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PHILOSOPHICAL AND LEGAL DIMENSIONS OF COMMUNICATIVE THEORY OF JURGEN HABERMAS

The article is devoted to the philosophical and legal aspects of communicative theory of substantiation of justice of Jurgen Habermas. The right, for him, is not the type of reflection, but a form of communication, in which not only the concept of law, but the law itself as a fact of social life is shaped. The idea of law by Habermas is not introduced into the social practice from the outside, but is formed in the course of a permanent social discourse. From the point of view of communicative theory the law has intersubjective nature and manifests itself in general metadiscourse.

It is emphasized that the principle of intersubjectivity allows to outline the ontological space of law. It is also indicated that the popularity of synthesis ideas are specified because of the fact that the phenomenon of law cannot be derived from only one factor. The analisis of different traditions of interpretation of law is held there in the article.

Habermas developed a specific societal theory about its history as the development of rationality in order to know how communication can lead to a certain level of social cohesion.

The theory of communication that Habermas develops draws on the idea that personal identity – our experience of our self as a self – is intersubjectively constructed through symbolic interaction, that is, communication. Because such communication constitutes the very person, its necessary presuppositions are not to

be viewed as norms, although they have a normative force. Instead, the necessary presuppositions of communication are the source for identity, as well as any position one might take and any norm to which one would accede. The intersubjective medium of language not only is the source of personal identity. It is also the medium through which the person understands himself or herself as a part of a social group and through which activity of individuals within such groups is coordinated.

The authors emphasize the idea of J. Habermas who claims that it is the political mechanisms of democratic countries that can guarantee an effective cooperation between the state and civil society and effective promotion of the conclusions of the discourse, which is associated with the concept of communicative rationality and procedural justice based on it.

Keywords: *communication, intersubjectivity, law, discourse, democracy.*

The current state of the philosophy of law in Ukraine demonstrates us rather mixed picture, which consists of partial legal thinking. It contains the remains of classical philosophical systems that eliminate the right of the objective laws of the outside world. They are based on the notion of the “substantial mind”, which laws of self-development are reflected in society by legal laws. Sometimes there are relapses of educational myths about a “public agreement”, in which law is interpreted as a kind of cultural universals or normative standard. From time to time there appear numeral positivism versions of legal reality in publications, naturalistic and mechanically interpreted by “logic” and also attempts intuitively to deduce legal relations from the psychological structure of personality.

At the time there is extending the idea that the phenomenon of law cannot be deduced of only one factor that determines the popularity of synthesis idea. In the West the concept of “integrated law” was developed by J.Gaulle and J.Berman, Russian integrative tendencies are represented by Hravskiy and Polyakov. Lapayeva called them “trying to escape from the classical paradigm” in her book “Types of legal thinking: legal theory and practice” [1, p.175-190]. In Ukraine the integrative tradition is represented by Maksimov, who suggests to distinguish wide and narrow meaning of “legal reality” concept. In the wide sense it means the whole body of phenomena. In the narrow sense “only basic legal realities are meant, in relation to that all the other phenomena appear to be derivatives and then under the legal reality in various directions and scientific schools it is used to be understood as legal norms or legal relationships or legal emotions. To the basic phenomena can be also included public law established by authorities, objective social relations, ideal interaction of subjects objectified in a language [2, p. 170].

According to Maksimov, legal reality should be understood as the whole “law world” that is constructed of legal phenomena, ordered according to the attitude to the basic phenomenon or “first reality” right. In the article “Duality of law in the context of methodology of legal thinking” he points out that the traditional legal understanding tends to either natural or positive law. “In relation to the legal reality its ideal-semantic and object-institutional aspects precisely correspond to the traditional division into natural and positive law” [3, p.163]. At the same time the author recognises the necessity of methodological synthesis of these oppositions, at

that “an absolute requirement isn’t mechanically-eclectic combination of principles, but search of deeper basis for realization of such synthesis” [3, p. 164-165].

The methodological basis that enables “consistent expression of the dual nature of law” is intersubjectivity. The principle of intersubjectivity allows to define the ontological law space: it appears as a special form of social life that is revealed in the interaction of subjects. There is no need to look beyond this space for some external objective laws that determine the content of law. The principle of intersubjectivity as an expression of the modern paradigm of knowledge means that the sense of entitlement isn’t dissolving in the mind of subject or in the external social world, but is revealing in the interaction of subjects.

Intersubjective approach is followed by numerous supporters of existentialistic, hermeneutic concepts of law (Hoyard-Fabre, Muller, Radbuh, Amselek, etc.) Within the limits of Postnonclassical philosophy of law thinkers try to avoid opposition of objective and subjective in law, negate polar “contrasting of objective conditions”. Special attention is deserved by the communicative theory of justice substantiation of Habermas [4].

The majority of authors, while analysing Habermas’ contribution into communicative concept of law, stop at the semantic and linguistic aspects. Meanwhile, the value of their contribution isn’t limited by this. In the theory of communicative action there are present at least three thematic “sections”:

- firstly, concept about communicative rationality that is directed against the limitation of mind to conceptual and cognitive tools
- secondly, there is considered a split-level concept of society in which the paradigm of “world life” of the individual and the social system are related not only rhetorically, but also in the widest sense
- thirdly, the so-called “theory of Modern”, which includes the metatheory of knowledge and social action at this stage, and which explains the more significant today type of social pathology, when the communicative-structural spheres of action are subordinate to autonomous formally organized legal systems and therefore have lost their effectiveness.

