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COMMUNICATIVE THEORY OF LAW IN THE DIGITAL AGE

Scientific specialty 5.1.1. Theoretical and historical legal sciences

DISSRTATION
for a degree of
doctor of legal science

Translation from Russian

Researcher advisor
doctor of legal science
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St Petersburg
2024

CONTENTS

INTRODUCTION

Relevance of the research topic. Digitalization continues to be the main trend of social development in the current century. Most often, researchers interpret its influence on the development of any humanitarian science in an expansionist spirit: the challenge of digitalization is external, it brings science a lot of new (digital born) objects of study, the principles and patterns of functioning of which science should explore. Legal science continues this logic, in the passport of the scientific specialty 5.1.1. "Theoretical and historical legal sciences" currently there is a research area 13 "Digitalization in the public legal sphere".[1] At the same time, digitalization is not limited only to the total mediation of social ties and relations by digital technologies. It captures science itself, changing its social and epistemic structures. This is because the "digital" means a new era, the socio-political realities of which, subordinated to a new technological algorithm.[2] This inevitably leads to a change in the previous concepts underlying the scientific worldview, as well as approaches to the methodology of explaining various phenomena. Postmodernism,[3] which deconstructed and exposed modernity as a project of Enlightenment, is losing its ideological influence, and is giving way to the arena of history to new strategies of theoretical thinking. «Fatigue» from postmodernism is evident by the end of the first decade of the XXst century. In the second decade of the XXIst century, the crisis of globalization is gaining momentum, bringing bitter disappointments in the model of political multipolarity. It is obvious that the socio-cultural cultural period associated with postmodernism has ended, and new times are coming. An epoch is formed around a specific phenomenon, and represents a long period of time when this phenomenon determines the nature of social relations and culture. Nowadays, digital

[1] Passports of scientific specialties // The official website of the Higher Attestation Commission of the Russian Federation. URL: https://vak.minobrnauki.gov.ru/searching#tab=_tab:materials ~ (accessed 08.17.2023).

[2] "Algorithm" is a common scientific metaphor, although in modern conditions of the spread of neural networks that function, in the strict sense of the word, essentially not based on an algorithm as a rigidly defined logical sequence, it should be used with reservations.

[3] In this case, postmodernism is understood extremely broadly, as all critical theoretical projects of the last third of the twentieth century, based on the principles of deconstruction, decentralization and deterritorialization, regardless of their disciplinary affiliation.

communication become such an axial phenomenon. The relevance of theories explaining communication and potentially applicable to its digitalization is increasing dramatically. In legal science, the range of such theories is very small, and the communicative theory of law created by A.V. Polyakov is central among them from the point of view of the fundamental elaboration of the category of legal communication. The relevance of this theory in the new era depends on whether it can meet the challenges of modernity.

Unlike the great political narratives of the Cold War, political ideology nowadays pays attention not only to projects of global transformation in the format of utopian design. The future is not the only object of political struggle. In addition to the future, the importance of the past increases. This observation could be subjected to general criticism based on the idea that concepts of the past have been a factor of legitimization at all times, but only recently have strategies for reconstructing the past become the object of compulsory legislative regulation. It is only nowadays that the concepts of reliability and unreliability of socially significant information and "disinformation" are developing as detailed normative concepts of state-organized law. All this is due to the importance of modern communication processes and, no less importantly, the importance of how these processes are mediated.

All attempts at real design of the future at the moment are connected in our century with digital technologies and digital communication. Socio-political reforms in the field of education, health, culture, interaction between citizens and the state, increasing the political activity of citizens in most states have a digital orientation and use digital tools. In this case, the priority is not the question of new qualitative characteristics of the final state of the object of reforms, but how accessible the characteristics provided by the previous development will be. Building an information society in Russia has achieved significant success. According to the Digital Ministry, on the website of Gosuslugi.ru about 570 million services were ordered in 2023, and the number of services actually provided increased 4 times

compared to 2020[4]. In 2024, GPS technology is planned on this site, which will allow online provision of services, i.e. provision at the time of application[5]. Public services have also received international recognition, for example, according to the British web analytics platform SimilarWeb in 2019, this site ranked second in the world in terms of traffic in the Law And Government category.[6] At the same time, the knowledge society, which is declared, is established as a priority in p. 20 Strategies for the development of the Information Society in the Russian Federation for 2017-2030,[7] as the goal of building an information society in Russia, is defined as "a society in which obtaining, preserving, producing and distributing reliable information, taking into account the strategic national priorities of the Russian Federation, is of paramount importance for the development of a citizen, economy and the state".[8] At the same time, in development of the previous thesis that "memorial" concepts are becoming not only scientific concepts, but normative concepts of state-organized law, it is necessary to emphasize that its understanding is specified in Part 2 of Article 67.1 of the Constitution of the Russian Federation,[9] which lays down an understanding of historical truth, determining the "historically formed state unity". The past and its memory are playing an increasingly important role in legal doctrine, while the importance of digital technologies in the processes of reconstructing history is increasing. Moreover, digital traces themselves play a serious role in understanding modern history, which is largely related to the digital

[4] How Public Services will develop // Rossiyskaya Gazeta. March 14, 2024. URL: https://rg.ru/2024/03/14/zamglavy-mincifry-kachanov-dlia-riada-sluchaev-mozhno-sdelat-robota-chinovnika.html (accessed 03.14.2024).

[5] The DigitalMinistry plans to introduce GPS technology in Public Services in 2024 // TASS. February 1, 2024. URL: https://tass.ru/ekonomika/19876185 (accessed 03.14.2024).

[6] The Russian portal of public services is one of the best in the world // Vedomosti. December 20, 2019. URL: https://www.vedomosti.ru/press_releases/2019/12/20/rossiiskii-portal-gosuslug-yavlyaetsya-odnim-iz-luchshih-v-mire (accessed 08.09.2023). In 2023, Public Services are ranked fifth in the world (https://www.similarweb.com/ru/top-websites/law-and-government/government/).

[7] The Strategy for the development of the information society in the Russian Federation for 2017-2030, approved by the Decree of the President of the Russian Federation dated May 9, 2017 // Collection of Legislation of the Russian Federation. 2017. No. 20, Article 290.

[8] Ibid., item "l", Article 4.

[9] The Constitution of the Russian Federation: adopted by popular vote on 12.12.1993: subject to amendments made by the Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation dated 03/14/2020 No. 1- FKZ // Rossiyskaya Gazeta. 1993. 25 Dec.; Collection of legislation of the Russian Federation. 2020. No. 11. Article 1416.

environment. In turn, in part of the period preceding it, reconstruction, carried out on the basis of digital models and facts, which themselves can be digitized for subsequent analysis, becomes in demand. Digital technologies as media are literally becoming an intermediary between the past and the present, between our predecessors and us – representatives of the digital age in the socio-humanitarian discourse. Thus, the medial turn turns into a memorial one, providing not only social actions, but also the memory of them as their premise and outcome. And this is exactly the context in which not only society as a whole is developing now, but also law and legal science in particular. All these phenomena are mediated by digital media.

The developing artificial intelligence captures all the frontiers of human living space. "Smart home", "smart city", "smart state" – all these concepts are aimed at automating and optimizing the management of the routine functioning of human communities of all levels and scales, and the ease and continuity of ensuring their "regular regimes" should ensure the realization of freedom, formal equality and other legal values. In these conditions, law can easily cease to be a human matter and, first in a metaphorical, computer–technology-oriented way, and then - as "machine-readable law" develops, and in a literal sense, transform into a series of "update packages" in which algorithms and (or) neural networks reconfigure key parameters in digital regulatory and legal systems. acts redefine legal concepts and deadlines.

The law that structures the human will and gives it forms of realization in the conditions of coexistence of a multitude of willing individuals, no less than digital technologies, depends on the human ability to develop scientific theories, i.e. to create systems of provisions claiming to be complete descriptions of their objects, used to predict the development of these objects or to create and manage them. Although now the communicative theory of law is undergoing a process of adaptation to the digital period and demonstrates the serious potential of its "digital transformation", as a scientific theory it arose in the doctrinal and ideological context of the pre-digital period, when the main task facing legal theory as a whole was to maintain and maintain the unity of its categorical space.

The inner contour of solving this problem was connected, firstly, with ensuring continuity in understanding the dogma of law in Russian legal thought, which experienced two radical political gaps in the twentieth century, dividing it into pre-revolutionary, Soviet and post-Soviet stages. Secondly, it presupposes the assertion of methodological pluralism, according to which fundamentally different scientific theories of the same object can simultaneously coexist. Since theories rely on different axioms and come to different conclusions, their existence cannot be conflict-free and consistent. The confrontation between legal positivism and the theory of natural law, which initiates the development of modern schools of law, remains particularly acute in legal theory. The content of theories in the language of computer science (which is applicable as a tool for external analysis of theories as information itself, and related processes as information processes) can be represented literally as data. In turn, the ordering of accumulated data increases the importance of intermediate generalizing constructions used to denote similar, but not identical, cultures of legal theorization. The latter include concepts of legal understanding, types of legal understanding and the actual schools of law, which offer research programs that allow us to formulate the outlines of legal theories in a general way.

The external contour of solving the problem of legal theory, which consisted in maintaining and maintaining the unity of its categorical space, was determined by the vectors of development of philosophy, philosophy of science and the praxis of state-building, which in our country was determined by the collapse of the USSR and the transition to the post–Soviet stage of socio-political and economic development, and in the continental West – with the program of creating united Europe capable of responding to the challenges of globalization. Continental European philosophy is very illustrative in this sense. At the end of the twentieth century, it enters a post-metaphysical phase. If the essay is by J. Habermas's "Post-Metaphysical thinking"[10] still holds the anti-metaphysical perspective laid down by

[10] Habermas J. Nachmetaphysisches Denken. Philosophische Aufsätze. Frankfurt am Main, 1988, 286 s.

positivism and revealed in the scientific interpretations of the tasks of philosophy, then the further development of post-metaphysical thinking (works by J. Deleuze, J. Derrida, A. Badiou, J. Vattimo, F. Laruelle, J.L. Marion) leads to the fact that criticism of metaphysics itself provides an increment of the latter and becomes a metaphysical excess. Accordingly, the positivist anti-metaphysical pathos loses its relevance, and the reinterpretation of metaphysics, on the contrary, receives it; The very relationship between metaphysics and post-metaphysics goes beyond the models of binary opposition and takes various forms of reinterpretation and reactualization. The pragmatically reoriented metaphysical problematics became the starting point of reflection both for the construction of the domestic communicative theory of law by A.V. Polyakov and for Western communicative legal theories, the authors of which (J. Habermas, N. Luhmann) are directly the developers of post-metaphysical thinking. Thus, the connection between legal theory and modern philosophy was ensured.

The philosophy of science, in turn, reinforced the emerging attitude in legal theory towards a plurality of theories and methodological pluralism through postpositivist concepts of the development of science – paradigmatic (T. Kuhn), programmatic (I. Lakatos) and anarchic (P. Feyerabend), in which the increase in scientific knowledge is no longer reduced to a linear sequence of successive theories, where each next refutes the previous one and deprives it of the meaning it had. The development of science was presented as a multidirectional process of complex interactions between competing theories, in which the actualization of the old theory in a new hypothesis is possible, and direct continuity is possible only in a situation of normal science. Theory is interpreted as a basic element of the dynamics of scientific knowledge, a locomotive that ensures its advancement. But, the trajectory of this locomotive is very variable, therefore, a certain systematization of theories was required, in the national tradition carried out on the basis of the historical types of scientific rationality highlighted by V.S. Stepin. In legal science, an extremely rare situation for other branches of scientific knowledge has turned out to be quite an effective existence of classical theory – legal positivism, inextricably linked with

legal dogmatics, retains its positions and often claims absolute priority. At the same time, the actual post-non-classical research program in legal theory is rather an exception to the rules, which calls into question both the nature of the relationship of legal theory with modernity and the universality of post-non-classical rationality in the humanities. The communicative theory of law, based on the methods of post-non-classical philosophy, was in a very advantageous position. Its modernity was impeccable and universal – until continental European post-metaphysics moved to new (flat) ontologies (regardless of our personal attitude to the concept of flat ontologies in terms of values, their postulation is a fact from the field of sociology of science that must be reckoned with), and epistemology did not begin to take into account material the basis for the production of knowledge, thereby setting the prerequisites for the emergence – let us dare to assume – a new, digital turn in scientific rationality (which, in turn, in the light of the general approach to explaining the medial turn as a meta-category proposed by V.V. Savchuk), in which the subject and object of cognition change places due to the inclusion of digital technologies, including artificial intelligence technologies, in scientific methodology and the claim to equalization in the processes of actual communication of the epistemic status of people and digital objects (B. Latour). At the same time, the technological dimension of the development of science at any moment may require legal novelties to adequately reflect changing ideas about what consciousness, self-awareness, will are, and what the volitional decision-making process consists of.

Reformatting modernity and its entry into a new, digital stage problematizes the current scientific status of the communicative theory of law. The latter, of course, remains an actual scientific legal theory. But will it remain modern? This work is an experience of the scientific study of the communicative theory of law, carried out as an analysis of modern legal teachings within the framework of the general methodology of the history of the teachings of law and the state. This experience is intended to answer the question of what is the challenge of two key turns of the digital era, the medial and memorial, addressed to the communicative theory of law, and to establish the foundations for the formation of a "digital" communicative

theory of law. At the same time, the content of the concept of "digital" as a characteristic of the theory of law is disclosed and justified separately in the study.

Degree of development of the topic. This dissertation is a scientific qualification work that solves the scientific problem of the scientific reconstruction of the communicative theory of law in the digital age, which has important political, socio-economic and cultural significance. Its solution required an initial formulation of the problem, since the scientific literature available at the time of writing did not contain studies on the formation and modern prospects for the development of the communicative theory of law.

The initial conceptual scheme used in the dissertation research to describe and reflect such an object of research as scientific theory is based on the scientific tradition of the philosophy of science, laid down by postpositivism (I. Lakatos,[11] T. Kuhn,[12] K. Popper,[13] P. Feyerabend[14]) in the study of the continuity of scientific activity. However, the study of a specific scientific theory is impossible in isolation from its disciplinary context, which includes scientific ideas, approaches, methods dominant in a particular historical period, as well as unique doctrinal and categorical connections between them, formed in the process of scientific communication between researchers and their teams. For his understanding, it was of fundamental importance, firstly, domestic theoretical and legal works devoted to the topic of integrative legal understanding, overcoming the conflict between legal positivism and natural theory of law and other schools of law, and, secondly, also the transition of legal theory to non-classical methodology, published at the turn of the XX-XXI centuries. Among the first, the works devoted to the search for the foundations of synthetic ordering and harmonization of legal knowledge by V.G. Grafsky,[15]

[11] Lakatos I. Falsification and methodology of research programs. M.: Medium, 1995, 236 p.

[12] Kuhn T. The structure of scientific revolutions / Per. I.Z. Naletova. M.: Progress, 1977, 300 p. It is necessary to note the polyparadigmatic nature of the post-Soviet legal theory, in which the types of legal understanding have the signs of a paradigm.

[13] Popper K.R. Logic of scientific research / Translated from English under the general editorship of V.N. Sadovsky. M.: Republic, 2005, 447 p.

[14] Feyerabend, P. V. method. An essay on the anarchist theory of knowledge / Translated from English by A. L. Nikiforova. M.: AST; Keeper, 2007, 413 p.

[15] Grafsky V.G. Integral (synthesized) jurisprudence: an actual and still unfinished project // News of higher educational institutions. Law studies. 2000. No.3, pp.49-64.

V.V. Lazarev,[16] V.V. Lapaeva[17] and A.V. Polyakov[18] himself were of the greatest importance.

Among the second, it is necessary to note the works of I.L. Chestnov, which considered the foundations and principles of postclassical methodology, its applicability in theoretical and legal and philosophical legal research.[19] The corpus of texts of the St. Petersburg School of Law is also of contextual importance (M.V. Antonov, V.V. Arkhipov, D.I. Lukovskaya, A.A. Kraevsky, A.V. Polyakov, E.V. Timoshina, I.L. Chestnov et al.), devoted, among other things, to the pre-revolutionary philosophy of law, which reflects the reproduction of the attitude towards a holistic, synthetic jurisprudence, and, at the same time, the identification of ways of transition of theoretical jurisprudence to the rails of non-classical methodology.

The next block of works appeared in the first decade of the XXI century and was associated with the primary approbation of A.V. Polyakov's communicative theory of law. The texts that can be attributed to it represent the first critical responses of the academic community to the emergence of a new theory; their main part is a reaction to the defense of the doctoral dissertation "*The communicative concept of law (genesis and theoretical legal justification)*", carried out in the form of a scientific report.[20] The discussion of this work at an expanded meeting of the Department of Theory and History of State and Law of the Faculty of Law of St. Petersburg State University on April 16, 2002 was published as a separate

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[16] Lazarev V.V. The origins of the integrative understanding of law // Our difficult path to the right. Materials of philosophical and legal readings in memory of academician V.S.Nersesyants / comp. V.G.Grafsky. M.: Norm, 2006, pp.122-139.

[17] Lapaeva V.V. Integral legal understanding in the Russian theory of law: history and modernity // Legislation and Economics. 2008. No.5, pp.5-13.

[18] Polyakov A.V. Communicative theory of law as a variant of integral legal understanding // Theoretical and practical problems of legal understanding. Materials of the III International Conference held on April 22-24, 2008 in RAP. / Edited by Dr. Law, Professor, Honored Worker of Science of the Russian Federation V.M. Syrykh and Cand. of Law M.A. Zanina, M.: RAP, 2010, pp. 70-85.

[19] See, for example: Chestnov I. L. Postclassical legal understanding // Social sciences and modernity. 2010. No. 5. pp. 157-162; The same. From classical to non-classical legal discourse (essays on the general theory and philosophy of law) // Izvestia of Higher Educational Institutions. Law studies. 2011. No. 6(299). pp. 242-245; The same. Postclassical rationality of law // Society and man. 2013. No. 3-4(6), pp. 105-109, etc.

[20] Polyakov A.V. The communicative concept of law (genesis and theoretical and legal justification): diss. ... D. legal sciences. St. Petersburg, 2002, 94 p.

publication, some sections of which were later revised by their authors into independent articles.[21] The negative reviews include the publications of M.I. Baitin, Yu.I. Grevtsov and E.B. Khokhlov, I.Yu. Kozlikhin;[22] the works of representatives of the legal-libertarian approach are restrained and positive.[23] To clarify the essence of the scientific controversy around the communicative theory of law, the response article by the author of the theory in question was important.[24]

The stage of the initial recognition process is replaced by interest in the basic category of a new methodological project – legal communication. For the 60th anniversary of A.V. Polyakov, a two-volume book "*Communicative theory of Law and modern problems of jurisprudence*" is being published, the authors of the first volume of which,[25] N.V. Adrianov, M.V. Bayteeva, V.M. Budilov, Yu.Yu. Vetyutnev, N.A. Vlasenko, V.V. Denisenko, V.V. Lazarev, A.V. Krasnov, E.F. Mosin, D.I. Lukovskaya, I.D. Nevvazhay, A.I. Ovchinnikov, V.I. Pavlov, Yu.E. Permyakov, N.V. Razuvaev, V.A. Sapun, E.G. Samokhina, A.V. Skorobogatov, A.V. Stovba, V.M. Syrykh, E.V. Timoshina, E. Fittipaldi, I.L. Chestnov, consider the communicative theory of law in the research of domestic and foreign scientists.

At the same time, there are works aimed at understanding its applicability in theoretical research, as well as works using the concept of communication applied to the analysis of legal reality for their theoretical tasks. This category of research in the dissertation will be designated as "legal communication studies", which will be understood as an interdisciplinary field of legal research focused on the

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[21] The communicative concept of law: questions of theory: Discussion of the monograph by A.V. Polyakov, St. Petersburg, April 16, 2002. St. Petersburg: St. Petersburg State University, 2003, 160 p.

[22] Baitin M. I. The essence of law (Modern normative legal understanding on the verge of two centuries). 2nd ed., add. M.: Publishing house "Law and the State", 2005. 554 p.; Grevtsov Yu. I., Khokhlov E.B. On legal and dogmatic chimeras in modern Russian jurisprudence // Izvestia of Higher educational institutions. Law studies. 2006. No. 5(268). pp. 1-23; Kozlikhin I. Yu. On non-traditional approaches to law // News of higher educational institutions. Law studies. 2006. No. 1(264), pp. 31-40.

[23] Varlamova N. V. Typology of legal understanding and modern trends in the development of the theory of law. M., 2010, 136 p.

[24] Polyakov, A.V. Modern theory of law. Response to critics // Izvestia of higher educational institutions. Law studies. 2011. No. 6(299), pp. 6-39.

[25] The communicative theory of law and modern problems of jurisprudence. On the 60th anniversary of Andrei Vasilyevich Polyakov. Collective monograph: in 2 vols. Vol.1 The communicative theory of law in the research of domestic and foreign scientists / Edited by M.V. Antonov, I.L. Chestnov, D.I. Lukovskaya, E.V. Timoshina. St. Petersburg: Alef-Press Publishing House, LLC, 2014, 373 p.

methodological use of the concept of "communication", understanding current problems of philosophy and not offering direct development of the communicative theory of law. Communication studies appeared in our country relatively late, since the very concept of "communication" is in opposition to the concept of "information" in the late Soviet and early post-Soviet humanitarian discourse.[26] The relationship between the communicative theory of law and legal communication studies can be represented as a research program, i.e. a sequence of theories in which the first acts as a «solid core», and the second as a «protective belt». The most complete thematic range of legal communication studies is reflected in the second volume of the jubilee two-volume book,[27] the authors of which are A.S. Alexandrov, M.V. Antonov, A.V. Assessorova, V.M. Baranov, S.A. Belov, E.V. Bulygin, Ch. Varga, N.V. Varlamova, E.A. Voynikanis, M.L. Davydova, S.A. Drobyshevsky, L.I. Glukhareva, I.N. Gryazin, V.S. Dorokhin, V.V. Lapaeva, S.V. Lipen, L.S. Mamut, B. Melkevik, A.M. Mikhailov, S.V. Orlova, I.I. Osvetimskaya, E.A. Pribytkova, P.V. Remizov, R.A. Romashov, N. Rulan, S.L. Sergevnin, V.V. Terekhin, E.N. Tonkov, V.A. Tokarev, V.V. Trofimov, N.Y. Filimonova, M. Van Hoecke. The studies of the foreign authors as H.A. Treviño[28] and B. Bix[29] are methodologically close to them. The dissertation research in this area includes the work of V.V. Denisenko,[30] devoted to the problem of legitimacy. During the same period, quite detailed analytical articles appeared on the structure of the communicative theory of law, its methodology and categorical series. These should

[26] Golub O. Yu., Tikhonova S.V. Communication studies vs information law: theoretical problems of the application of the information approach in information law // Bulletin of Saratov State University. A new series. Series: Economics. Management. Right. 2013. Vol. 13, No. 4-1. p. 594.

[27] The communicative theory of law and modern problems of jurisprudence. On the 60th anniversary of Andrei Vasilyevich Polyakov. Collective monograph: in 2 vols. 2. Actual problems of philosophy of law and legal science in connection with the communicative theory of law / Edited by M.V. Antonov, I.L. Chestnov, D.I. Lukovskaya, E.V. Timoshina. St. Petersburg: Alef-Press Publishing House, LLC, 2014, 533 p.

[28] Trevigno A. H. The relevance of the classics for modern sociology of law: the American context // News of higher educational institutions. Law studies. 2013. No. 5(310), pp. 26-47.

[29] Bix B. Law, Language, and Legal Determinacy. Oxford: Clarendon Press, 1995, 232 p.

[30] Denisenko V. V. Legitimacy of law (theoretical and legal research) : diss. ... D. legal sciences. St. Petersburg, 2020, 323 p.

include the works of M.V. Antonov,[31] S.I. Arkhipov,[32] V.M. Budilov.[33] Also analytically significant is the appendix to the publication of selected works of A.V. Polyakov "*Communicative Legal understanding*",[34] entitled "*The communicative approach and the Russian theory of law*", co-authored by M.V. Antonov, A.V. Polyakov and I.L. Chestnov.[35]

Critical rethinking of Western social theories that studied law within the framework of the social whole (communicative legal theories) and the Western version of the communicative theory of law played an important role in the discussions around the Russian communicative theory of law. The former, without detailing the legal element, were considered in philosophical literature as the results of post-metaphysical thinking, versions of social theory and models of democracy. The candidate dissertations by V.K. Glebova,[36] P.S. Dabosin,[37] D.S. Smetannikov[38] should be attributed to the legal studies devoted to the study of these theories, and doctoral dissertation by O.V. Poskonina,[39] as well as her monograph.[40] The emergence of communicative legal theories touches upon the problems of the relationship between the continental and analytical philosophical and philosophical-legal traditions, the range of main directions of which were studied by

[31] Antonov M. V. On the communicative theory of law by Andrey Vasilyevich Polyakov // Russian Law Journal. 2015. No. 6(105), pp. 22-33.

