

# Introduction

## 1. BACKGROUND

1. The existence of interactions between different legal orders, albeit overlapping, has always aroused the interest of the doctrine whether the relationship is between international law and the domestic law of the states or between federal law and the members of the federation.<sup>1</sup> According to Mirkine-Guetzévitch, historically, the existing doctrines on interordinal relations between international law and national law could be classified as ‘parallelism’ (recognition of the coexistence of two separate independent legal orders), ‘internationalism’ (recognition of the primacy of international law) or ‘constitutional nationalism’ (recognition of the primacy of national law).<sup>2</sup> However, the classification finally imposed on the doctrine is the one opposing *dualism* to *monism*. Thus, ‘parallelism’ would be equivalent to *dualism* while ‘internationalism’ and ‘constitutional nationalism’ would be equivalent to the *monistic* conception.<sup>3</sup> Despite the irreconcilable differences that these different conceptions had, the need to make the system viable and the very existence of the international society led from existing conflicts into pragmatic solutions.<sup>4</sup> Likewise, in the national field, discussions about the primacy of federal law in connection with the constitutions of the Federated States were intense, especially during the early years of American federalism.<sup>5</sup>

<sup>1</sup> See the classic work of A La Pérgola, *Costituzione e adattamento dell'ordinamento interno al diritto internazionale* (Giuffrè, Milano, 1961), and the Spanish version (translated by Professor Cascajo and Professor Rodríguez-Zapata) A La Pérgola, *Constitución del Estado y normas internacionales* (UNAM, México, 1985).

<sup>2</sup> See B Mirkine-Guetzévitch, ‘Droit international et droit constitutionnel’ (1931) 38(1931-IV) *Recueil des Cours de l'Académie de Droit International de La Haye* 307.

<sup>3</sup> An historical analysis maybe found at B Mirkine-Guetzévitch, *Derecho constitucional internacional* (L Legaz y Lacambra (tr)) (Revista de Derecho Privado, Madrid, 1936), especially at 29–61.

<sup>4</sup> See L Legaz y Lacambra, ‘La primacia del Derecho de gentes sobre el Derecho interno como problema jurídico y político’ (1977) 152 *Revista de Política Internacional* 7 and M Virally, ‘Sur un pont aux ânes : les rapports entre droit international et droits internes’ in H Roling *et al* (eds), *Mélanges offerts à Henri Rolin. Problèmes de droit des gens* (Pedone, Paris, 1964) 488 at 488–505.

<sup>5</sup> On the American case, see AC McLaughlin, *A Constitutional History of the United States* (Appleton-Century-Crofts, New York, 1935); JC Calhoun and RM Lence, *Union and Liberty: The Political Philosophy of John C Calhoun* (Liberty Fund, Indianapolis, 1992); JP Feldman, *La bataille américaine du fédéralisme: John C Calhoun et l'annulation (1828–1833)* (PUF, Paris, 2004); N Pérez Serrano, *La noble obra política de un gran Juez (Juan Marshall)* (Real Academia de Ciencias Morales y Políticas, Madrid, 1955). On the German case, see E Von Puttkamer, *Föderative Elemente im deutschen Staatsrecht seit 1648* (Musterschmidt, Göttingen, 1955); K Loewenstein, ‘The Government and Politics of Germany’ in JT Shotwell (ed), *Governments of Continental Europe* (Macmillan, New York, 1940) 279; L Michael, ‘El Estado federal experimental’ (2006) 6 *Revista de Derecho Constitucional Europeo* 11. The application of the American experience to the EU has

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2. But the problems at the time of the discussions between supporters of monism or dualism regarding international law or primacy or faculty not to apply a federal law contrary to the Constitution of the federate State in the discussion of federalism would be simple compared with the current situation. Indeed, in those cases the difficulties focused on the problem of coordination between 'only' two legal systems (international and internal order) or perhaps three in the case of the United States (if we add the relationship between Federated States law and international law). Since the end of the Second World War there have been many new and parallel systems. The United Nations Organization (UN) and its specialized agencies or, more recently, the World Trade Organization (WTO) structure international society from a political and economic view. In Europe, the system of protection of human rights established by the Council of Europe and that developed within the European Union (EU) are the most troubled systems in this sense, despite being two different systems, as shown by recent decisions of its major interpreters. But these are only some examples and the list is by no means exhaustive. The picture is enhanced as international organizations emerge whose bodies approve actions that must be executed. The coordination between general international law and specific or regional 'sub-orders' is by no means a new phenomenon, but issues relating to the relationship between general law and special rules, or even among their own special rules, are gaining in importance. Thus, in relation to the WTO, many questions have been raised regarding the relationship between international trade law and international environmental law or international labour law.<sup>6</sup> Moreover, the emergence of specialized international criminal courts makes one wonder about its relations with the International Court of Justice.<sup>7</sup> In this context, once feasible solutions, developed in the field of interpretation of treaties or relations between successive treaties, are now, at least, incomplete.