In each of these sections there implicitly present legal dimensions.

Thus, the **purpose** of this article is an attempt to outline the philosophical and legal aspects of Habermas’ communicative theory.

According to Habermas, claims of Modern epoch on cognition of objective truth through individual efforts of subject turned out to be the unilinear, unidirectional, monologic understanding. He criticises it, proposing instead a sample of dialogic, and even polilogic search for truth in a process of communication.

Habermas refers to the phenomenology of Husserl, who came to the conclusion that in the structures of human consciousness an important role is played by intentionality and before-objective entity of the world of social connections and relationships. These structures of consciousness define cognitive limits that allow the experience of perception of anything in the world, and also understanding of any “I” with any “Other”. Exactly in the intersubjectivity theorists tried to find the way out of

critical for social science polarization between objectivism and subjectivism. The principle of intersubjectivity takes into account the multi-vector nature of cognitive process and possibility of determinacy of subject by influence from the side of Other.

Habermas' communicative theory was initially focused on the link between the different disciplines, as it was provided for most empiric researches of knowledge basis, social action and communication. The idea of unity of cognition and communicative action passes as a "red line" through all his works. From the position of such approach the philosopher gives the metaphysical ground of law through an "argument in discourse".

Habermas believes that the process of establishing of a social order is carried out by a discourse way, that is, through the action of individuals focused on mutual understanding. In his idea about the possibility of coordinated interaction in the process of communicative action he goes out of an idea about character of verbal communication. As known, Habermas distinguishes between two forms of communication: first, communicative action and, second, discourse.

In first case "significance is naively considered to be a semantic cohesion for a purpose of information exchanging that is related to existing experience. Here are expressed problematic significant demands on the relevant issues, but the information isn't being exchanged.

In the second case, agents are looking for ways of understanding and ways of reaching an agreement to resolve the problems that arose in the act of communicative action. Mutual understanding aims to overcome the situation which arose out of problematisation of naively predictable significant claims in communicative action. Mutual understanding leads to discoursevely achieved, motivated agreement.

Developing his own vision of social action Habermas points out that the latter expresses the projective relation to social reality, based on knowledge. He distinguishes three types of social actions: strategic, normative and dramaturgic. Strategic action is an action that is explained by egocentric ideas about the personal benefit supported by verbal actions. Strategic model of an action defines language as one of many means of communication, through which there happens an influence of one partner on another in order to achieve their own selfish aims. Instead, for normative action the goal is to reach consenssus on a particular issue. In the normative model of action a language is a menas of cultural transmission, means of transmission and reproduction of cultural values and norms. Dramaturgic model of an action also aims to achieve a common language among partners, but language there serves as a way of self-presentation, forms of which are facial expressions and sign language. According to Habermas, only a communicative action assumes implementation of all functions of language as it is aimed at designing their own and other life-world, to the concept of our life-world and achieving public understanding of the communication partner. Clearly, Habermas emphasizes procedural form of communication, that is the understanding of communication as a process of intercourse, which refers to compatible activity of subjects and their organization. So, the concept of social action turns, according to him, into a concept of communicative

action, which aims to explore the possibilities of qualitative transformations by examining interests and needs of the person, reorientation of values, engrained in interpersonal communications.

Normative order of society, which is codified in legal laws, must be founded in the field of common beliefs of its members. Habermas insists that compulsory conformity of modern languages must give way to undistorted, free, natural communications. Consistently continuing critical tradition of the Frankfurt School, Habermas declares all attempts to impose imperious domination by means of capital to be “distorted”, “untrue” communication.

Distorted communication is a form of radical alienation of a person in society, as in the process there is oppressed something with the help of which people can understand and interact with each other, namely, language. Untrue communication takes a person’s human nature, real one returns it to its true identity. Habermas opposes the idea to untrue communication as obviously as free “discourse”, which returns meaningful nature of human communication.

In this case, the discourse turns into a purposeful process of public discussion of higher values that people are guided by in their actions. Thinker suggests that this harmony can be achieved as a result of rational criticism of core values by people that define the overall purpose and perspective of the existence of society. Such criticism promotes conscious correction of higher values by discourse participants in order to bring these values in line with the changing requirements of modern epoch. As even a separate individual, indignant by passions and superstitions, not always “reflects” higher values, according to which he or she actually determines the final goal of the activity. At the societal level, the reflection promotes clear and precise understanding of the values even less than a reflection of individual rights.

That is why a public discourse is needed, in which ideally would be involved all members of society. Then in the process of rationally organized discussion, which aims to “the truth only”, an individual and group particularism, which disconnects people and interfere with their understanding, can be overcome.

Unlike Apel, Habermas believes that discourse ethics can be justified only through an appeal to the resources of the real life world. Philosophic discourse, he thinks, is always historically limited by social and cultural life-world of a particular epoch, and, therefore, outside this world there are no conclusive preconditions for understanding. In other words, there is no objective discourse as a discourse of a higher order, which sets rules for subordinate discourses.

Apel, in contrast, insists that objective discourses are possible and proposals formulated at the highest level of reflection and synthesis have the status of “marginal justification” [5].

Justifying the discursive nature of law, Habermas significantly expands the features and functions of civil society. He tries to approach the ideal of every citizen participation in law-making to the complex realities of modern life through partial delegation of legislative powers to the public.

Drawing up the conclusion, we note that in the communicative theory of Habermas law has subjective nature. The process of law cognition merges in his conception with a process of law creating because the idea of law isn't brought into social practice from outside, but is formed and continuously updated during social discourse.

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