[32] Arkhipov S.I. A. V. Polyakov's communicative theory of law // Russian Law Journal. 2016. No. 4, pp. 20-28.

[33] Budilov V. M. General theory of law in an integral context: continuation of the dialogue (to the release of the second edition of the textbook by A. V. Polyakov "General Theory of Law: problems of interpretation in the context of a communicative approach") // Bulletin of the St. Petersburg University. Right. 2017. Vol. 8. Issue 1, pp. 4-25.

[34] Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, 575 p.

[35] Antonov M.V., Polyakov A.V., Chestnov I.L. Communicative approach and the Russian theory of law (appendix) // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 549.

[36] Glebova V.K. Jurgen Habermas's Concept of Law. Abstract of the dissertation. ... cand. legal sciences. Voronezh, 2020, 31 p.

[37] Dabosin P.S. "Critical" theory of society and the state Yu. Habermasa: methodological aspect. Abstract of the dissertation. ... cand. legal sciences. St. Petersburg, 2001, 23 p.

[38] Smetannikov D.S. School of Critical Legal Studies. Abstract of the dissertation. ... cand. legal sciences. St. Petersburg, 2000, 24 p.

[39] Poskonina O.V. Niklas Luhmann's Political and Legal theory (Methodol. aspect): diss. ... D. legal sciences. St. Petersburg, 1997, 436 p.

[40] Poskonina O. V. Niklas Luman on the political and legal subsystems of society. Izhevsk, 1997, 122 p.

A.B. Didikin,[41] S.N. Kasatkin,[42] V.V. Ogleznev.[43] Modern natural law theory, to the ideals and ideas of which the communicative theory of law is sensitive, represented by the views of L. Fuller,[44] J. Finnis,[45] M.C. Murphy,[46] J. Crowe,[47] was considered in the works of V.V. Arkhipov,[48] A.B. Didikin,[49] L.V. Karnaushenko,[50] I.Yu. Kozlikhin,[51] V.Yu. Perov and A.D. Sevastyanova,[52] V. Rodriguez-Blanco.[53] It is necessary to note the systematic analysis of the problems associated with the crisis of law, the gaps between classical and post-classical paradigms in legal thinking, the formation of a post-classical ontology of law, relativism in law and the new search for the foundations of the theory of law caused by it, carried out by the authors of collective scientific monographs published by the St. Petersburg publishing house "Aleteya" in the series "*Interpretation of sources of law*".[54]

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[41] Didikin A.B. The formation of an analytical tradition in the modern philosophy of law // Schole. Philosophical antiquity and the classical tradition. 2010. No. 4(1), pp. 149-165.

[42] Kasatkin, S. N. Borders of Empire: Ronald Dworkin's Legal Interpretativism on the map of Legal Theories. Samara: Samara Law Institute, 2021, 115 p.

[43] Ogleznev V.V. G.L.A. Hart and the formation of the analytical philosophy of law. Tomsk: Publishing House Vol. unita, 2012, 216 p.

[44] Fuller L.L. The Morality of Law, rev. ed. New Haven: Yale University Press, 1969. 215 p.

[45] Finnis J. Natural law and natural rights. Moscow: ANO "IRISEN", 2012, 554 p.

[46] Murphy M.C. Natural Law Theory // The Blackwell Guide to the Philosophy of Law and Legal Theory. Ed. By Martin P. Golding and William A. Edmundson. Malden; Oxford; Carlton: Blackwell Publishing Ltd, 2005, pp. 15-28.

[47] Crowe J. Natural Law Theories // Philosophy Compass. 2016. No.11/2. Pp. 91-101. DOI: 10.1111/phc3.12315.

[48] Arkhipov V.V. Lon L. Fuller's Concept of law: dissertation ... cand. legal sciences. St. Petersburg, 2009, 164 p.

[49] Didikin A.B. Modern theories of natural law and classical tradition // Schole. 2014. No. 8, pp. 418-424.

[50] Karnaushenko L.V. Theory of natural law J. Finnis as the Renaissance of the metaphysics of law // Bulletin of the Kazan Law Institute of the Ministry of Internal Affairs of Russia. 2019. No. 2 (36), pp. 158-162.

[51] Kozlikhin I. Yu. The procedural concept of law by Lon Fuller // Izvestia of Higher educational institutions. Law studies. 1993. No. 2, pp. 53-58.

[52] Perov V.Yu., Sevastyanova A.D. The problem of the moral content of law in the concept of J. Finnis // Conflictology. 2018. No. 13(3), pp. 71-84.

[53] Rodriguez-Blanco V. Is Finnis right? Understanding of normative jurisprudence. Part 1 // Bulletin of the Humanities University. 2018. No. 4 (23). pp. 92-94; The same. Is Finnis right? Understanding of normative jurisprudence. Part 2 // Bulletin of the Humanities University. 2019. No. 2 (25), pp. 26-41.

[54] Postclassical ontology of law. Collective monograph / Edited by I.L. Chestnov. St. Petersburg: Aleteya Publishing House, 2016, 688 p.; Crisis of Law: history and modernity. Collective monograph / Edited by V. V. Denisenko, M.A. Belyaev and E.N. Tonkov. St. Petersburg: Aleteya Publishing House, 2018, 514 p.; Legitimacy of law. Collective monograph. St. Petersburg: Aleteya Publishing House, 2019, 496 p.; Legal thinking: classical and postclassical paradigms. A collective monograph. / Edited by I.L. Chestnov and E.N. Tonkov. St. Petersburg: Aleteya Publishing House, 2020, 464 p.; In search of the theory of law. Collective monograph / Edited by E.G. Samokhina, E.N. Tonkova. St. Petersburg: Aleteya Publishing House, 2021, 286 p.; Relativism in law. Collective monograph /Edited by I.I. Osvetimskaya and E.N. Tonkov. St. Petersburg: Aleteya Publishing House, 2021, 349 p.; Postclassical studies of law: prospects for a scientific and practical program. Collective monograph / Edited by E.N. Tonkov, I.L. Chestnov. St. Petersburg: Aleteya Publishing House, 2023, 500 p.

Legal aspects of the communicative theory of J. Habermas were revealed in a series of articles by B. Melkevik, collections of which, translated by E.G. Samokhina, were published under the scientific editorship of A.V. Polyakov in 2018,[55] under the scientific editorship of M.V. Antonov in 2018,[56] under the scientific editorship of I.L. Chestnov[57] – in 2020. It is important to note that M. van Hook's work "Law as Communication" was translated into Russian by the representatives of the Russian school themselves, M.V. Antonov and A.V. Polyakov,[58] which opened up to the Russian reader the possibility of a critical understanding of the Western communicative concept of law as a whole, as well as the opportunity to draw an independent conclusion about the substantive priority, which will be discussed separately. Of particular importance in this aspect is the article by A.V. Polyakov, which critically analyzes the logic of the Belgian theorist's theorizing.[59]

Since the beginning of this century, the metaphor of "turn" has been actualized in philosophy at the level of methodological reflection. Throughout the twentieth century, it was used to describe the reorientation of the research interest of philosophy. Since the time of the ontological turn of Hartmann and Heidegger, the "choreography" of the turn itself includes among them connotations of a return, a recursive movement to what was unreasonably forgotten, lost sight of, which can take the form of the idea of a 180-degree turn, i.e. appeals to opposite objects that cannot be in the field of view at the same time, and therefore prolonged attention to one automatically forms the implication of the other. Currently, there are more than a dozen turns in the scientific literature: ontological, linguistic, iconic, theological, performative, medial, anthropological, rhetorical, narrative, spatial, bodily, gaming,

[55] Melkevik B. Jurgen Habermas and the communicative theory of law. St. Petersburg: Alef-Press Publishing House, 2018, 95 p.

[56] Melkevik B. Notes on the history of legal concepts. St. Petersburg: Alef-Press Publishing House, LLC, 2018, 255 p.

[57] Melkevik B. Habermas and Rolls: reflections on democracy. Moscow: RG-Press, 2020, 136 p.

[58] Hoecke, Van M. Law as communication / Translated from the English by M.V. Antonov and A.V. Polyakov. St. Petersburg: Publishing House of St. Petersburg State University, LLC "University Publishing Consortium", 2012, 288 p.

[59] Polyakov A.V. Postclassical jurisprudence and the idea of communication // Izvestia of Higher educational institutions. Law studies. 2006. No. 2(265), pp. 26-43.

digital, etc. The metaphor of turning adapts the classical concept of a stage to the pluralism of modern methodology, philosophical trends and directions, and the existence of many powerful interdisciplinary semantic fields. It captures the methodological situation of changing the focus of research through a change of the central concept, which requires updating the categorical system used, in which the practices of a new interpretation are implicitly approved in the spirit of "everything is language", "everything is a game", "everything is media", etc. If Kuhn's scientific revolution always involves a change of incompatible paradigms, then the movement of the turn is closer to the logic of the «drift of the core of the paradigm», its reorientation.

The memorial turn begins in the 70s and 80s of the twentieth century in connection with the global rethinking of the epistemological foundations of historical science. In O.B. Leontieva's research, this process is shown as refocusing the attention of researchers from historical events and phenomena as such to the study of living memory of them, objectified in the public consciousness, its content, methods of translation, and social functions.[60] The memorial turn has led to the widespread (across all branches of the humanities) interdisciplinary field of "memorial research" (eng. “memory studies”), which has four waves in its history today. The first wave began with the question of the existence of a collective memory of historical time and its social framework in the works of M. Halbwaks. For Halbwax, collective memory is a representation of the past shared and constructed by members of a social group, it is a group "viewed from the inside… She presents the group with her own image... this is a picture of similarities, and she naturally imagines that the group remains, and remains the same, because she directs her gaze at the group, and the group's relationships or contacts with others have changed."[61] Within the framework of the second wave, differences in the genesis and social role of historical knowledge and historical representations were reflected, therefore, the

[60] Leontieva O. B. "Memorial turn" in modern Russian historical science // Dialogue with time. 2015. Issue 50. pp. 59-96.

[61] Halbwaks M. Collective and historical memory // Inviolable reserve. 2005. No. 2. URL: https://magazines.gorky.media/nz/2005/2/kollektivnaya-i-istoricheskaya-pamyat.html (accessed 08.16.2023).

models of historical memory developed in the works of P. Nora, J. Assman, A. Assman and their followers reflect the key conflict between the "official" historical narrative formed by ideology, education and science, and the living memory of a generation based on personal and family history. White spots, silences, falsifications of official discourse were considered as receptacles of the memory of local collectives, implemented in marginal media forms — diaries, memoirs, correspondence. The source of the idea of the past here is the non-institutional, personally colored contact of generations. The third wave is associated with the transition to "trauma studies", focused on the study of the memory of the great catastrophes of the twentieth century, world wars and genocides. In this perspective, it becomes important to study the mechanisms of "privatization" by descendants of the memories of previous generations of traumatic events, the work of the so-called post-memory, considered in the classic studies of M. Hirsch[62]. The fourth wave is associated with the appeal to the phenomenon of "digital memory" (eng. “digital memory”), or media memory, and with a diverse adaptation of digital methods for researching memorial content of Internet networks, considered in the works of Gard-Hansen, Neiger, Hoskins.[63] Actually, the fourth wave was brought to life by the medial turn, without which it would have been impossible.

The memorial turn is combined with the medial turn, the fundamental turn of modernity, which determines the vector and technological basis of all other today's turns.One of the authoritative interpretations is that the idea of the medial turn as a fundamental shift in the socio-cultural landscape in the West appears in the context of the evolution of M. McLuhan's ideas, passing into media philosophy by the turn of the twentieth and twenty-first centuries. In Western studies developing in the context of the medial turn, the ontological analysis of the medial turn is based on new flat ontologies that rethink the ontological status of an object and networks of

[62] Hirsch M. Family frames: Photography, narrative and postmemory. London; Cambridge, MA: Harvard Univ. Press, 1997. 304 p.

[63] Save as… Digital memories / Ed by J. Garde-Hansen, A. Hoskins, A. Reading. Basingstoke; New York: Palgrave Macmillan, 2009. 217 p.; On media memory: Collective memory in a new media age / Ed. By M. Neiger, O. Meyers, E. Zandberg. New York; London: Palgrave Macmillan, 2011. 300p.; Digital memory studies: Media pasts in transition / Ed by A. Hoskins. New York; London: Routledge, 2017. 326 p.

objects in new social structures. The epistemological analysis of the medial turn is based on the concepts of STS (interdisciplinary field of research "Science – Technology – Society"), which include actor-network analysis B. Latour, D. Beard's concept of material epistemology. The socio-philosophical analysis of the medial turn is based on the concept of a network society, which is being replaced today in the categorical ranks of socio-humanitarian knowledge by the concept of a digital society. In interdisciplinary domestic research, the concept of the medial rotation was put forward by V.V. Savchuk[64] and reinterpreted as the basic philosophical and legal problem of modernity by V.V. Arkhipov, whose dissertation research lays down a scientific concept of the semantic limits of law, justifying strategies for adapting the legal system of society to the conditions of a digital society,[65] and the articles justify the transition to new understanding subjectivity in modern conditions.[66]

At the same time, it should be noted that the central importance of the medial turn is determined solely by the recognition of the fact that media is important for social reality, cognition, and reconstruction of one's own subjectivity. Specific conclusions and methodological strategies – for example, the identification of media and messages or the same flat ontologies – are among the possible ones; they are not shared and developed by all domestic scientists (for example, the concept of "semantic" or "semantic" limits of law by V.V. Arkhipov does not rely on these assumptions, using a model to substantiate the reality of individual social values).

Generally, the digitalization of legal discourse has been actively developing for decades. The pioneering works clarifying the relationship between cyberspace and law, including methodological issues of the prospects for the "digitalization" of the theory of law, include the works of F. Easterbrook[67] and L. Lessig,[68] reflecting

[64] Savchuk V.V. Media philosophy. An attack of reality. St. Petersburg: Publishing House of the Russian Academy of Sciences. 2014, 162 p.

[65] Arkhipov V.V. Semantic limits of law in the conditions of a medial turn: theoretical and legal interpretation: diss. ... D. legal sciences. St. Petersburg, 2019, 757 p.

[66] For example, Arkhipov V. V. Subjectivity as the main scientific problem of digital law: towards the formulation of a hypothesis // Legal World. 2023. No. 4, pp. 14-18.

[67] Easterbrook F.H. Cyberspace and the Law of the Horse // University of Chicago Legal Forum. 1996. Iss. 1, p. 207 – 216.

[68] Lessig L. The Law of the Horse: What Cyberlaw Might Teach // Harvard Law Review. 1999. Vol. 13, pp. 501-549.

their polemic about whether the need for «cyber law» is more urgent than the need for "horse law", which is understood as abuse in the creation of specialized legislation and development related legal research. This controversy cannot be reduced to a dispute about new industries, since it touches on broader problems of technological determinism of legal genesis. The development of cyberspace, based on the transition to web 2.0, which democratized the production of user content in all directions, led to the emergence of a digital segment of "theorizing" about law. A representative example here is the articles by participants of the American conference "*Bloggership: How Blogs Are Transforming Legal Scholarship*" on April 28, 2006, which include H.J. Bashman, P.L. Caron, K. Litvak, A.M. Froomkin, G. Heriot and others.[69] Methodological projects of overcoming postmodernity are reflected in the ideas and concepts put forward by G. Harman, Q. Meillassous, R. Brassier, L. Bryant, N. Srnicek. Among them, the most promising for understanding the processes of theorization in the modern philosophy of law is the wave concept of the development of Western metaphysics, which was proposed by L. Bryant, N. Srnicek and G. Harman in the work "*The Speculative Turn: Continental Materialism and Realism*".[70]

In this dissertation, the concept of "memorial turn" is used in the sense of actualizing its fourth, digital wave. In the political and legal context, the memorial turn's interest in the problems of symbolic aspects of politics related to identity and ideology is in demand, the understanding of which brought to life the concepts of "symbolic politics", "politics of memory", "historical politics", "state-legal policy of memory", the categorical foundations of which were laid in the collection of articles in 1983 under edited by E. Hobsbawm and T. Ranger "*The Invention of Tradition*",[71] which demonstrates the mechanisms of the invention of traditions by elites for certain political purposes. By legitimizing their own power, political elites form the

[69] Washington University Law Review. 2006. Vol. 84. Iss. 5.

[70] The Speculative Turn: Continental Materialism and Realism. Ed. by Levi Bryant, Nick Srnicek and Graham Harman. Melbourne: Re.press, 2011, 430 p.

[71] The Invention of tradition / Ed. by Eric Hobsbawm a. Terence Ranger. Cambridge etc.: Cambridge univ. press, 1983, 320 p.

historical consciousness of the masses. Gradually, researchers stopped associating mnemonic activity only with political elites in the direction of the widest possible number of its agents. Currently, there is increasing interest in its normative aspects and role in social reproduction. These processes are most clearly represented in the socio-ontological works of M. Ferraris on the theory of documentality.[72] The high demand for the theoretical discourse of the memorial turn is explained by the polarization of the ideological vectors of mnemonic activity of the main actors of the global geopolitical confrontation. At the time of writing the dissertation, there were no works that could provide a predictive function in relation to the digital development of the communicative theory of law in the context of the medial and memorial turns.

Purpose and objectives of the research. *The purpose of the research* is to develop and substantiate the scientific model of the evolution of the communicative theory of law in the digital age. At the same time, the theory is understood as an object that is formed in certain disciplinary conceptual and methodological conditions, based on the ideas of other previous theories; a change in conceptual and methodological conditions is considered as a turn that brings prospects for categorical updating of the theory. The purpose of the study is determined by the model of the development of the communicative theory of law as a methodological tool describing the structure of legal science and related to the field (1) philosophy of law, since it considers the dynamics of the processes of theorizing the meaning of law through system-forming concepts; (2) the methodology of law, since it considers the scientific theory under study as a way of organizing its own method of cognition of law; (3) the theory of law, since it defines the content of the basic concepts of the theory under consideration, which underlie the conceptual model of the dogma of law; (4) to the interdisciplinary problems of the development of law and the theories reflecting it in the context of the medial and memorial turns.

[72] Ferraris M. Social Ontology and Documentality // Approaches to Legal Ontologies. Theories, Domains, Methodologies. Law, vol. 1. Eds.: G. Sartor, P. Casanovas, M.A. Biasotti, M. Fernández-Barrera. Berlin: Springer Verlag, Dordrecht, Heidelberg, 2010, pp. 83-97; Ferraris. M., & Torrengo G. Documentality: A Theory of Social Reality // Rivista di estetica. 2014. No. 57, pp. 11-27. https://doi.org/10.4000/estetica.629.

The objectives of the study are determined by the purpose of the study and include:

– comparison of various approaches based on the recognition of the importance of communication in law, definition and justification of the place of A.V. Polyakov's communicative theory of law from the point of view of the comparative historical primacy of the idea, analysis of A.V. Polyakov's communicative theory of law as historically the first version of scientific theory in the field of philosophy of law and legal theory based on an integrative attitude and being implemented as a unique methodological project;

– identification of the main ideological sources of the Russian communicative theory of law and their systematization;

– the scientific qualification of the Russian communicative theory of law, which allows to fix its structural levels and their basic categorical series;

– consideration of the main approaches of post-metaphysical continental theories that reveal the functional role of law in the social system as a contextual field for the development of M. van Hook's Western communicative theory of law;

– the establishment of differences between the theory of mutual recognition of A.V. Polyakov and the theory of recognition of A. Honnet;

– the scientific qualification of the Western communicative theory of law formulated by M. van Hook, aimed at determining its disciplinary context and establishing differences with the Russian communicative theory of law;

– analysis of the methodological consequences for the theory of law caused by the digital memorial turn;

– definition of the formation of a new categorical series with philosophical and legal content initiated by the specialization of the state legal policy of memory, phenomenologically related to the field of legal communication;

– establishing the consequences of an attempt to logically transfer Habermasian communicative normogenesis to collective memory;

– the study of the doctrinal and theoretical influence of the medial turn on the methodological strategies of legal theory;

– analysis of the connection of the theoretical legal doctrine with the dominant types of media on the example of the medial turn;

– reflection on changes in strategies of methodological synthesis before and after the medial turn on the example of modern naturalism;

– the study of a new practice of methodological synthesis put forward in the context of a medial turn;

– establishment of points of growth of the methodology of the communicative theory of law, capable of ensuring the development of the theory during its transition to digital form.

Compliance of the dissertation with the passport of the scientific specialty of the Higher Attestation Commission.

This dissertation corresponds to the provisions of the passport of the scientific specialty of the Higher Attestation Commission 5.1.1. Theoretical and historical legal sciences on the following points:

1. Legal science: problems of object, structure, functions;

2. Methodology and history of legal science;

58. Subject, methodology, historiography and source study of the history of the teachings of the state and law;

68. Modern teachings on the state and law.[73]

The academic novelty of the thesis consists in the fact that it represents the first comprehensive monographic study that provides the conceptualization of the prospects for the development of the communicative theory of law, which is relevant for modern conditions of the medial and memorial turn.

In the course of the research, the following results with scientific novelty were obtained:

1) The author proposed a scientific analysis of the communicative theory of law by A.V. Polyakov, which revealed the use of the phenomenological method to

[73] Passport of scientific specialty 5. 1.1. Theoretical and historical legal sciences [electronic resource] // The Higher Attestation Commission (HAC) under the Ministry of Science and Higher Education of the Russian Federation. https://vak.minobrnauki.gov.ru/uploader/loader?type=17&name=92259542002&f=15285URL: (accessed 08.28.2024).

form the primary axiom of a new theory, the derivation of basic concepts from it and their correlation with the categorical series of the dogma of law, the open nature of the key concept of "legal communication" is shown, providing the possibility of its redefinition through related and related phenomenology projects.

2) Three groups of sources have been identified as the main ideological sources of the communicative theory of law, including the Russian pre-revolutionary philosophy of law, social phenomenology, supplemented by separate provisions of the theory of communication, and the basic provisions of the domestic methodological search for an integral legal understanding of the 90s of the twentieth century. It is shown that the influence of the first group of sources was so great that it caused the complexity of the theory under consideration, its division into two levels, the level of transcendental foundations of law and the level of construction of the dogma of law.

3) The scientific qualification of the Russian communicative theory of law as a two-level essentialist postnonclassical theory based on the synthesis of a wide range of postnonclassical socio-philosophical and philosophical-legal methodology is proposed.

4) The concept of communicative legal theories is formulated, describing Western socio-philosophical concepts that interpret the functional role of law in the social whole through the concept of communication, and their division into two diametrically opposed approaches is shown – closed, characteristic of the N. Luhmann social autopoiesis system, in which the closure rule closes the legal system, and open, characteristic of the communicative rationality of O. Habermas, who lays down democratic deliberation as the basis of legal genesis. The orientation of the closed approach to legal positivism, and the open approach to the integration of legal positivism and natural law theory is established.

5) The specifics of the development of the Habermasian open approach to the law of A. Honneth's theory of recognition, revealed through a methodological reinterpretation of the original sources, which allowed to establish the primacy of the ontological interdependence of individuals in relation to the establishment of

legal freedom, examines the grounds put forward by Honneth for criticism of the theory of social contract related to the advancement of a new theory of subjectivity, which redefines autonomy as a basic characteristic of a social and legal entity, shows its differences from the theory of mutual legal recognition of A.V. Polyakov.

6) The logic of the formation of the Western communicative theory of law is revealed. The mechanics of its integration of the closed Luhmann and open Habermasian approaches are shown; a formal analysis of this theory is carried out, establishing as a basic concept a set of structures of communicative action that are redefined in each specific legal system. Meaningfully, this version of the communicative theory of law is described as the doctrine of the multiplicity of ways of legal genesis, capable of achieving five levels of legal autonomy in its development.

7) It is established that the medial turn interrupts the phase of normal science in the post-non-classical social sciences and transfers them to the digital phase, in which the media philosophical trends of the "digital era" begin to dominate as the basis of methodology, including the socialization of artificial intelligence into everyday social practices, the medial (material) foundations of the development of science itself, the theory of mediatization and digital society, digital anthropology. New strategies of methodological synthesis have been identified, the implementation of which is capable of qualitatively transforming the considered scientific theory into a digital one.

8) The connection of the categorical apparatus of theoretical legal science with and methodological strategies based on it, with the dominant type of media, is shown through the correlation with the chronological fixation of the medial turn.

9) The change in strategies of methodological synthesis in modern natural law theory is justified, an example of which is chosen in connection with the asynchrony of conceptualization of the medial turn in the West and in Russia; the expansion of the premedial methodological strategy based on open definitions, combinatorics of arguments and stable conceptual connections between alternative theories, the medial project of developing crossdoctrinal connections through the detection of

smaller than in the premedial ones is demonstrated projects, degrees of similarity of arguments.