3. Typically, the relationships between different orders have not been subject to regulation through specific provisions contained in the founding treaties of the legal systems in question. It is true that Article 103 of the UN Charter proclaims

been largely theorized: see JHH Weiler, *The Constitution of Europe. 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration* (Cambridge University Press, Cambridge, 1999) 10–101; and JP Jacqu e, 'Back to Philadelphia' (2002) 463 *Revue du March e Commun et de l'Union Europ enne* 661.

<sup>6</sup> The scholarship on this issue is huge. See N Perdakis and R Read (eds), *The WTO and the Regulation of International Trade. Recent Trade Disputes between the European Union and the United States* (Edward Elgar, Northampton, 2005); PT Stoll and F Schorkop, *WTO. World Economic Order, World Trade Law* (Max Planck Institute for International and Comparative Law, Martinus Nijhoff, The Hague, 2006) 243–80; MJ Trebilcock and R Howse, *The Regulation of International Trade* 2nd edn (Routledge, London, 1999) 395–440 (on international trade law and environmental law) and 441–563 (on international labour law); E McKendrick, H Kronke and R Goode, *Transnational Commercial Law: Text, Cases, and Materials* (Oxford University Press, Oxford, 2007) 89–106 and 129–30.

<sup>7</sup> See HAM Hebel, JG Lammers and J Schukking (eds), *Reflections on the International Criminal Court. Essays in Honour of Adriaan Bos* (Cambridge University Press, Cambridge, 1999), especially 'Part II. The International Criminal Court in Perspective'.

the primacy of the obligations derived from it over any other international obligation agreed by the Member States of this organization. Within the European Union, Article 307 TEC (Article 351 TFEU) voices a provisional coexistence between community obligations and those from previous agreements concluded by Member States and third parties. But the original EU Treaties did not contain any indication of their relations with the European Convention on Human Rights (ECHR). In that context, it was difficult to apply systematically the classical solutions on the relationship between successive treaties without questioning the uniformity of the rules applied to the internal market. Similarly, the fact that the founding states (except France) did not apply a Community rule deemed contrary to the ECHR, while France, which was not a member in the initial period, could execute it without a word of complaint, would have threatened the unity of the market that was being built. This kind of question is the inevitable consequence of the current 'fragmentation' of international law in orders and different and uncoordinated sub-systems.<sup>8</sup>

Thus, the potential for conflict multiplies exponentially as each of these systems is constantly evolving through the decisions of its major interpreters or supervisory bodies.<sup>9</sup> The consequence of this changing or evolving nature and of the different orders that must coexist is an increase in the chances of clash or conflict as if they were shifting tectonic plates drifting over the Earth's mantle. With this background, even if the different systems strive to make the measures adopted within it compatible with other orders or, at least, with their essential values, the risk of conflict does not disappear at all, since what today might be acceptable to another, tomorrow might not be the case, given the constant development they undergo.

4. This situation creates an apparent complexity in the management of inter-territorial relationships, a complexity that also affects, in a significant manner, legal security. For individuals (either an individual or a legal person, from a foundation to the largest corporation) perhaps the most important thing is to live under a firm order making predictable the legal consequences of their actions. Because talking about 'fragmentation of international law', 'legal pluralism' or orders that organize their coexistence through 'counterlimits' or 'contrapunctual law' principles or, more generally, the so-called 'global governance' that some call 'governance' (to give some examples that we shall discuss in this book) is undoubtedly of great interest to the doctrine, and tries to understand some realities and influence them, there is no doubt that these ideas have inspired the solutions that supranational courts have given in the litigation that

<sup>8</sup> On the so-called 'fragmentation of international law', see I Buffard *et al*, *International law between universalism and fragmentation: Festschrift in honour of Gerhard Hafner* (Martinus Nijhoff, Leiden, 2008).

<sup>9</sup> The ECtHR has developed an evolutive interpretation of the ECHR, that is, as a 'living instrument to be interpreted in light of present-day conditions'. See *Loizidou v Turkey* App No 15318/89 (ECtHR, 23 March 1995, Series A vol 310) para 71.

