, is the one nominated to run for the post of Chancellor. By the*

way, the closed list makes it impossible for the voter to order the politicians, that is, it prevents the elected candidates from being hand-picked by the citizens. Basically, the voter gives his vote to a group of candidates, who cannot be separated from each other, instead of choosing a specific one ".[103]

In Portugal, the "Electoral System" is distinguished by being constituted by a single Chamber: the Assembly of the Republic. Its composition can vary between a minimum of 180 and a maximum of 230 Members. Deputies are elected from lists presented by Parties, or Coalitions of Parties, in each constituency. The conversion of votes into mandates is done according to the proportional representation system and Holdt's highest mean method. [104] Deputies represent the entire country and not just the citizens of the constituency for which they were elected. Its term of office is 4 years, corresponding to this period of one legislature. Voting is personal, direct, in person, secret and universal. As far as the 'Political System' is concerned, the organs of sovereignty are: the President of the Republic, the Assembly of the Republic, the Government and the Courts. The Portuguese State is a semi-presidential unitary Constitutional Republic. The President of the Republic is the Head of State. Its democratic legitimacy that is conferred on it through direct election by Portuguese citizens. The President is elected by the citizens, by direct and universal suffrage, for a 5-year term, and cannot be re-elected for a third consecutive term. Under the terms of the Constitution, "represents the Portuguese Republic", guarantees national independence, the unity of the State, and the regular functioning of the Democratic Institutions" and is the Supreme Commander of the Armed Forces. With regard to the formation of the Portuguese Government, it is formed by the Prime Minister and the Council of Ministers. The Prime Minister coordinates the actions of the other Ministers. The Government conducts the general policy of the country and directs the Public Administration, which carries out State policy. It carries out political, legislative and administrative functions.[105] With regard to voters, those registered in the national census can vote: all Portuguese citizens – over 17 years of age –; Brazilian citizens with a citizen's card or identity card (with status of equal political rights); foreign citizens, nationals of the countries indicated in the topic "Voting Rights Registration – Foreign Cid".

In Spain, the "Electoral System" has as a criterion the proportional vote in a closed list, with vote counting by the D'Hondt system, as well as the optional vote and that there is a majority election for the Senate, City Halls, State Governments and Presidency. There are 350 seats in the Spanish Parliament. There are 176 Deputies for the Party, or a Coalition, to compose the Government. There is a barrier clause that prevents access to the Parliament of Parties that receive less than 3% of the votes. The Government is formed from the benches elected to the Chamber of Deputies. The same applies to the

formation of State and Municipal Governments. If it is not possible to form a majority, new elections will be called. The President of the Government is a Deputy. Deputies are elected from 50 provinces, plus the cities of Ceuta and Melilla, both located on the African shores of the Mediterranean. " *In turn, the Senate is composed of 259 seats, of which 208 are directly elected by the people and 51 nominated by regional legislators and the term is also 4 years. The Senate has a territorial role and 3 Senators are elected per province, out of a total of 208 and another 58 appointed by the autonomous communities. This at the rate of 1 Senator for every million inhabitants of each territory. In all, there are 17 autonomous communities, the largest being Andalusia, Catalonia, the Community of Madrid and the Valencian Community. With regard to voting, voters choose the printed list with their preferred Party representatives, place it inside the envelope and deposit it in the ballot box. Voters only mark candidates' names when they vote for the Senate. He chooses 3 candidates who can belong to a single Party or to different Parties* ".[106] Voting is not mandatory and anyone over 18 may vote. It is possible to vote by mail and not just justify not being able to attend elections. No electronic voting machine is used. There is no second round and therefore no absolute majority of votes is required to govern (half plus one). In turn, the Spanish 'Political System' has as a kind of 'Government System', the 'Parliamentary Monarchy', since its Legislative Power exercises most of the legislative and government responsibility. " *It is a parliamentary system because after the legislative elections the King of Spain must make the proposal of the President of the Government to the Congress of Deputies and if this approves, the elected remains in office as long as he maintains the confidence of the deputies, otherwise he must resign. The King can dissolve the Cortes if there is no uniform criterion of government, and then new elections are called . Spain being a kingdom, the king is also head of state. As a hereditary monarchy, the successor can only be acclaimed when the predecessor dies or when the predecessor renounces the throne. The king is head of state, symbol of its unity and permanence, arbitrates and moderates the regular functioning of democratic institutions, assumes the highest representation of the Spanish State in international relations, especially with the nations of its historical community, and exercises the functions that the Constitution and the laws expressly attribute to it* ".[107]

In Italy the "Electoral System" is based on a mixed proportional and majority 'System'. The *Rosatellum Bis* Law provides for the following distribution of seats in Parliament: 37% of seats designated for single-member colleges with a majority system; 61% of seats assigned to multi-member colleges with proportional system; 2% of the seats allocated for voting by Italians abroad. The 630 electoral seats in the Chamber of Deputies are distributed as follows: 232 in single-member colleges; 386 in small multi-member colleges (about 65 colleges); 12 in the Outer Circumscription. In turn, the number of voting seats in Italy reserved for the Senate is 315, distributed as follows: 116

in single-member colleges; 193 in small multi-member colleges; 6 in the Outer Circumscription. Thus, the 232 candidates with the most votes in the House and the 116 in the Senate will receive their seats directly, even if they obtained only one vote more than their opponents. Electoral colleges are established on a national basis in the Chamber. While the Senate are distributed on a regional basis, as provided for by the Italian Constitution. [108] Every Italian citizen over the age of 18 registered in the electoral register of his *comune* can vote for the Chamber of Deputies. As for the Senate, you have to be 25 years old. Including citizens of other Member States of the European Union. Just register in the electoral register of your Italian municipality. It is important to emphasize that, regardless of the fact that voting is not mandatory in Italy, every Italian citizen is invited to participate in any and all voting that takes place in the country. With regard to the 'Political System' it is a parliamentary republic, which has a head of government; the Prime Minister, appointed by the President; and a Head of State, the President. The Parliament is made up of two Chambers: the Chamber of Deputies and the Senate of the Republic. The country is divided into 20 regions. Of these, five have a special status of autonomy, which allows them to adopt legislation on some issues of a local nature.[109]

In France, the "Electoral System" is also made up of a mixed proportional and majority system. The French Parliament has two Chambers: the National Assembly and the Senate. The Assembly has 577 members, elected for a 5-year term through constituencies. In turn, the Senate has 348 members, of which 328 serve a 6-year term and are elected by the electoral college and 12 are elected by French citizens residing abroad. For elections to the European Parliament and local elections the proportional voting system is valid. The French President is elected by direct vote for a 5-year term and may not serve more than two consecutive terms. There is a forecast for the second round if none of the candidates obtains the majority of valid votes. The French Republic is a representative democracy. Legislative and executive political offices are elected (directly and indirectly) by the French people as well as through their representatives. France elects, at the national level, the Head of State – the President of the Republic – and the legislature – the Parliament of France. " *The organization of the French State is decentralized, since it is a Unitary State: that is, it is formed by a single State, whose power is rooted in only one interstate entity. Its regime is semi-presidential, a system in which the figure of the President of the Republic is chosen in direct elections, but which also has a Prime Minister, appointed by the elected President, from among the Deputies of the Party or of the majority coalition* ".[110] Voting in the "French Electoral System" is not electronic and is optional, and the voter can vote from the age of 18 onwards. To be eligible, you must be a voter and have French nationality or, in the case of municipal and European elections, have the nationality of one of the Member States.

In Asia, the “Electoral Systems” of Japan and China are highlighted in this study. In Japan, the "Electoral System" has exercised its democracy, in view of the following aspects: the Japanese Parliament (Diet) is bicameral: the House of Representatives, with 511 members, 200 of which are elected by the people, its members are elected each 4 years by universal suffrage, and the Chamber of Counselors, with 252 members, all elected by the people, its members are elected every 6 years by universal suffrage, half being renewed every 3 years. The Japanese “Electoral System” combines single-member voting and proportional representation for legislative elections. All citizens over the age of 20 are entitled to vote and to compete in national and local elections held with a secret ballot. Japan has a democratic and multi-party political system with 6 major Political Parties. The Japanese state is currently a constitutional monarchy. The Prime Minister, Head of the Japanese Government is chosen by the Japanese parliament, the Diet. The Prime Minister is the leader of the Majority Party or of one of the Parties linked to the Majority Party. The Prime Minister appoints his Cabinet, and each Cabinet Minister heads one of the Government Ministries. The Cabinet, chaired by the Prime Minister, is responsible for the Executive Branch. “ *The Emperor who is the Monarch, Head of State of Japan. According to the Japanese Constitution of 1947, the Emperor is the symbol of the State and the unity of the people. It does not have any governing powers, its functions being essentially ceremonial* ”.[111]

Furthermore, in China, its “Electoral System” is formed by a hierarchical organization, in which the People's Congress (or People's Congress) of each location is elected by direct vote. From then on, these Congresses assume the role of electing all higher levels up to the National People's Congress (the highest legislative body in the People's Republic of China). Thus, each subdivision of the country has its own People's Congress, which is responsible for the government of the region.[112] The offices of Governor, Mayor, and county, district, county and city leader are elected by their respective People's Congresses. Presidents of People's Courts and Chief Prosecutors of People's Attorneys are elected by local People's Congresses immediately above the county level. The President of China and the National People's Council, consisting of 2980 people. Members of the National People's Congress (CNP) are elected for 5-year terms. Nominations for the National Government are given as follows: the President and Vice President of China, the President (*Chairman*), Vice-President (*Vice - Chairman*) and Secretary General of the Permanent CNP Committee, the President (*Chairman*) of the Central Military Commission and the President of the Supreme People's Court are elected by the National People's Congress. Officially, China is a One-Party Marxist-Leninist Socialist Republic, under the leadership of the Communist Party of China. “ *In theory, any citizen over 18 years of age, regardless of race, religion, ethnicity, gender, occupation, family background, education, property or place of residence. In practice,*

however, any citizen can lose this right if accused – or simply investigated – of "threatening national security".[113]

In view of the espoused in this §10, it must be concluded that the "Contemporary Electoral Systems" in the various sovereign States have as a substitute the popular manifestation in the choice of their rulers, regardless of the species chosen by the collective ethical conscience of each one of them - universal suffrage - and also its exercise, that is, if the 'Electoral System' was based, for example, on a direct election of the people or even an indirect one; if the model for obtaining the electoral result comes from the proportional type; the majority, or even the mixed.[114]

§9 Binary Electoral System

In examining the Systemic Theory - and which also attends to the "Contemporary Electoral System" - it is worth noting that it should be seen: that at the same time it considers that the system translates into *"normatively closed"*, by establishing that only the norm decides the relevance legal, the legal system is *"cognitively open"* insofar as it is stimulated by information from the environments and continuously adapting to the demands of the environment.[115] Thus, if a nation state has its political power based on manifestations of collective ethical consciousness and, therefore, its 'Electoral System' is democratically constituted in order to respect the will of society, the environments around it consequently tend to be developed in order to erect a standardization capable of absorbing the spirit of public duty of the rulers in their performance as their legitimate representatives, according to the purposes of these social environments that involve them.