10) The influence of digital methodological tools on the speed and complexity of methodological synthesis is studied; their decrease in the conditions of increasing operationalization of doctrinal and empirical material is shown; the specifics of "chimerical" methodological synthesis are revealed.

11) The conceptual content of the memorial turn is considered, which is revealed in the emergence of a new social ontology that allows interpreting law as a procedural collective memory that ensures social reproduction through the generation of social objects, and in the specialization of the state legal policy of memory; the "chimerical" nature of the methodological synthesis is established, bringing law and memory closer together on the basis of ignoring the genetic links between theories when emphasizing their functional similarity.

12) It is established that the redefinition of the concept of text, which performs an instrumental and methodological function in this theory, from a broad to a narrow one, is able to ensure the transition of the communicative theory of law into a digital communicative theory of law

13) A new categorical series of the memorial turn is defined, set by the introduction of the constitutional concept of historical truth, involving the concretization of the concept of historical justice; the modern redefinition of the concept of historical justice in philosophical and legal discourse is shown; the significance of these concepts for the new memorial legislation is established.

14) A logical connection has been established between attempts to transfer Habermasian communicative normogenesis to collective memory and to strengthen the concept of collective responsibility, which underlies the practices of the culture of cancellation. It is shown how the concept of semantic vulnerability of the autonomy of the subject by A. Honneth and the concept of Lethe by B. Melkevik substantiate the idea of conventional selection of collective memory, whereas its concretization can be determined only by assessing the quality of epistemic procedures leading to the appearance of certain ideas about the past. It is proposed

to minimize the identified risks by referring to the Russian communicative theory of law.

Methodology and methods of research. The methodological project of the dissertation is aimed at the scientific and methodological qualification of the communicative theory of law as one of the scientific theories describing legal genesis and the analysis of sources and prospects of development of this theory based on it. The initial methodological platform was the paradigm of post-non-classical scientific rationality; the objects under study were interpreted in a dialectical way. At the general scientific level, the author relied on a group of formal logical methods (analysis, synthesis, induction, deduction, abstraction), a systematic approach, structural and functional analysis both for systematization of methodology and for the construction of idealized objects and a communication approach adapted by the author for scientific purposes, showing the contribution to the development of social communication of specific media. Formal-legal, comparative-theoretical methods and the method of theoretical reconstruction were used as private scientific ones. The formal legal approach was used to analyze legal concepts and norms of law. Comparative-theoretical approach was used to compare the ways of organizing internal and external categorical relations of legal theories. The method of theoretical reconstruction was used to reproduce the historical logic of the formation of the scientific theory under study. In carrying out the conceptual reflection of legal communication, the dissertation relied on the theoretical and methodological provisions of technological determinism, modified in social epistemology on the basis of actor-network theory; natural law schools, including the theories of revived natural law; took into account the mediatized revisionism of social constructivism (A. Couldry and A. Hepp) and the experience of its critical rethinking; the project of detailing the digital society by A. Nasse, based on the idea of a new social architecture of distributed intelligence. The scientific perspective of the research is set by the concepts of the development of science, put forward in postpositivism, and the idea of a consistent change in the types of scientific rationality (V.S. Stepin). These methodological foundations were synthesized in such a way as to ensure the

identification of the trajectory of the development of the scientific theory chosen for analysis and the diagnosis of its methodological reserves to respond to the basic challenges of the digital age associated with the medial and memorial turns.

The source base of the dissertation is structured on two levels, theoretical and regulatory. The first category includes personal-thematic scientific texts, which are doctrinal sources on the basis of which the explication of the theory under study was carried out. A.V. Polyakov's communicative theory of law was studied on the basis, first of all, of the following texts: the textbook "*General Theory of Law*" and its supplemented and revised editions in 2003, 2004, 2016,[74] the second edition of the textbook "*General Theory of Law*" co-authored with E.V. Timoshina;[75] the anniversary edition of his works "*Communicative Legal Understanding*" (2014),[76] as well as scientific articles and sections in the author's collective monographs of different years.[77] N. Luhmann's communicative and legal theory was analyzed on

[74] Polyakov A.V. General theory of law. Course of lectures. St. Petersburg: Publishing house "Law Center Press", 2001. 642 p.; Same. General theory of law: A phenomenological and communicative approach. A course of lectures. 2nd ed., additional St. Petersburg: Publishing house "Law Center Press", 2003, 845 p.; Polyakov A.V. General theory of law: Problems of interpretation in the context of a communicative approach: A course of lectures. St. Petersburg: Publishing House of St. Petersburg State University, 2004, 864 p.; Polyakov A.V. General theory of law: problems of interpretation in the context of a communicative approach: textbook. 2nd ed., corrected. and additional M.: Prospect, 2016, 2021, 2023, 832 p.

[75] Polyakov A.V., Timoshina E.V. General theory of law. 2nd ed. St. Petersburg: St. Petersburg State University, 2015, 472 p.

[76] Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, 575 p.

[77] Polyakov A.V. Is an integral theory of law possible? // State and Law at the Turn of the Century: problems of History and Theory, Moscow, February 02-04, 2001. Moscow: Institute of State and Law of the Russian Academy of Sciences, 2001, pp. 114-119; Polyakov A.V. Pravogenesis // Izvestia of higher educational institutions. Law studies. 2001. No. 5(238), pp. 216-234; Polyakov A.V Recognition of law and the principle of formal equality // News of higher educational institutions. Law studies. 2015. No. 6(323), pp. 57-77; Polyakov A.V. Human rights and state sovereignty // Postclassical ontology of law: monograph / edited by I.L. Chestnov. St. Petersburg, 2016, pp. 295-324; Polyakov A.V The deficit of freedom as a political and legal problem // Proceedings of the IGP RAS. 2018. Vol. 13. No. 4, pp. 37-56; Polyakov A.V The pure doctrine of law by Hans Kelsen, the idea of natural law and justice: the view of a communicator // The human world: a normative dimension – 6. Norms of thinking, perception, behavior: similarity, difference, interrelation: proceedings of the international scientific conference (Saratov, June 27-29, 2019). Saratov: Publishing House of the Saratov State Law Academy, 2019, pp. 205-224; Polyakov A.V Legitimacy as a property of law // Legitimacy of law: a collective monograph / under general ed. by E.N. Tonkov, I.L. Chestnova. St. Petersburg: Aleteya, 2019, pp. 44-80; Polyakov A.V The principle of mutual legal recognition: the Russian philosophical and legal tradition and a communicative approach to law // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2021. Vol. 16. No. 6, pp. 39-101; Polyakov A.V. Human rights and values: their philosophical meaning and ideological significance in post-Soviet jurisprudence // Ideology and Politics. 2021. No.2 (18), pp. 152-193; Polyakov A.V Justice as adherence to the principles of law // Is justice alive in law? Collective monograph / edited by D.I. Lukovskaya, N.I. Malysheva, M.I. Yudina. St. Petersburg: Aleteya, 2022, pp. 40-82; Polyakov A.V Prospects for the development of the Russian philosophy of law in the context of cognitive research and neuroscientific data // Russian Justice. 2022. No.12, pp. 30-42; Polyakov A.V Freedom and justice in a legal understanding // Law. 2023. No.4, pp. 105-117; Polyakov A.V Freedom and justice in a legal understanding // Law. 2023. No.5, pp. 97-113; Polyakov A.V Postclassical jurisprudence, evolutionary theory and neuroscience (confessions

the basis of the monograph "*Law as a social system*" (translated into English in 2004)[78] and the translation of the article "*What is communication?*".[79] Habermas's communicative legal theory was studied on the basis of "Facticity and Significance" (1992)[80] and translations of his works from different years, including the translation of the fundamental work "*Theory of Communicative Action*" (translated into Russian 2022).[81] The theory of recognition by A. Honneth was analyzed on the basis of his works "*The Struggle for Recognition*" (1995)[82] and "*The Right of Freedom*" (2011),[83] as well as texts written in collaboration with J. Anderson.[84] The communicative theory of law by M. Van Hoecke was studied on the basis of the Russian translation by M.V. Antonov A.V. Polyakov of the monograph "*Law as Communication*" (2002).[85]

The second one includes normative legal acts, including the Constitution of the Russian Federation, the Criminal Code of the Russian Federation and the Strategy for the Development of the Information Society in the Russian Federation

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of a communicationist) // Postclassical studies of law: prospects for a research program: a collective monograph / edited by E.N. Tonkov, I.L. Chestnova. St. Petersburg: Aleteya, 2023, pp. 29-157; Polyakov A.V A Communicative Approach to Leon Petrażycki's Theory of Law // Leon Petrażycki: Law, Emotions, Society / eds. Eduardo Fittipaldi, A. Javier Treviño. NY: Routledge. 2023, pp. 193–208.

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for 2017-2030[86] and "Fundamentals of state policy for the preservation and strengthening of traditional Russian spiritual and moral values".[87]

The theoretical and practical significance of the study is in the creation of the author's concept, the first in Russian legal thought, describing the formation and possible subsequent development of the communicative theory of law as a relevant scientific legal theory of digital society. This concept is applicable to the analysis of the modern ideological and methodological context of the development of any legal theories initiated by digital and memorial turns. It is also important for understanding the theoretical foundations of the state-legal policy of memory, the formation and refinement of its basic concepts. The conclusions of the dissertation research can be used as the basis for further scientific developments in the modernization of the methodology of the theory and philosophy of law, information law, as well as interdisciplinary research related to the study of the impact of digitalization on theoretical jurisprudence. The results of the research can also be used in teaching practice, in the development of textbooks and teaching aids for the basic bachelor's and master's degree courses "*Theory of State and Law*", "*History of political and legal doctrines*", "*History and Methodology of legal science*", "*Modern teachings on law and the state*", as well as in the development of special courses, including the course "*Methodology of digital Humanities in the theory of law*".

The provisions to be defended. The aspects of academic novelty of the dissertation mentioned before are disclosed *inter alia* by means of the following main provisions to be defended.

1. The communicative theory of law historically arises in Russia, where its basic provisions were first formulated in 2001 by A.V. Polyakov in the work "*General Theory of Law*" and which are being developed and supplemented by the

[86] Strategy for the development of the information society in the Russian Federation for 2017–2030, approved by the Decree of the President of the Russian Federation of May 9, 2017 // Collection of Legislation of the Russian Federation. 2017. No. 20. Art. 290.

[87] Fundamentals of state policy for the preservation and strengthening of traditional Russian spiritual and moral values (approved by Decree of the President of the Russian Federation No. 809 dated November 9, 2022) // Official Publication of legal acts. URL: http://publication.pravo.gov.ru/Document/View/0001202211090019 (accessed 07.14.2023).

author to the present day. The theories preceding it, devoted to the analysis of the communicative dimension of law, were not related to the reformatting of the dogma of law, M. Van Hoecke a year later. The turn of the millennium was fruitful for the development of political science, and it is underestimated in Russia. In this context, a broad interdisciplinary platform for law communication studies is being formed. The philosophical and methodological platform of the new theory is the phenomenological tradition, from Husserl to social constructivism. The meaning conveyed in communication is interpreted in phenomenology as the basis of the intersubjective world from which all social institutions, including law, grow. Using a phenomenological approach, A.V. Polyakov substantiates the concept of entitlement as a phenomenological axiom of human existence and the most communicative theory of law, which does not require proof due to self-evidence. Using the category of communication, the basic concepts of legal duty and legal norms are derived from axiomatic competence, and, further, the entire categorical series of the classical Russian theory of state and law, while preserving the dogma of law. The very concept of communication is set by the author pluralistically, formulated as open to the conclusions of all philosophical trends close to phenomenology, describing communication, production, transmission and understanding of meaning. Therefore, in later editions of the "*General Theory of Law*" (2003, 2004, 2016), each of which was distinguished by additions and reworking, a transcript appears in the title clarifying the author's self-determination of the developed approach, first as a "phenomenological-communicative" one.

2. The advancement of the communicative theory of law required a long-term doctrinal study. It is based on three groups of sources, the connection with which is not declarative. These include the Russian pre-revolutionary philosophy of law, social phenomenology, supplemented by separate provisions of the theory of communication, and the basic provisions of the domestic methodological search for an integral legal understanding of the 90s of the twentieth century. An important feature of the phenomenological project proper in the communicative theory of law is the appeal to pre-revolutionary legal thought, which, of course, is aimed at

restoring and strengthening continuity between the pre-revolutionary and post-Soviet law schools of St. Petersburg University. However, its striking effect is a new interpretation of Husserl's texts in the ideological context of criticism of Western metaphysics, which was formed by L.I. Petrazhitsky, P.I. Novgorodtsev and I.A. Ilyin, and which later through the students of L. Petrazhitsky, L. Gurvich and P.A. Sorokin, reflected on the sociological school of law. The desire to bring back into circulation the ideas of Russian metaphysics about the moral principles of personality embedded in its transcendental structures is the starting point of philosophical and legal thought of A.V. Polyakov. Reliance on these sources determines the division of the system of communicative theory of law into two levels. Since the middle of the tenth years of the XXI century, an upper, meta-theoretical level has been built above the level of the dogma of law, built on phenomenological axiomatics, revealing the transcendental foundations of legal communication. This level includes the doctrine of legal recognition as the foundation of legal genesis, in which the boundaries of the behavior of subjects of legal communication are continuously mutually agreed upon on the basis of understanding. Legal recognition as a principle is based on the very ontological fact of the existence of Another as a representative of the human race, the recognition of which by an individual is impossible without voluntarily assuming responsibilities corresponding to the rights of this Other as a response to expectations about their own rights.

3. The two-level communicative theory of law is based on a wide range of post-non-classical socio-philosophical and philosophical-legal methodology. At the same time, it is an essentialist theory, since its core is the answer to the question "what is law?" found through the category of legal communication. This significantly distinguishes the communicative theory of law from related concepts. At the first level of the theory, the transcendental foundations of legal communication are revealed, preceding its specific acts in the sense of an ontological fact, i.e. Before legal communication begins, the subjects must recognize each other. At the second level, the search for an answer to the original question goes beyond

the transcendental framework into the field of real interactions, for which norms of law are created on the basis of legal dogmatics.

4. The Russian communicative theory of law has a number of fundamental differences from the Western version of the communicative theory of law, which is less characterized by a spiritual and humanistic principle. The philosophical basis of the Western version of the communicative theory of law are communicative legal theories, which include post-metaphysical social theories of the late twentieth century, explaining the nature of legal genesis based on the concept of communication, regardless of the analysis of legal dogmatics, which is replaced by the reproduction of classical positivist schemes where it comes to the positivization of law – the theory of autopoiesis by N. Luhmann and the theory of communicative actions by J. Habermas. Autopoiesis involves the complication of the social system as a result of self-organization, which occurs when communication communicates. Differentiation of communication leads to the emergence of a legal code, and then, on its basis, a legal system is formed that redefines communications as legal or non-legal. Luhmann's concept is a closed approach to law, since it is focused on the "closure rule" of the legal subsystem. Within the Western discourse, he is opposed by the open approach of J. Habermas, in which legal genesis is based on continuous communication with the non-legal aspects of social reality. Habermas tries to combine the analysis of the processes of positivization of law with the emphasis on the role of the subject in the democratic deliberative model of legal genesis. Based on the communication model of K.L. Buhler, the philosopher separates the logic of the functioning of law as an institution and the logic of the functioning of law as a means. Considering the first logic, to distinguish between the legal and the non-legal, he uses the processes of subjectivation and objectification of the Other, quite in tune with the pathos of naturalism. The second logic is interpreted in a positivist way. Luhmann's subjectless closed approach brings to the fore the processes of objectification of the subject, whereas Habermas's open approach, on the contrary, is subjectively centered, but purely in a technical sense. The confrontation of these approaches presupposes a methodological choice between the panoramas of legal

genesis, in one of which the natural development of social communication leads to the emergence of law and its development, and in the other – a rational search for consensus carried out by free and reasonable people in the process of practical activity. The closed and open approaches focus on the functional analysis of law, and do not aim to answer the question of its essence. In contrast to these approaches, the Russian communicative theory of law is centered on the subject as a unity of spiritual, moral and physical principles.

5. The category of mutual recognition, central to the Russian communicative theory of law, is developing in the context of a critical understanding of related approaches. In the Western tradition, the concept of recognition was formed within the framework of an open Habermasian communicative and legal approach by A. Honneht. It is based on the correction of the basic ideas of Habermas, supplemented by the return of the traditional problems of the Frankfurt school related to social exclusion, and on a new reading of the political and legal thought of early Hegel. Honneth interprets the Hegelian text in such a way as to reveal its intersubjectivist background, which makes it possible to interpret law as a mechanism for the internalization of intersubjective institutions. Using Hegel's idea of crime as a reaction to the strengthening of formal legal recognition, he comes to the conclusion about the ontological interdependence of individuals preceding the establishment of legal freedom. Honneth's assessment of the theory of the social contract, the core of liberalism, as logically untenable, allows him to develop his own theory of subjectivity, in which existentialist, neo-Freudian and neo-Marxist motives are strong. Autonomy as a key characteristic of a subject is not attributive, but procedural, and depends on the success of an individual's intersubjective strategies in the process of socialization. The idea that autonomous individuals are capable of establishing a state turns out to be a utopia, since the constant strong autonomy of the subject is illusory. To the extent that it is possible, it is set through the dialectic of recognition, when the one who recognizes the Other, in turn, recognizes himself. Despite the fact that Honneth's legal freedom is negative, since

it does not provide reciprocity of recognition, whereas A.V. Polyakov's mutual recognition underlies law as a space of genuine freedom.

6. The thesis about the parallel development of the communicative theory of law in the West and in Russia is connected with the work of M. Van Hoecke "*Law as communication*" (2002). However, this work itself comes out a year later and reflects a narrower approach to legal communication. It was created as a compromise project combining the achievements of both the closed communicative approach to the law of Luhmann and the open communicative approach of Habermas. Van Hoecke interprets law through communication based on the methodological principle of plurality, which unites legal pluralism as the doctrine of polyuridism, where legal orders are simultaneously produced by different social actors, and the idea of chronological and geographical multiplicity of legal systems, which nevertheless differ in degree of complexity and go through certain stages in their development, which the researcher he calls the levels of autonomy of law. There are five levels of autonomy: autonomy of primary norms; autonomy of secondary norms; autonomy of legal professions, methodological autonomy; doctrinal autonomy. Social theory allows Van Hoecke to substantiate the process of multiple legal genesis, and to show at what stage of the evolution of the legal system, its communication specialization in the Luhmann sense allows Habermasian deliberative normogenesis to be realized. According to the jurist, Luhmann's ideas about the mechanisms of autopoiesis require an opening where Luhmann insists on closeness, and a transition to a model that includes a change of openness and closeness in the configurations of communication in law. Van Hoecke considers the architectonics of structural ensembles of communication that generate legal norms under the influence of a network approach, using a pyramidal model supplemented by circular (network) elements. The last level of legal autonomy, doctrinal, provides a rational design of legal communications for the purposes of social and state building in the context of globalization, reducing the asynchrony of theory and practice. Van Hoecke refuses to single out a universal "primary element" of legal communication that would launch it in all legal systems. Each legal system is

characterized by its own set of structures of communicative action, leading to the development of a specific level of legal autonomy. Thus, Van Hoecke's concept answers only one of the questions of theoretical jurisprudence, unlike the Russian communicative theory of law.

7. Understanding the place of the communicative theory of law in the system of scientific knowledge requires an analysis of a broader socio-philosophical context that claims to explain the modernity of the XXI century. The concept of the medial turn, justified in Russia in the philosophical works of V.V. Savchuk, became the basis for V.V. Arkhipov's understanding of the modern existence of law in relation to the problem of simulation in the media space. But the challenge of the medial turn has not only a practical, but also a theoretical nature, on this basis it appeals to legal theory in general and to the communicative theory of law. The turn interrupts the phase of normal science, as it brings with it new objects and systems of concepts reflecting them. In the conditions of the medial turn, science itself is transformed, passing into the phase of technoscience, which entails changes in the culture of theorization, preparing the transition to a new type of scientific rationality. New media are changing styles of thinking, leading to the emergence of new methodological strategies. Media today mediate the relationship between ontology and epistemology, which is reflected in the spread of a model of material epistemology in which non-human things are actively involved in the production of knowledge together with human researchers. The basic media philosophical trends of the digital age – the socialization of artificial intelligence, the medial (material) foundations of the development of science itself, the theory of mediatization and digital society, digital anthropology, necessarily invade the subject field of the communicative theory of law, since their center is the problem of subjectivity as such. Initially, the understanding of the digitalization of legal technologies, the emergence and development of the electronic state, did not require fundamental changes in the categorical apparatus of the communicative theory of law, and developed in the related field of legal communication studies, the interdisciplinary field of research "communications about law". Currently, the theoretical foundations

for changing the categories of subject and object are being strengthened, related to attempts at human self-improvement and the emergence of "smart things" integrating human and technical. Since the doctrinal center of the communicative theory of law is the subject, all methodological transformations in its understanding should be taken into account by this theory.

8. From the point of view of media philosophy, it is fundamentally important that the modern philosophy of law was formed in the textual paradigm of the media. The dominant form of media determines the styles and results of scientific theorization. Further development of the communicative theory of law, focusing on information interaction between subjects, is not feasible without taking into account the theory of media. The beginning of the medial turn occurred in the 80s of the twentieth century, when the concept of information society appeared for the first time in media theory. The categorical series and methodology of the communicative legal theories and the communicative theory of law that appeared after the medial turn did not experience its direct impact. They were shaped by the influence of post-metaphysical thinking in Western philosophy, including its versions developed by the late Frankfurt School. The problems of digital communication remained outside the ideological field of these sources, which relied on classical schemes of mass media and mass communication where it was a question of the role of the public sphere in legal genesis. And philosophical and legal searches of A.V. Polyakov, and the analysis of the legal system at the Frankfurt School, relied on methodological constructs of communication modeling within the framework of mass media theory. Van Hoecke introduced network concepts into his theory almost implicitly, through the concept of circularity.

9. Further development of the communicative theory of law requires the establishment of differences between pre-digital and digital methodological strategies. Despite the fact that the theory of law ignores them, their heuristic potential is not identical. This can be proved by referring to the Australian school of natural Law, the founder of which, J. Finnis, created his theory just before the medial turn in the text "*Natural Law and Natural Rights*" (1980), and his followers,

M.C. Murphy and J. Crowe, they develop natural law ideas already in digital conditions, which changes the qualitative side of the issue. Finnis conducted a detailed analysis of the differences between the real arguments of natural law theory and the ideas of legal positivists about the arguments of natural law theory, which are criticized by legal positivists, showing their differences, whereas Murphy and Crowe divided the arguments of conflicting theories into strong and weak (soft), showing the fundamental incompatibility of strong arguments and the proximity of weak ones, using the latter to link opposing theories. The medial turn in theorization provides crossdoctrinal connections when detecting similarities of lesser degrees than those used in post-non-classical methodology. Quantitative changes in information exchange turn into qualitative ones, and they are what make qualitative changes in scientific methodology possible.

10. All social sciences change qualitatively under the influence of the medial turn. Digital practices are beginning to displace the attitudes of the printed book culture in the work of a humanitarian researcher, and these are not just technical changes. Digital forms of approbation and validation of scientific ideas accelerate and increase the number of communication exchanges involved in this process, which leads to qualitative changes. Informal expertise practices are being strengthened through the modern digital environment. The routine use of digital tools simplifies the procedure of methodological synthesis, providing it with conditions for "reviewing" empirical and doctrinal material of a new qualitative level. A meaningful methodological synthesis combines the coordinate and/or subordinative connections of two or more theories into one in order to create a basic theoretical object. In classical science, genetically related theories are synthesized, in non-classical, fundamental similarities between synthesized theories are established, in post-non-classical, the fundamental similarity of synthesized theories is constructed through reinterpretation, which opens up new meanings in aspects of synthesized theories, previously considered insignificant from the point of view of similarity. After the medial turn, two new types of methodological synthesis appear – synthesis through weak arguments and "chimeric synthesis" based on a

combination of what was previously considered incongruous in a methodological chimera combining previously unrelated concepts into a working methodological tool. Chimerical synthesis can be used to strengthen the communicative theory of law with the provisions of the theory of communication in terms of the doctrine of digital media when the assistance of thought communication by digital actors (strong artificial intelligence) becomes so significant that it will require the development of the concept of digital legal communication, which, as we believe, shows a qualitative change in the methodology of legal science due to transformation media. In this case, the communicative theory of law will become a digital theory.