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has arisen. But it raises some doubts about the fact that these doctrinal models or theoretical constructions may provide confidence (in terms of legal certainty) to multinational companies and investment funds that operate in a context that could be described as transnational.<sup>10</sup>

Even if the various jurisdictions involved, either national or supranational, develop through constructive dialogue laudable and complex efforts to at least keep coexistence in a complex scenario in which the inherent contradictions among orders come to light, the presumed victim who claims a violation of their fundamental rights (recognized in some of the applying overlapping orders) will hardly be in a position to wait for such ‘cross-jurisdictional’ dialogue, or for the complex doctrinal constructions to tell him which court he should go to in order to file the complaint or what are the regulations applicable to his case. The uncertainty about the applicable law or litigation expenses will constitute, without any doubt, an obstacle that few would try to overcome in order to assert their rights. But we must clear up any lingering doubts as to the addressee of the potential criticisms. Criticism shall not be directed at the doctrine (which has made strenuous efforts to shed some light) or at the courts (operating at the limit of their powers and possibilities), but at their political power, unable to provide a solution to the deep seated problem or, perhaps satisfied with the status quo or, even worse, simply passive.<sup>11</sup>

5. In fact, a construction based on the principle of hierarchy (which later became ‘constitutionalist’) would not make it possible, in the current situation, to report the real situation or to give answers to the specific problems that arise, unless an approach of rather simplistic and questionable value is carried out. Furthermore, if the construction based on Kelsen’s pyramid has a clear utility in the context of internormative relations within any legal order, it is less effective at coordinating complex interordinal relationships where, in addition, each order would consider that its rules prevail over the other. On the other hand, a vision founded on the idea of a ‘mesh’ or ‘net’ (which in this book we shall call ‘pluralism’) would be conceptually more accurate, but it would not be at all clear that it would be capable of giving a practical answer to the existing difficulties.<sup>12</sup> Certainly in the (few) cases in which the founders of the orders had organized the interordinal relations of that legal system and other existing systems or in those situations where the rules of the relevant orders were fully

<sup>10</sup> See C Scott, “‘Transnational law’ as proto-concept: Three conceptions’ (2009) 10(6–7) *German Law Journal* 859; and P Zumbansen, ‘Transnational law’ in J Smits (ed), *Encyclopedia of Comparative Law* (Edward Elgar, Northampton, 2006) 738.

<sup>11</sup> See JP Jacqué, ‘Droit constitutionnel national, Droit communautaire, CEDH, Charte des Nations Unies. L’instabilité des rapports de système entre ordres juridiques’ (2007) 60 *Revue Française de Droit Constitutionnel* 3 at 5.

<sup>12</sup> See F Ost and M Van de Kerchove, *De la pyramide au réseau? Pour une théorie dialectique du droit* (Publications des facultés universitaires Saint-Louis, Bruxelles, 2002) 545–79 and R Bustos Gisbert, *La Constitución Red: Un estudio sobre supraestatalidad y Constitución* (IVAP, Oñate, 2005).

compatible among them. However, the usual assumption happens to be one in which information is missing on the coordination of the interordinal relations and/or the rules arising from the legal systems in disputes are incompatible, in which case the judge (or the equivalent authority) would have to rely on the general rules on successive treaties or in the classic conceptions of relations between national and international law.

6. Certainly, the application of the rules governing the relationships between successive treaties is, at least, delicate in cases of orders deriving from international agreements whose members maintain close ties at various levels, as if they were Russian dolls.<sup>13</sup> Thus, all members of the EU are members of the Council of Europe, whose members are all part of the UN. The treaties supporting each legal order establish mandatory rules that cannot be exempted through an agreement between several of its members. Indeed, in most cases, these orders are comprehensive or complete systems, in the sense that the relationships established between the parties cannot be decomposed into a set of bilateral relations. Moreover, the provisions of the Vienna Convention on the Law of Treaties (in particular Article 30 on successive treaties and Article 41 dealing with the *inter partes* agreements within a multilateral treaty) do not always offer appropriate solutions, especially in cases where there are powers or transfer of powers from the Member States to an organization they belong to, as in the case of the EU. To make it more complex, the application of rules on the successive treaties is difficult when not all states have become party to the same treaties at the same time. Thus, Germany became a UN member in 1973 and France did not ratify the ECHR until 1974. By that time, the European Economic Community, whose founding treaty entered into force in 1958, already had a past and the ECJ had already proved its importance.