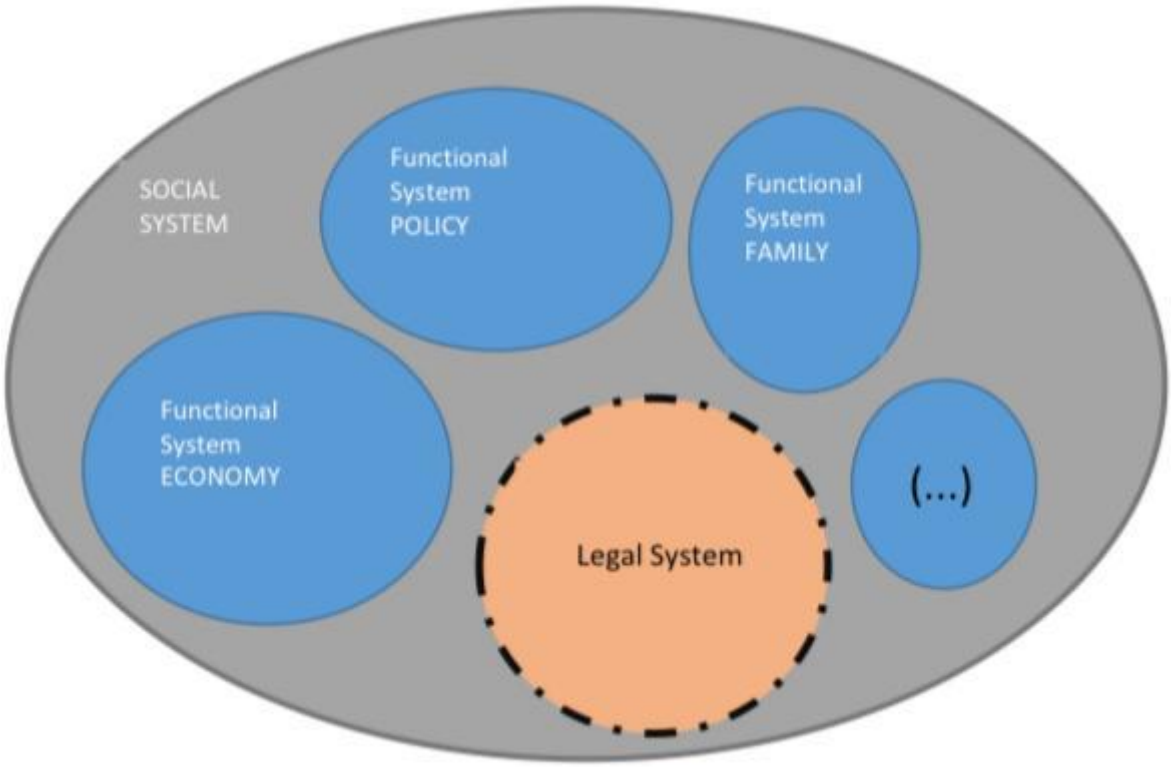
Luhmann, as already pointed out – §2 –, the Systems are called "double contingency of systems" the fact that they operate in a closed normative way and at the same time they operate in an open way cognitively, "in which the asymmetry between the system and their environments force them to reciprocate adaptation and change".

Thus, legal systems present a combination of normative and cognitive dispositions, establishing *conditionalities* for the introduction of environment stimuli, or irritations, into the system.

"In this sense, legal norms, unlike Kelsen's and Durkheim's conceptions, do not derive from a factual legal order or a fundamental norm, but are ' *conditional* programs ' for the introduction of the stimuli (information) of the environments into the system". Unlike living systems, social systems would have instead

of living elements, meanings, thoughts, etc., only communicative elements, communications, which produce other communications, do not exist in environments, but only in the social system (society), as a global communicative system . In this “macro system”, the partial systems, called “functional systems”, appear as environments for each other.

Thus, what are not environments is a system, while subsystems, or partial/functional systems, are considered environments in relation to the others because they are external to these, even though they are part of the macro system (social system). This relationship is schematically presented below, in a very simplified way.



In social systems, the presence of a self-observation mechanism that would bring the system/environment difference into it is fundamental.

In social systems, the presence of a self-observation mechanism that would bring the system/environment difference into it is fundamental. By the way, it is in this context that the “Contemporary Electoral Systems” are developed.

“For Gunther Teubner, (...) to study society as an autopoietic communicative system, it is necessary to make use of a concept of 'autopoiesis' in which

this would not be 'a blind process, as for Maturana, but rather a combination of self-production and self-observation".

Luhmann proposes to replace structural functionalism (or structural maintenance functionalism, which originates from the stimuli of ethnological and social-anthropological studies), with ontological roots and which, in his view, contained a series of limitations, with one consistent with functional equivalences . According to Javier Torres Nafarrate, "equifunctionalism is the concept to designate a method that, in solving problems, develops a special sensitivity to different equivalent solutions".

Together with this change in functionalism, from structural to functional (later called systemic) it improved and adapted Talcott Parsons' *theory of action* , whose works influenced Luhmann's system in one way or another.

In this aspect, the reproduction of Luhmann's text is interesting:

"Thus, the theory of action presents itself more oriented towards the individual as a subject and, in this way, sociology opens up to the possibility of integrating psychic and organic aspects of the one who acts; on the other hand, system theory is used to designate large-scale (macrosocial) realities, in order to preserve its highly abstract character." (our italics).

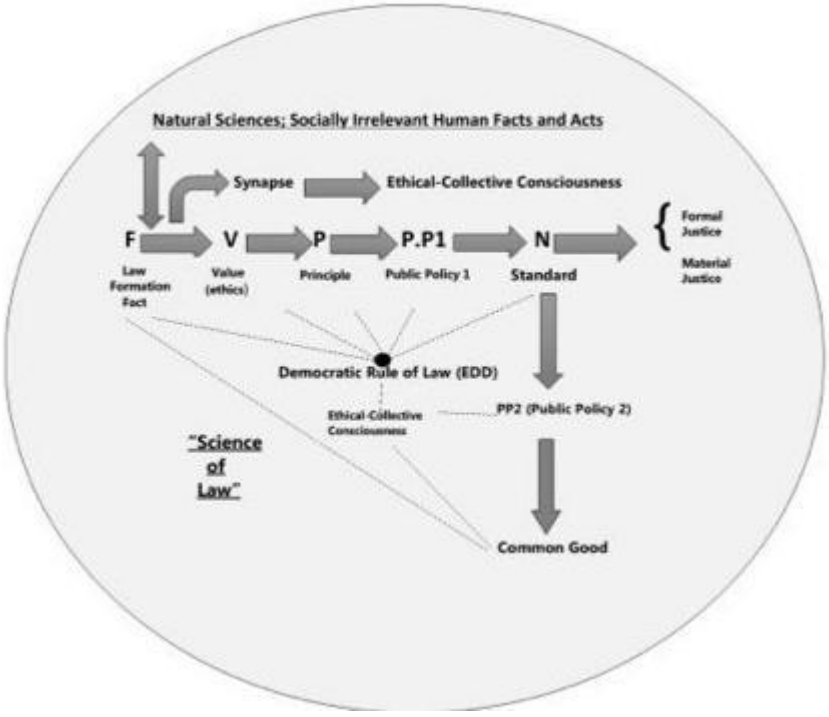
Finally, Luhmann expressly establishes a distancing from interpersonal relationships, or micro relationships, taking as a principle the large scale of system theory, a preponderant factor for not only the theoretical foundation of his theory, but for other themes of contemporary law, such as , incorporating the philosophical basis of 'the enemy's criminal law'.

In the understanding of reality, questions arise that go beyond the mere human vision to reach the valuations and the senses or meanings of the cognitive phenomena that underlie the reason and the sensory of Man, either as a person or as a social being that projects itself in time and in the space. Thus, the sciences try to explain the reasons that justify the concreteness of these cognitive phenomena, but not all of them reach the social phenomenon as a singular object situated in its own trajectory of visible reach, observing the external conditions of communication; its content established in the general repercussion; of Systems or Dimensions that are designed to meet a common end; and in the formatting of a structure capable of producing effects that alter the reality not only of a being, but of a broad or reduced social context, depending on the context of its reference universe. Therefore, each System, including the "Electoral System", according to the "System Theory", brings within itself a range of by-products or sub-

systems and that these have their own autonomy, but are interconnected by a communication path external meeting or promoting the reach desired by the binding System. In this metaphysical system, as well as in each sub-system, it is good to try to describe the meaning and rules of its foundation; the causes and conditions of its own existence; the principles of their degree of commitment to the general common interest; its capacity for reconstruction, in case of crisis (autopoiesis), deviation of purpose or decay of its assumptions of formation or structure; the challenges to be overcome due to time or for any other reason make it believe in its overcoming due to external or even internal requirements. Finally, confirming the need for its existence as a phenomenon to be observed, understood and molded to the reality around it.

Faced with this metaphysical universe, which is too extensive to be examined in this study, there is an opportunity for a System, in particular, which has as its primacy the dimensions or sub-systems: factual, social-ethical, principiological, political and normative, such as the concrete purpose of serving the *common good* of a given society, in the time and space suitable for its examination.[116] This System is called Law – the Electoral Law is highlighted in this study – and it has original implications for the way of life of people, or citizens, as they live in a common environment: in the social environment.[117] In this desideratum, the Law to meet its legitimacy is formed by dimensions or subsystems that are interconnected by the collective ethical consciousness, constituting between them its constant and dynamic link. , that is, the fact without social repercussion, passing through the fact with collective ethical-social density (legal fact: for example, the need to change the electoral law) and reaching its apex in the fact, with collective ethical-social intensity (fact legal: the validity of a new electoral legislation), and following the path of legitimation by the fundamental ethical concepts of society, going beyond the principles that enshrine these values, in addition to the role of public policy as a subsystem that selects the principles and values that historical moment have their social importance, according to the interest, opportunity and convenience of this subsystem, to constitute the norm, another subsystem and which has material justice in its content, comprising the principles and social values that are implicitly focused on the materialization of the collective social ethical will, as well as formal justice that consists in the materialization of the State's will that explicitly exposes the regulation of the conduct of the social man.[118] Finally, in order to complement this cycle guided by the collective ethical conscience, the public policy subsystem comes once again, but with a different perspective, in which it is fostered by the planning of social programs and legitimate execution to be carried out by the government or by the dominant legitimate power, according to the dictates of the norm, with the transparent purpose of serving the common good of the collectivity, in time and space. Therefore, the Law in this context, as a System capable of producing effects and which has in the ethical-social valuation of

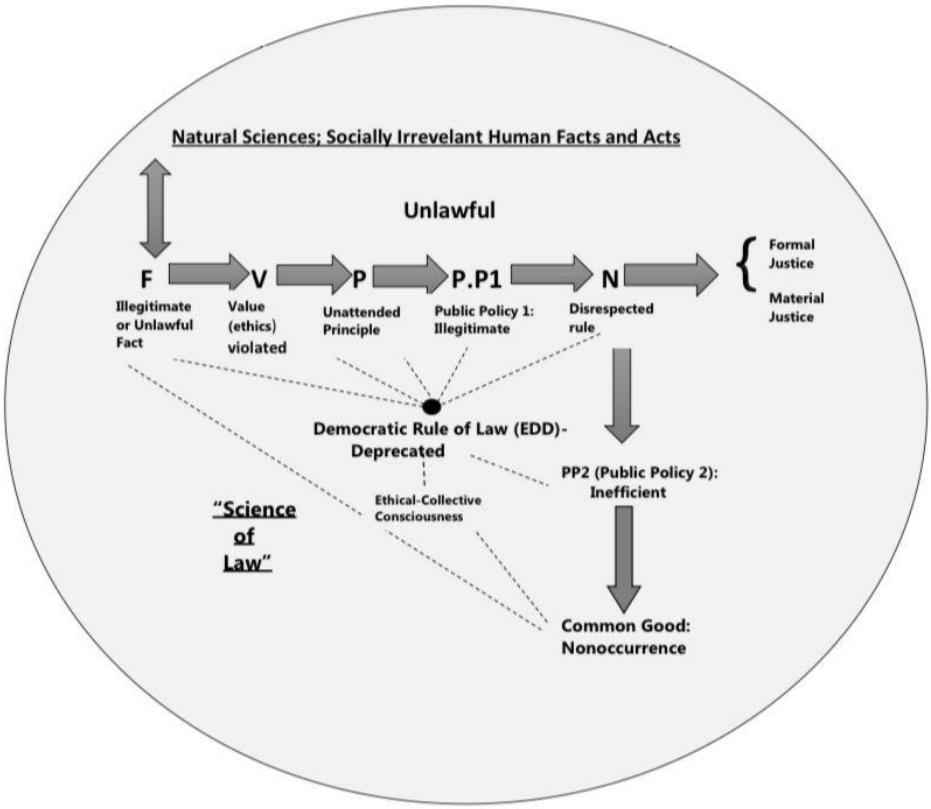
the fact (legal fact) its beginning and the common good of society its greatest purpose. Furthermore, it is necessary to formulate, in light of the above, a geometric figure below that well exposes this understanding capable of guiding the interpreter of Law as to its dynamics.[119] Furthermore, it should be noted that the Law, as a social system, also has its core always focused on meeting the "Fundamental Principles" (*vg* , art.9.3, of the Spanish Constitution; art.1 of the Brazilian Federal Constitution /1988 ; art.20 of the German Constitution; art. 33 of the Belgian Constitution; art.1 of the French Constitution; art.1 of the Greek Constitution; art.2 of the Italian Constitution; art.2 of the Portuguese Constitution, etc.) which constitute the true Petria Clause of the substrate of the ethical, political, and normative formation of the Democratic State of Law and of the Social Man, as visualized:



F- Legal Fact; V- Value (ethics); P- Principle; P.P1 (Public Policy 1);N - Standard; Formal Justice; Material Justice; P.P2 (Public Policy 2); Very common; *Synapse* = Collective Ethical Awareness; Democratic Rule of Law; Natural Sciences; Socially Irrelevant Human Facts.