11. At the same time, it should be borne in mind that the medial turn is an accomplished phenomenon that does not exhaust the transformation of the media. The medial turn brought to life the memorial turn, during which the institutionalized system of production of ideas about the past, based on the state-legal institution of censorship, is being destroyed. Since any science is historical, and the theory of law cannot do without historical methods, the ways of reproducing historical interpretations cannot but influence the content of this theory. In the context of the memorial turn, the role of small social groups in the construction of collective memory is decreasing, digital tools allow individuals to manifest their ideas about the past directly in the media environment, where the competition of memory voices leads to the influence of specific interpretations of the past. Historical memory is becoming the main resource of political and geopolitical conflicts, and as such, ideas about it begin to penetrate into the subject field of the philosophy of law. The memorial theme goes beyond the interdisciplinary field of memory studies and determines the emergence of a new social ontology (M. Ferraris), in which analytical and continental philosophical traditions are integrated, and memory as a record is interpreted as the generative basis of sociogenesis. In M. Ferraris's documentary ontology, the recording of a social action transforms an action into a social object; the totality of social objects coincides with social reality. An entry in a documentary ontology is not limited to a statement, it is understood as a procedure certifying the consent of participants in a social action to its implementation. The media capable

of providing such a procedural record coincide with the codes of the basic forms of law. In this methodological perspective, law turns out to be a mechanism for creating social objects, i.e. a fundamental way of social reproduction. The chimerical synthesis here can bring together the phenomenological layers of the communicative theory of law, which consider the meaning of law in communication, with the analytical tradition, reinterpreted by Ferraris, which considers law as an action. Regardless of how much memory processes are explicated in the definitions of legal communication and legal recognition, real or demonstrative amnesia will make them impossible, and in a situation where the media provide the widest opportunities for silencing, substituting and falsifying memory, its legal role becomes especially important. The very interpretation of law as memory is based on a methodological strategy of chimerical synthesis that ignores the genetic connections between theories while emphasizing their functional similarity.

12. A.V. Polyakov's two-level communicative theory of law not only integrates various types of legal understanding, but also reliably connects the philosophy of law with the theory of law. The use of the Bakhtin-Lotman tradition of defining culture as a sign system and the understanding of text as a system of signs derived from it allows A.V. Polyakov to describe legal communication as a thought communication objectified in the form of a text, understanding by text any sign complex that has an addressee and an appropriate meaning. This strategy works to universalize the conclusions of the theory, ensuring its applicability to any chronological and geographical framework. However, a broad understanding of the text is based on the principle of synthesis of the semantic and syntactic foundations of semiosis. Such a high level of theoretical communication may be appropriate for studying timeless issues of the theory of law, but it does not allow taking into account qualitative changes in the medial turn in the methodological strategies of this field of knowledge. The semantic (semantic) limits of law were problematized by V.V. Arkhipov, syntactic limits can also be the subject of research. A broad understanding of syntactic limits is indifferent to the dominant media in a particular type of culture, and therefore insensitive to the syntactic features set by the code,

which, in turn, is determined by the physical nature of the media channel. The theory of communication proceeds from the idea of a plurality of channels, where text is only one type of media. The digital age determines the relevance of a narrow, communicative understanding of the text, which allows the development of a communicative theory of law when it comes to the possibility of the emergence of digital forms of law that can displace textual ones, and about changing the figurativeness of Another, assisted by digital technologies, including strong artificial intelligence. The integration of artificial intelligence phenomena into scientific practice is not just a change of technical tool, because the generative neural network acts as an intermediary between the researcher and an indefinite circle of other researchers whose works underlie her training. The communication process is implied in the tool itself, which makes the communicative theory of law digital.

13. The pragmatic perspective of the influence of memorial themes on legal theory is associated with a reassessment of the scale of the contribution of collective ideas about the past to the sustainability of political and legal development. The specialization of the state legal policy of memory in Russia requires the formation of a new categorical series with philosophical and legal content, the introduction of which affects the understanding of communication about law, and strengthens the connection between the communicative theory of law and legal communication studies, which resolves questions about what unreliable and unreliable memory is. The social nature of individual memory, far from absolute accuracy, is revealed in the need to strengthen one's memories through communication with Others, intersubjectivity is the basis for correcting collective ideas, which are rethought, corrected and clarified in dialogue. In the digital age, it is the commonality of the past that is the source of group identities and social solidarity. Its reliability and reliability are currently assessed using the constitutional and legal category "historical truth". Semantically and functionally, the concept of historical justice is connected with it, which ceases to be defined only ethically, as a special case of social justice. The modern content of the concept of "historical justice" passes into the philosophical and legal plane. These categories are important as tools to ensure

the legitimacy of the emerging memorial legislation, in the discourse of which ideas about basic national values and traditions play an increasingly important role. The idea of historical justice and its legal embodiment supports the consensus of society and the authorities.

14. The modern Western communicative theory of law does not respond to these challenges. The logical consequence of Habermas's communicative-legal theory is an attempt to transfer the logic of communicative normogenesis to collective memory. The theoretical deepening of this attempt is possible with the involvement of the idea proposed by A. Honneth about the semantic vulnerability of the autonomy of the subject, which implies the right to a semantic environment friendly to marginal life projects. The Habermasian memorial line develops in the concept of the confrontation between Lethe and Mnemosyne by B. Melkevik. It assumes the conventional establishment of a regime of oblivion for historical memory through democratic procedures, which undermines the expertise of professional historical knowledge that ensures a reliable Past. In practice, the procedures for the manifestation of oblivion are not compatible with the presumption of innocence. The modern media space does not use rational proof procedures as universal; it relies on the mechanics of replicating personally colored subjective judgments of post-truth. In the culture of abolition, collective memory, as translated representations of the past, becomes the object of rationing, with the help of which not only standards of correct memory are prescribed, but also a "new ethics" is cultivated, suggesting the possibility of placing blame for the actions of one person on the group with which he identifies. The concept of collective responsibility in its present praxeological perspective contradicts the basic ideas of natural law theory about the nature of natural rights used by the communicative theory of law. In the Habermasian and Honneth perspectives, the culture of cancellation can be interpreted as the practice of digital political and legal work with memory, radicalizing the potential of communicative discourse in conditions of a lack of its rationality in the media space. The foundations being laid for a new understanding of subjectivity, using the possibility of gradation of its severity, carry new threats to

formal equality. This crisis can be overcome on the basis of the Russian communicative theory of law, in which the mechanisms of legal recognition are ontological and transcendental, and as such precede the self-actualization of the individual, rather than complete it.

The main scientific results. In this dissertation, it is substantiated that the Russian communicative theory of law is a project for building a scientific theory[88] reformatting the dogma of law on the basis of a phenomenological method that allows to establish the primary semantic axiom of law, to derive from it the basic concepts of legal obligation and legal norms, and through them to redefine and correct the traditional categorical series of domestic theory of law.

The main groups of ideological sources of the domestic theory of state and law were identified,[89] their influence and role in the formation of a new theory were assessed, its main structural levels were determined,[90] their content was analyzed, and a retrospective of their development was presented, which made it possible to classify the domestic communicative theory of law as an essentialist post-non-classical theory with a synthetic methodology.

In the dissertation, the demarcation of communicative theories of law and communicative legal theories is carried out on the basis of the severity of the appeal to the analysis of the dogma of law and the definition of the latter is proposed. Communicative legal theories are Western post-metaphysical social theories of the late twentieth century that use the concept of communication to explain legal genesis. Such theories can describe legal communication as a closed and open

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[88] Rybakov O. Yu., Tikhonova S.V. Methodological problems of the formation of the theory of legal policy // Izvestia of higher educational institutions. Pravovedenie 2010. No. 1(288). pp. 36-38; Rybakov O. Yu., Tikhonova S.V. The problem of human-state relations in the theory of legal policy // Izvestia of higher educational institutions. Law studies. 2011. No. 2(295). p. 35; Rybakov O. Yu., Tikhonova S.V. Modernization of law and socio-humanitarian science: problems of dialogue // Social Sciences and modernity. 2011. No. 6. p. 10; Tikhonova S.V. The formation of legal communication studies in Russia: problems and prospects // Bulletin of Saratov University. A new series. Series: Economics. Management. Right. 2015. Vol. 15, No. 3. P. 326.

[89] Tikhonova S. V. The ideological origins of the development of the Russian communicative theory of law // Right. Journal of the Higher School of Economics. 2023. No. 2. p. 28. DOI 10.17323/2072-8166.2023.2.25.47.

[90] Tikhonova S. V. The formation of A.V. Polyakov's communicative theory of law // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2023. Vol. 18. No. 3. DOI 10.35427/2073-4522-2023-18-3-tikhonova. p. 37.

process,[91] which leads either to the emergence of an object-free model of law, or to a deliberative model[92] based on value relativism. The theoretical and methodological strategies on the basis of which the Western communicative theory of law tries to substantiate the possibility of a compromise between the socio-legal ontology of closed and open communicative legal theories are established, the multiple nature of the definition of legal communication set by these strategies is demonstrated. The key difference between the Russian communicative theory of law and the Western one is determined, revealed as an accentuation of the spiritual and humanistic principle in substantiating the category of the subject of law. The limitations of the Western model of the autonomy of the subject in the dialectic of recognition are established,[93] and their overcoming in the Russian communicative theory of law through the category of mutual recognition is shown.[94]

It is proved that the medial turn initiates a memorial turn,[95] forming new structures of historical memory and reshaping the understanding of social ontology. Mediatized memory[96] is interpreted as the basis of sociogenesis,[97] and its political and legal reflection is based on new, digital, strategies of chimerical synthesis. The article analyzes the emergence of a new categorical series in modern political and legal thought associated with the category of historical memory, namely the concepts of "historical truth" and "historical justice" associated with the emergence of a

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[92] Tikhonova S.V. Theoretical foundations of the Western communicative theory of law: Jurgen Habermas // Bulletin of the Saratov State Law Academy. 2022. No. 1(144). DOI 10.24412/2227-7315-2022-1-25-36. pp. 31-32.

[93] Tikhonova S. V. The doctrine of the crime of early Hegel in the intersubjectivist interpretation of A. Honnet // Bulletin of the Saratov State Law Academy. 2023. No. 1(150). DOI 10.24412/2227-7315-2023-1-54-60. pp. 58.; Tikhonova S.V. Axel Honnet: limits of legal freedom // Izvestiya Saratov University. A new series. Series: Economics. Management. Right. 2022. Vol. 22. No. 4. DOI 10.18500/1994-2540-2022-22-4-473-479. pp. 474-475.

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specialized legal policy[98] aimed at harmonizing historical memory. The main directions of Western searches for communicative and legal theories in the field of collective memory are presented, their connection with the culture of cancellation and the culture of post-truth is revealed.[99]

The author's interpretation of the influence of new media[100] that have overcome the digital divide[101] on the development of the theoretical level of socio-humanitarian science in general[102] and legal science in particular[103] through transdic-disciplinary[104] digital humanities[105] is put forward. The influence of the digital stage of society 's development on legal genesis has been revealed.[106] The article shows the extension of the concept of digital communication beyond the framework of both

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the Russian communicative theory of law[107] and Western concepts of legal communication formulated in the framework of studies of the late Frankfurt school,[108] and demonstrates its political and legal relevance. Using the example of modern natural law theory,[109] the differences in the methodological strategies of the pre-digital[110] and digital eras[111] are considered, the heuristic potential of chimerical[112] models of methodological synthesis[113] in conditions of a shortage of traditional neo-modern values[114] is shown. The digital perspective of the further development of the Russian communicative theory is substantiated in the context of the growing epistemological significance of strong artificial intelligence[115] – neural networks[116] through an appeal to the concept of digital communication in the spirit of methodological pluralism[117].

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The degree of validity and approbation of the results of the research. The validity of the research is determined by its heuristic potential confirmed both by the contents of the research itself, *inter alia*, in part of the instances of employing the method of theoretic modeling, and by the approbation of the results. The dissertation research was tested during the discussion at the department of theory and history of state and law of Saint Petersburg State University on 13 May 2024;

the practice of teaching the disciplines "*History of political and legal doctrines*", "*Modern teachings on law and the State*" for undergraduates of the Saratov State Law Academy, "*History and Methodology of Legal Science*" for undergraduates of the Faculty of Law of the Saratov State University, "*History and Philosophy of Science*" for graduate students of the humanities of Saratov State University, author's courses "*Digital Politics and electronic state*", "*Theory of communication and media philosophy*" for students with the master's program "*Digital Society and technological ethics*" (master's degree 47.04.01 Philosophy, SSU), the scientific guidance of which is carried out by a dissertation;

presentations at the ongoing international online seminar "*In search of the Theory of Law*" (HSE-St. Petersburg, 2020).

The main provisions of the dissertation research are reflected in the following publications:[118]

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1. Tikhonova S. V. Transcendental foundations of law in the communicative theory of law A.V. Polyakov: legal recognition // Proceedings of the Saratov University. A new series. Series: Economics. Management. Law. – 2024. – Vol. 24. – No 1. – pp. 59-64. DOI: 10.18500/1994-2540-2024-24-1-59-64.

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international:

"Readings on the history of political and legal thought in memory of V.G. Grafsky on the topic "Fundamental legal sciences and the preservation of historical memory" (Moscow, April 13, 2023); "Criticism of law and the state in postclassical philosophy of Law", (St. Petersburg, December 10, 2021); "XIII Theoretical and Applied Ethics: traditions and perspectives. Ethics as a Science and profession" (St. Petersburg, November 18-20, 2021); International Scientific and theoretical on-line seminar "Justice and Principles of Law" (St. Petersburg, May 27, 2021) International scientific and theoretical on-line seminar "The suggestiveness of Law: from history to modernity" (St. Petersburg, May 11, 2021); XII International Constitutional Forum (Saratov December 16-18, 2020); "Justice in the post–Soviet legal order: concept, principle, purpose" (Moscow, November 6-7, 2020); XV Philosophical and Legal Readings in memory of Academician V.S. Nersesyants (Moscow, October 9, 2020); "Legal communication of the state and society: domestic and foreign experience" (Voronezh, September 11-12, 2020), "The human world: normative dimension – 8: Abnormal" (Saratov, June 27-29, 2023), International scientific and theoretical on-line seminar "The Elusive existence of law" (SantkSt. Petersburg, June 3, 2020) 16th International Congress on Logic, Methodology and Philosophy of Science and Technology “Bridginig across academic cultures” (Prague, Czech Republic, August 5 – August 10, 2019); "The human world: normative dimension – 6: Norms of thinking, perception, behavior: similarity, difference, interrelation"

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"Communicative strategies for human transformation (Communication-2014)" (St. Petersburg, September 16-18, 2014); "Transformation of the historical consciousness of youth in a risk society" (Saratov, May 15, 2014); "Harmonization of the Russian legal system in the context of international integration" (Kutafin Readings) (Moscow, April 3-5, 2014); V Constitutional Forum (Saratov, December 17-18, 2013); "V Kutafin Readings" (Moscow, November 26 – December 2, 2013); "Political and legal technologies for resolving conflict situations between government and public organizations" (Saratov, July 1-2, 2013); "The human world: a normative dimension -3. Rationality and Legitimacy" (Saratov, June 13-15, 2013); "Society, Politics, Economics, Law: Relationships and mutual influences" (Kharkiv, February 26-27, 2013); "Spring Legal Readings" (Kharkiv, April 27-28, 2012); "Law and its implementation in the XXI century" (Saratov, September 29-30 , 2011); "Man in the space of disease: humanitarian methods of medical research" (Saratov, November 19-20, 2009);

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“Law and language: actual problems of interaction" (Moscow, March 23, 2023); "The human world: the normative dimension -7: The problem of substantiating norms in various perspectives: from realism to constructivism and transcendentalism", (Saratov, SSU, June 7-9, 2021); "Social order in the information society: normative sustainability" (Moscow, May 22, 2020); "Man in the Digital world: a philosophical view and the meaning of law" (Moscow, May 5, 2020); "V Legal regulation of the media communication sphere in Russia: new legislation and problems of law enforcement" (Saratov, April 16, 2018); "Legal regulation of the media communication sphere in Russia: New legislation and problems of law enforcement" (Saratov, April 18, 2017); "XII Derzhavin Readings" (Kazan, October 17-19, 2016); "Legal policy and Legal monitoring: problems of theory and practice" (Moscow, October 28, 2016); "Legal regulation of the media communication sphere in Russia: "Law, science, education: Traditions and Prospects (VII Saratov Legal Readings)" (Saratov, September 29-30, 2016); New legislation and problems of law enforcement" (Saratov, April 20, 2016); "Formation and development of

constitutional tradition in Russia: 110 years of the new edition of the basic state laws of the Russian Empire in 1906" (Saratov, March 15, 2016); "Derzhavin Readings" (Kazan, October 25-26, 2015); "Legal regulation of the media communication sphere in Russia: new legislation and problems of law enforcement" (Saratov, April 23, 2015); Legal readings at Bolshoy Karetny-2014 "Legal Development of Russia: principles, strategies, mechanisms" (Moscow, October 30, 2014); "Theoretical and Applied Ethics: problems and prospects" (St. Petersburg, November 21-23 2013); "Legal Science and Law Enforcement (V Saratov Legal Readings)" (Saratov, June 1-2, 2012); Fourth Philosophical and Legal readings in memory of Academician V.S. Nersesyants (Moscow, October 2, 2009).

The main provisions of the dissertation research have been under academic scrutiny: in interaction with the participants of the research project with the financial support of the grant of the RSF No. 22-18-00153 "The image of the USSR in historical memory: a study of media strategies for reproducing ideas about the past in Russia and foreign countries", (head) and RFBR No. 19-011-00265 "Social construction of historical memory in digital space", head.

The structure of the dissertation. The dissertation research consists of an introduction, four chapters, the first three of which include three paragraphs each, the last one consists of four paragraphs, a conclusion, a list of references and annex.

CHAPTER 1. Russian communicative theory of aw

§ 1.1. The ideological origins of the development of the Russian communicative theory of law

The development of the communicative theory of law in Russia fits into a period coinciding with the current century and slightly exceeding two decades. By the standards of humanitarian history, it is relatively small, but, of course, it is based on previous traditions, different in degree of influence, duration and power. In general, their reinterpretation depended on the large-scale overcoming of the ideological influence (sometimes dogmatic, sometimes censorious) of «orthodox» Soviet Marxism, characteristic of the socio-humanitarian thought of Russia in the 90s of the twentieth century. This process went in three directions in all branches of theoretical humanitarian scientific knowledge: the revival of interest in the achievements of pre-revolutionary Russian thinkers, the revision, criticism and reinvention of the existing categorical apparatus and the reception of the semantic content of academic Western texts, the analysis of which in the Soviet period was limited. The theory of law was no exception, the main schools of which solved the same problems.[119] The communicative theory of law developed thanks to the activities of the St. Petersburg School of Law,[120] which returned to scientific circulation its pre-revolutionary legacy of the "golden age of Russian jurisprudence", engaged in dialogue with foreign researchers, providing translation and reflection of their fundamental texts and put forward its own innovative ideas. A key role in the development of this theory belongs to Professor A.V. Polyakov, who put forward its basic provisions and continues the crystallization of its theoretical core.

In this very large-scale work, three groups of ideas are particularly interesting within the framework of the stated issues. Firstly, Russian philosophy of law at the beginning of the twentieth century, the key role in which is assigned to the views of

[119] Tikhonova S.V. The role of scientific schools in the reproduction of the ethnos of legal science // Russian Law Journal. 2020. № 5(134). DOI 10.34076/2071-3797-2020-5-39-47. p. 43.

[120] In this case, the author somewhat artificially unites jurists of the pre-revolutionary, Soviet and post-Soviet periods who worked at St. Petersburg University in order to show the methodological links of their search in the definition of law, but remembers the gaps in the continuity of their work that go beyond the classical definition of a scientific school.

L.I. Petrazhitsky and the theoretical "roll call" with them of the views of I.A. Ilyin, P.I. Novgorodtsev and other Russian philosophers of law belonging to the sociological school of law and the school of revived natural law. Secondly, it is a dialogue with modern social theory and the theory of communication, carried out in areas of their synergy, primarily in studies of the intersubjectivity of the social world in line with phenomenological sociology.[121] Thirdly, it is the own integrative search of the modern St. Petersburg school of philosophy of law to ensure the synthetic integrity of the legal understanding.

The first group may include a very extensive list of personalities, since the positions of V.S. Solovyov, N.N. Alekseev, G.D. Gurvich, P.A. Sorokin, S.L. Frank, A.S. Yashchenko, L.I. Petrazhitsky, P.I. Novgorodtsev and I.A. Ilyin turned out to be significant for A.V. Polyakov's views. Nevertheless, here I will focus on the analysis of the views of the last three Russian jurists, since references to them are found throughout the entire creative path of A.V. Polyakov, and he detailed them in separate articles. The analysis of the concepts of all the listed authors will require independent research. It is logical to begin consideration of this group of ideas with the provisions of the legacy of L.I. Petrazhitsky, the founder and long-term (more than twenty years) leader of the St. Petersburg School of Philosophy of Law, which are significant for the theory of communication. As noted by A.V. Polyakov and E.V. Timoshina, the very status of this school is faced with discussions related to the difficulty of applying "school" criteria to its ideas and personalities, both geographical, which is connected with Petrazhitsky's emigration, which divided his students into several countries, and temporary: "the chronological boundaries of the St. Petersburg School of Philosophy of Law remain unclear, given the revival of ideas L.I. Petrazhitsky both in Russia and abroad".[122] Nevertheless, its connection with his doctrine is obvious, and precisely in the context of efforts to go beyond the

[121] Polyakov A.V. Communicative concept of law // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 8.

[122] Polyakov A.V., Timoshina E.V. Preface // St. Petersburg School of Philosophy of Law: To the 150th anniversary of the birth of Lev Petrazhitsky / Under the general editorship of A.V. Polyakov and E.V. Timoshina. St. Petersburg: Publishing House of St. Petersburg University, 2018, p. 6.

one-sided reflection of law. The potential of applying Petrazhitsky's concepts in modern jurisprudence is also noted by Western researchers. For example, L.B. Kiejzik shows that "his brilliant developments ... are suitable for creating a unified (albeit multi-level) legal system".[123] No wonder it turned out to be so in demand these days.

The task is complicated both by the volume of his legacy[124] and the degree of elaboration of L.I. Petrazhitsky's views by modern representatives of the St. Petersburg school. Thus, only E.V. Timoshina, who defended her doctoral dissertation "Theory and Sociology of Law by L.I. Petrazhitsky in the context of classical and postclassical legal understanding" in 2013, according to the RSCI, is the author of more than twenty works, including almost a three-hundred-page monograph devoted to his ideas.[125] In 2018 an international collective monograph "St. Petersburg School of Philosophy of Law: To the 150th anniversary of the birth of Lev Petrazhitsky" was published, edited by A.V. Polyakov and E.V. Timoshina, which includes the results of many years of study of Petrazhitsky's theory and its development by students (P.A. Sorokin, G. Gurvich, N.S. Timashev, etc.) of the St. Petersburg the school of philosophy of law, the authors of which from the Russian side were M.V. Antonov, A.A. Krayevsky, A.V. Polyakov, E.V. Timoshina, I.L. Chestnov. Within the framework of this paragraph, I will focus on those motives of Petrazhitsky's theory of law that are directly recorded in the works of A.V. Polyakov, namely, articles by A.V. Polyakov published in 2013-2021. In this case, the theoretical reconstruction ignores the direct chronological approach, but

[123] Kieyzik L. B. On the beginnings of the St. Petersburg School of Philosophy of Law, or On crossing borders. A study of the history of Lev Petrazhitsky // Justice, 2020, vol. 2, no. 3, pp. 197-212. DOI 10.37399/2686-9241.2020.3.197-212. See also: Fittipaldi E. Everyday Legal Ontology. A Psychological and Linguistic Investigation within the Framework of Leon Petrażycki's Theory of Law. Milano: Edizioni Universirarie di Lettere Economia Deritto, 2012, 300 p.

[124] The volume of his selected works, published under the scientific editorship of E.V. Timoshina, contains over a thousand pages (Petrazhitsky L. I. Theory and Politics of Law. Selected works / scientific ed. by E. V. Timoshin. St. Petersburg: "University Publishing Consortium "Law Book", 2011, 1031 p.), in his legacy there are over ten major monographs.

[125] Timoshina, E. V. How is the theory of law possible? Epistemological foundations of the theory of law in the interpretation of L.I. Petrazhitsky. Moscow, Yurlitinform pbl, 2012, 296 p.

instead allows us to consider legal reflection in the perspective of an ongoing and self-explanatory dialogue.