Besides, we should note the intention of some organizations to establish their own constitutional order. Thus, if the United Nations Charter is sometimes introduced as the 'Global Constitution', the Court of Justice in Luxembourg considers the Treaties as a 'Constitutional Charter' and, on the other hand, the European Court of Human Rights (ECtHR) has defined the ECHR as the constitutional instrument of a 'European public order'. In this context, recourse to the rules governing the relations between these orders that consider themselves as constitutional orders through general rules of treaty law seems, at best, insufficient. Moreover, regarding the application of the rules on relations between national and international law, the primacy and direct effect of EC/EU rules guaranteed by the Luxembourg judges would deviate from the traditional views on the subject.

7. In this kind of 'legal globalization' where different orders established by founding texts that share all or a group of members of other systems and each

<sup>13</sup> This ingenious comparison appears in JP Jacqu  (2007) (n 11) at 6.

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seems to move at its own pace, the interest in analysing the rules and internal procedures would give in to the challenge of understanding and, if possible, resolve any possible conflicts that may arise between them. Thus, the judges have emerged as the guarantors (sometimes vigilantes) that the obvious contradictions have not triggered irreconcilable conflicts. A series of unilateral declarations, doing their best to ensure that their content was nonetheless tolerated by the interpreters of the other legal systems, has set minimum standard rules that essentially all have accepted. But, given that each judge decides on the basis of the legal instrument used for their competence, in a kind of *Kompetenz-Kompetenz* judicial loop, the absence of final or all-encompassing solutions is not surprising. Thanks are due to these courts for being able to measure time and not having provoked irreconcilable differences that could have led to unsolvable crisis. The differences among major interpreters have become 'theories' and 'obiter dicta' and, through a rich dialogue fed by jurisprudential conceptions, they have been able to find concrete solutions to specific problems as they arose without compromising individual projects converging. The livelihood of the entire system owes much to the tolerance and the mutual opening of the national and supranational jurisdictions. In this sense, the most important difficulties when coordinating the interordinal relationships have mainly arisen around national constitutional law, the law of the EU (before the EC), the ECHR and the UN Charter.

### 2. METHODOLOGY AND STRUCTURE

8. The difficulties deriving from the instability of interordinal relationships, far from being a theoretical problem or one of little visible impact, and aside from meaning a breach in legal security (a prerequisite for the very existence of a rule of law), it has implications for the individual and, specifically, on his or her rights and obligations.<sup>14</sup>

Thus, we can cite the case of a small Turkish charter flight company, from which the Irish Government seized one of their two aircraft when it was refuelling at the airport in Dublin. Ireland justified the seizure under an EC regulation that implemented the sanctions imposed by the Security Council of the United Nations to the Republics of Serbia and Montenegro. The Turkish company countered the embargo, arguing essentially that the regulation was not applicable (because it had deposited the income earned from the rental of the aircraft, owned by the former Yugoslavian public airline, in blocked accounts) and, subsidiarily, that the seizure of the aircraft was against its fundamental right to

<sup>14</sup> See, for instance, the issues about the implementation in Spain of the European Arrest Warrant in Spanish Constitutional Court, Judgment No 199/2009. In a dissenting Opinion, Justice Pablo Pérez Trepms defended the need for a preliminary ruling procedure before the ECJ to solve the underlying legal issue. The Spanish Constitutional Court finally referred to the ECJ for such a procedure in June 2011 (Case No 6922-2008).

property, as recognized by the ECHR. The case was sent before the Irish courts and the ECJ, and ended up in the ECtHR. Deep down, in this case two things were illustrated. The first referred to the old controversy of whether the EC/EU was bound by the ECHR, even though it had never been ratified. Ultimately, there was the question whether the decisions of the ECtHR, in the end, could overrule or at least compel ECJ case law, at least in terms of fundamental rights. Also indirectly it raised the issue, although the ECtHR did not take it into consideration, about the control of the sanctions activity of the UN Security Council and its adjustment to fundamental rights, as they were protected, *inter alia*, by the ECHR.