In a neutral sense, the Natural Sciences and socially irrelevant facts stand out that may be admitted to the dynamic social constructive cycle of Law, if the collective ethical conscience gives due importance to their meanings and assimilates

them as being not only empirically inspired, but with an enveloping ethical-collective density (legal fact). Finally, the Binary System, which translates into the System that contradicts the Law in its illicit and illegitimate manifestations. The illicit, as it constitutes a fact that contradicts the norm in its Formal content and the illegitimate, in turn, contradicts Material Justice and which will be highlighted below, based on the analysis of the present geometric figure of the BINARY SYSTEM:



F- Illegitimate or Unlawful Fact; V- Value (ethics) violated;P- Unattended Principle; P.P1 (Public Policy 1: Illegitimate); N - Disrespected rule; Formal Justice; Material Justice; P.P2 (Public Policy 2: Inefficient); Common Good: Non-occurrence; Synapse = Ethical-Collective Consciousness; Democratic Rule of Law (EDD) - Deprecated;12- Natural Sciences; Socially Irrelevant Human Facts and Acts; Science of law.

In the binary trajectory of the fact, it translates into the inversion of the fact that was legal and that became illicit or illegitimate (1), such as an authoritarian State, that is, its government has no social legitimacy, and thus its ' Electoral System', if it exists, is inadequate to the democratic parameters inserted by the international collective ethical conscience, causing an injury to one of the subsystems of Law and which must be recomposed by the democratic order, that is, by the Institutions that have constitutional

competence to do so or even in the face of the disapproval of the collective social ethical conscience: it imposes on the State or the constituted governmental power the reconstruction – autopoiesis – of the social values and principles for having been affected. As far as axiology (2) is concerned, this is understood in the valuation of the moral concepts that society preserves, as it dignifies the social man and which changes at all times, even because the dynamics of reality itself, thus, imposes itself. Therefore, when by illegal or illegitimate action of any of its members affects this legal subsystem, it is appropriate to submit it to a resocialization through a social defense mechanism capable of producing effects that meet not only the ethical and social environment, but that it does not violate human dignity.

In continuation, with reference to the binary subsystem of the illegitimacy of public policies (4 and 8) it is an injury against the Democratic State of Law itself, as the collective ethical conscience (10) was violated in its greatest projection by which everyone should be guided : in the loyalty and honesty of those who represent or are the representatives of the Nation. The absence of these requirements makes a State unable to respond to the concerns of society and, accordingly, the means of communication between the various legal subsystems mentioned above are obstructed, converging to a paralysis, making a State static, with the distancing of those who temporarily own the state political power of other members of society who have unlimited social power and which reflect the very reason for the existence of Law (13).

Furthermore, when examining the norm, including electoral ones, as well as being a subsystem of Law, its core and its components of Formal Justice and Material Justice are highlighted. Therefore, in the occurrence of vice (5), in any of these components, in a binary perspective, there is illegality in Formal Justice (6) or also illegitimacy in Material Justice (7). The illegality that consists of an injury to the Formal Justice is translated into the occurrence of the phenomenon of the antithesis of the will of the State, materialized in the preparation of the current normative order and in the dogmatics of the Law to its understanding, that is, distorting what the norm advocates regarding its interpretation, with the adequacy of the legal fact considered vitiated – *eg* , legislation imposed by a despotic government that assumed the political power of the State –. In turn, the illegitimacy of Material Justice is perfected in the absence of an echo between the legal subsystems, the values (axiology) and the principles (3) that society believes are vital for the formation of Law, with the action of those who attempt against these meanings inherent in the collective ethical consciousness.

Finally, the Binary System of Law to be understood must start from the premise of the emergence of an illicit or illegitimate fact that was considered relevant to

the collective ethical conscience and also to the State, such as the enthronement of an illegitimate norm in which precept on the occurrence of the annihilation of electoral secrecy at the time of the respective suffrage, in direct contrast with the superior Principles arising from the 'Democratic Rule of Law' (11), as well as with the end of the 'Legal System' implemented, configuring the risk of order social for not serving the common good (9) of society or even in its improvement.

§10 Criticism of the Social Ethical System of the Electoral System

In examining the "Communicating Legal System" of a given State, the important role of social communication in detaching the functions of each subsystem of its composition and, therefore, its opening to the environments that surround its Universe, such as the economic, religious, and international relations, with other States, providing a broad vision of its social context and the time in which it is inserted, giving it a dynamic perspective by which it guides the path to be followed, according to the finalism established to serve the common good of its society.

However, there are criticisms of this thought, as it is believed that the application of the Law is circumscribed in the Standard and its power to control social conduct, regardless of its legitimacy through collective ethical awareness. The Norm represents the political will of the State and, therefore, it has the power to say what the Nation should have as a horizon regarding developments: social, economic, political, legal, etc. In turn, with regard to the “Communicating Legal System”, according to this criticism, it is related to other fields of action that are the object of other Sciences that do not fit into the 'Legal System'. Thus, the subsystems of «legal facts, values, principles and common good» belong to other Social Sciences, such as, for example, Sociology and Anthropology; with regard to the subsystems of «public policy on training and public policy on implementation» belong to Political Sciences. Thus, these Sciences have in common a strong inclination for the study of empirical issues and the Law, however, it must have in its genesis, the concrete power to act in the respective State by legislating without external influence, and always concentrated according to the will of its installed government. The Legal or Normative System, according to this perspective, becomes circumscribed to its static environment and without constant communication with other Sciences: from its current normative order, unless there is a need for its transformation. In this case, an occasional window opens for the influence of other Sciences, which has a short term, as it closes again when creating a cocoon of protection, in order to protect the integrity of its normative system.

By agreement, it is in this limited environment, that the understanding of contemporary Law should be distanced, according to a dominant social ethical view of Law, when translating into the construction of a "Communicating Legal System" - and in the particular of this present study also being applied to "State Election Systems" - as being able to have support in the collective ethical consciousness that erects a paradigm of 'Democratic State' to be instituted, according to its already highlighted subsystems involved, constituting, finally, an environment of constant legitimacy and, that it is able to emphasize an autopoiesis or reconstruction, in the event that any subsystem is injured by any external factor: without the “Legal System” being annihilated. [120]

The State based on an ethical-social ideal, when considering its creation, and in view of the reality in which it lives, stems from means – with democratic will – capable of pursuing a trend of advancement in its various areas of action. The legal technique used to achieve this objective varies between the different States and its implementation will depend on the political will and the legitimacy of its proposals to be obtained by the population. Thus, we do not believe in the dissociation between the theological, moral or political thought of the State with positivism implemented directly or indirectly by that group or individual who holds power. Isolating the legal system from their social life is to make it distant from their ethical conscience. The model chosen in the formation of the State Institution creates a conception of government that intends to be exercised and the preservation of democratic principles will depend on the emergence of social phenomena that will influence the subsequent political decisions of its leaders. By the way, the question is: but what technique would have the power to make compatible, *eg* , between the ethical-social thought and the will of the leaders? The answer to this question comes from discovering the essential values that society considers unavoidable to be discussed. If the common effort is to achieve social " *welfare* ", it is believed in the undeniable submission of the individual will to the benefit of the collective will. However, the program to be instituted in favor of society must have in its context the ethical sense in order not to underestimate the subjective universe of the human being. Cooperation between the various organized sectors of society – « *equity* » – will provide the essential information for instilling a program that makes politically viable the construction of a legal system that meets the collective will and, therefore, requires the importance of the commitment of each person per itself, taking into account the single goal: " *from individual performance aimed at common development* ". The task is to achieve social stability and individual sacrifice is natural, but there are limits to the rule of collective will. From the investigation of the behavior pattern of individuals, there will be the selection of social actions that avoid producing effects contrary to the fundamental values rooted in the community itself. The social function is to value the

facts and adapt them to the solidary behavior of people, providing the State with « *efficiency* » in the execution of its political decisions. On the other hand, the social life experiment creates an interdependence between people in order to make each fact a matter of general consequences and the abstraction of the scope of this political decision will depend on the consideration of all involved. Faced with this articulated social phenomenon, it generates the fundamental political decision for the creation of the State. In States where they opted to concentrate this political decision in a single document: the written Constitution is a reflection of the political decision of those who represent the will of a people at a given historical moment. From then onwards, ethical-social values are impregnated throughout the context of the fundamental Charter, enabling each citizen to interpret the exercise of their solidary participation. As a matter of fact, each State lives with its social reality and its legal orientation plan – ideal model – is the substitute for the permanent valuation of the facts that are presented and the emergence of these ethical values comprises the result of this valuation. We then have the configuration of a legal asset protected by the State, containing in the normative context the corresponding coercibility: valuing the ethical-social interest to the individual right, this one with naturalistic causal connection. The seat of this approach extends to any established legal panorama, considering the principle of " *rationality of legal orders* " established by the logic and harmony of normative standards and adopting the teleological sense of law: without a *jusnaturalist* basis the criteria of normative option of the constituent or of the legislator would become illegitimate, making the State's objectives in meeting the common good ineffective. [121] Therefore, regardless of the « *theory of imputation* » - " *the State as the "convergence center" of all acts qualified as state and with independent reflection of the person who issued it in view of its abstractly considered legal autonomy* " - emphasis is given , however, the result of normative regulation and not the natural or moral source that emanated it. If, for example, the legislative act belongs to the Government Institution – a moral source – or a person – a natural source – realizing the governmental power, it doesn't matter, the legal order must impose « *rationality* » in its actions. The genesis of the State focuses on its particular reason for being: if we think that the State is an end in itself and the individual is in the collectivity to exclusively serve the State and his subordination is therefore unlimited, he understands, after all, its foundation in a reason subjugated to " *pan-statism* ", however, on the contrary, recalculating the determination of the State to act not to serve itself, but to meet the needs of the person in society with the sole purpose of making them happy, we believe that we aim at an ethical sense. embodied in this particular purpose. [122] The present sociological meaning of the State becomes the driving force for conducting its performance in the directive plan of " *efficiency* ". In turn, in the legal sphere, it consists of a social institution that is

committed to imposing standards of conduct and regulating interests in favor of " *efficiency* " - technique of legal enforcement - intended for the well-being of the collective entity: without, however, being able to neglect at any time of the protection of individual rights. As a matter of fact, these fields of scientific action of the State are interpenetrated all the time, flowing in a single achievement of meeting the « *common good* ». Thus, the norms formulated by the State have their informational support fundamentally at the sociological, historical and political levels, and when studying social facts, a perspective of legal improvement is recommended, based on this information, in view of the natural dynamics of political society. Furthermore, in disseminating this interpretation, the meaning of " *common good* " must be taken into account . In this way, this terminology is already being discussed, because according to Dabin, "in the *case of the State, the expression public good is preferable to the common good, because it needs the common good at stake to be the public common good* ".[123] However, the expression " *common good* " has been popularized as a synonym for the expression " *public good* ", giving value only to its definition. In conceptualizing it, Bigne de Villeneuve considers that " *the public good is the synthesis of everything that legitimate private interests carry, reconcilable between them and with the primordial necessity of the permanent and well-ordered life of a political community* ".[124] In the same approach, Viktor Cathrein states that the " *common good* " is the " *complex of indispensable conditions for all members of the State – within the limits of the possible – to freely and spontaneously attain their happiness on earth* ".[125] The ethical-social interest present in these concepts imposes a guideline of the normative content issued by the government and, therefore, achieving social satisfaction becomes mandatory to meet human interests, especially those that involve the preservation of human dignity.

When examining the content of legal rules, including electoral rules, whether they are substantial or instrumental, their projection for the future must be determined, that is, whether they regulate facts that will have permanent repercussions and therefore have an unlimited period of validity, or conversely if they are changeable with repercussion finite, reaching, for example, conducts that in certain circumstances or circumstances have value, but when these situations are surpassed, the norms cease to be operative: *eg* , norms that regulate facts that occurred during a public calamity. In constitutional norms in general, they have permanent repercussions - except for those constitutional provisions of a transitory nature - even because almost all of them are material norms of an organic or programmatic nature and their essential functions, after all, range from the creation of institutions to promoting actions of global development and lasting demand. These constitutional norms include those that regulate the essential rights of human beings and in this context have in their essence a strong ethical-social

appeal, rigorously influencing the permanent requirement for their care. By the way, it is unacceptable to admit a constitutional rule of this nature to have only limited effect or even to include it in that kind of rule that has, before being promulgated, the character of *indifference* , because " *the rules founded on changing circumstances are not only alien to the permanent nature of things as they are also shown to be indifferent to any reasons of justice, of ethical demands* ".[126] This principle of inexhaustible validity is covered by the constitutional norms that regulate fundamental rights and individual guarantees, including the right of democratic citizens to choose their rulers through a transparent and legitimate suffrage and, above all, taking into account that they have the maximum degree of ethical-social requirement, giving it the stony character regarding the alteration of its dictates.