So, from the point of view of this special approach to the theoretical reconstruction of ideas, we should begin with the work "L. Petrazhitsky's Psychological theory of law in the light of a communicative approach" (2016).[126] Here, the scientific work of L.I. Petrazhitsky approaches the postclassical socio-phenomenological approach, and as its main achievement, the identification and justification of the "necessary connection between law and human personality"[127] is established, which classical theories of law cannot grasp. Thanks to it, law can be understood as a reality created by a person's consciousness, his inner world (mental reality), in this capacity it cannot be considered as an alienated hostile force. The lack of correlation between psychological and social (external) in Petrazhitsky's constructions is compensated by the response to the Darwinian theory of evolution, which allows us to substantiate the similarity of natural selection in relation to single individual imperative-attributive emotions that make up the content of law: those of them that meet social needs "receive social support, are fixed not only at the level of intuitive law, but also through appropriate normative facts".[128] A.V. Polyakov considers Petrazhitsky's idea extremely significant and productive that imperative-attributive emotions do not imply consistency, they can easily be conflicting, while the very reproducibility and, as we would say today, the "frequency" of such reproducibility by most people leads to the fact that a specific variant is fixed. Further, he emphasizes those passages of Petrazhitsky's works that demonstrate that the thinker lays down the characteristic of dialogical meaningfulness in the concept of imperative-attributive experiences, as a result of which it can be argued that Petrazhitsky not only "actually recognizes the possibility of a common understanding, but also interprets the behavior of another person as a text that needs to be read for his understanding, recognizing that the most important thing is that

[126] Polyakov A.V. L. Petrazhitsky's psychological theory of law in the light of a communicative approach // Izvestia of Higher Educational Institutions. Law studies. 2016. No. 5(328), pp. 144-155.

[127] Ibid., p. 144.

[128] Ibid., p. 147.

this text has a common, i.e. "objective" (actually intersubjective) meaning".[129] As a result, Petrazhitsky's thought turns out to be in agreement with the later provisions of social phenomenology on the intersubjectivity of social interaction, which initially distributes individual meanings as common, and anticipates them.

The following article, also published in 2016, concretizes Petrazhitsky's legal understanding of human rights.[130] In this case, immersion in the psychological theory of law is "mediated" by a polemic with E. Fittipaldi, the most rigorous modern "Petrazhitskian", and is accompanied by a clear textual analysis as a justification for a particular conclusion.

In this article, A.V. Polyakov radicalizes the internal contradiction of Petrazhitsky's theory in order to show its limit while increasing the requirements for its logical rigor. The focus of attention is on the attributive nature of the "subject emotions of duty"[131] as a specific distinguishing feature ("differentia specifica") of law. This thesis is a consequence of Petrazhitsky's identification of the "imperative-attributive nature" of law and the imperative-attributive psyche; A.V. Polyakov convincingly demonstrates that such a logical choice unambiguously equates fantastic, delusional and real mutual legal imperative-attributive emotions. In order to "weed out" the untenable (phantom, virtual) ones from the latter, Petrazhitsky has to introduce the doctrine of normative facts, which reflects the unification trend of law, carried out through the development of a "single template of norms" underlying the understanding of rights, duties, legal relations and "even the very appearance of the court",[132] i.e. legal forms, ensuring social harmony.

As a result, A.V. Polyakov comes to the conclusion that Petrazhitsky failed to reconcile the ideas about the imperative-attributive nature of law and the doctrine of normative facts that remained in the relationship of contradiction and conflict. Due to the individuality of legal emotions, Petrazhitskian law remains virtual, for

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[129] Ibid., p. 153.

[130] Polyakov A.V. Human rights in the context of the "Petrazhitskian perspective" // Izvestia of Higher Educational Institutions. Law studies. 2016. No. 1(324), pp. 46-61.

[131] Petrazhitsky L. I. Theory of law and the state in connection with the theory of morality. Vol. 1. St. Petersburg, 1909, p. 105.

[132] Polyakov A.V. Human rights in the context of the "Petrazhitskian perspective"...p. 52.

actualization it requires an intersubjective perspective, the transition to which cannot be carried out by internal means of the theory of strict Petrazhitskianism. This transition is carried out by the communicative theory of law with the help of other theoretical and methodological tools. But she does this based on the already established and theoretically deeply developed thesis about the connection between law and the human psyche. It is he who is the fulcrum for further communicative studies of law.[133]

The next representative of Russian legal thought who influenced the communicative theory of law is P.I. Novgorodtsev. According to A.V. Polyakov, the teaching of this philosopher of law develops the content of the implicit side of communication, which includes "internal, spiritual, but not always clearly realized, "intentional" moments of communication",[134] which can be considered as it's a priori conditions or eidos. Putting forward the "integrity of communication"[135] as a transcendent ideal, P.I. Novgorodtsev actually establishes a regulatory ideal for law, in which the highest critical instance for positive law is embedded. His conceptualization required an extraordinary methodological synthesis of the Kantian personality and the Hegelian integral society, designed to reflect the fusion of the personal and the collective in ideal communication. In this case, it is not about the personality itself, but about the personality associated with other personalities. The Kantian line of Novgorodtsev's methodology is based on the Kantian gap between theoretical and practical reason and the formula of the categorical imperative as the maxim of free will. Ought to be a sphere defined by the ability of practical reason to be a universal legislator based on a noumenal rather than a phenomenal order. P.I. Novgorodtsev transforms this supreme vocation of the spirit, justified by Kant, into the idea of "inspiring morality", fueling the eternal and inexhaustible desire to fulfill duty. The universal obligation of the thinker, emphasizes A.V. Polyakov (and

[133] Tikhonova S. V. The ideological origins of the development of the Russian communicative theory of law // Right. Journal of the Higher School of Economics. 2023. No. 2. DOI 10.17323/2072-8166.2023.2.25.47. P. 31.

[134] Polyakov A.V. The Russian idea of "revived natural law" as a communicative problem (P.I. Novgorodtsev v. L.I. Petrazhitsky) // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2013. No. 4, pp. 116-142.

[135] Novgorodtsev P.I. On the social ideal. M., 1991, p. 200.

here he sees the influence of V.S. Solovyov, to whom the researcher turns later in the context of Solovyov's idea of justifying religion through law and morality, which allows "not to derive law from religion, but to "connect" religion to law, if sufficient grounds are found for this"[136]), as the idea "already presupposes many but, on the other hand, it defines a certain higher norm that stands above the will of the individual and follows from the ideas of a higher objective order"[137]. This is the implicit communicative essence of the human personality, in which the autonomy of free will does not close on itself, but opens up to others and is realized only together with them, forming a "moral unity", reconciling the individual in the general collective. This transition from one to many is impossible without a transition from morality to law, the fixation of which goes beyond the possibilities of Kantian thought. Legal requirements may not include moral ones, but they do not require their exclusion, therefore natural law represents "a priori principles and conditions of human community ... that allow a person to act as an equal and equivalent partner in human communication, binding everyone by uniform rules of conduct, reasonably and morally accepted and shared by all".[138] The norm of natural law turns out to be the regulatory ideal for positive law, on the basis of which the latter is evaluated. Meaningfully, it coincides with the essence of the human personality, its rational and moral nature, to which a person must remain faithful in any historical conditions.

A.V. Polyakov scrupulously correlates the ideas of P.I. Novgorodtsev with the ideas of L.I. Petrazhitsky, trying to identify the fundamental compatibility of the latter with usnaturalism. Petrazhitsky declared the need to revive the natural law doctrine in his work "Introduction to the Study of Law and Morality. Fundamentals of emotional psychology", approaching this idea even in his civilistic works. The scientist wrote: "Due to various misunderstandings about the meaning and significance of the teachings of natural law and various other circumstances,

[136] Polyakov A.V. The principle of mutual legal recognition: the Russian philosophical and legal tradition and a communicative approach to law // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2021. Vol. 16. No. 6, p.45.

[137] Polyakov A.V. The Russian idea of "revived natural law" as a communicative problem (P.I. Novgorodtsev v. L.I. Petrazhitsky), p. 127.

[138] Ibid.

including the political reaction after the French Revolution and the fall of ethical ideals, at the beginning of the nineteenth century there was a sudden fall and destruction of the school of natural law, and since that time the historical and practical dogmatic development of positive law was recognized as the only possible science in the field of rights. This major and sad historical misunderstanding led, among other things, to the fact that jurisprudence and other sciences concerning the social system – state sciences, political economy – turned out to be devoid of principled and ideal guidance and partly engaged in historical and dogmatic microscopy, and partly fell into a superficially utilitarian, “practical” in the vulgar sense of the word direction devoid of common principles, ideas and ideals".[139] This application was never fully implemented, the methodology chosen by Petrazhitsky did not leave a conceptual territory for it (although an outline of the theory of intuitive law and the politics of law was created), moreover, P.I. Novgorodtsev's active participation in the development of these ideas became the object of criticism for Petrazhitsky.

Nevertheless, A.V. Polyakov finds vulnerabilities in Petrazhitsky's critical assessment of Novgorodtsev's view, showing that their views, which contradict in the assessment of morality and law (Petrazhitsky believed that Novgorodtsev's law is essentially intuitive morality, whereas natural law refers to an intuitive legal psyche), can come closer if we consider that Petrazhitsky defends a narrow understanding of morality as an imperative emotion (morality of duty), and Novgorodtsev – broad, understanding by it an inspiring and pretentious morality that falls under the Petrazhitskian definition of attribution and, therefore, under the concept of law. In this case, Novgorodtsev's revived natural law should be understood as "an informal positive law based on normative facts in the form of rational (doctrinal) requirements arising from the communicative nature of the human personality".[140] Thus, the very possibility of a methodological correlation

[139] Petrazhitsky L.I. Introduction to the study of law and morality. Fundamentals of emotional psychology. St. Petersburg, 1908, pp. V-VI.

[140] Polyakov A.V. The Russian idea of "revived natural law" as a communicative problem (P.I. Novgorodtsev v. L.I. Petrazhitsky), p. 134.

between the ideas of Petrazhitsky and Novogorodtsev is substantiated, and the horizon of supplementing the former with the latter is outlined, namely, by introducing the Novgorodtsev's understanding of personality, which means "a person endowed with dignity and freedom and connected with other people by a "higher moral unity"[141]. Moral unity justifies the possibility of introducing the concept of "communicative unity", in which the freedom and dignity of communicants are manifested.

To reflect the "phenomenological-Hegelian" perspective of the principle of mutual spiritual recognition, A.V. Polyakov refers to the legacy of I.A. Ilyin, namely, to the nineteenth chapter "The Third Axiom of Legal Consciousness" of the work "On the essence of Legal Consciousness",[142] revealing its key theses in his article "The Principle of mutual legal recognition: the Russian Philosophical and Legal tradition and communicative an approach to law" (2021).[143] Ilyin proceeds from the fact that politics serves the spirit (quite Hegelian), creating state unity through "legal law"[144], spirit and law are connected because the necessary forms of the spirit are forms of legal consciousness, theoretically expressed as axioms. Ilyin has three such axioms in total: the law of spiritual dignity, the law of autonomy and the law of mutual recognition[145]. Spiritual dignity is the result of a spiritual experience in which a person realizes his mission, the ability to serve super-values in the face of the "Kingdom of God", even if he cannot conceptualize a "meeting" with the latter. Spiritual dignity is revealed through spiritual self-affirmation, which resolves the conflict between spiritual vocation and a sense of self-preservation and is the basis of a person's self-respect. The second axiom captures the ability to define oneself and manage oneself on the way to good goals. Autonomy requires one's own beliefs and spiritual maturity. Actually, the third axiom, in which a person reveals himself

[141] Ibid., p. 137.

[142] Ilyin I. A. On the essence of legal consciousness / Text preparation and introductory article by I. N. Smirnov. M.: Rarog, 1993, pp. 188-199.

[143] Polyakov A.V. The principle of mutual legal recognition: the Russian philosophical and legal tradition and a communicative approach to law // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2021. Vol. 16. No. 6, pp.39-101.

[144] Ibid., p. 146.

[145] Ibid., p. 148.

as a social being, asserts mutual recognition. Human life is impossible without relationships with other people, these relationships cannot ignore their "spiritual composition", therefore it is necessary to "provide them with a spiritually and objectively decent level"[146], at which a varying degree of subjective "pleasantness" is always accompanied by objective fidelity and spiritual dignity. It follows from this that a legal relationship as a spiritual relationship is always based on "mutual spiritual recognition of people".[147] A.V. Polyakov reveals the threefold nature of the twice-realized recognition underlying Ilyin's legal relationship, showing that a legal relationship requires, firstly, recognition of law, secondly, recognition by the subject of his own spirituality, including dignity and autonomy, and, thirdly, recognition of the spirituality of another subject[148]. Acts of recognition are not necessarily actually committed by the subject as independent actions, they can be "tacitly assumed"[149], although such omission can lead to their oblivion and loss; therefore, A.V. Polyakov argues that Ilyin's recognition plays the role of a legal presumption or a legal principle[150].

In general, Ilyin's recognition permeates all spiritual communication, but for A.V. Polyakov, the thesis that legal communication, spiritual in nature and based on recognition, reveals and affirms the "spiritual brotherhood of all people" is extremely important.

Thus, Russian legal thought has prepared the foundation for the communicative theory of law for the formulation of the following ideas: law is connected with the human personality, the basis of communication is the human psyche (L.I. Petrazhitsky), which has a specific pretentious-binding (attributive-imperative) nature; the human personality has an implicit communicative essence, which allows creating the basis for the concept of "communicative unity", in which

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[146] Ibid., p. 191.
[147] Ibid., p. 192.
[148] Polyakov A.V. The principle of mutual legal recognition: the Russian philosophical and legal tradition and a communicative approach to law, p. 53.
[149] Ilyin I. A. On the essence of legal consciousness…, p. 193
[150] Polyakov A.V. The principle of mutual legal recognition: the Russian philosophical and legal tradition and a communicative approach to law, p. 53.

the freedom and dignity of communicants are manifested (P.I. Novgorodtsev); communicative unity is based on mutual legal recognition (I.A. Ilyin).

Consideration of the second group of ideas involves an appeal to the phenomenological tradition, firstly, to the basic ideas of early Husserl, and secondly, to the phenomenological sociology of A. Schutz and the social constructivism of P. Berger and T. Lukman. These last two directions are both genetically and conceptually connected by the methodological context (since they grow out of Husserl's phenomenology), and by the common goal of defining social knowledge as the basis for reproducing social reality, they create the ideological context in which Russian legal thought is placed, and in which, as in a refractive prism, it receives a completely new sound and it is enriched with new meanings.

A.V. Polyakov's appeal to Husserl's phenomenology logically follows from the first group of sources. I.A. Ilyin, during his scientific internship (1911-1912), listened to Husserl's lectures at the University of Göttingen and communicated with him. As Y.T. Lisitsa notes, Husserl's book "Ideas for Pure Phenomenology and Phenomenological Philosophy" will be published only in 1913, and associate Professor Ilyin already in the 1912/1913 academic year expounds to his students the ideas of Husserl's phenomenological method".[151] Ilyin himself calls his method phenomenological: "the philosophical study of an object through an intense and selfless immersion of the soul into its inner experience is a phenomenological study (the essence of an object is known by its phenomenon). It always reveals how the situation in the subject is — the objective situation (what is objectively in it)".[152] N.N. Alekseev's phenomenological approach is also based on the ideas of E. Husserl.[153] A.V. Polyakov directly connects the formation of social knowledge with the Husserl approach.[154]

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[151] Lisitsa Yu.T. Ivan Ilyin // Self-knowledge. Berdyaev readings. 2015. No.2, p. 48.

[152] Ilyin I.A. Philosophy as spiritual doing: [course of lectures]. Moscow: Publishing House of the PSU: Orthodox St. Tikhon's Humanitarian University, 2013, p. 79.

[153] See: Arkhipov S.V. Phenomenological motives of the concept of law by N. N. Alekseev // Proceedings of the A.I. Herzen Russian State Pedagogical University. 2013. No.160, pp. 122-128.

[154] Polyakov A.V. General theory of law: Problems of interpretation in the context of a communicative approach: A course of lectures. St. Petersburg: Publishing House of St. Petersburg State University, 2004, p. 39.

Social phenomenology suggests the development of E. Husserl's thesis about the intentionality of consciousness, which constructs meanings, the horizon for which is the life world. For A.V. Polyakov, Schutz's concept of the intersubjective everyday world, experienced in a natural setting as reality, and accessible to subjects both as an experience and as an interpretation, as well as the concept of a "cash reserve" of such experiences and interpretations, is important.[155] I note that Schutz's life world is much broader than Husserl's, and includes social and cultural structures (the criterion for attributing an object to the life world is the uncriticism of its perception). The content of the cash reserve is permeated with practical interest. Since law is immersed in the intersubjective world, to the extent that "all law acting in real social life in accordance with its "nature" is characterized by uniformity of its understanding (which indicates its validity) and recognition by interacting persons (which defines the concept of effectiveness, efficiency)".[156] This becomes possible due to the iconic nature of intersubjectivity, through representations linking individual experiences and other people's interpretations. Appresentation leads to communication in the external, not internal, social world for the subject, and communication lays down a communicative environment in which understanding and agreement are realized.[157] Ideal-typical constructions form an objective dimension for subjective semantic contexts; law, as an objective phenomenon, belongs to such constructions.

Schutz's concept of the life world became the starting point for two phenomenological schools in social theory – Berger and Luckmann's social constructivism and G. Garfinkel's ethnomethodology. For the communicative theory of law, it has become fruitful to turn to the ideas of the first (although, perhaps, Garfinkel's model of "background practices" will still find its application) contained in the program treatise "Social Construction of Reality. A Treatise on the Sociology of Knowledge" (1966), which became so widely known in our country after being

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[155] Polyakov A.V. Psychological theory of law by L. Petrazhitsky in the light of a communicative approach // Izvestia of higher educational institutions. Law studies. 2016. No. 5(328), p. 149.

[156] Ibid., p. 150.

[157] Schutz A. Symbol, reality and society // Schutz A. Favorites: A world glowing with meaning, p. 484.

translated in 1995,[158] that now his postulates are integrated into most research programs in social knowledge up to the level of implicit attitudes. Social knowledge is the basis for the inclusion of people in social roles and institutions, it is formed from early socialization due to the fact that typical situations are repeated over and over again for an individual, as a result of increasing experience of which subjective, intersubjective and objective meanings are fused, the beginning of this process is rooted in the everyday life world. Society reproduces only because people, acting in accordance with their knowledge, meet the expectations of others, the result of this collective process creates the illusion of the "naturalness" of the social order. Social reproduction itself is a cycle of changing habitualization, institutionalization, tradition and legitimation, each new level recycles and reassembles the results of the previous one. In this concept, the thesis that "society is both a human product and an objective reality, while man himself is a product of society, turns out to be the most in demand for the communicative theory of law. In other words, society is both a subjective and an objective reality".[159] In the cited work, A.V. Polyakov directly notes the conclusions of the concept of P. Berger and T. Luckmann, "which must be considered, since they express the essence of social dialectics: on the one hand, society exists only to the extent that individuals are aware of it; on the other hand, individual consciousness is socially determined. On the one hand, the institutional order is real only insofar as it is realized in the roles performed (typed behavior); but on the other hand, roles represent an institutional order that defines their character and gives them objective meaning".[160] It is obvious that the problem of social dialectics is being actualized here, combining the subjective and the objective, the individual and the social in multiple repetitive interactions. Thus, the communicative theory of law receives a toolkit describing the mechanics of continuous connections

[158] Berger P., Luckmann T. Social construction of reality. A treatise on the Sociology of Knowledge / Translated by E. Rutkevich, M.: Medium, 1995, 323 p.

[159] Polyakov A.V. Pravogenesis // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House LLC, 2014, p. 64.

[160] Ibid., p. 65.

between meanings produced by one Self and meanings produced by other Selves, generalizing them and laying them in the foundation of law.

A.V. Polyakov also addressed the interpretation of the emergence of social and legal institutions put forward by P. Berger and T. Luckmann.[161] An institution is a permanent solution to a specific social problem, and that is why individuals recognize the meaning and significance of this institution in society. By engaging in actions related to the institutional space, they get acquainted with this meaning, but superficial acquaintance is not enough, institutional meanings must be "strongly and memorably imprinted in the individual's mind"[162] in an easy-to-remember form so that people who are forgetful, lazy and not always highly rational can cope with solving institutional tasks. And it is precisely because of the unreliability of human nature that the transfer of institutional meanings is always accompanied by interrelated control and legitimization. A.V. Polyakov identifies certain objectified institutional meanings of Berger and Luckmann with "legal texts", i.e., sign complexes of law that are subject to transfer and interpretation. In addition, the socio-constructivist approach to the description of the legitimization apparatus, which is easily applicable to the description of the legitimization of legal norms, is certainly significant for the communicative theory of law.

The theory of communication adjoins the socio-phenomenological paradigm in this category. Berger and Luckmann wrote their treatise in a methodological situation characterized by a deep degree of elaboration of the concept of "social action". The tradition of studying it, begun by Weber and Durkheim, will largely pass to the theory of communication. Social action and a communicative act, as the primary elements of society and communication, respectively, are always reduced to an action performed by at least two people. But in the first case, the focus of attention is the exchange performed in interaction and its social effects, in the second – the semiotic accompaniment of the exchange. Communication theory calibrates the configuration of action, revealing it through forms of imitation, dialogue and

[161] Polyakov A.V. Human rights in the context of the "Petrazhitskian perspective"..., p. 59.
[162] Berger P., LuckmannT. Social construction of reality, p. 27.

management, and these forms somehow penetrated the explanatory apparatus of social theory throughout the twentieth century. In the context of Berger and Luckmann's research, we are always talking about the micro-level of social action represented by an individual subject performing (mostly) everyday routine interactions. It is reflected by the Osgood-Schramm circular model[163], in which the understanding of the message is carried out in the overlap of the framework of correspondence of the funds of information signs that record subjective experience, and is inscribed in the context of the relationship of communicants. This dialogical model is in maximum demand by the communicative theory of law, but the latter does not ignore linear models that work where law is depicted in the paradigm of the order. The theory of communication, which asserts the multiplicity of forms of communication, allows the communicative theory of law to vary explanatory schemes depending on the specifics of the legal communication under consideration.

The third group of ideas is related to the search for an integral legal understanding. After the collapse of the USSR, the Constitution gives inalienable human rights a dominant meaning as the meaning and purpose of law. Jurisprudence had to respond to this challenge in a methodological situation of prolonged confrontation and obvious incompatibility of statist positivism and the natural law school, both epistemological, expressed in the confrontation of materialism and idealism, and ethical, expressed in the conflict of the corresponding concepts of justice and duty and, in fact, legal, related to fundamentally different models of the nature of law and its implementations in its sources. The schools of jurisprudence were formed in polemics with each other, their competition is connected both with methodological features and with the development of national legal doctrines. In addition, the modernization of law presupposed the modernization of the legal science itself, its departure from the principles of classical rationality towards non-classical and post-classical ones.[164] Since the end of the last century, the need to find

[163] Schramm W. How Communication Works. // Process and Effects of Mass Communication. / Ed.: W. Schramm. Urbana: University of Illinois Press, 1954, pp. 22-90.

[164] Rybakov O. Yu., Tikhonova S.V. Modernization of law and socio-humanitarian science: problems of dialogue // Social Sciences and modernity. 2011. No. 6. p. 101.

a compromise between schools of law and their characteristic types of legal understanding has been actualized, the answer to which has been the search for an integrative legal understanding. The latter is designed to combine existing types of legal understanding through the search for "common points of contact, and not by simple arithmetic summation".[165] Such a task, on the one hand, was to rid the new search of eclecticism, on the other, to go beyond the explanatory schemes of positivism.

The very formulation of the problem was fundamentally new: as E.V. Timoshina shows, back in 1900, L.I. Petrazhitsky contrasted the "synthetic" way of organizing his own theory of law with the "combinational" way "as logically incorrect, and therefore not leading to the creation of theories".[166] V.G. Grafsky rightly notes that "attempts to streamline and harmonize legal knowledge within the framework of a unified theoretical and cognitive and practical discipline has been undertaken repeatedly, but it has not had any lasting and sustained effect".[167] Nevertheless, in his opinion, in jurisprudence there is an increasingly clear desire for a transition to integral jurisprudence, which is broadly understood as "synthesizing jurisprudence that exists due to the ordering of the most useful and promising ways of introducing legal knowledge, legal education and mastery in the use of rights, including the use of texts of laws, procedures and the most important principles and the axioms of legal understanding".[168] The positions of V.V. Lazarev[169] and V.V. Lapaeva[170] are close to this point of view.

In principle, the adjectives "synthetic", "integral" and "integrative" are used synonymously in relation to legal theories. A.V. Polyakov justifies the need to

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[165] Zolotoilo M.V. Integrative legal understanding: a new approach // Journal of Russian Law. 2014. No.2, p. 143.

[166] Timoshina E.V. How is the theory of law possible? Epistemological foundations of the theory of law interpreted by L.I. Petrazhitsky. M., 2012, p.88.

[167] Grafsky V.G. Integral (synthesized) jurisprudence: an actual and still unfinished project // News of higher educational institutions. Law studies. 2000. No.3, p. 50.

[168] Ibid., p. 60.

[169] Lazarev V.V. The origins of the integrative understanding of law // Our difficult path to the right. Materials of philosophical and legal readings in memory of academician V.S.Nersesyants / comp. V.G.Grafsky. M.: Norm, 2006, pp.122-139.