Another interesting case is that of a Saudi resident and a Sweden-based foundation. Following their inclusion on the so-called blacklists of one of the sanctions committees of the United Nations, all their funds in the EU were frozen by virtue of a regulation that implemented those sanctions at the EC/EU level (*Kadi and Al Barakaat* case). Both parties concerned appealed to national authorities and, subsequently, to the EC/EU courts alleging, among other grounds, an attempt against their fundamental rights. Specifically, they alleged a violation of the right to be heard, the violation of the right to respect for property and the principle of proportionality and, thirdly, the violation of the right to effective judicial protection. EC/EU courts were faced with the uncomfortable situation of either complying with international law and applying the sanctions (denying an effective remedy to those concerned) or to protecting the victims and ignoring the UN sanctions (so the Union would incur an infringement that it has always criticized when incurred by other actors). The Court of First Instance chose, basically, the first option and the ECJ, in essence, the second one.

9. In these and other cases discussed in this book it is clear that there is a problem of constitutional significance. The instability of interordinal relations, apart from an indubitable academic interest and besides affecting 'governance' or 'global governance', ends up having an impact on legal security (in terms of predictability) and on the fundamental rights of individuals, and compromises the very existence of a rule of law. So, first, the messy interordinal overlap prevents individuals from having a clear idea regarding their particular 'charter of rights and obligations', that is, what fundamental rights are recognized and what obligations they have. Secondly, the very existence of different levels of protection of fundamental rights according to the applicable legal order does not seem a priori objectionable. Now the problem arises when the minimum rights considered by some orders as indispensable are not respected – this is where the application of an EC/EU regulation (being a direct development of a UN sanction) does not comply with one or more of the fundamental rights recognized as such in the national Constitution. This would be the case, for example, of the right to a fair trial (also called due process guarantees), a right that states traditionally recognize as absolute in their Constitutions, which is included in the ECHR and has

also been established as fundamental in the EU legal order but, on the other hand, those sanctioned by the UN Security Council do not have.

10. The solutions to this situation range from the establishment of a comprehensive legal system integrated by the other subsystems, based on the principle of hierarchy and in the most strict version of which the UN Charter appears at the top of the Kelsen pyramid (called ‘constitutionalist’), to concepts called ‘pluralistic’ which, in essence, try to extend the concept of freedom typical of the Anglo-Saxon systems to the interordinal relationships. That is, each legal order (in its interpreter, eg, the Constitutional Court) shall act and develop freely as long as it does not harm others. Following the ‘pluralistic’ theories, in order to avoid potential conflicts, legal orders should (on behalf of their freedom) assume the essential principles of the others so as to operate a kind of synchronization that avoids contradictions between them.

However, all these proposals have their problems and none of them has been accepted by the major interpreters of the legal orders at stake. The solution proposed here will bring some order to the European scope, which is the ideal legal laboratory for studying this issue since it is the focal point of the more developed supranational orders of constitutional nature, and will consist of the adoption of an interordinal constitutionalist model, based on the ‘soft constitutionalist’ approaches. But also, as we shall conclude, in order to make this model successful it will ultimately require the intervention of political power.

11. To sum up, the thesis supported here is that the solution to the interordinal instability and management of real conflicts that such instability (due to the messy overlapping of different legal systems) produces in the European scope is to embrace interordinal constitutionalism, that is, to adopt a soft ‘constitutionalist’ approach to managing the situation and face the challenges issued from the so-called fragmentation of the international law – that is, a model that assumes the existence of an international or global community of some kind, in which the principles underlying the different orders are universalized and, finally, in which there are common rules or principles to redirect conflicts that may occur, while the whole system slowly navigates to a kind of synchronization of the standards of protection of fundamental rights.

12. To verify this hypothesis, and given the breadth and complexity of the object of analysis, first, this book has been limited to the European context, an ‘ideal laboratory’, as stated above, in which to test a demonstration of the postulates hereby enunciated. That is, as seen in the examples described above (for example, the aircraft seized or the freezing of funds by UN mandate), this situation of instability and overlapping orders becomes particularly intense in Europe, where, besides the national orders, different legal systems of a constitutional nature such as EC/EU law, the ECHR or the UN Charter converge. Thus, this book has

focused on this particularly dense point of convergence of legal systems, the European arena.

Secondly, to address the many complex issues that arise and justify the hypothesis put forward, the author has followed a method of work by segmenting or compartmentalizing the study of the interordinal relationships, following an order directly proportional to the level of attention that such problems have attracted in the doctrine and jurisprudence to date. Therefore, first the relationship between the Constitution and EC/EU law is discussed, then all the ins and outs of the EU law/ECHR binomial, and ending up with an analysis of the UN Charter, EU law and ECHR triad.