CHAPTER V - RECOMPOSITION OF THE ELECTORAL SYSTEM

§11 Ethical Valuation Catalog

By adducing the understanding of this theme, it comes from an ideal of normative conformation and which could well be developed from the following icon of elements of conviction:

> [« *a- the norm be considered as a means of «efficiency» of the State, but containing a pattern of «rational» coercion; b- the norm is not only the result of the influx of natural, sociological, ethical and political concepts, but also these concepts will be valued at the time of their effective imposition; c- the constitutional norms that regulate the "fundamental individual rights" of the human being will always have the character of permanent repercussion as they contain the maximum degree of ethical-social demand; d- the demands of the State's normative power being limited by the fulfillment of fundamental human rights; e - the norms that govern the fundamental rights of the person can only be violated in exceptional cases and even then if there is a preponderant justification; f- the constitutional norm that regulates in particular the "right to privacy" - such as the one that defends the voter's right to the secrecy of the vote - has an evaluative scope of infinite validity, full imposition and by consistent ethical resistance to any change; and g- the action plan of the material content of the constitutional provision consists in the exercise of the «rule of law* »»] .

Believing, however, in the departure from normative parameters for the influx of natural, ethical, social and political values, justifying a " *positivist perspective that understands the law as an authoritative fact, and not as a moral propositional enterprise, as it loses any normative capacity to to check the fulfillment of the legality ideal by the legal system* " is to deprive the norm of its intertwining with its substantial finalism.[127] The State's " *efficiency* " plan is the source of information about the implementation of its action and the norm consists precisely in this social action formalized in the legal sphere. The technique of legal enforcement – " *efficiency* " – promoted by the State has a clear purpose of creating an environment of social well-being and for that, through the available means of information, it will be

able to achieve this objective. Thus, the elements that make up the content of this information are found in the levels of values closest to the individual in society. Therefore, the norm is the result of the conscious will of the human being (natural value), in order to satisfy the " *common good* " (ethical-social value) and in the exercise of the " *rule of law* " (political value). Regarding, in turn, the argument that these values suppress the capacity of the normative authority to fulfill the ideal of legality gives a strictly formal evaluative understanding without taking into account the substance of the norms. Thus, the general understanding follows: the standard provides for the description of an imperative conduct that everyone must comply with, and also frequently contains a sanction to be applied in the event of not being met in its determination. If we think that the norm is expressed in strictly legal concepts and that the internal morality of the Law converges in a limited perspective in its formal elements, such as: if it is public, prospective and not contradictory to each other, then we have a restricted view of its material projection at the time of its formulation. [128] If we note, however, that the norm has a living and diffuse essence, built to meet the essential values of the human person, on a higher plane therefore to a vision profiled in the pre-constituted scientific construction of Law and therefore serving as the instrument formalism in its maximum existence value, it is good to believe that different perspectives are being evaluated. In this sense, the valuation of the norm is shown to be necessary in both fields of its existence, so as not to relegate any of them to a lower level. Thus, the norm has to be interpreted universally without thinking about limiting restrictions on the existential plane. The conjugation of substantial and formal vectors can coexist in a single plane of understanding the reason for the existence of the norm in its multiple aspects. In the theoretical examination, *eg* , the following assertion is given: the norm is public and its power comes from coercibility (formal plan), however, at the same time, its imposition will only have material validity if it is legitimate (political and ethical-social – substantial plan –). After all, the reach of this conclusion comes from the continuous observation of the norm in the two fields mentioned, through which they interpenetrate in order to meet Institutional Justice «JI

The State, in the reading of socially relevant facts, has constantly imposed abstract, generic and coercive ethical-social measures to control individual freedom on the premise of sustaining public order, and therefore, with the aim of preserving the well-being of the community. The intention is to create a social environment conducive to the effectiveness of the « *right to object* » to the unfair or unethical fact manifested by the person in the performance of his « *autonomy of will* ». The illegitimate action of the person in his relationship with third parties or with the State itself is subjugated by social control and, in the formulation of a concrete

action norm, presupposes a solidary society imbued with the primary purpose of removing from the politically organized environment those who act in disagreement with the substantial values rooted in the environment in which they live. However, in a demonstration of social maladjustment, the phenomenon of " *violence* " has its most visible face. Thus, there are various forms of " *violence* " - *eg* , those of diffuse origin: moral or ethical violence, institutional, economic or political, in the family environment, sexual violence, urban or rural - creating a sphere of intimidation to the social order finally promoting an ethical imbalance in the legitimate actions of the State. The attack on ethical-social thought that is comprehensive in the community reflects the greater or lesser degree of repression instituted in the coercive measure implemented by the State with the intention of abstractly preventing the occurrence of this social phenomenon of universal scope. The growing criminalization of conduct, *eg* electoral offenses, reflects the realization of this reality and the greater distribution of criminal canons versed in limiting the freedom of the person exposes this trend. This multiplicity of mismatched behaviors gives rise to the formation of a veritable « *labyrinth* » that triggers the construction of a complex system of legal norms implying a constant valuation of the interpreter to conflicting values of an individual-subjective and ethical-social nature. Thus, the « *principle of proportionality* » in the graduation of sanctions becomes a necessary vector at the mercy of the legislator in the formulation of norms that reach a point of balance in the protection of the aforementioned values. In parallel, the impulse to violence builds a legal framework that tries to accompany it in its progress, but suffers from the slow action of the State in carrying out an ethical-social policy of prevention and awareness of the community in moving away from the practice of crimes. Thus, it is not enough to repress with the formulation of stricter norms regarding the increase of penalties addressed to those who practiced an unlawful act to reduce " *violence* ", with the objective that they move away from illegality: " *special or individual prevention* " - and that it can also serve as an example by intimidating other people, if they come to think of following this course based on the ethical disvalue of conduct - " *general prevention* " -, but it is up to the State to also develop adequate public policies obliterating the achievement of the unethical fact itself: find the principle of " *ethical prevention* " is the best argument regardless of the exclusive types of technical-legal prevention mentioned. Several known factors justify the widespread violence, *eg* , the enormous inequality in the distribution of income among people in the community, the disorganization of the State in the economic, political and/or social spheres, etc., however, the absence of an « *ethical conscience* » in the respective society puts the very power of the State at risk. The concern is to support the ethical values that sustain the State in its " *efficiency* " plan , and as a corollary of the influence of these values in the legal-

constitutional order. In any case, it is to give a propelling census of indignation to the generalized " *violence* " inscribed in unethical factors that contaminate the community where it triggers an environment of disorder and fosters the State's vulnerability in its social action. Thus, the purpose is to elevate the ethical-social concept of a fact by considering it the main focus in the valuation of the legislator when he decides to describe illicit conduct of all kinds, including that which prevents the full exercise of democracy through transparent and for the choices of the rulers of a sovereign state. The violence treated after all is illegitimate violence and unethical substrate to differ from that which " *substantially is synonymous with force insofar as the imposition of a legitimate coercibility in the defense of a legally protected right* ". [129] By the way, the justification of the sanction according to Günther Jakobs' assertion consists of a " *cohesive factor of the political-social system due to its capacity to restore collective trust shaken by transgressions, the stability of the order and, therefore, to renew the fidelity of citizens with regard to institutions* ".[130] After all, what matters is the social pacification of coexisting perfectly with the macro brave and cosmic idea of " *ethical prevention"* : anticipating the occurrence of the unethical illicit fact and, consequently, establishing a process of legitimate and general awareness of the community by spreading the positive political message of the importance of non-violence.

In order to seek a paradigm of a pyramid structure of positive natural and ethical values from the perspectives: normative and socio-political, we advocate the following pattern of substantial valuation:

> [« *«level 1» values - those referring to natural values essential to the personality or positive ethical values of greater magnitude (essentially those belonging to the main dimensions of personality: «right to a «dignified life», freedom of conscience and autonomy of the will, eg, the exercise of the right to free electoral voting»): these values have the characteristic of subjective natural non-submission and a comprehensive ethical-social concept, regarding the protection of the fundamental rights of the human being; those of "level 2": comprise the values that have in their platform of action, a limitation of ethical-social requirement erga omnes, such as those of resolvable property, joint property or restricted freedom; and «level 3»: diffuse ethical-social values or constant external natural influence, such as those related to the environment and natural dependence: organic, individual and unlimited - these values have the character of natural universality*

of dependence of the human being and that no one individually will be able to prevent its access – "].

The above intention of establishing an ethical-social and natural gradation in a division of levels was to justify the importance that each value has for the human being, based on the concept of " *dignified life* ", a requirement for which it is addressed *erga omnes* . At « *level 1* », the human being's requirement to be cared for by other people is absolute, because the justification to the person's essence is in its own dimensions. In « *level 2* » values, individuals share the requirements in the case of joint ownership, but each has its particular right recognized; the requirement to respect their property right, with respect to third parties, has a fixed term of validity or condition to be satisfied, characteristic of resolvable property; or their freedom to act is limited by the moral and social circumstances surrounding their right. And finally, at " *level 3* " the diffuse rights that belong to everyone and which therefore consist of an external dependence on natural goods whereby the ethical-social requirement is reciprocal among human beings.

Given this scale of values, it is clear that the Standard should have at its core a material justice aimed at the concerns of society, fostering security and capable of transmitting a result of a process of continuous legitimacy and exercising its role as an instrument of efficiency from the consolidation of lasting social peace. It is with this feeling that the valuation of legal protection becomes latent with the « *influx of natural, ethical and political values* » essential in the construction and application of norms by the State, in addition to the ethical-social preventive control of « *violence* ».

After all, the " *violence* " illegitimate practiced against any of the " *level of values* " stressed should be repulsed by the state seeking to safeguard the fundamental natural rights and social-ethical human being. The State in the social control of " *violence* " in order to be " *efficient* " (technique of legal enforcement) must understand the natural, moral and social reasons that involve the person in order to build and apply norms appropriate to the social context capable of ensuring the « *dignified life* » recognized by all, whether collectively or even individually.

§12 Perspectives of the Contemporary Electoral System

The human personality manifests itself in different ways, such as the freedom to act, feel or even exercise citizenship in an egalitarian way. The positive law in a democratic State preserves as one of its dictates the legal equality of citizens, since it considers: " *all are equal before the law* ". Thus, regardless of the individuality of the

natural person as to their qualities, race, political or religious convictions, their origin or social class, the social dignity of each citizen has its equality guaranteed by the State. The social justice of the new times, in turn, is concerned with the equality of opportunities that each citizen must have to achieve their personal achievements. It is up to the State to implement social actions capable of offering the means to the citizen in being able to build a « *dignified life* ».[131] The structure of institutions should be geared towards serving the entire community without distinction and the reason is to meet « *social satisfaction* » as a prerequisite for earning the State its highest degree of *efficiency* . If for many there is a difficulty in obtaining goods and for others not, thus creating a social injustice, the State has the duty to promote actions capable of reducing social differences and bringing the less favored layers closer to those that the State has given more. attention, or that they made better use of the opportunities offered. Thus, « *social equality* » becomes an imposition given to public policies and the balance of the equitable distribution of wealth comprising one of the aspects of « *social justice* ». On the other hand, " *equality* ", also as an immanent principle of a " *Democratic State of Law* ", may also have several implications, such as in the differentiation between legal equality and natural or naturalistic equality; that this principle constitutes one of the options of the material Constitution, thus prohibiting any privilege or discrimination (the negative sense of the expression) [132] ;in a procedural view by assuring the parties involved the equal treatment of their postulates; or even when this principle has to be confronted with certain legal imperatives.[133] .