[170] Lapaeva V.V. Integral legal understanding in the Russian theory of law: history and modernity // Legislation and Economics. 2008. No.5, pp.5-13.

demarcate these terms, differentiating the approaches they reflect: "....The view of law as integrity distinguishes an integral legal understanding from an integrative one. The integral approach makes it possible to identify in the integrity of law those aspects that are fragmentary, in isolation from other aspects of legal reality, are represented in classical legal theories. The integrative approach, not seeing the original integrity of law, seeks to find it through combining various approaches developed in classical jurisprudence".[171]

Indeed, the internal reserves of integration of conflicting conceptual structures are limited, the interaction of legal positivism and revived natural law clearly demonstrates the existence of limits beyond which the "school" system of categories cannot go without the risk of insoluble logical contradictions. The main types of legal understanding, the study of which in the last decade of the twentieth year was actively transferred from the plane of the history of the teachings of the state and law into the mainstream of the philosophy of law, designed to put forward methodological guidelines for applied jurisprudence, are organized as deductive pyramidal hierarchies of concepts, which makes direct reception of logical constructions impossible. The schools of law developed as W. Heisenberg's "closed theories", characterized by him as "methodological excellence"[172]. They represent a "deductive system of logically interrelated statements, the interpretation of which is an idealized object," and include as the main elements the empirical basis, the theoretical basis, the logic of the theory and its conclusions.[173] Closed theories are distinguished by a logically and coherently constructed conceptual core of the theory based on the unity of the method and the rules of its interpretation. Methodological monism is specific to closed theories. Heisenberg considered closed theories using examples of natural science, where inductive logic dominates the formation of concepts. Schools of law, as noted above, are deductive, since they did not develop

[171] Polyakov A.V. Communicative theory of law as a variant of integral legal understanding // Legal ideas and institutions in historical and theoretical discourse (to the 70th anniversary of Professor V.G.Grafsky) / ed. L.E. Lapaeva. M., 2008, p.23.

[172] Heisenberg W. Steps beyond the horizon. Moscow, Progress pbl, 1987.

[173] Rybakov O. Yu., Tikhonova S.V. Methodological problems of the formation of the theory of legal policy // Izvestia of higher educational institutions. Jurisprudence 2010. No. 1(288). p. 37.

under the influence of changes in the actual legal norms; The source of their movement was large-scale socio-political changes and the emergence of fundamental ideas reflecting them (reason, development, positive knowledge, etc.). From these ideas, the concept of law was derived, the logical consequences of which were the main legal categories. In other words, the development of legal understanding was carried out through an appeal to non-disciplinary philosophical concepts for law, even if the result of such an appeal was a principled positivist refusal to include such concepts in the closed system being formed.

In this perspective, it is natural to turn to non-disciplinary philosophical knowledge for jurisprudence as the basis and source of integration. The connection of the schools of legal understanding with the prevailing philosophical paradigms is well known. The rootedness of the school of natural law in rationalist philosophy, positivism – in the methodology and philosophy of science, the historical school of law – in romantic nationalism, revived natural law – in the basic currents of Western philosophy of the twentieth century is analyzed in detail in the history of political and legal doctrines. From the point of view of the modern search for interdisciplinary foundations, the frequency of appeals to sociological theories of law within the framework of integrative projects that arose at the turn of the XX-XXI centuries[174] is indicative. Being closely related to modern social theory, they are able to provide flexibility in responding to the very socio-political changes that initiate the progress of jurisprudence.

Nevertheless, the desire for integration on an "external" socio-theoretical platform also faces significant barriers. If social science were able to offer a logically rigorous and comprehensive model of social reality, the task of jurisprudence would be to reduce legal categories to the denominator of categorical systems and conclusions of social theory, to achieve total "methodological perfection". Given the relative nature of truth in scientific knowledge, such a task would always have to be solved retrospectively, following social cognition and lagging behind the

[174] See, for example: Grafsky V.G. Integral (synthesized) jurisprudence: an actual and still unfinished project // News of higher educational institutions. Law studies. 2000. No.4, pp.49-64.

understanding of the present dynamics of legal life. Moreover, the social orientation of jurisprudence is complicated by methodological pluralism, which has been recognized as a methodological principle of post-non-classical science as such and post-Soviet philosophical research, in particular. By asserting the equality of different methodological strategies, methodological pluralism thereby limits the transcendental claim of philosophical concepts to universality, limiting attempts to create "the only true" theories.

The author of the concept of methodological pluralism is P. Feyerabend. One of his most famous statements about the pluralism of method in science came into wide circulation: "Cognition ... is not a series of consistent theories approaching some ideal concept. It is not a gradual approach to the truth, but rather an ocean of mutually incompatible alternatives, in which each individual theory, fairy tale or myth are parts of one set, encouraging each other to develop more carefully, and through this process of competition they all contribute to the development of our consciousness".[175] Feyerabend's idea of the proliferation of theories means the necessary coexistence of "incompatible alternatives" within the framework of a theoretical whole, which is required for a qualitative refutation/confirmation of the hypothesis put forward. Methodological pluralism as a principle of cognition means the need to take risks, combining even contradictory approaches, for the sake of a more reliable description of the object under study.[176]

Modern methodological pluralism, of course, is not identical to methodological anarchism. Nevertheless, despite the justification of the methodology that has become mandatory from the point of view of research design standards, the procedure for selecting the methods used in methodological pluralism is characterized by a certain intuitiveness and cannot be clearly formalized, despite the fact that researchers, of course, strive to rationally argue their methodological

[175] Feyerabend P. Against the method. An essay on the anarchist theory of cognition. Moscow: AST pbl, 2007, p. 49.

[176] Tikhonova S.V. Philosophy of law in the context of post-non-classical science: methodological pluralism and the case of the communicative theory of law // Proceedings of the Saratov University. A new series. Series: Economics. Management. Right. 2020. Vol. 20, No. 3. DOI 10.18500/1994-2540-2020-20-3-320-325. p. 322.

choice, but do so formally, as a rule, after completion the research itself. Due to methodological pluralism, the methodological field of theories is mosaic and fragmented. Immersed in a specific concept, it is difficult to find a universal system of explanation of social reality suitable for the methodological needs of legal understanding in general, and to overcome the postmodern crisis in particular.

However, methodological pluralism is not intended to epistemologically fix the discreteness of a set of methods, on the contrary, it ensures their unity. Working as a complementary principle of mutual reinforcement of related and close methods, it allows you to complement, «calibrate» and add research procedures where necessary. In other words, it opens up a space for methodological synthesis, in which theories are initially constructed not as competing and mutually exclusive closed systems of concepts, but as complementary conceptual constructions open to dialogue, interacting with each other, combining inductive-deductive logics, adapting methodological ensembles to the peculiarities of the studied object.

The communicative theory of law, which A.V. Polyakov has repeatedly positioned as an integral one, is no exception[177]. It is based on the thesis of the fundamental nature of communication processes in society and the world, and also uses a categorical apparatus that fixes the structure of legal communication, its main forms and models, using close, related and non-conflicting legal and social theories. This theory does not claim the status of a meta-theory, i.e. It does not contain an explanation of the disciplinary theories included in it, although it includes metatheoretical elements in the sense that they go beyond the theory describing the elements of the dogma of law. The "composite" disciplinary theories detail and concretize the categorical series of the theory of communication in accordance with the terminology and methodological rules adopted in them. Thus, a single conceptual whole of the communicative theory of law is formed, implementing the principle of methodological pluralism and, at the same time, based on the statement of the universal connection of legal communication and the ontological nature of man. Its

[177] See, for example: Polyakov A.V. Postclassical jurisprudence and the idea of communication // Izvestiya vysshikh uchebnykh uchebnykh. Law studies. 2006. No. 2(265). pp. 26-43.

main heuristic advantages are related to the fixation of communication as the basis of constructiveness, intersubjectivity, human proportionality, practical reproducibility, and also mental, socio-cultural conditionality and contextuality of legal reality.[178] Using explanatory models of communication theory, the communicative theory of law not only offers a broad multidimensional model of law, correlating it with modern data of socio-humanitarianism and overcoming the crisis of the methodological foundations of theoretical jurisprudence, but also opens up prospects for the modernization of legal dogmatics, combining the philosophy of law with its theory, as well as justifying the possibility and relevance of a pluralistic methodology in legal research.

As we can see, the search for an integral understanding became the basis of logical and methodological criteria for the methodological synthesis of heterogeneous and non-identical approaches, which the communicative theory of law was designed to correspond to.

In conclusion, the analysis of the ideological sources of the communicative theory of law should note the special status among them of the modern continental philosophy of law, the greatest importance among which is given to the modern German philosophy of law (V. Krawietz, N. Luhmann, P. Shelsky, J. Habermas, G. Teubner).[179] Of course, they influenced the communicative theory of law of A.V. Polyakov, but this influence is rather diachronic in nature, since it was carried out and is being carried out through "peer-to-peer" discussions (the forum for which was largely served by the magazine "Izvestia of Higher Educational Institutions. Jurisprudence", of which A.V. Polyakov was the editor–in-chief in 2011-2017), which make it possible to clarify the explanatory schemes and categorical series used by theorists in polemics.

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[178] Chestnov I.L. Prospects of post-non-classical communicative theory of law // Communicative theory of law and modern problems of jurisprudence. On the 60th anniversary of Andrei Vasilyevich Polyakov. Collective monograph: in 2 vols. Vol. 1. The communicative theory of law in the research of domestic and foreign scientists / edited by M.V. Antonov, I.L. Chestnov; preface by D.I. Lukovskaya, E.V. Timoshina. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 21.

[179] See: Antonov M.V., Polyakov A.V., Chestnov I.L. Communicative approach and Russian theory of law // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 570.

Conclusions:

The communicative theory of law, formed in Russia at the beginning of the XXI century in the works of A.V. Polyakov, is based on a very wide range of previous concepts in the philosophy of law, since its main methodological task was to bridge the gap between the school of natural law, legal positivism and the sociological school of law. The main ideological sources of the communicative theory of law can be systematized on the basis of the identification of three groups – the Russian pre-revolutionary philosophy of law, social phenomenology, supplemented by the theory of communication, and the basic provisions of the methodological search for an integral legal understanding.

The first group of sources is connected both with the need to restore continuity with the pre-Soviet tradition, and the significance of its own philosophical and legal programs linking the individual, law and the state on the basis of various directions of philosophical idealism. Since the development of the communicative theory of law was carried out in line with the theoretical searches of the St. Petersburg School of Law, of particular importance to it was the reconstruction of doctrinal links with the Russian philosophy of law of the early twentieth century, among which the ideas of imperative-attributive emotions as an internal basis of law in relation to a person, formulated by L.I. Petrazhitsky, were used as a basic ideological source. approaching an understanding of their intersubjective nature; the teachings of P.I. Novgorodtsev on "inspiring morality", which initiates the rational and moral self-disclosure of the essence of the human personality; I.A. Ilyin's idea of recognition as the basis of legal communication of people.

The phenomenological complex of sources, reflecting one of the most influential modern philosophical trends in both ontology and social theory, served both to substantiate the eidetic meaning of law and to develop its intersubjective perspective, therefore it includes Husserl's ideas about pure consciousness, intentionality, intersubjectivity, the life world, A. Schutz's ideas about everyday intersubjective life the world, P. Berger&T. Luckmann's program of social constructivism, revealing the dialectic of the subjective, individual and objective,

collective in the formation of social knowledge, which is the basis of social reproduction. Socio-phenomenological ideas about intersubjective interaction is calibrated in the communicative theory of law by such an ideological source as the theory of communication, which generalizes the schemes of a communicative act.

The last group of sources is associated with the domestic search for integral jurisprudence at the turn of the millennium, which put forward basic criteria for a methodological synthesis aimed at combining the achievements of the main types of legal understanding that developed by the end of the twentieth century. With its help, the vector of methodological synthesis chosen by the communicative theory of law is substantiated. These ideological sources determine the qualitative methodological originality that distinguishes the Russian communicative theory of law, filled with deep value content, from Western projects of methodological application of the concept of communication in the study of law.

§ 1.2. A.V. Polyakov's communicative theory of law

The communicative theory of law put forward by A.V. Polyakov is currently one of the very influential theories that acts as the basis for an independent type of legal understanding. Its recognition in Russian jurisprudence was a rather long process, which began with a restrained positive assessment from representatives of the legal libertarian approach[180] and sharp negative criticism from both positivists[181] and representatives of a broad legal understanding[182] in the first decade of this century[183], massive interest in its analysis and the establishment of the boundaries of applicability at the beginning of the second decade[184] and continuing to the present mastering its heuristic potential.[185] Today, its assessment as an independent type of non-classical (post-classical, post-non-classical) legal understanding is well-established. [186] As D.I. Lukovskaya shows, A.V. Polyakov "is the original developer of the communicative theory of law, since such a theory (both in name and in fact) did not exist before, despite all the prerequisites for its appearance".[187]

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[180] Varlamova N. V. Typology of legal understanding and modern trends in the development of the theory of law. M., 2010, 136 p.

[181] Baitin M. I. The essence of law (Modern normative legal understanding on the verge of two centuries). 2nd ed., supplement M., 2005.

[182] Grevtsov Yu. I., Khokhlov E.B. On legal and dogmatic chimeras in modern Russian jurisprudence / Yu. I. Grevtsov, E. B. Khokhlov // Izvestia of Higher Educational Institutions. Law studies. 2006. No. 5(268), pp. 1-23; Kozlikhin I. Yu. On non-traditional approaches to law // News of higher educational institutions. Law studies. 2006. No. 1(264), pp. 31-40.

[183] It is not by chance that M.V. Antonov characterizes the polemic around the communicative theory of law of those years as "fierce" (see Antonov M. V. On the communicative theory of law by Andrei Vasilyevich Polyakov // Russian Law Journal. 2015. No. 6(105), p. 28).

[184] Communicative theory of law and modern problems of jurisprudence: A collective monograph. To the 60th anniversary of Andrei Vasilyevich Polyakov: in 2 volumes St. Petersburg: Limited Liability Company "Publishing House "Alef-Press", 2014.

[185] See, for example: Bayramov R. R. Review of some aspects of the theory of legal genesis in the context of the communicative theory of law // Scientific notes of the St. Petersburg branch of the Russian Customs Academy named after V.B. Bobkov. 2020. No. 3(75), pp. 84-86; Pushchin A. I. Human rights in the communicative theory of law // The satellite of the higher school. 2021. No. 3(3), pp. 31-34. DOI 10.55346/2782-5647_2021_03_31.

[186] See, for example: Lapaeva V. V. Communicative concepts of law in the context of the actual tasks of Russian legal theory and practice (from the standpoint of libertarian legal understanding) // Izvestiya of Higher educational institutions. Law studies. 2014. No. 6(317), pp. 77-100; Chestnov I. L. Legal communication in the context of postclassical epistemology // Izvestia of higher educational institutions. Law studies. 2014. No. 5(316), pp. 31-41; Antonov M. V. On the communicative theory of law by Andrey Vasilyevich Polyakov // Russian Law Journal. 2015. No. 6(105), pp. 22-33.

[187] Lukovskaya D.I. Not all the words have already been said ... (on the communicative theory of law by A.V. Polyakov) // Communicative theory of law and modern problems of jurisprudence. On the 60th anniversary of Andrei Vasilyevich Polyakov. Collective monograph: in 2 vols. Vol.1 The communicative theory of law in the research of domestic and foreign scientists / Edited by M.V. Antonov, I.L. Chestnov, D.I. Lukovskaya, E.V. Timoshina. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p.10.

Structurally, the communicative theory of law consists of two levels: the theory of transcendental foundations of law, conceptualizing law as a process of mutual recognition, and the communicative theory of law itself, in which law is described as a psychosocial and cultural system based on intersubjective communication.[188] The first level, fundamental in terms of the degree of universalization, is chronologically later, has been developed by the author since the middle of the tenth years of the XXI century in articles, and reflects the strategy of philosophical foundation of the basic provisions of the second level. The second, earlier one, correlates the author's interpretation of law, based on a communicative-phenomenological approach, with the classical categorical series of the national theory of state and law. A.V. Polyakov developed it within the framework of textbooks "General Theory of Law" (2001),[189] "General Theory of Law: A Phenomenological and communicative approach. A course of lectures" (2003),[190] "General Theory of Law: problems of interpretation in the context of a communicative approach" (1st edition 2004[191]; 2nd edition 2016[192]).

The consideration of the communicative theory of law in this section will be based on a chronological approach, from earlier works to later ones, and will begin with an analysis of the actual communicative theory of law. Anticipating it, we would like to note that the PhD thesis "Revived Natural Law in Russia"[193], defended in 1987 by A.V. Polyakov, is of great importance for the future communicative theory of law: a critical analysis of the basic concepts", which summarizes the relationship between law and morality in the works of P.I. Novgorodtsev,

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[188] Tikhonova S. V. The formation of the communicative theory of law by A.V. Polyakov // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2023. Vol. 18. No. 3. DOI 10.35427/2073-4522-2023-18-3-tikhonova. p. 37.

[189] Polyakov A.V. General theory of law. Course of lectures. St. Petersburg: Publishing house "Law Center Press", 2001, 642 p.

[190] Polyakov A.V. General theory of law: A phenomenological and communicative approach. A course of lectures. 2nd ed., additional St. Petersburg: Publishing house "Law Center Press", 2003, 845 p.

[191] Polyakov A.V. General theory of law: Problems of interpretation in the context of a communicative approach: A course of lectures. St. Petersburg: Publishing House of St. Petersburg State University, 2004, 864 p.

[192] Polyakov A.V. General theory of law: problems of interpretation in the context of a communicative approach : textbook. 2nd ed., corrected. and additional M.: Prospect, 2016. 832 p.

[193] Polyakov A.V. Revived Natural Law in Russia: A critical analysis of the fundamentals of concepts: diss. ... cand. law. sciences'. Leningrad, 1987, 217 p.

B.A. Kistyakovsky, V.M. Gessen, E.N. Trubetskoy, N.A. Berdyaev, A.S. Yaschenko and I.V. Mikhailovsky. In this work, synthetic perspectives are outlined in determining the basis of natural law and possible points of intersection of the revived natural law doctrine with the sociological theory of law. From understanding the legacy of pre–revolutionary Russian legal thought,[194] A.V. Polyakov proceeds to the issues of new perspectives opening up at the turn of the millennium,[195] linking them first with the search for an integral legal understanding,[196] and then with the application of a communicative approach to the theory of law.[197]

The textbook "General Theory of Law" structurally reproduces the general logic of the educational course "Theory of State and Law", in which the presentation of general issues of legal understanding, revealing the nature of law, its connection with society and the state, precedes the presentation of the basics of the teachings on the structure of law, sources of law, the rule of law, legal relations, the operation of law, its application and interpretation, on offense, law and order. As shown by I.L. Chestnov, "it is impossible to justify legal dogmatics by the methods of legal dogmatics itself",[198] since legal dogmatics acts as a middle-level theory in the Mertonian sense, its justification requires reaching the level of metatheory. The last for the communicative theory of law is the methodological synthesis of the Russian revived theory of natural law and social phenomenology, on the basis of which the basic elements of the dogma of law are revised while maintaining most of the working definitions of the private teachings of the domestic theory of state and law. It is obvious that such a strategy of the author will lead (and has led), for example, to a more serious revision of the topic "legal awareness" than the topic "offense".

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[194] For example, Polyakov A.V. Can the right be wrong? Some aspects of the pre-revolutionary Russian legal understanding // News of higher educational institutions. Law studies. 1997. No. 4(219), pp. 83-101.

[195] Polyakov A.V., Timoshina E.V. Theory of State and law at the turn of the century: problems and prospects // Izvestia of Higher Educational Institutions. Law studies. 2000. No. 3(230), pp. 240-246.

[196] Polyakov, A.V. Is an integral theory of law possible? // State and Law at the Turn of the Century: problems of History and Theory, Moscow, February 02-04, 2001. Moscow: Institute of State and Law of the Russian Academy of Sciences, 2001, pp. 114-119.

[197] Polyakov A.V. Pravogenesis // Izvestia of higher educational institutions. Law studies. 2001. No. 5(238), pp. 216-234.

[198] Chestnov I.L. Legal dogmatics in the context of the postclassical paradigm // Criminalist. 2014. No.2 (15), p. 80.

Not all lectures contain the fundamental provisions of the communicative theory of law, although in each of them the author performs a certain synchronization of the material in order to avoid contradictions or sharpen the points he needs, updating scientific data in the part that relates to state studies, legal psychology, etc. In the lecture "The problem of legal understanding in the history of theoretical and legal thought" (1), communicative problems are introduced into the subject field of the theory of state and law. The lecture "Russian Legal discourse: the main ideological dominants" (2) allows the author to introduce into the context of domestic teachings on the state and law, which are significant for the theory of state and law, some of which served as ideological sources for the author. The lectures "Legal Genesis" (3), "The Ontological status of law" (4), containing fundamental ideas of the communicative theory of law, are of fundamental importance for the analysis. The details of these provisions are contained in the lectures "Law and the Law" (7), "Norms of Law" (12), "Sources of Law" (13), "Legal Relations" (14). Further in the text, the lectures are mentioned by ordinal numbers.

A feature of A.V. Polyakov's work, atypical for the chosen genre, is a very large-scale reference and bibliographic apparatus, in which quotations are the basis of voluminous commentatorial footnotes that reveal and clarify the author's position, as well as introducing the reader into the context of the most acute scientific polemic on controversial issues and presenting a wide panorama of philosophical and legal reflection. Often, footnotes and quotations enter into a detailed polylogue, provoking certain theoretical moves where they did not explicitly unfold. Thanks to this author's strategy, the text of the textbook is accompanied by a detailed fundamental scientific justification (the breadth of which cannot fail to impress), and the compact presentation of the educational material does not prevent the reader from entering the field of relevant scientific research.

An essential feature of the theory formed in the textbook, emphasized by A.V. Polyakov already in the author's preface, is the application for the integrality of the legal understanding reflected by it, according to which the communicative theory of law is: "a kind of introduction to integral jurisprudence (italics of the author –

S.T.)".[199] The attribution of this feature is also confirmed by analysts of the communicative theory of law, seeing in it the result of a search for "a certain middle position between legal positivism and the school of natural law"[200] and the product of "a dialogue between various schools and currents of modern jurisprudence".[201] Integrative communicative theory is designed to reflect the integral nature of the law itself, which can be revealed through the manifestation of its communicative-active, value, semiotic and psychological aspects, fixed in a general ontological interpretation. At the same time, it faces the task of modernizing domestic legal theory, which is necessary for the latter to be able to meet the challenges of the new millennium.

In the first lecture, A.V. Polyakov defines the theory of law as part of the philosophy of law, showing the key importance for its explanatory function of the ontology of law, which requires clarification in the context of its epistemology and ontology; he makes legal technique, legal dogmatics and legal sociology dependent on legal ontology. Further, he concentrates on the reasons for the lack of a unified understanding of law, linking theoretical and legal pluralism with civilizational pluralism and epistemological anarchism. The researcher emphasizes the importance of overcoming the ideological reduction linking law with values positioned by one ideology or another, and shows that the scientific analysis of law is complicated by a high degree of penetration of ideology into social sciences. Considering the types of legal understanding (natural law, statist and sociological), A.V. Polyakov shows the need for "a theoretical substantiation of an integral concept of law that could unite the vital ideas of the main legal schools and directions," among which the Russian philosophy of law should take a special place.

The second lecture is devoted to the Russian tradition of searching for the meaning of law. Along with the presentation of the basic theses of G.F. Shershenevich's legal statism, the sociological school of law (N.M. Korkunov,

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[199] Polyakov A.V. General theory of law. Course of lectures. St. Petersburg, 2001, p. 3.

[200] Antonov M. V. On the communicative theory of law by Andrey Vasilyevich Polyakov // Russian Law Journal. 2015. No. 6(105), p.25.

[201] Arkhipov S.I. A. V. Polyakov's communicative theory of law // Russian Law Journal. 2016. No. 4, p. 25.

M.M. Kovalevsky, S.A. Muromtsev), this section includes an analysis of L.I. Petrazhitsky's views, revealing their phenomenological connotations, and consideration of neo-idealism in Russian legal theory (B.N. Chicherin, V.S. Soloviev, P.I. Novgorodtsev, E.N. Trubetskoy), in terms of his conclusions about the ideal, superempirical side of law and its value nature. The latter is dominated by an appeal to the views of V.S. Solovyov, P.I. Novgorodtsev, B.A. Kistyakovsky in the context of their search for the meaning of law as a pluralistic phenomenon and the establishment of its relation to transcendent natural law. N.N. Alekseev's phenomenological theory of law is interpreted in detail, in which the meaning of law dominates its manifestations. It is in the context of Alekseev's phenomenology that A.V. Polyakov introduces into his discourse the key ideas of Husserl's phenomenology (categories of phenomenon, eidos, intentionality, noema, noesis, the life world; the procedure of phenomenological reduction). Marxist Soviet jurisprudence and modern Russian theories of law are also considered, the concepts considered are typologized according to the modes of legal understanding. On the one hand, this section forms a systematic understanding of the domestic traditions of legal understanding and fully justifies its name ("the main ideological dominants"). On the other hand, it allows the author to bring to the fore those Russian jurists whose views (including those developed by their students, commentators and researchers) will be used to substantiate, apologize and strengthen the proper communicative theory of law.