In Part IV the hypothesis supported is put to the test. That is, the soft constitutionalist model advocated is compared with other models and possibilities of coordinating interordinal relationships, analysing the impact that the adoption of a model and others has as well as their real viability, that is, to what extent the courts operating in the European context, especially the ECJ, are willing to embrace this interordinal constitutionalism.

Finally, the conclusions, far from representing a summary of what has already been stated or what the reader has been able to observe through the text, try to go further. That is, the conclusions resulting directly from the research upon which this book is based are set forth, but with an attempt to extend and generalize the results. Thus, the internalization of basic principles of coexistence together with an intervention of political power will make the model hereby described to be used in the European context ultimately successful and may, therefore, be exported to other areas.

13. From the formal viewpoint, this book is structured into four distinct parts.

In Part I, we recognize the principles on which the national constitutional jurisprudence and the FCJ have built the interordinal relations of the legal orders of which they are the ultimate guardians. Then, we consider the attempts to reconcile the positions adopted until reaching the last codification attempts of these coexistence principles that appear in the failed Constitutional Treaty and, more recently, in the successfully ratified Treaty of Lisbon.

Part II focuses on analysing the relationship between the EU legal order and the ECHR, particularly in light of the leading developments in case law and the dialogue established between the ECtHR and the ECJ. Given the specialization of the ECtHR, the topic of this dialogue has been fundamental rights, whose protection systems established at different overlapping levels (national, EU and Council of Europe) has been the leitmotif of the Praetorian evolution. Therefore, first, the role of fundamental rights in the European Union is analysed. Then, an approach to the relationships between the EU legal order and the ECHR is carried out from the point of view of EC/EU law, reviewing the substance of the doctrine that so far had ruled on the issue. Next, we study the relations between the two systems, in this case, from the standpoint of the European Convention, with particular reference to recent developments in case law. Finally, we review

the current situation and possible developments of the issue in light of the responses and the silences of the courts in Luxembourg and Strasbourg.

In Part III we analyse the relationships and interactions established between the law of the United Nations Organization, particularly as regards the sanctions adopted by the Security Council, and EC/EU law. We begin with a chapter devoted to the Security Council, its forms of action and the difficulties of demanding accountability of international organizations. Then, we pay particular attention to the relationship between the Security Council resolutions and the ECHR, especially the possibility that the UN could be bound by the ECHR in the light of the recent case law of the ECtHR on the matter.

Finally, in Part IV we discuss the various possibilities for coordinating the relationships among the orders of a constitutional nature, especially from the standpoint of the European Union order, taking into account the consequences derived from the option for either approach.

The concluding section has been drafted in the form of statements or theses as clearly and concisely as possible to develop the scope of such claims without repeating or summarizing what was already said in the main section of the book.

14. As to the scientific method used by the author, this book follows a methodology of empirical, comparative, inductive-deductive and historical research. First, a method of empirical analysis has been followed in the sense that the source of information and answers to the problems set forth at the beginning of the investigation is experience. Thus, particularly, I have resorted to selected case law of the different national and supranational courts that have ruled on the subject of study and also the most representative doctrine that has ruled on the matter. Secondly, I have used a comparative approach by contrasting the answers and solutions that doctrine and jurisprudence have contributed to analogous or similar difficulties within the different legal orders the object of attention. Thirdly, the method is also, simultaneously, inductive and deductive. It is inductive as is necessary through the systematic classification of the conclusions reached as a result of the analysis of doctrine and jurisprudence to establish the principles governing interordinal relations. The deduction would not oppose the aforementioned, but the deductive process would be closely linked to the inductive one. Thus, induction aims to provide data or conclusions about some realities, but to relate those data, to build categories and establish comprehensive argument schemes as final conclusions, I resort to the deductive system. Besides, in a complementary manner, when it comes to showing the evolution of a certain doctrinal and jurisprudential construction, I have turned to the historical method of analysis.

15. Finally, we should make a brief but not irrelevant reflection of a rather subjective nature. The object of study, the interordinal relations among orders of constitutional nature or what could also be described as ‘pseudo-constitutional’

orders, is particularly complex, comprehensive and seems to be immersed in an unstable evolutionary process that has not yet come to an end (and perhaps never will). As the final draft progressed, new issues and possibilities for development appeared, under penalty of perpetuating this book, so they have been postponed for further investigation. What the author wants to make clear is that he is fully aware of the complexity of the topic chosen and the ambitious nature of the project. But it is not meant to be a perfect work (in the sense of finished or completed). Instead the author's intention is much more modest: to be the start of a much broader research, which the author hopes to pursue in the coming years.

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