The enthronement of the principle of " *legal equality* " in the legal system is generally found in the catalog of the fundamental rights of the person, in the various existing Constitutions, but its optimization focuses on the development of the right to individual freedom, in a proportionality distribution of advantages or burdens - prevailing justice - limiting only what is necessary to safeguard the freedoms of others. It is by embracing the idea of equal treatment, with the distribution of benefits or burdens that the rules are evaluated as fair or unfair. If *vg* , a certain norm (A) benefits a certain social class or race (B) to the detriment of other classes or races, it becomes an unequal distribution, if we take into account the parameters of a social justice of humanitarian genesis. However, if we take into account that this prevailing norm (A) imposed by the majority or by those who hold power, being advocated by discrimination, it is our responsibility to accept it, as to its treatment, as being impartial, in view of of the political option exercised by the citizens of a given society, even though it may be unjust and capable of considerably affecting the core of man's personality right, which is his dignity. Thus, the importance of this principle is to ensure

the rules that regulate fundamental rights, making them " *rocky* " so that the other rules included in the legal system do not manifest themselves as materially unjust or ethically unequal in their content. [134] The principle of equality and justice are intertwined when the issue in question reflects on the impartial distribution of goods, seeking to inculcate in the State, through its norms, its sense of " *efficiency* ". In the regulation of the behavior of people in society by the State through the legislative process, it is urgent to build a proportional system of values that has the primacy of identifying the egalitarian rules of distribution. As a matter of fact, the obstruction of justice is corrected over time, but the principle of " *equality* " accepted by the State in its legal system reflects the benefits that will be expressed in " *social satisfaction* " and by converging converging with the security of individual rights. The inequality of the norm is not to be confused with the normative differences that have exceptional motivation and a non-discriminatory nature, given that it contains a reasonable justification, by urging a relationship of proportionality to the intended purpose.

Furthermore, material freedoms in the Constitutions presuppose a common objective of equalizing social conditions, an objective to be achieved not only through the enthronement of norms, but also through the application of policies or programs of state action. [135] By the way, in this context of material freedoms it also includes the equality of citizens, regardless of social class, political option, religion, ethnicity, etc., when voting, with autonomy of will, in any state or political election even if it comes to participate in some democratically instituted candidacy.

Morality, in turn, comprises the set of immaterial values inherent to human life and it is up to the State to protect them. Among the dictates of conscience, Man manifests himself through this moral principle: indicating his profile and qualifying the distinction concerning other living beings in the Universe. The breadth of the human being is made up of a logic capable of surpassing their actions, making up, in their most intimate degree of feeling, their greater or lesser magnitude to be valued: examination of conduct sometimes escapes the Law, but reflects in the ethical context the respect that each person should deserve. The legal and moral norms have clear differences in structure, but both coexist, since the legal norms have their legitimacy in the " *moral principle* ". Even in countries where societies have a religious pluralism, the established legal order must coexist with these various social manifestations as long as they influence the formation of a moral standard accepted by all. Although moral norms are not codified as they are, legal norms have a corresponding sanction in common. In morality, the sanction comes from the ethical judgment: either from the person who, when performing an immoral act, feels remorse

or from the people around him who repudiate his act. In turn, in legal norms the sanction is written - or according to customs - and addressed to anyone who disrespects its ethical content. The justice of the moral norm is addressed to the one who finds himself in the dilemma and the people around him, however the norms of justice in the Law and its decisions have immediate general effect in view of its wide dissemination. In the " *moral principle* " the attributes of each person are evaluated by the society to which they belong and thus that human being becomes sufficiently prosperous, with an evaluation capable of making him/her a person considered to be of integrity. Thus, honor and reputation are examples to be identified by the principle of morality and which are at the core of human personality. In case the State exceeds the limits of the application of the law, making its action against the person abusive, it will deserve the greatest repairs both at a material level, through indemnity, and at a moral level, thus repaying, if possible, the closer to the equivalent of the degree of moral damage suffered by the person. On the other hand, the standard in your information center should contain a high ethical content and morality is a principle to be contemplated in the manifestations of your will. The State's willingness to maintain balanced and efficient control over the actions of each member of the collective entity comes from its ethical sense that guides its political decisions, resulting in respect for human dignity, which the social order gravitates to. Morality assumes its role as a fundamental right addressed to everyone without distinction and in this particular of an inalienable (inalienable and inalienable) and imprescriptible nature. Thus, the restriction of the person's freedom of expression - such as the exercise of freedom to vote - comprises a violent action and incapable of producing as a result an expression of legality (" *efficiency* ") subject to valuation or even benefit that may be intended. .

Finally, it is concluded that not only in the introduction of the norm in the legal system, but also in its application, the ethical principle should govern the contemporary actions of the State, protecting the essential rights to the personality inherent to human dignity.

TITLE III - CONCLUDING CONSIDERATIONS

The person differs from other beings in the universe because he is a being able to demonstrate his sensitivity and because he evolves from his birth, making his uniqueness in an original way. It is with caution that its origin must be unveiled, but its *eg* right , life, conscience, morals, image and freedom must be preserved, guaranteeing its personality. These determining factors for the preservation of the human being that the Law is concerned at every moment to regulate the experiences lived by the person in their transformations arising from the circumstances of time and space, therefore it is up to Man to know how to interpret this volubility: reducing to thought, " *Homo sum , et nihil humani a* me *alienum puto* ". In fact, in this harmony, every day a close relationship between Man, as an intimate being, focused on his reflections and actions, with the anthropological Man comes closer: to the position of social being, in a two-faceted view, in a reach outlined in the balance between their mistakes and successes, given their daily conduct. The characteristic of being involved and living in a community brings each individual their own vision and perception of reality, causing a personal and, at the same time, dynamic organization, aiming to achieve their intention of fulfillment. It starts with the unity of the whole and the social structure by which it imposes itself - " *collective will* " - by reflecting on the factual level the obedience to indicated values, instituting, finally, a phenomenon guaranteeing social justice: the enthronement of the legal system as regulatory vector of relations between people and between them and the State. Thus, it is from a language known to all, people are instrumentalized in exogenous elements, such as the shared search for sociopolitical development and a stable economy - valuation of a stable ethical-social environment - that harmonize individual ideas, fostering a social unit with an autonomous structure, as it is supported by the sovereignty of its decisions.

At the beginning of humanity, the forms of evolution of the social role were rudimentary, but with the contemporary meaning of life, the equation of the " *common good* " was shaped by the insertion of the State in the individual will. Thus, the vertical and hierarchical inspiration of the pyramid in the State Power crystallized, turning itself into a growth parameter, but at the same time denying the individual and insurmountable content of human consciousness and the factor of intimacy on a lower plane. The Law, in turn, has been the instrument capable of better assimilating this interaction between the Public Power and the person. By the way, the experience lived between the interaction of Law with other Social Sciences, such as Sociology and Politics, has been constituting a benefit, as it expands the human content to be considered by Positive Law and, accordingly, the focus on controlling excesses arising

from the actions of the State before the individual will constitutes one of the pinnacles established by the norm, by erecting logical conditions of behavior capable of transmitting reasonable and possible security between the parties involved. In this regard, it should be taken into account that the Law, in addition to being a social phenomenon, has in its complexity to promote a special characteristic as to its structure: its practice has the nature of being argumentative. [136] Thus, *eg* , there are those like Austin when advocating that legal authority is limited to a sovereign or a group of people who hold power and that everyone in society should bow down, however Hart refuted such an opinion, as the foundations of Law is translated into a stimulus superior to that admitted by Austin: " *social conventions grant an individual or a group of people the power of leadership and, accordingly, the creation of valid laws".* [137] [138] . It is in these theories of positivist genesis that the understanding of Law is involved by configuring as a substitute the particular examination of the present emphasis, about the superiority of the State over the individual or its inclination towards that. However, those who defend the classic argumentation of natural law must be emphasized: morality is sometimes superior to legal propositions and, in addition, it becomes unacceptable to admit a legal proposition if it is not fair. If a certain law is silent, for example, not contemplating an individual right or even if it is transparent as to the intention of the legislator, but creating social unrest, the solution of this legal proposition will have to consider what is fair and ethical to be conclusive. For others, " *common sense* " appears as a principle to be followed for the purpose of justice. [139]

The configuration of the divergence on which will be the true argument to serve as guidance, among the legal propositions formulated, becomes a necessary and useful discussion for learning the legal science itself and its content, leaving the judge to interpret the law to apply it. it, moving away from nihilism and therefore safeguarding the greater interest of public order. When questioning whether or not a law has the primacy in reflecting a social interest, in relation to the individual right, it is necessary to interpret its factual assumption and its real impact, in addition to clarifying especially the " *legal asset* " to be protected: if it has the characteristic of being public or essentially private. The objective law then configured generates subjective rights and duties that assume their role by the will of the State, however "it *makes the current man an easy prey of the dominant power structure, which under the pretext of giving him a good that he lacks or judges to lack , ends up castrating him in the essence of his human personality as well as the anthropocentralization of legal rules, of which the consecration of a general personality right is one of the most significant dynamics, as a matrix, reference and complement of special personality rights* ". [140] However, it is vigorously that some States currently seek to signal in their legal systems the configuration of a " *general personality right* " formally harboring

the conviction of certain human rights, as being inviolable and inalienable, although historically others, by in turn, they make their original will insufficient by acting materially in a discrepant way in favor of the interest oriented by that or the group of people that momentarily constitutes the representative authority of the State by performing certain actions that constantly violate the essential rights of the human personality, independently whether or not they are in a time of peace. [141] [142] Thus, the reservation and secrecy of " *private life* " comprise one of the spheres of the general personality right which has at its core the respect for the dignity of the person. [143] It is with the unlawful offense the personality that the offended party will have the right to request the State-Judge its cessation, in addition, if applicable, to obtain a corresponding indemnity from the one who was considered the author, in view of the damage proven to have been suffered : generates in question the " *individual personality right* " of the offended party to seek compensation for the damage suffered. This merely privatistic effect of civil liability becomes, in turn, framed in a larger dimension, if perhaps the author of the illicit act is the State itself, thus erecting an emerging social insecurity. Incidentally, the State's obligation to protect the established legal order necessarily involves safeguarding the citizen 's " *general right of personality* ", justifying finally the reason for having been created and the purpose for which it is proposed, which is to meet the « *common good* ». However, in order to hold a State responsible for its actions, society must follow some evaluation principles, as we shall see, on its role in terms of the meaning of the assertion of justice. In fact, the idea of justice may generate a certain discomfort, if it starts from the perspective that relationships are complex between people in a society, given the existence of conflict between the will of all, pursuing an ideal of well-being, with reciprocal and mutual advantages. at the same time coming to the conclusion that goods are not for everyone, just for a few. In this sense, the distribution of justice will comprise a thorny job of determining which interest will be satisfied and for this, people must meet the minimum mandatory rules of social coexistence: the institutions will be responsible for " *defining the appropriate distribution of the benefits and burdens of social cooperation"* . [144] In this sense, disputes over the interest to be satisfied are distressing, but we can say that they are natural, given the State's incapacity to serve everyone. The sense of balance between people's mutual coexistence with institutions generates "social *satisfaction* ", revealing the organizational stability of a given State by solving inequality issues and dealing realistically with desirable *efficiency* plans . The topic to be satisfied is, therefore, social justice and the basic structure by which the State must have to meet the population's expectations: the opportunities presented in front of a widely discussed project, generating favorable conditions for an ethical-social, economic and policy based on freedom of action, although this is subject to certain

rules of conduct that make it limited or relative. The set of rights and duties provided for in the legal system is an essential item for the purpose of social justice, but insufficient to be considered an advantage that can affirm that the State is fully developed in its operating principles. In the wake of a well-ordered society comes the State's willingness to seek to meet social demands and respect for human rights. The meaning we want to give is the object of justice to be instituted by the State and the *status* considered to it, due to having a society formed by ethical people, in the expression of John Rawls: " *rational beings with their own goals and capable of a sense of justice".* [145] After all, in this understanding, it is important to emphasize that it could lead to a conception of the ideal State without taking into account the vicissitudes that a modern society necessarily goes through, given the affliction of human beings in the face of increasingly lively intellectual and professional competitiveness. inequality of opportunities generated by the Public Power, but what we have or want is not always what we can have or possess and so it is reasonable to admit a social organization capable of meeting enough to meet the general and essential expectations of social justice capable of transmitting security to each citizen regardless of whether or not he is elevated to the category of lucky. Furthermore, what matters is for the State to have a legal framework and follow " *ethical-social principles* " prone to legitimize the " *collective will* ", including in the exercise of its suffrages, with the aim of erecting a 'Contemporary Electoral System' that safeguards the individual rights essential to human personality, giving rise to the understanding that it is a democratic State and focused on the development of its actions, according to the expectations of its people.