The third lecture puts legal genesis in direct dependence on social conditions (the law "manifests itself" only in society, as a specific order of social relations, the participants of which have a certain social freedom to act in one way or another, enshrined in the duties of others. Moreover, the measure of this freedom (subjective rights and obligations) is determined by socially recognized and binding rules of proper behavior of members of society"[202]; lawful action, unlike voluntary or spontaneous, "presupposes a correlation of the behavior of other subjects

[202] Polyakov A.V. General theory of law. Course of lectures. St. Petersburg, 2001, p.142.

commensurate with this right, who are obliged to act or not act in a certain way in the interests of an authorized person"[203]), while the social itself is understood in the paradigm of social constructivism by P. Berger and T. Luckmann, in which the reproduction of social reality is revealed through detailed sequential processes of institutionalization, habitualization, typification, objectification and legitimation. The socio-phenomenological perspective of A.V. Polyakov calibrates with the theory of ethnogenesis, which establishes the specifics of the group dynamics of an ethnic group that generates ordinary (archaic) law.

As a result, he puts forward his own definition of society, meaning by it "a set of people distinguished on the basis of a system of generally significant [i.e. socially meaningful and socially valuable] actions reproduced by them".[204] He divides societies into primary and secondary ones. Primary ones are associated with the satisfaction of the basic needs of an individual, which he cannot provide on his own, and are defined as "the historically formed integrity of people, within which their basic, vital needs are satisfied and the reproduction of society itself is carried out".[205] The ordering of primary societies was ensured by the public authorities, which resolved conflicts through monopolized physical coercion in the absence of specialized punitive bodies.

Secondary societies are aimed at satisfying secondary (private) needs that bring certain social groups to life; secondary societies are less stable, rely mainly on a contract, and their degree of objectification is lower. It is obvious that their wide variety is characteristic of the modern stage of social development.

Here, A.V. Polyakov faces the problem of identifying the basic characteristics of law that were equally applicable to both primary and secondary societies, and at the same time would form the basis for their further concretization, which would allow defining the features of archaic, state and late non-state law without gaps, while maintaining the intention to maintain the achievements of methodological

[203] Ibid., p. 143.
[204] Ibid., p. 144.
[205] Ibid., p. 145.

pluralism (the types of law will be specified by him in the seventh lecture). Archaic law was (and remains in well-known cultures) oral, the opposition of oral and written as primitive and state in terms of normative regulation is quite traditional.

However, A.V.Polyakov overcomes this gap, relying on the semiotic definition of culture as a sign system, and the understanding of text as a system of signs derived from it. The law is associated with a text outside of which it cannot exist, but the text itself can be both written and oral. As a result, from the earliest stages of its existence, law appears as a "specific social language and as a universal form of social interaction (communication)",[206] without demarcating the channels used for such interaction. In this understanding, word and action are inextricably linked to each other, since each of them reinforces, accompanies, initiates and terminates the other. Their intellectual (theoretical) splitting is artificial, and its illusory naturalness is overcome by a socio-phenomenological approach: in order for a system of social interaction with a priori linguistic dimension to exist (both as a coherent whole and at the level of a local act), it is necessary not only the physical existence of its subjects, but also the presence of such subjects of specific socio-psychological characteristics. The theorist refers to the latter three abilities: "1) to understand the ideal meaning of the rules of proper behavior expressed in generally binding norms formed by interpreting, interpreting external, symbolic forms of their expression; 2) to recognize them (directly or indirectly) as necessary grounds for their external actions (to perform acts of value legitimization) and 3) independently to act, to implement the powers and obligations arising from them (norms)".[207] Cultural codes capable of "imperiously influencing the behavior of subjects"[208] are superimposed on these abilities (although, more precisely, thanks to them, they are produced), as specific socio-cultural conditions for the emergence of law. Objectification leads to the appearance of these conditions (in terms of social constructivism, "typification, externalization, institutionalization and legitimization

[206] Ibid., p. 148.
[207] Ibid., p. 153.
[208] Ibid., p. 156.

of the behavior of the social subjects themselves"[209]). A.V. Polyakov associates the emergence of law with the transition of mankind to a historical stage and a greater degree of freedom, understood as a variation of behavior based on the norms of due. The researcher calls such a law "civilized", and considers the emergence of a state providing the translation of law into written form and reinforcing it with the help of hardware-organized physical coercion to be a key condition for its appearance. It is important to note that in the communicative theory of law, the existence of such a social condition as the state is necessary for the emergence of developed forms of law.

The fourth lecture is devoted to the analysis of the ontological status of law, based on the fact that law exists not only and not so much as an idea, but as reality. The reality of law is understood as the contact of an individual with him in his daily reality, described in the context of social phenomenology as the life world. Both the life world and law are special types of reality peculiar only to man and created by him, i.e. both are anthropogenic realities. The definition of the ontological status of law is identical to the identification of its meaning, which at the level of phenomenological analysis is equivalent to the definition of the eidos of law.

A.V. Polyakov proceeds from the fact that law as an anthropogenic reality is a "multidimensional psychosociocultural system in which all elements are interconnected",[210] and represents an emergent property of their interaction. The eidetic meaning of law has its own structure, which "socially exists in the form of a functioning concrete historical system of law",[211] but this meaning is always broader than the set of social facts associated with law available in a particular society (courts, laws, etc.).

The phenomenological reduction carried out by A.V. Polyakov leaves out as ambiguous ("ambiguous" and "ambiguous", i.e. having meanings outside the context of law) and norms, and will, and coercion, and interest.

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[209] Ibid.
[210] Ibid., p. 172.
[211] Ibid., p. 175.

What remains in parentheses, among the "original", "correlative" and "irreducible to each other" legal realities? A competence that carries the light of a "reasonable" reality. The theorist insists that "the eidetic primogeniture of entitlement cannot be rationally proved, but it can be shown and described, since it is only revealed through the description of the eidetically interrelated elements of the legal structure".[212] The introduction of such a phenomenological axiom leads to the fact that competence, understood as "the available opportunity for a subject to act justifiably [this justification of action is fundamental] in one way or another and to require other actions corresponding to competence",[213] turns out to be a central element of the legal structure. Since entitlement is based on a bundle of subjective law and corresponding duties, A.V. Polyakov sees in it an eidola (incomplete eidos) of law, to which the rest of the meanings of law are attached, forming its eidos. To reveal these meanings, it is necessary to indicate the presence of a bearer of authority (a legal entity), the general validity and general obligation of the rules of conduct by which it is justified (a rule of law). The connection of meanings is achieved through communication; therefore, the communicative aspect is the most important aspect of law, and it is defined as "a communicative order of relations based on socially recognized and generally binding norms, the participants of which have mutually conditional powers and duties".[214]

This definition implies two signs of law, which include a) the presence of subjects with interdependent (correlative) rights and obligations, and b) socially recognized and generally binding rules of conduct (norms).[215] In the absence of these signs (for example, the behavior of subjects is not based on norms, the norms do not provide for rights/obligations for them, or the norms themselves are not recognized in society or are not generally binding), there is no law itself. At the same time, as law is impossible outside of legal relations, so a separate norm does not exist outside

[212] Ibid., p. 177.
[213] Ibid.
[214] Ibid., p. 187.
[215] Ibid., p. 188.

of legal relations, and, more broadly, without subjects endowed with legal personality.

It also clarifies the relationship between law and coercion, which A.V. Polyakov considers as a means of achieving law that is not part of its ontological essence. We are talking about physical coercion, which usually refers to the concept of violence. Psychologically, the right is always compulsory in the sense that it has an intellectual and emotional (value) justification, expressed in a duty (imperative): "an authorized subject, demanding that others perform legally binding actions, acts not only on his own behalf, but also on behalf of the whole society, which has established and recognized the relevant rule as generally binding",[216] i.e. by itself, the public nature of law opposes not only the authorized person to the obligated person, but also, at the same time, society as a whole, which makes the connection between law and mental coercion immanent.

In the seventh lecture, in the spirit of legal pluralism, the types of law are established, which include state law (law), as well as social law, divided into 1) centralized (universal, public) and 2) decentralized (particular, private). The first includes legal customs and taboos in pre–state and modern potestarian societies, the second – Individual (socio-civil) law, family law and corporate law. A type of corporate law is ecclesiastical (canon law); A special type of non-State law is international law. According to the degree of institutionalization, A.V. Polyakov divides non-state law into official (requires manifestation by specific social structures as standard legal texts) and unofficial (which does not have such a manifestation). It is important that for a theorist, state and non-state law are not separated by an impenetrable wall, they are two interconnected subsystems.

The twelfth chapter establishes the universal signs of a legal norm characteristic of all types of law, and specifies the signs of a legal norm established by the State. The concept of the social justification of the rules of behavior, or legitimacy, is concretized, which means normativity (""justify" means to correlate

[216] Ibid., p. 203.

with the norm"[217]). The legal norm itself is defined as "a generally valid and generally binding rule of conduct having a grant-binding character".[218] Accordingly, its features are general significance (the socially recognized value nature of the norm, or legitimacy, cognizable through the intersubjective socio-legal experience of communicants); general obligation (the requirement of unconditional fulfillment of the norm by those to whom it is addressed); grant-binding character (revealed as the authority arising from the norm (subjective right), correlatively related (mutually conditioned) with a legal obligation. It presupposes that the authorized person has the opportunity to dominate the behavior of the obligated, i.e. includes mental coercion). Among the signs of state legal norms, A.V. Polyakov refers to "formal certainty; established legal force; state protection".[219] Here, the system of norms of law is specified, while the researcher differentiates the system of law and the system of norms of law.

The thirteenth lecture is devoted to the sources of legal norms. It concretizes the approach to the definition of the concept of "legal text", which plays a very important role in the communicative theory of law. In the most general form, the intersubjective activity of members of society that generates law is defined as a common source of law. It's typical and significant aspects are objectified in the form of a primary legal text (a broad definition of text as a system of signs based on a semiotic approach to the definition of culture was used above). Polyakov divides the sources of the form of the legal text and the sources of its content, the first include the ways of its origin – custom, establishment, contract, the second – intersubjective activity itself. A cultural text acquires a legal character if it "can be interpreted by a social subject as containing a certain rule of behavior (norm), endowing someone with subjective rights and obligations (their implementation forms a secondary text)".[220] Therefore, the form and content of the legal text are the source of the rule

[217] Ibid., p. 460.
[218] Ibid., p. 463.
[219] Ibid., p. 467.
[220] Ibid., p. 501.

of law, and the rule of law, in turn, becomes the source of subjective rights and obligations.

A.V. Polyakov considers myths (mythology), legal customs, judicial precedents, judicial and administrative practice, normative legal treaties, legal doctrines, sacred books, acts of international law, normative legal acts to be textual sources of legal norms. He divides mythology into mythology in a narrow sense, i.e. the mythology of archaic societies, and mythology in a broad sense, to which, following A.F. Losev, he refers a wonderful personal story and a detailed magical name[221] that is in use in modern societies. They refer to judicial and administrative practice as "established customs, techniques, methods of solving legal cases that form and clarify the meaning of legal norms", which can play the role of a source of legal norms in legal systems that do not recognize case law. Other types of sources of legal norms are interpreted in the traditional way for the Russian theory of state and law.

The fourteenth lecture corrects the doctrine of legal relations, bringing it closer to the idea of the mentally coercive force of law, characteristic of the communicative theory of law, arising from its psychosocial nature. A.V. Polyakov understands social attitude as "the behavior of members of society, correlated in their meaning with each other and expressed in various forms of interdependence, interconnection and interaction".[222] Structurally, the legal relationship includes the cognitive level, which includes the participants' ideas about proper legal behavior and their mutual expectations, and the behavioral level, i.e. the actions/inactions of the participants, which constitute the very content of the legal relationship. Therefore, the signs of a legal relationship include 1) legal entities; 2) the correlation of their behavior (the same correlation of subjective rights and obligations characteristic of competence); 3) the determination of the legal relationship by the norm of law. On this basis, the following definition of a legal relationship is put forward: "a legal relationship is a social relationship whose subjects relate their

[221] Ibid., p. 505.
[222] Ibid., p. 542.

behavior to their correlative (interdependent) rights and obligations".[223] In contrast to the traditional definition of a legal relationship through the regulation of public relations by the rule of law, the definition of A.V. Polyakov emphasizes the processes of cognition and recognition of the rule of law occurring in the mind of an individual, and thereby emphasizes the connection of a legal relationship with the eidetic meaning of law.

The considered text became the basis of A.V. Polyakov's doctoral dissertation, defended in the form of a scientific report in 2002. The presentation of the communicative theory of law in the report itself can be summarized as follows. A.V. Polyakov interprets communication as a way of human existence in the world; a person acquires his human essence through communicative interaction with the "Other".[224] Sociality is reduced to communicativeness, and communicativeness to sociality, since the second is an invariant of the first.[225] The specificity of legal communication lies in the fact that communicants are *aware* of each other's rights and corresponding responsibilities, mutually *recognize* themselves and them and interact on this basis.[226] Powers and legal obligations are "clothed" (objectified) in textual forms, they are normative, since they are interpreted from "legitimized texts".[227] Certain, including vital claims of subjects of law, are recognized and normatively consolidated in the form of obligations imposed on the addressee of the claim. Legal communication between holders of rights and obligations, supported by various means of socially legitimized coercion, binds all subjects of law into a coherent system of legal relations. Thus, the main elements of legal communication are defined – legal subjects, legal norms, legal texts and legal relations. Since legal norms form the structure of law proper, and legal texts relate to the legal system, a systemic differentiation is formed: the social system/culture includes the legal system as a subsystem, and it, in turn, law. This is how A.V. Polyakov's

[223] Ibid., p. 548.
[224] Ibid.
[225] Ibid., p. 9.
[226] Ibid.
[227] Ibid.

communicative model of law is formulated in an extremely brief summary. According to the author, its advantages are that, firstly, it is stereoscopic, since it allows you to see the versatility of law, and, secondly, it is dynamic, since legal communication in its interpretation is continuous and is a product of social regulation. I will add its third feature – the considered communicative model of law is characterized by the fundamental openness of law to social reality.

In 2003, a new textbook by the author was published, "General Theory of Law: A Phenomenological and communicative approach. A course of lectures." After a little editing, it was published in almost the same volume in 2004 under the title "General Theory of Law: Problems of interpretation in the context of a communicative approach". It was this book that was awarded the St. Petersburg State University I degree prize "For scientific works". Since such a high assessment is a confirmation of recognition from the academic community, further analysis will be based on the text of 2004.

Already from the very expansion of the name, the methodological self-determination carried out by the author is obvious, who now insists on a new approach to law, first linking it with the phenomenological tradition (textbook 2003), and then (textbook 2004) expands it to an interpretative basis (as a rule, social phenomenology, hermeneutics and semiotics are combined within its framework). Now the author's approach is related to the interpretation of legal dogma from the standpoint of identifying communicative processes that lead both to its construction and ensure its functioning. A significant part of the text was revised and received a new line-up in order for the author's position to become more distinct in the context of a genre designed to broadcast an "average" position generally accepted in science (the text itself increased from 642 to 864 pages) for educational purposes. This intention is reinforced by the expansion of the text with accentuated inserts, and a certain structural rearrangement. I will focus on the most significant of these innovations in more detail.

In the new textbook, A.V. Polyakov retains the basic structure of the presentation: 18 initial lectures are supplemented by a new seventh lecture "Legal

Culture", which leads to a shift in the ordinal numbers of further (after N6) lectures in the format "N_{basic} + 1", lectures with initial ordinal numbers 12 and 13 are reversed and become lectures of the thirteenth and fourteenth, respectively. New didactic units appear in individual lectures (they are fixed in an expanded plan that precedes each lecture), allowing for the systematic introduction of new material. The author's preface is expanded, the author's afterword is introduced.

The introduction retains the intention to consider law as an integral phenomenon, which requires an integrative approach that identifies the "total and synergistic intersubjective reality" of law in its communicative, activity, value, semiotic and psychological aspects, but a new semantic axis of this approach appears: "At the center of the legal reality thus understood is man as a creation and creator legal communications – homo communicaticus".[228] The focus on bridging the gap between law naturalism and legal positivism remains, but in a new, expanded definition of the methodological situation, which is described as a conceptual confrontation between statistic, natural law and sociological jurisprudence.

In the first lecture, the subsections "Social cognition", "The concept of communication", "The connection of types of legal understanding with types of scientific rationality" appear. The subsection "Social cognition" begins with a presentation of the basics of the phenomenological approach, the basic part of which was previously used by the author to detail the views of N.N. Alekseev, and now it is called upon to reveal the specifics of the "sciences of the spirit", where "phenomenology has destroyed the "subject-object" confrontation characteristic of classical scientific rationality and made the principle of subjectivity paradigmatic for the communicative strategies of post-non-classical science".[229] Having considered the basic categories of Husserl's analysis, A.V. Polyakov defines people's social behavior as communicative behavior, which is "interaction between social subjects in accordance with the meaning of socially recognized texts".[230] In the

[228] Polyakov A.V. General theory of law: Problems of interpretation in the context of a communicative approach: A course of lectures. St. Petersburg: Publishing House of St. Petersburg State University, 2004, p. 10.

[229] Ibid., p. 39.

[230] Ibid., p. 53.

subsection "The concept of communication", the author, starting from the basic definitions of communication by A.Y. Babaytsev,[231] emphasizes the importance for the theory of law of the concept of "thought communication", which means "interaction between subjects mediated by some iconic object (text)", [232] since it exposes the semantic aspect of social interaction. In a semiotic perspective, the concept of text as a unit of communication is brought to the fore, the structure of thoughtcommunication is established (communicants, an intelligible situation, a message, motives and goals of communicants, their translation and interpretation), its aspects (informational, aka rational, emotional-value, aka irrational, praxelogical, aka activity), its types and forms. Through the concept of chronotope, thought communication correlates with social time and space, the circle of authors whose works are significant for the analysis of social communication is determined, these include representatives of phenomenology, personalism, existentialism, hermeneutics, social theory, symbolic interactionism, philosophy of dialogue, theory of communicative action, psychoanalysis, metaphysics of communication, structuralism and poststructuralism, semiology and postmodernism. On this basis, A.V. Polyakov concludes that "the concept of law cannot be only a theoretical science based on eidetic knowledge, but must also be a worldview philosophy that has grown out of understanding".[233] In the subsection "Connection of types of legal understanding with types of scientific rationality", the contrast between classical types of legal understanding and concepts that appeared in the second half of the twentieth century, in which "communicative strategies become dominant in the post-non-classical type of scientific rationality, which can also be called "communicative rationality",[234] is strengthened. The intention to search for an integral type of legal understanding, in which the theory of law is pluralistic and based on the principle of "multi-unity", remains.

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[231] See: Babaytsev A.Yu. Communication // Postmodernism. An encyclopedic dictionary. Minsk, 2001, p. 372.

[232] Polyakov A.V. General theory of law: Problems of interpretation in the context of a communicative approach: A course of lectures. St. Petersburg: Publishing House of St. Petersburg State University, 2004, pp. 54.

[233] Ibid., pp. 76-77.

[234] Ibid., p. 106.

In the third lecture, the subsection "Problems of the theory of legal genesis" is specified, which in the new edition becomes the subsection "Law and communication: problems of legal genesis". The subsection "General social (sociopsychic and sociocultural) conditions of the emergence of law" includes a new communicative emphasis ("Communicative (sociopsychic and sociocultural) conditions of the emergence of law"). With the general preservation of the logic of presentation, references appear in the text, for example, to the concept of autopoiesis by U.R. Maturana and F.H. Varela, which influenced the autopoiesis of N. Luhmann, the understanding of society as Another is concretized: "... a person has rights and duties not only in relation to another person, but also in relation to society; just as society has rights and duties in relation to a person. The simple interaction of two individuals does not create a right yet. To do this, the subjects must be immersed in the "social"; a common life world is needed: common social institutions, common values and norms, in short, a common communication space is needed. Therefore, in any legal relationship, the society (state) acts as one of the parties performing the function (role) of an “Instance” – a guarantor of the legal nature of the actions performed. Therefore, legal communication always has a public character and does not take the form of a dialogue "I am Another", but in the form of a polylogue "I am Another—Instance".[235] A distinction is also introduced between the concepts of "primary" and "secondary" legal texts (the former constitute subjective law itself; the latter are related to the application of law and its implementation). Legal norms are irreducible to primary texts and have an integrative property that allows combining "the semantic meanings of several legal texts."[236] Prestate law is defined as oral law.[237] The previously highlighted general social conditions for the emergence of law are now unambiguously defined as communicative conditions in the subsection "Communicative (sociopsychic and sociocultural) conditions for the emergence of law". The definition of sociocultural conditions is changing ("the

[235] Ibid., p. 228.
[236] Ibid., p. 236.
[237] Ibid.

presence in society of objectified, generally valid and generally binding rules of behavior themselves, defining the rights and obligations of members of society and acting as universally valid values, peculiar cultural codes capable of imperiously influencing the behavior of subjects"[238]), objectification is now understood as "textual objectification".[239] The emergence of law as a social freedom, understood as "the opportunity to act, making a conscious choice of one or another behavior option based on socially recognized norms of due"[240] is now directly identified by A.V. Polyakov with the right, which follows from the communicative nature of a person, and naturally in the same sense in which speech is natural for a person: "Only in In this sense, one could talk about law, characterizing it as a **natural right** [highlighted by the author – *S.T.*]. Law follows from the communicative nature of man and is natural in the same sense as human language, speech, interaction between people, and culture in general are natural".[241]

In the fourth lecture, the interpretation given in parentheses for the subsection "Elements of the structure of law: generally valid norms and intersubjective legal relations (subjective rights and correlative legal obligations) disappears."

The change in the sequence of lectures "Norms of law" and "Sources of law" (they change places, the second name is concretized, transforming into "Legal texts as sources of law") more clearly reflects the deductive logic of the presentation. In the thirteenth lecture, the idea of primary and secondary legal texts develops, the signified (content) and the signifier (sign form)[242] are distinguished in the structure of legal texts, and the polylogicity of legal texts is asserted. In the fourteenth lecture, the norms of law are defined as functional social values and, at the same time, social

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[238] Polyakov A.V. General theory of law. Course of lectures. St. Petersburg: Publishing house "Law Center Press", 2001., p. 156.

[239] Polyakov A.V. General theory of law: Problems of interpretation in the context of a communicative approach: Course of lectures. St. Petersburg: Publishing House of St. Petersburg State University, 2004. p. 243.

[240] Polyakov A.V. General theory of law. Course of lectures. St. Petersburg: Publishing house "Law Center Press", 2001. p., 156.

[241] Polyakov A.V. General theory of law: Problems of interpretation in the context of a communicative approach: Course of lectures. St. Petersburg: Publishing House of St. Petersburg State University, 2004., p. 247. We are talking about the "naturalness" of law, determined by human nature, understood in the metaphysics of Russian philosophy as the integrity of the spiritual, social and bodily.

[242] Ibid., pp. 649-650.

practices of their implementation,[243] and are interpreted as the result of self-organization of social communications through feedback.

The result of such a voluminous processing is the expansion of the author's meta-theoretical position, the inclusion in it as a meta-theoretical justification of the philosophical provisions of the theory of communication, the deepening of the concept of "legal communication" through its correlation with the concept of social communication, as well as giving the author's theoretical views greater harmony and consistency. The recognition of this work is evidenced by the awarding of the St. Petersburg State University I degree Prize "For Scientific works" to the textbook. In 2016 it was republished with corrections and additions,[244] which, however, did not change the basic provisions, which was noted by A.V. Polyakov himself in the new author's preface: "it was decided not to make any fundamental changes to the text, leaving it as it was in the first years of the new millennium, being a kind of monument of that era, which in in the eyes of the author, it was associated with hopes for changes for the better in our native Fatherland".[245] As V.M. Budilov shows, the addition to this textbook is not only the book "Communicative Legal Understanding" (2014), which represents the collection of works by A.V. Polyakov of different years, as the theorist himself pointed out in it, but also the two-volume "Communicative Theory of Law and modern problems of Jurisprudence"[246] (2014), showing a wide range of conceptual connections between various fields of jurisprudence and the theory of A.V. Polyakov.[247] I would like to note that although the title of the textbook in the second edition continues to assert the author's approach to the theory of law, all the articles cited in this section are devoted to the ideas of A.V. Polyakov's views are designated precisely as the "communicative theory of law", this naming by the

[243] Ibid., pp. 698.

[244] Polyakov A.V. General theory of law: problems of interpretation in the context of a communicative approach : textbook. 2nd ed., corrected. and additional M.: Prospect, 2016., 832 p.