TITLE IV- BIBLIOGRAPHY AND FOOTNOTES

[1] " *The Electoral Law is a set of legal norms that regulate the process of enlistment, party affiliation, party conventions, registration of candidacies, electoral political advertising, voting, counting, proclamation of the elected, accountability of electoral campaigns and diplomas , as well as the forms of access to elective mandates through electoral systems* ", Ramayana, Marcos, "Electoral Law", Ed. Impetus, p.17.

[2] As highlighted by Ramos, Gisela Gondin, when highlighting the "Special Constitutional Principles of Electoral and Party Law: ...we emphasize as sectoral constitutional principles of Electoral Law, those principles that structure and give meaning to the electoral legal system, densifying their norms: principle of annuality or precedence of the electoral law; principle of party freedom; principle of party autonomy; principle of party loyalty; and the principle of universality of the suffrage..." – "Legal Principles", Editora Forum, pp. 523/530 -.

[3] FACT → LAW FORMATION ELECTORAL FACT → LEGAL ELECTORAL FACT.

[4] " *The historical fact is unique and the sociological fact is general: it is this dimension of one or another science that makes History an individualizing discipline and Sociology a generalizing discipline, as taught by Gilberto Freire* " – Newton Fernandes, Getúlio Chofard *in* Criminal Sociology", p.61, Ed. São Paulo.

[5] "It that reveals the laws . – If it falls into a regrettable error if one studies the penal laws of a pueblo as if it has an expression of its character; las leyes do not reveal what a pueblo es, but what seems strange, rare, monstrous, exotic. The laws deal with exceptions to the morality of customs" - Friedrich Nietzsche, "La Gaya Ciencia", Ed. Àkal, Barcelona, p. 95 -.

[6] Scientific investigation questions should have as a substitute the creation of questions that identify, in the first step, the general objective to be focused and, then, in the subareas of interest, establish research hypotheses that are related to the questions and statements that have to be answered and tested, as foreseen in the lesson of *Andrew Summer and Michael Tribe* : "*... How are the aims and objectives and the research questions? Aims to be a general focus on the research problem into a sub-area of interest, and then objectives make the overall aims through specific research questions and hypotheses which identify the questions and statements which are to be answered and tested…" – "The Nature of Epistemology and Methodology in development studies: what do we mean by 'rigour'?" – Paper prepared for: 'The nature of Development Studies', DSA Annual Conference, 'Bridging research and policy', Church House, London, 6 November 2004, p. 9* .

[7] "It is not possible, nowadays, to conceive of a State of Law dissociated from the affirmation and guarantee of political rights to its citizens, which is fully in line with the ideals of justice and democracy", Costa, Daniel Castro Gomes of the "Course in Electoral Procedural Law". Ed. Forum, p.31.

[8] "Decision Making" (DT) is the result of 'State Power', as defined by Torquato Jardim: " *Power is a socio-psychological relationship based on a reciprocal effect between those who hold and exercise power and those who who directs the power. This political power is the exercise of social control, it is the ability to make or determine a decision and to enforce its compliance* ", Positivo Electoral Law, Ed. Brasília Jurídica, p.49.

[9] Professor Fabriz, Daury César, when disposing of bioethics, prescribes: it is related to all human attitudes, to everything that surrounds man or concerns him, Ethics provides the most consistent indications with regard to man's actions in society. Bioethics and fundamental rights. Belo Horizonte: Commandments. p.78.

[10] Formal justice, in the sense of Perelman, Chaïm, consists in observing a rule that contains an obligation to treat in a certain way all beings of a certain category, that is, it simply comes down to the correct application of a rule. . In turn, material justice is the rule of the rules of a society, it is what gives a moral value to the respect for regulations of all kinds, even when these are not, by themselves, specifically moral rules. Therefore, it is, par excellence, the moral rule responsible for the very existence of the social group, since it is what entails a moral demerit of the author of any infraction of the rules of that group, of any nature that are, in fact, those rules. Ethics and Law. São Paulo: Martins Fontes. pp. 44-50.

[11] Perelman, *op. cit.* for. 63.

[12] Martinez, Soares, quoting Espinosa: " *Having the man transferred all his rights to the political society, they owed obedience to the power established by it, and even to the absurd orders issued by it. However, power would rarely determine absurd things, because it is interested in watching over the common good, in obedience to principles of rationality, and it is almost impossible for a large assembly to come to an agreement on the basis of an absurdity* ". Philosophy of law. Coimbra: Almedina, 1995, p. 382.

[13] " *In a democratic society, governmental legitimacy is based on the consent of the people. Government functions must emanate from the collectivity, be exercised in its name and for its benefit* ", Ribeiro, Fávila, "Direito Eleitoral", Editora Forense, p.1.

[14] Alluding to this theme, Nogueira Ataliba argues: "There are no men for the State, but the State that exists for men, because it is the half-natural State, which man can and should use for achievement of its end, being the State for the man and not the man for the State. Thus, the State is means, seeks the order for the common prosperity of men. The State is a means and not an end". São Paulo: Saraiva, 1955, p.21, 67, 150 and 154.

[15] Korte, Gustavo, "Initiation to Ethics". São Paulo, Juarez de Oliveira, 1999, p.107.

[16] Carrara, Francesco, in this sense argues: "I *give penale not avendo another basis of leggimità che the giuridica tutelage, not può convertsi in a instrument of sanctification of the anima. It is not punishable in violation of moral duty, but violation of legal duty, cioè, the offense of right". Programma del corso di Diritto Criminale – Parte Generale,* 1871, p.32.

[17] Birnbaum, *Archiv des Criminalrechts* , p.179; Ramirez, Juan Bastos, Manual de Derecho Penal español – Parte General, Ariel Derecho, 1984. p. 5; Souza, Paulo Vinicius Sporleder de. Criminal legal property and human genetic engineering. São Paulo: Revista dos Tribunais, 2004. p. 48.

[18] Binding, *apud* Juan Bastos Ramirez, *op . cit .*, p. 52-53. In this positivist conception, we can also highlight Rocco.

Rocco, Arthur. L'oggetto del reato and della tutela giuridica penale, apud Francesco Antolisei, Manuale di Diritto Penale – Part Generalle. 14. Ed. Milano: Giuffrè , 1997. p. 173 - 174.

[20] Carnelutti, F. II damage and il reacto. Padova: {noun}, 1926. p.5.

[21] Souza, *op . cit .*, p. 60-61. Liszt, Lehrbuch. for. 140.

[22] Ferri, Enrico. Criminal Law Principles – The criminal and the crime. Campinas: Bookseller, 1996. p. 381.

[23] Hon. Die Einwilling, p. 106; Souza, *op . cit .* for. 66-67; Figueiredo Dias, "Fundamental Questions", p.64.

[24] Welsel, Hans. " *German Criminal Law* ". General part. 1970. p.15.

[25] Hassemer, *Theorie und Soziologie* , p. 151, et seq.; Hassemer/Munõz Conde, *Introduction* , p. 111; Souza, *op* . *cit* ., p.77.

[26] Gunther, Jakobs. Criminal Law – Part General, 2. Ed. Madrid: Marcial Pons, 1997, p. 52.

[27] When interpreting this theory of objective imputation, Jesus, Damásio E. de, ponders: " *the judgment of objective imputation requires the consideration of the behavior having created a legally disapproved danger to the legal good and that the result produced corresponds to the realization of this risk (risk-result ratio)* ". Objective imputation. São Paulo: Saraiva, 2000. p.23.

[28] *Apud* Smanio, Giampaolo Poggio, *in* article, *cit* . Brazilian Journal of Criminal Sciences, São Paulo, n. 39, p. 137-138; Roxin, Claus, *Criminal Law* – General Part. Madrid: Civitas. 1997. t.1.p. 60-62.

[29] When referring to the content of the standard, Hart, Herbert LA, ponders that " *the fulfillment of its social function is to prescribe and define certain types of conduct as something that should be avoided or done by those to whom it is apply regardless of your wishes* ". *In* : the Concept of Law. Lisbon: Calouste Gulbenkian Foundation. for. 34. " *Immutability is an orthodox characteristic of the content of the norm, but the blank norm is an exception to be highlighted: structurally imprecise and mutable* " – Cupello, Leonardo Pache de Faria. Criminal Law and Portuguese-Brazilian Criminal Procedure: brief reflections. Curitiba: Juruá, 2003, p.29.

[30] Silva, Germano Marques da. 'Portuguese Criminal Law': general part, introduction and theory of criminal law. Lisbon: Verbo, 1997, p. 75.

[31] Carnelutti, F. " *Il damage and il reacto* ". Padova: {noun}, 1926, p.51.

[32] Bobbio, Norberto; Matteucci, Nicola; Pasquino, Gianfranco, Dictionary of politics, 4. Ed. Brasília: Universidade de Brasília, v.2, p. 1292.

[33] Günther, Jakobs, " *Strafrecht . Allgemeiner Teil . Die Grundlagen und die Zurechnungslehre* ". *Berlin* : *D e Gruyter* , 1983.

[34] Ferrajoli, Luigi. Law and Reason: theory of penal guarantee. São Paulo, Magazine of the Courts. 2002.

[35] DworKin, Ronald, "The Empire of Law", Ed. Martins Fontes, São Paulo, 1999, p. 17.

[36] Austin, JL, " *The Province of Jurisprudence Determined* (HLA Hart. org., New York, 1954)".

[37] Hart. LA, " *The Concept of Law* (London, 1961)".

[38] The "Snail Darter" case: the vote of the US Supreme Court Judge Lewis Powel when he stated that " *it is not up to us to rectify political or political judgments emanating from the Legislative Power, however notorious the disservice they do to the interest public. But when the formation of the law and the legislative process, as in this case, do not need to be interpreted to reach such a result, I consider it the duty of this Court to adopt an effective interpretation that is compatible with a little common sense and with the public welfare.* " (Tenesse Valley Authority v. Hill, 437 US 153.185-1978-).

[39] Sousa, Rabindranath VA Capelo from "The General Right of Personality", Coimbra Editora, 1995, pp. 84/85.

[40] In the German Constitution, for example, in its art.1.1 it states that "the dignity of man is intangible. All public powers have the obligation to respect and protect it" and highlights in its art. 2.1 that "everyone has the right to the free development of their personality...". In turn, the Portuguese Constitution guarantees the development of personality to all, the intimacy of private life and, therefore, human dignity

(art.26). In Brazil, in its Federal Constitution of 1988, it provides as one of its fundamental principles the dignity of the human person (art.1, III).

[41] All those totalitarian states that use as a *modus operandi, eg* torture and excide in the face of opponents *in* order to remain in power. Thus, in these States, as Sahid Maluf well advocates: " *what prevails is the end in itself and, therefore, individuals are used as a means to achieve their own purpose and lead to the annulment of the human personality and the slavery of man* " - General Theory of the State, Ed. Saraiva, 1991, p.110-.

[42] The rights to personal identity, civil capacity, citizenship, good name and reputation, image, freedom of expression and information, the inviolability of the home and correspondence, freedom of conscience, religion and worship , etc. other spheres of general personality law are also considered and it will be up to the State not only to protect them, but to classify them as inherent to a Democratic State of Law, since " *the dignity of the human person is a spiritual and moral value inherent to the person , which is uniquely manifested in the conscious and responsible self-determination of life itself and which brings with it the claim to respect by other people, constituting an invulnerable minimum that every legal statute must ensure, so that, only exceptionally, they can be done limitations to the exercise of fundamental rights, but always without underestimating the necessary esteem that all people deserve as human beings* (Alexandre de Moraes-Fundamental Human Rights, 3rd Edition, Ed. Atlas, 2000, p.60) ".

[43] Rawls, John, "A Theory of Justice", Ed. Martins Fontes, São Paulo, 2000, p. 5.

[44] *Idem* , p.13.

[45] Kolm, Serge-Christophe, "Modern Theories of Justice", Ed. Martins Fontes, São Paulo, 2000, p. 3.

[46] John Rawls observes that " *justice as equity, the concept of fair precedes that of good* ": ob. cit. p.34. Indeed, the doctrine based on " *utilitarianism* " has had several opponents, since " *most contributions to social ethics and political philosophy since the mid-twentieth century have arisen as reactions against utilitarianism. In one voice Raws, Friedman, the "libertarians" and Nozick said that utilitarianism should not be applied, since what matters is "freedom and the primary goods"; Buchanam argued that no one would want to implement ethical-social maximization; and Dworkin once suggested that utilitarianism is useful in deciding whether the stadium should be used for rugby or football* – Kolm, Serge-Christophe, ob. cit., p. 507 – ".

[47] Hobbes, Thomas, "Do Cidadão", Ed. Martins Fontes, São Paulo, 2002, p. 31.

[48] Perelman, Chaïm, "Ethics and Law", Ed. Martins Fontes, São Paulo, p. 240.

[49] Kolm, Serge-Christophe, ob. cit., p.14. In fact, I have already emphasized that " *the legal nature of these fundamental human rights - in a positivist view - comprises legal, objective and subjective situations provided for in positive law - such as those inscribed in Constitutions, International Treaties or even in Universal Declarations of Human and Citizen Rights – in defense of human dignity, equality and freedom. For some, these rights have a supraconstitutional value or a suprastate nature (in a jusnaturalist connotation), however they are born and based on a popular sovereignty. The internationalization of these rights is a reality, especially in countries considered to be democratic, but their applicability and effectiveness will depend on the effective approval of the people of* each *State: in the full exercise of their sovereignty* ". – " *in "Criminal Law & Luso-Brazilian Criminal Procedure – Brief Reflections", Ed. Juruá, Curitiba, Paraná, 2003, p.136* ".

[50] Kolm, Serge-Christophe, ob cit., pp 323 ff.

[51] Höffe, Otfried, "Political Justice", Ed. Martins Fontes, São Paulo, p. 27.

[52] Höffe, Otfried, ob. cit., Ed. Martins Fontes, São Paulo, p.42.

[53] Perelman, Chaïm, states: " *The appeal to equity is, therefore, an appeal to the judge against the law; their sense of equity is appealed to when the law, rigorously applied, in accordance with the rule of justice, or when the precedent, followed to the letter, leads to unfair consequences* " - Ethics and Law, Ed. Martins Fontes, São Paulo, p.163.

[54] Kolm, Serge-Christophe, ob. cit, p.19: in Kolm's view, " *the most important issue of distributive justice may ultimately be the thorough analysis and examination of needs, and its most pressing policy will certainly be the alleviation of misery, as well as source of suffering as well as obstacles to human existence and dignity* ".

[55] Baracho, José Alfredo de Oliveira. "Legitimacy of Power". Legislative Information Magazine (Reprint), a. 22 n. 86, pp 15-17, Apr./Jun. 1985.

[56] Zippelius, Reinhold, "General Theory of the State", Calouste Gulbenkian Foundation, 3rd Edition, Lisbon, 1997, p. 62.

[57] Rawls, John, "Justice and Democracy", Ed. Martins Fontes, São Paulo, p. 375.

[58] The State is understood in the contemporary definition of R. Carré de Malberg: as being " *a community of men fixed on its own territory and which has an organization which results for the group, considered in its relations with its members, a superior power of action, command and coercion* " – "Theory General of the State", p. 26-.

[59] Mário G. Losano: "a *legal ordering, for Kelsen, is built by hierarchical degrees, in which the validity of the inferior is inferred from the superior, in a process of delegation of validity (ie, of "should be") which descends from the constitution to the law and from the latter to the sentence* " (Kelsen, Hans, "The Problem of Justice", Ed. Martins Fontes, São Paulo, 2003, p. 12).

[60] " *The quality or virtue of justice attributed to an individual is externalized in his conduct: in his conduct towards other individuals, that is, in his social conduct. The social conduct of an individual is fair when it corresponds to a norm that prescribes that conduct, that is, that makes it due and, thus, constitutes the value of justice. The social conduct of an individual is unfair when it contradicts a norm that prescribes a certain conduct. The justice of an individual is the justice of his social conduct; and the justice of its social conduct consists in its corresponding to a norm that constitutes the value of justice and, in this sense, to be fair. We can designate this norm as the norm of justice* ". Kelsen basically classifies into two types of "justice norms": the metaphysical type (*those that cannot be understood by human reason, eg, divine justice*) and the rational type (*eg, the formula "suum cuique": the norm according to which to each one must give what is his, that is what is owed to him, what he has a claim (title) or a right*) -Kelsen, Hans, ob. supra cit. p.3.-.

[61] Kelsen, Hans, ob. supra cit. p.19.

[62] Höffe, Otfried, ob. cit. for. 49.

[63] Idem, p.154.

[64] Luhmann, N., "Ausdifferenzierung des Rechts. Beiträge zur Rechtssoziologie und Rechtstheorie, Frankfurt aM (1981): *apud* Höffe, Otfried, ob. cit. p.159.

[65] For example, it revokes Election Day crimes, such as the use of loudspeakers, a rally or motorcade, and the exit of the ballot box.

[66] Sociologist Edward Tylor defined culture as "the complex that includes knowledge, beliefs, arts, laws, customs, and other habits acquired by the human being who is a member of society".

[67] Social relationship is a type of interaction. Max Weber defines social action " *as human conduct whose subjective sense refers to another person(s) and which is effectively*

oriented towards that person(s) ", Newton Fernandes and Getúlio Chofard in "General Sociology, Criminal Legal", Editora São Paul, p.111.

[68] Reale, Miguel, "Preliminary Law Lessons", Ed. Saraiva, p.26.

[69] Gerlero, Mario Silvio, "Introduction to Legal Sociology", Copyright, David Grinberg, Libros Jurídicos, p.106.

[70] Reale, Miguel, "Preliminary Law Lessons", Ed. Saraiva, p. 6: " *The different parts of the Law are not placed side by side, as finished and static things, since the Law is an order that is renewed day by day* ".

[71] Citing the "systems theory" advocated by Niklas Luhmann, Díez, Carlos Gómez-Jara argues: " *Dichas implicaciones para el legal son desarrolladas system por el propio Niklas Luhmann en un artículo that recoge them basic tears permiten watch al Derecho as an autopoietic system of modern society, as well as the main practical consequences of this planting* ". "Theory of Systems and Criminal Law, Fundamentals and Application Possibilities", Editorial Comares, XVI.

[72] Ávila, Humberto, "Theory of Principles: from the definition to the application of legal principles", 4th Edition, São Paulo Magazine, Malheiros, 2004.

[73] Fernandes, Newton and Chofard, Getúlio, "General, Legal and Criminal Sociology", 1st Vol., Ed. Rumo, pp. 130/131.

[74] *Idem* .

[75] *Idem* / *Idem* .

[76] Cupello, Leonardo Pache de Faria, "Communicating Legal System", *e-book, Amazon* .

[77] *"...For the explanation of this individuality of the primary social ordinances, the popular awareness of morality and right was invented. This selective and non-creative awareness should be decisive for the concrete configuration of the ordering system in each – society – particular given..."-Geiger, Theodor, - Estudios de Sociologia Del Derecho, p.99, Ed. Economic Culture - Mexico.*

[78] Cupello, Leonardo Pache de Faria, *in* Criminal Guardianship & Criminal Procedure for Privacy, on pages 23 and ff. Ed. Juruá.

[79] Polo, Leonardo *in* "The Kantian Critique of Knowledge", p.47, Ed. Escala: "Kantian time works as a rule; it can, therefore, apply to space, but it is not limited to that. Time, in Kant's gnosiology, is more linked to the understanding, to the concept, than to space. And, effectively, it's evident that I can have a concept that doesn't exist in space at all. The *triangle in space* is always this or that, but its concept applies to everyone. *The triangle's outline is not its image; it is that through which the concept arrives at the image, but without allowing itself to be fixed by it* . In time as a scheme – as a construction rule – there is, therefore, the universality of the concept. Imagination's time compares with space according to representation; but, on the other hand, and as a rule for tracing, it covers all possible cases unilaterally, while in space it would be necessary to multiply the representations infinitely" – *our emphasis* – .

[80] Positive Constitutional Law Course, pp 122-123, Malheiros Editores.

[81] In the wake of this understanding, Zippelius argues in contrasting Kelsen's orientation: " *The pair of concepts "norm" and "fact" does not appear to us only when we compare political reality with ideal models, but also plays a role in the very construction of "state reality". As will be seen, this cannot by any means be sufficiently conceived as a normatively unrelated fact. Nor can the State be constructed as a "pure" system of norms, that is, free from any sociological facts, as proposed by*

Kelsen, who thought that the State could be conceived, from the point of view of legal science, as pure normative order, and, from the point of view of sociology, as a mere fact (Kelsen 1928, 105 ff., 114 ff.). This, however, is not feasible – ob. cit. p.10 -.

[82] For example, in the Belgian Constitution in its art. 23 states that "everyone has the right to live according to the dictates of human dignity and mentions that the law will guarantee economic, social and cultural rights and will determine the conditions for their exercise". It also adds this provision: "these rights include, namely: 1) The right to work and to the free choice of a professional activity, within the scope of a general employment policy, aiming, among others, to ensure as stable and high a level as possible, the right to working conditions and equitable remuneration, as well as the right to information, consultation and collective bargaining; 2) The right to social security, health protection and social, medical and legal assistance; 3) The right to adequate housing; 4) The right to the protection of a healthy environment; 5) The right to cultural and social development".

[83] Miranda, Jorge, Manual of Constitutional Law, Volume IV, Fundamental Rights, 3rd Edition, Coimbra Editora, 2000, pp 237/238.

[84] By the way, in Brazil the Federal Supreme Court (STF), when disposing of the "Principle of Equality in the Process", has understood as follows: "There is no maltreatment of the constitutional principle of equality, since the Court determined the performance of a certain proof, although the opposing party may not have asked for it. There would only be mistreatment at the beginning if the request for evidence had been granted to one of the contenders and denied to the other, with the evidence required by both contenders being equally necessary to clarify the facts" (2nd T. - AGRAG n.º130.583 /SP-rel. Min. Adir Passarinho, Diário da Justiça, Section I, 31 May 1991, p.7.239).

[85] In this sense, for example, the following r. Decisions of the Portuguese Constitutional Court: "The judgments n.ºs 99/88, of April 28th (CJ 1988, 2, 39) and 413/89, of May 31st (Dr, II, of 15.09.1989) understood that the expiry deadlines for the investigation of maternity and paternity set out in articles 1817., nos. 3 and 4, and 1873 of the Civil Code do not violate the principle of equal treatment of children born in and out of wedlock. In a different sense, regarding no. 4 of art.1817.ºC, cfr. B.C. STJ (Supreme Court of Justice -Portuguese-) of 15 November 1989 (BMJ 391, 155)".

[86] " *Whether A and B must receive an equal or unequal distribution depends on the applicable distribution rule. As far as the distribution norm is concerned, A and B are treated equally, not because both are subject to the same concession, but because the rule is applied to them impartially.... Treatment according to the prevailing rules, whatever they may be its determinations, it is always egalitarian as impartial* " (Norberto Bobbio, Nicola Matteucci and Gianfranco Pasquino, Political Dictionary, Editora UnB, Brasília, 8th Edition, p. 598).

[87] Moraes, Alexandre de "Fundamental Human Rights", Editora Atlas, São Paulo, 3rd Edition, p.93. Thus, if *vg* , a certain law provides that all provisional prisoners must remain in a public jail during the prosecution of criminal proceedings, and if, however, the same law provides for exceptions granting certain persons the right to special prison, with due justification , not for that reason we will be able to conclude the departure from the isonomic principle, but only the occurrence of a « *differentiated normative treatment* ». By the way, the Brazilian Justice has ruled as follows: "The special prison is not a privilege that violates the principle of legal equality, but embodies a measure that aims to protect the physical integrity of the prisoner who occupies public functions, removing him from the promiscuity with other common detainees. Civil police officers, whose functions correspond to those performed by

former civil guards, are entitled to special prison, ex vi of art. 295, XI of the Code of Criminal Procedure" -STJ, 6th Panel-HC No. 3. 848- rel. Min. Vicente Leal, Diário da Justiça, Section I, 4. nov. 1996, p. 42,524-.

[88] Comparato, Fábio Konder, "Public Law, Studies and Opinions", São Paulo, Editora Saraiva, 1996, p.59.

[89] "An ethical society is one that seeks the well-being of all and where the concept of well-being is democratically established" – Fabriz, Daury Cezar *in* "Bioethics and Fundamental Rights", p.77, Ed. Commandments.

[90] *In Carlos Cossio's statement in the "Egological Theory of Law": "that the derecho is the conduct in intersubjective interference, as a cultural object is impregnated with values that give a meaning, adding that the rules fulfill a double role, It is, on the one hand, that it is the thought that underlies the description of the conduct in its liberad y, on the other hand, it integrates the conduct that it is mentioned, to integrate its sense" - Cossio, Carlos, "La Theory Egológica Del Derecho, Abeledo-Perrot, Buenos Aires, 1964 -.*

[91] Garcia, Ricardo Ginés, adds: " *The ethical values captured through feelings are expressed in judgments of ethical value. Unlike the judgments of existence, which contain only factual statements about what they are, the judgments of value indicate the repercussion that the proper acts or ajenos have for a subject, es dicidir, ponen of manifested, the appreciation or contempt that them poseen actions for a human being. For example, we issue a judgment of existence when we affirm 'the man is a rational animal' and judgments of ethical value when we decipher 'this woman is good' or 'this judge is fair' – in* "Fundamentos Del Derecho", Parabola Editorial, p . 89 – .

[92] Savigny, Carlos Federico de, *apud* Larenz, Karl *in* "Just Derecho, Fundamentals of Legal Ethics", p.24, Editorial Civitas, SA.

[93] Raws, John *in* "A Theory of Justice", p.11, Ed. Martins Fontes: "I consider that the concept of justice is defined by the performance of its principles in the attribution of rights and duties and in the definition of the appropriate division of social advantages. A conception of justice is an interpretation of this action".

[94] *"...For the explanation of this individuality of the primary social ordinances, the popular awareness of morality and right was invented. This selective and uncreative awareness should be decisive for the concrete configuration of the ordering system in each Σ – society – particular given..."- Geiger, Theodor, - Estudios de Sociologia Del Derecho, p.99, Ed. of Economic Culture - Mexico.*

[95] David, René, "The Great Systems of Contemporary Law", Ed. Martins Fontes, 2002, p.385.

[96] Lupoi, M., *Appunti sulla real property and sul trust nel diritto inglese* (1971), *apud* , David, René, Ob. Cit., p.386.

[97] https://jovempan.com.br/programas/jornal-da-manha/eleicoes-na-argentina-com-previas-decisivas-sistema-eleitoral-tem-particularidades.html .

[98] https://www.politize.com.br/sistema-eleitoral-no-uruguai/ .

[99] pt.m.wikipedia.org .

[100] " *Political system is the set of decision processes and power relations that concern the entirety of a global society* ", Introduction to Political Science, theories, methods and themes", Fernandes, António José, Porto, Editora, p.160.

[101] www.europarl.europeu.eu .

[102] https://www.tatsachen-ueber-deutschland.de/pt-br/politica-alemanha/sistema-politico .

[103] www.politize.com.br .

[104] The D'Hondt method, also known as the quotients method or the D'Hondt highest mean method, is a method for allocating the distribution of Deputies and other elected representatives in the composition of bodies of a collegial nature. The method is named after the Belgian jurist who invented it, Victor D'Hondt. The method is used in countries such as Cape Verde, Portugal, East Timor, Argentina, Austria, Belgium, Denmark, Spain, Finland, Iceland, Netherlands, Uruguay and other countries, pt.m.wikipedia.org .

[105] portugal.gov.pt .

[106] www.poder360.com.br .

[107] *Idem* .

[108] italocidadaniaitaliana.com.br .

[109] https://europa.eu/european-union/about-eu/countries/member-countries/italy_en .

[110] www12.senado.leg.br .

[111] pt.m.wikipedia.org .

[112] pt.m.wikipedia.org .

[113] https://super.abril.com.br/historia/as-eleições-na-china/amp/ .

[114] Queiroz, Ari Ferreira de, Electoral Law, Ed. Jhmizuno, pp. 67 and ff.

[115] amazon.com.br/sistema-jurídico-comunicante-leonardo-cupello-ebook/ .

[116] The "Systems Theory", whose first statements date back to 1925, was proposed in 1937 by biologist Ludwig Von Bertalanfly, having reached its peak of dissemination in the 1950s (ALVAREZ, 1990). The System is a set of interacting and interdependent parts that, together, form a unitary whole with a certain objective and perform a certain function (OLIVEIRA, 2002, p.35).

[117] For Imanuel Kant, when dealing with the role of understanding in the cognitive process, he states that "knowing scientifically is to establish necessary or causal relationships - of dependence - between data or objects within the reach of the subject, in order to make its predictable and controllable behavior". Thus, transplanting this meaning to Law, we can affirm that Law only exists because society exists and also that Law is controllable, as it is within society's reach and, therefore, its behavior is predictable.

[118] Niklas Luhmann distinguishes between a simple contingency, which refers to the possibilities offered by the physical environment -hecho - of the system, and a double contingency, which implies the existence in the environment of other men, whose conduct and your expectations - hecho legal – it is necessary to be able to predict for the development of social coexistence (Pilar Giménez Alcover, 1993, 185 ff.).

[119] Polo, Leonardo *in* "A Critica Kantiana del Conocimiento", p.47, Ed. Escala: "El tiempo Kantiano works as a rule; It can, therefore, be applied to space, but it is not limited to that. El tiempo, in Kant's gnosiology, is more linked to understanding, to concepto, than to space. Indeed, it is evident that yo can have a concept that does not exist in space at all. The triangle in space is always that, but its concept is valid for everyone. The triangle scheme in es su imagen; It's that by means of which the concept brings it to the image, but if you don't want to stick to it. In time as a scheme – as a construction rule – there is, therefore, the universality of the concept. The time of the imagination compares with the space according to the representation; but, on the other hand and as a back rule, it covers all possible cases unilaterally, while in space it would be necessary to multiply the representations infinitely" – emphasis nuestro – .

[120] " *Democracy is the government of the people, the government in which the people rule, in which the people decide. In the democratic regime, he is the one who commands the destinies of the political organization, the supreme judge of the affairs of the State. The meta-legal assumption for its development is a certain degree of cultural and*

economic development of the population, so that it can choose its representatives ", Velloso, Mário da Silva and Agra, Walber de Moura, "Elements of Electoral Law", Ed. Saraiva, p.19.

[121] Martínez, Soares quoting Espinosa: " *Having men transferred all their rights to political society, they owed obedience to the power established by it, and even to the absurd orders issued by it. However, power would rarely determine absurd things, because it is interested in ensuring the common good, in obedience to principles of rationality, and it is almost impossible for a large assembly to come to an agreement on the basis of an absurdity* " - "Philosophy of Law" , Coimbra, Almedina, 1995, p. 382.

[122] Alluding to this theme, Ataliba Nogueira argues: " *There are no men for the State, but the State that exists for men, because it is the natural state, which man can and should use, to achievement of its end, being the State for the man and not the man for the State. Thus, the State is a means, it seeks the order for the common prosperity of men* " - "The State is a means and not an end", Edition Saraiva, São Paulo, 1955, pp 21, 67, 150 and 154.

[123] Dabin, Jean, "Doctrine Générale de L'État, Établissements Émile Bruylant, Bruxelles, 1939

, for. 35.

[124] This concept was recalled by Aderson de Meneses, *in* "General Theory of the State", Ed. Forense, 5th Edition, 1993, Rio de Janeiro, p. 63.

[125] *Idem* , p. 63.

[126] Martínez, Soares, ob. cit., p. 383.

[127] Position adopted by Lon Fuller *in* " *The Morality* of Law", 1969, p. 221, *apud* Oscar Vilhena Vieira, *idem* , p.205.

[128] *Idem* , p. 205.

[129] Norberto Bobbio, Nicola Matteucci and Gianfranco Pasquino "Dicionario de Política", vl.02, 4th Edition, Editora Universidade de Brasília, Distrito Federal, p. 1292.

[130] Jakobs, Günther, " *Strafrecht . Allgemeiner Teil . Die Grundlagen und die Zurechnungslehre* ", *De Gruyter* , *Berlin* , 1983.

[131] For example in the Belgian Constitution in its art. 23 states that "everyone has the right to live according to the dictates of human dignity and mentions that the law will guarantee economic, social and cultural rights and will determine the conditions for their exercise". It also adds this provision: "these rights include, namely: 1) The right to work and to the free choice of a professional activity, within the scope of a general employment policy, aiming, among others, to ensure as stable and high a level as possible, the right to working conditions and equitable remuneration, as well as the right to information, consultation and collective bargaining; 2) The right to social security, health protection and social, medical and legal assistance; 3) The right to adequate housing; 4) The right to the protection of a healthy environment; 5) The right to cultural and social development".

[132] Miranda, Jorge, Manual of Constitutional Law, Volume IV, Fundamental Rights, 3rd Edition, Coimbra Editora, 2000, pp 237/238.

[133] In this sense, for example, the following r. Decisions of the Excelso Portuguese Constitutional Court: "The judgments n.ºs 99/88, of April 28th (CJ 1988, 2, 39) and 413/89, of May 31st (Dr, II, of 15.09.1989) understood that the expiry deadlines for the investigation of maternity and paternity set out in articles 1817., nos. 3 and 4, and 1873 of the Civil Code do not violate the principle of equal treatment of children born

in and out of wedlock. In a different sense, regarding no. 4 of art.1817.ºC, cfr. B.C. STJ (Supreme Court of Justice -Portuguese-) of 15 November 1989 (BMJ 391, 155)".

[134] " *Whether A and B must receive an equal or unequal distribution depends on the applicable distribution rule. As far as the distribution norm is concerned, A and B are treated equally, not because both are targets of the same concession, but because the rule is applied to them impartially... . Treatment according to the prevailing rules, whatever their determinations, is always egalitarian and impartial* " (Norberto Bobbio, Nicola Matteucci and Gianfranco Pasquino, Political Dictionary, Editora UnB, Brasília, 8th Edition, p. 598).

[135] Comparato, Fábio Konder, "Public Law, Studies and Opinions", São Paulo, Editora Saraiva, 1996, p.59.

[136] DworKin, Ronald, "The Empire of Law", Ed. Martins Fontes, São Paulo, 1999, p. 17.

[137] Austin, JL, "The Province of Jurisprudence Determined (HLA Hart. org., New York, 1954)".

[138] Hart. LA, " *The Concept of Law* (London, 1961)".

[139] The Snail Darter case: the vote of US Supreme Court Justice Lewis Powel when he stated that " *it is not up to us to rectify policies or political judgments emanating from the Legislative Power, however notorious the disservice they do to the interest public. But when the formation of the law and the legislative process, as in this case, do not need to be interpreted to reach such a result, I consider it the duty of this Court to adopt an effective interpretation that is compatible with a little common sense and with the public welfare.* " (Tenesse Valley Authority v. Hill, 437 US 153.185-1978-).

[140] Sousa, Rabindranath VA Capelo from "The General Right of Personality", Coimbra Editora, 1995, pp 84/85.

[141] In the German Constitution, for example, in its art.1.1 it states that "the dignity of man is intangible. All public powers have the obligation to respect and protect it" and highlights in its art. 2.1 that "everyone has the right to the free development of their personality...". In turn, the Portuguese Constitution guarantees the development of personality to all, the reservation of the intimacy of private life, and therefore, human dignity (art.26.º). In Brazil, in its Federal Constitution of 1988, it provides as one of its fundamental principles the dignity of the human person (art.1, III).

[142] All those totalitarian states that use as a *modus operandi, eg* torture and excide in the face of opponents, *in* order to remain in power. Thus, in these States, as Sahid Maluf well advocates: " *what prevails is the end in itself and therefore individuals are used as a means to achieve their own purpose and lead to the annulment of the human personality and the slavery of man* "- General Theory of the State, Ed. Saraiva, 1991, p.110-.

[143] The rights to personal identity, civil capacity, citizenship, good name and reputation, image, freedom of expression and information, the inviolability of the home and correspondence, freedom of conscience, religion and worship , etc. other spheres of general personality law are also considered and it will be up to the State not only to protect them, but to classify them as inherent to a Democratic State of Law, since " *the dignity of the human person is a spiritual and moral value inherent to the person , which is uniquely manifested in the conscious and responsible self-determination of life itself and which brings with it the claim to respect by other people, constituting an invulnerable minimum that every legal statute must ensure, so that, only exceptionally, they can be done limitations to the exercise of fundamental rights, but always without underestimating the necessary esteem that all people deserve as*

human beings (Alexandre de Moraes-Fundamental Human Rights, 3rd Edition, Ed. Atlas, 2000, p.60) ".

[144] Rawls, John, "A Theory of Justice", Ed. Martins Fontes, São Paulo, 2000, p. 5.

[145] *Idem* , p.13.