[245] Ibid., p. 4.

[246] Communicative theory of law and modern problems of jurisprudence. To the 60th anniversary of A. V. Polyakov: a collective monograph: in 2 volumes / edited by M. V. Antonov, I. L. Chestnov; preface by D. I. Lukovskaya, E. V. Timoshina. St. Petersburg: Publishing house "Alef-Press", 2014. Vol. 1, 373 p.; Vol. 2, 533 p.

[247] Budilov V. M. General theory of law in an integral context: continuation of the dialogue (to the release of the second edition of the textbook by A. V. Polyakov "General Theory of Law: problems of interpretation in the context of a communicative approach") // Bulletin of the St. Petersburg University. Law, 2017. Vol. 8. Issue 1, p. 13.

middle of the second decade of the XXIst century becomes generally accepted in scientific discourse. In this case, we are talking about the fact that the actual contribution to science turned out to be more fundamental than the author's modest statements about it.

Separately, it is necessary to note the second edition of the textbook "General Theory of Law" published in 2015, written by A.V. Polyakova in collaboration with E.V. Timoshina, in which the authors consistently highlight the problem of the place and role of general theory of law in the system of socio-humanitarian knowledge (the first chapter) and present a large-scale analysis of historical types of legal understanding (classical, non-classical, postnonclassical), emphasizing the specifics of integral legal understanding as a phenomenon of postnonclassical science.[248]

Summing up the analysis of the works of A.V. Polyakov, it should be noted that in his textbooks, including in collaboration with E.V. Timoshina, the communicative theory of law is presented as a systemic whole. Despite the revolutionary revision of the grounds for determining the essence of law carried out within its framework, it is designed as a kind of deductive "container theory". The term "container theory" was put forward by U. Beck[249] to describe classical sociological theories using specific ordering logical-theoretical schemes that place societies in a "container" of national states, and meso-phenomena such as collective identities are distributed across autonomous institutional worlds. If we discard the globalizing context of Beck's construction, which contrasts network interaction with hierarchical interactions, container theory will turn out to be a methodological project that frames and, at the same time, formats a specific fragment of the subject field of research through the formation of a framework linking the subject area into a single whole. Its deductiveness means a clearer elaboration of the axiomatic core, and the concepts arising from it, forming the teachings detailing the elements of the dogma of law. In the communicative theory of law, the main search is conducted on

[248] Polyakov A.V., Timoshina E.V. General theory of law: textbook. 2nd ed. St. Petersburg: St. Petersburg State University, 2015, 472 p.

[249] See: Beck W. What is globalization? Moscow: Progress-Tradition, 2001, 304 p.

the "upper" floors of the theory of state and law, bordering on the philosophy of law. In this way, the communicative theory of law provides "access to the "upper floors" of modern social theory, interpreting legal genesis as an integral part of continuous sociogenesis".[250] Here, the level of universalization of the provisions is extremely high, and reflects the author's work with the ultimate foundations of the elements of legal dogma, due to which their further deductive transfer to the "lower" floors is possible. As a result, categorical series of a communicative nature act as a container for most of the disciplinary doctrines traditional for the Russian theory of state and law, and the very introduction of new metatheoretical foundations does not imply the development of new disciplinary doctrines. The formation of the first involves the revision of only ontological and, to a lesser extent, epistemological ideas about the nature of law, for most other conceptual blocks, adjustments, doctrinal clarifications and correlations are sufficient, modernizing the conceptual constructions generally accepted in the discipline. This is how the integrative nature of the communicative theory of law is manifested, where the initial deep methodological synthesis allows not only to discard outdated, but also to preserve relevant legal knowledge accumulated in the theory of state and law.

Conclusions:

A.V. Polyakov's communicative theory of law has been forming for a long time. Currently, it is structured on two levels, the first substantiates the transcendental foundations of law through the category of legal recognition, the second reflects the author's approach to the essence of legal communication as the content of law. The second level is chronologically earlier and includes the author's most voluminous texts.

The author begins work on the basic provisions of the second level in the textbook "General Theory of Law" (2001), based on the task of forming a holistic integrative legal understanding capable of systematically taking into account various aspects of law. He lays the foundation of the new theory of the domestic tradition of

[250] Tikhonova S.V. The formation of legal communication studies in Russia: problems and prospects // Izvestiya Saratov University. A new series. Series: Economics. Management. Right. 2015. Vol. 15, No. 3. p. 326.

searching for the meaning of law, emphasizing the ideas of L. And Petrazhitsky, considered from a phenomenological perspective, and neo-idealism in Russian legal theory (B. N. Chicherin, V. S. Solovyov, P. I. Novgorodtsev, E. N. Trubetskoy). Through the analysis of the phenomenological theory of law N.N. Alekseev introduces the key ideas of Husserl's phenomenology.

Pravogenesis is interpreted in a social context, the basis for understanding sociality is the provisions of the social phenomenology of P. Berger and T. Lukman. A.V. Polyakov forms his own definition of society, which is based on the definition of law as a multidimensional psychosociocultural system, which is a text (a system of signs). Through the procedure of phenomenological reduction, he discovers the eidetic basis of law, which is competence. The remaining meanings of the right (related to the possibility for the subject to act justifiably and demand from other actions corresponding to the competence) are attached to the competence, forming its eidos.

The basic provisions of the communicative theory of law were concretized, expanded and supplemented in subsequent texts. The scientific report of A.V. Polyakov's doctoral dissertation (2002) defines legal communication and examines its main elements. In the textbook "General Theory of Law: Problems of interpretation in the context of a communicative approach" (2004), the author redefines his approach, moving away from its direct phenomenological characteristics towards interpretative analysis, synthesizing social phenomenology, hermeneutics and semiotics to identify the meanings of law. The integrative mission of the new theory is being strengthened, which now bridges the gap not only between usnaturalism and uspositivism, but also sociological theories of law. The concept of legal communication correlates with the concept of social communication, in the latter its understanding as thought communication begins to dominate. The socio-phenomenological analysis of legal genesis is calibrated through an appeal to the ideas of autopoiesis.

The publications "Communicative Legal Understanding" (2014), "Communicative Theory of Law and modern problems of Jurisprudence: in 2

volumes" (2014), revealing the conceptual connections of the communicative theory of law with various fields of jurisprudence, become a theoretical addition to the main provisions of the communicative theory of law. As a result, A.V. Polyakov creates a holistic theory of law based on an integrative methodology in the logic of container theory, which sets a socio-ontological framework of categories that substantiate the dogma of law with its minimal correction.

§ 1.3. The development of the communicative theory of law by A.V. Polyakov

The development of the communicative theory of law, carried out by its author, A.V. Polyakov, in the second decade and the beginning of the third decade of the XXIst century, is largely determined by the general direction of his further research. During this period, the jurist corrects his version of L.I. Petrazhitsky's reading,[251] develops the author's interpretation of human rights,[252] reveals the philosophical and legal content of the category of freedom,[253] examines the correlation of the categories of the justice[254] and of the legitimacy[255] in a communicative way, substantiates his own understanding of the ways of development of philosophy and theory of law in the digital age[256]. In this problematic field, a fundamental, philosophical and legal level of substantiation of the transcendental foundations of law was being formed.

As noted earlier, for the communicative theory of law, this is the upper level of ultimate universalization. In order to concretize it in later works, A.V. Polyakov deepens his theory with the concept of legal recognition. Initially, it was put forward as the idea of recognizing the right.[257] The very assumption that law needs to be

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[251] Polyakov A.V. A Communicative Approach to Leon Petrażycki's Theory of Law // Leon Petrażycki: Law, Emotions, Society / eds. Eduardo Fittipaldi, A. Javier Treviño. NY: Routledge. 2023, pp. 193–208.

[252] Polyakov A.V. Human rights and state sovereignty // Postclassical ontology of Law: monograph / edited by I.L. Chestnov. St. Petersburg, 2016, pp. 295-324; On. Human rights and values: their philosophical meaning and ideological significance in post-Soviet jurisprudence // Ideology and Politics. 2021. No.2 (18), pp. 152-193; The same. Freedom and justice in a legal understanding // Law. 2023. No.4, pp. 105-117; He. Freedom and justice in a legal understanding // Law. 2023. No.5, pp. 97-113.

[253] Polyakov A.V. The deficit of freedom as a political and legal problem // Proceedings of the IGP RAS. 2018. Vol. 13. No. 4, pp. 37-56.

[254] Polyakov A.V. The pure doctrine of law by Hans Kelsen, the idea of natural law and justice: the view of a communicationist // The human world: a normative dimension – 6. Norms of thinking, perception, behavior: similarity, difference, interrelation: proceedings of the international scientific conference (Saratov, June 27-29, 2019). Saratov: Publishing House of the Saratov State Law Academy, 2019, pp. 205-224; On. Justice as adherence to the principles of law // Is justice alive in law? Collective monograph / edited by D.I. Lukovskaya, N.I. Malysheva, M.I. Yudina. St. Petersburg: Aleteya, 2022, pp. 40-82.

[255] Polyakov A.V. Legitimacy as a property of law // Legitimacy of law: a collective monograph / under the general editorship of E.N. Tonkov, I.L. Chestnova. St. Petersburg: Aleteya, 2019, pp. 44-80.

[256] Polyakov A.V. Prospects for the development of the Russian philosophy of law in the context of cognitive research and neuroscientific data // Russian Justice. 2022. No.12, pp. 30-42; The same. Postclassical jurisprudence, evolutionary theory and neuroscience (confessions of a communicationist) // Postclassical studies of law: prospects for a research program: a collective monograph / edited by E.N. Tonkov, I.L. Chestnov. St. Petersburg: Aleteya, 2023, pp. 29-157.

[257] Polyakov A.V. Recognition of law and the principle of formal equality // News of higher educational institutions. Law studies. 2015. No. 6(323), pp. 57-77.

recognized in order to be considered objectively existing is fundamentally incompatible with the idea that law is a set of established norms, since subordination to such norms is explained not by attitude to these norms, but by relations with those who established them. Legal texts contain prescriptions according to which it is necessary to act, and not just read their meaning. Therefore, legal communication necessarily "includes behavior in the implementation of a legal prescription (prescription of a legal norm)",[258] and behavior that necessarily involves interaction (as a rule, about certain values) with other people. Only when the interacting people understand the boundaries of their behavior and coordinate them with each other, the right becomes possible. Thus, A.V. Polyakov connects the intellectual and cognitive aspects of law with the emotional and axiological ones, the unity of which is revealed in its recognition, interpreted as legitimation. The latter transforms the prescribed norm into a strategy of behavior, which the individual himself considers as legitimate, legitimate, and fair. It is important that legitimation can be both rational (here the prescription correlates with the legal system within the framework of formal legitimation, or with social ideals and values within the framework of meaningful legitimation) and irrational (supported by imitation, individual or collective unconscious, traditions, customs, mentality, etc.). But in order for legitimation to take place at all, it requires an initial premise, namely, "recognition of subjects as communicative personalities, i.e. they must be considered as persons possessing original freedom, equality, dignity and responsibility".[259] This recognition inevitably presupposes and entails their equality. A.V. Polyakov reveals formal equality in four aspects.[260] The first is communicative equality, in which people appear as equally capable of understanding freely self–determining subjects, i.e. equal in their legal capacity. Here we are talking about the fact that the addressees of a legal norm are considered equally capable of understanding the meaning of a legal norm and accepting it as the basis of their goodwill. This means that the value

[258] Ibid., pp. 59-60.
[259] Ibid., p. 63.
[260] Ibid., p. 66.

and autonomy of each subject of law is recognized. The second is normative legal equality, since general norms measure out an equal measure of freedom for all people. The third is equality as a legal ideal, in which formal equality becomes a legal principle involving the endowment of as many people as possible with as wide a range of rights as possible, supported by responsibilities. The fourth one interprets equality through the principle of correspondence, equivalence, equivalence. Only the first two aspects are inherent in law inherently and directly, since the principles of law, unlike the signs, can never be fully implemented. The key features of law combine recognition with trust, faith and conviction, i.e. combine the cognitive and volitional attitudes of an individual with his focus on openness and reliability in human relations.

In the following article, "The principle of mutual legal recognition: the Russian philosophical and legal tradition and a communicative approach to law" (2021)[261], A.V. Polyakov moves from understanding the recognition of law as an idea to affirming the principle of mutual legal recognition and substantiating mutual legal recognition as a kind of mutual recognition. Since social communication has two aspects, which are cognition (of oneself and the world) and attitude (towards oneself and the world), recognition is defined by him as "a positive value attitude of the subject to the phenomena of the inner and outer world".[262] The communicative nature of a person is based on the reciprocity of relationships, which is impossible without understanding and recognizing oneself and the Other as understanding and interacting. A person "transfers" his own qualities to his counterparty, and the fact of such transfer is equivalent to affirming the humanity of the counterparty. As E.G. Samokhina and I.I. Osvetimskaya show, the idea of personal sovereignty underlying the paradigm of recognition of A.V. Polyakov is consonant with the position of A. Honneth ("individuality is formed through a practical attitude to oneself, self-understanding, which, in turn, develops in recognition

[261] Polyakov A.V. The principle of mutual legal recognition: the Russian philosophical and legal tradition and a communicative approach to law // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2021. Vol. 16. No. 6, pp. 39-101.

[262] Ibid., p. 57.

relationships"[263]), the authors see this coincidence in the fact that "the recognition paradigm proposes to consolidate mutual recognition of human dignity in social institutions and practices through which social, moral and legal interdependence can be ensured (autonomy) of individuals "[264].

Despite the obvious similarity of the two concepts, there is also a significant difference. Indeed, in the analysis of the motivation of the transfer procedure for A.V. Polyakov, the storylines of the Honneth concept of the struggle for recognition are extremely significant. However, A.V. Polyakov enhances their positive, consensual sound in contrast to Honneth's interest in permanent situations of conflict and confrontation, which are a socio-ontological feature of social development, as will be shown later. If Honneth 's recognition is a scarce resource for which there is a continuous struggle, then Polyakov has it as a prerequisite for any interaction, the absence of which turns the interaction into a defective one. It is no coincidence that A.V. Polyakov postulates the "threshold minimum" of recognition necessary for interaction to be considered human. Indeed, if one person reduces another to the level of a laboratory or working animal, treats it as an expendable material or tool, then we are talking about a dehumanized material interaction. Such an understanding does not exclude the understanding of recognition as a scarce resource for which there is a struggle, but it is broader. The forms and degree of recognition are always variable and begin from the "threshold minimum" – at the intellectual level (in its legal meaning), up to admiration, deification, and worship at the emotional level (in moral and religious meaning).

Individual recognition is carried out in the format of a spiritual act, an emotional act and an intellectual act. As a spiritual act, it is associated with respect for human dignity, a conscious attitude to the value of human freedom and solidarity with other people as worthy and free beings, strengthened throughout life by a person

[263] See: Honneth A. The Struggle for Recognition: The Moral Grammar of Social Conflicts. London: MIT Press, 1995, 240 p.

[264] Samokhina, E.G., Osvetimskaya, I.I. (2022). Normativity and facticity: foundation of legal validity from the communicative perspective // J. Sib. Fed. Univ. Humanit. soc. sci. 2022. No.15(12). DOI: 10.17516/1997-1370-0949, p.1758.

in relation to other people and realized in concrete actions. In interpreting the spiritual dimension of recognition, A.V. Polyakov brings his position closer to the ideas of V.S. Solovyov and I.A. Ilyin. Recognition as an emotional act is associated with emotions and feelings that make another person significant, special and extremely important. Recognition as an intellectual act means some calculation of the significance and value of another individual from the standpoint of his economic or social capital. Recognition, as a moral and legal principle, presupposes a doctrinal and institutional justification, it is no longer individual, but collective, socially. The protection of the legal personality of each member of a given society, its fundamental rights and freedoms at the level of the law is the implementation of the principle of legal recognition at the level of the legal system. Legal recognition does not require an emotional attitude towards another, attachment to him or a calculated justification of his importance in the context of, say, his high status. It is based on the very ontological fact of the existence of "Another as anyone who is different from me, but belongs to the human race",[265] i.e., equal to me in his communicative abilities. The concept of responsibility plays an important role in legal recognition, since transferring to Another human status implies respect for him and assuming responsibilities corresponding to his rights as a response to expectations about his own rights.

Interestingly, A.V. Polyakov concretizes possible ways to substantiate the principle of mutual legal recognition, referring to them theological, ethical, irrationally mystical, rational, natural-scientific, utilitarian, historical and socio-cultural justifications, showing through different traditions the significance of the principle under study in the evolution of human society. And this principle itself becomes a way of substantiating natural law, not so much revived as asserted by the communicative theory of law.

Thus, the concept of mutual legal recognition, which is later than the original, «container» for the classical theory of law, works at the level of communicants,

[265] Ibid., p. 62.

expanding the first group of consequences of its doctrinal development, which will be discussed below. Firstly, it interprets mutual recognition as an initial communicative act that distinguishes a person from other beings. Secondly, it asserts natural law as the core of human communication and the basis of social solidarity. Thirdly, it gives the communicative theory of law metaphysical depth, linking it directly with the spiritual search for pre-revolutionary Russian legal thought. Fourthly, it outlines an existential perspective related to the strengthening of the humanistic principle in legal development.

Other works of the author concretize the basic postulates of the communicative theory of law, deepen its connection with the philosophical and legal tradition and the urgent tasks of modern jurisprudence.[266] For example, in the article "Farewell to the classics, or how the communicative theory of law is possible" A.V. Polyakov studies the dialectic of the subjective and objective in law, showing that the nature of legal communication is revealed through its ability, firstly, to promote the unification of law, to propose the development of a common code to distinguish law from wrong, and, secondly, to allow autonomous legal systems to arise, gradually included in the unification process.[267] This interpretation allows us to consider law as a self-organizing system, continuously developed in the joint activities of people. In this perspective, legal communication A.V. Polyakova reproduces the logic of N. Luhmann's self-reproduction of communication: when the material prerequisites are put together (the universe arose, protein life originated and led to evolution, intelligent people are next to each other), communication does not need external causes, it creates itself in the act of autopoiesis, regardless of external communication goals, participants and consequences. Similarly, legal communication does not require externally established transcendental laws, will or other conditions, since its element is social self-organization. Social and legal

[266] Tikhonova S. V. Transcendental foundations of law in the communicative theory of law A.V. Polyakov: legal recognition // Proceedings of the Saratov University. A new series. Series: Economics. Management. Right. 2024. Vol. 24, issue 1. DOI: 10.18500/1994-2540-2024-24-1-59-64. p. 62.

[267] Polyakov A.V. Farewell to the classics, or how a communicative theory of law is possible // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 104.

communications arose precisely because they reflect the nature of man, existing as a biological organism through adaptation to the environment. This means that human claims are more or less directed at this very adaptation, i.e. they depend on "natural" laws, which does not interfere with autopoiesis, at least in the interpretation of Maturana and Varela[268].

In the work "Postclassical jurisprudence, evolutionary theory and neuroscience (confession of a communicationist)"[269] A.V. Polyakov substantiates the importance of the problem of integrity (both society and law) for science in general and for the philosophy of law. Showing that its solution is possible precisely within the framework of postclassical jurisprudence, he simultaneously hones and rethinks the basic categorical series of his theory, strengthening the connection between its two levels. As a result, the phenomenological and communicative reality of law as an intersubjective intentional phenomenon is built on the basis of communicative universals. If earlier the latter were considered as transcendental categories, now the researcher shows their anthropological determinism, dependence on the phylogenetic features of human evolution. Such an angle inevitably implies a drift of research attention towards natural science data. If the task turns out to be to demonstrate how the experience of mutual communication in the process of long-term genetic and cultural coevolution gradually formed universal ideas about ethics and law," then modern data on anthropogenesis inevitably turn out to be in demand, revealing the relationship between the exchange of descriptive language messages and a reciprocal affective (emotionally rational) reaction in the form of mutual recognition as the best option for the survival of society, as well as the cognitive characteristics of human behavior in general. As a result, the holistic communicative theory of law is rooted in modern evolutionary theory and neuroscience, and its interdisciplinary character is enhanced.

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[268] Maturana H., Varela F. Autopoiesis: the organization of the living (1973) // Maturana H., Varela F. Autopoiesis and Cognition. Boston, 1980. P. 63-134.

[269] Polyakov A.V. Postclassical jurisprudence, evolutionary theory and neuroscience (confessions of a communicationist) // Postclassical studies of law: prospects for a research program: a collective monograph / edited by E.N. Tonkov, I.L. Chestnov. St. Petersburg: Aleteya, 2023, pp. 29-157.

Conclusions:

The first level of the communicative theory of law focuses on the substantiation of the metatheoretical foundation of this theory in the doctrine of legal recognition as the transcendental basis of law. The idea of objectification of law through recognition proposed by A.V. Polyakov becomes the basis of a new humanistic understanding of law, which asserts the key character of trust in legal genesis.

The development of the doctrine of recognition as the foundation of legal genesis begins with the substantiation of the idea of recognition of law. A.V. Polyakov connects the very possibility of law with the fact that interacting subjects must not only understand the boundaries of their behavior, but also continuously coordinate them with each other. In this process, each of the subjects must recognize the presence of symmetrical abilities in the counterparty, therefore, recognition is understood as the unity of intellectual and cognitive aspects of law with emotional and axiological ones, which asserts the primacy of freedom, equality, dignity and responsibility of the participants in the interaction. From this thesis, A.V. Polyakov deduces four aspects of formal equality – communicative equality, normative legal equality, equality as a legal ideal and equality as conformity.

The conceptual transition from the idea of law as recognition to the principle of mutual legal recognition is based on the fact that legal recognition as a principle is based on the very ontological fact of the existence of Another as a representative of the human race, recognition of Another's human status means an individual assuming responsibilities corresponding to the rights of Another as a response to expectations about their own rights.

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Based on the results of the first chapter, the following *conclusions* can be drawn.

In general, the Russian communicative theory of law is an essentialist theory, the core of which is the answer to the question "what is law?". At the first level of the theory, the transcendental foundations of legal communication are revealed,

preceding its specific acts in the sense of an ontological fact. Here, the intellectual and cognitive aspects of law are connected with the emotional and axiological ones, their unity is revealed in legal recognition. Firstly, mutual recognition is interpreted as an initial communicative act that distinguishes a person from other beings. Secondly, at this level, the communicative theory of law asserts natural law as the core of human communication and the basis of social solidarity. Thirdly, the concept of legal recognition gives the communicative theory of law metaphysical depth, linking it directly with the spiritual search for pre-revolutionary Russian legal thought. Fourthly, it outlines an existential perspective related to the strengthening of the humanistic principle in legal development.

At the second level, the search for an answer to the original question goes beyond the transcendental framework into the realm of real interactions. The possible subject area of their analysis is set through a communicative and interpretative paradigm that outlines the boundaries of understanding the nature of the social. On its platform, a phenomenological reduction procedure is carried out, directed towards the social foundations of legal dogmatics. The resulting eidetic meaning of law allows us to understand the legal as social without losing its essential specificity, through the concept of competence, formulating the concepts of communication, from which the main categories of the theory of law are further derived. A.V. Polyakov's two-level communicative theory of law not only integrates various types of legal understanding, but also reliably connects the philosophy of law with the theory of law.

CHAPTER 2. Western Communicative Theory of Law

§ 2.1. Theoretical foundations of the Western communicative theory of law: N. Luhmann and J. Habermas

The methodological heterogeneity of the Western communicative tradition in the philosophy of law has been repeatedly noted in the literature.[270] I.L. Chestnov, choosing the attitude to the autonomy of the legal system as a criterion, identifies two approaches in them: "the closed approach, focused on the "closure rule" of the legal system and the open approach, involving constant communication of legal with "non-legal" – economic, political, etc. – aspects of social reality.[271] This classification is very productive, since the vast majority of different versions of communicativism go back to two ideological sources that oppose each other precisely according to the noted criterion – the political and legal concepts of N. Luhmann (closed approach) and J. Habermas (open approach), developed in line with the paradigm of Western post-metaphysical thinking in social theory. It is important to note that both Luhmann and Habermas are among the most influential sociologists in continental Europe, influential not only among social scientists, but also among philosophers and legal theorists. Their legal views are included in the context of the social theories they developed (Luhmann has a work devoted directly to law – "Law as a Social system", 1993, trans. 2004[272]; among the works of Habermas, the most fully reproducing his legal understanding is considered to be "Facticity and Significance[273]", 1992), and thus integrated into the categorical series of modern social knowledge. However, their "private" nature does not negate the detail of their study. Let's look at their approaches in more detail.

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[270] For example, see: Antonov M.V., Polyakov A.V., Honestly I.L. Communicative approach and Russian theory of law // Polyakov A.V. Communicative legal understanding: Selected works. St. Petersburg: Alef Publishing House, LLC, 2014, p.550.

[271] Chestnov I.L. The communicative theory of Bjarne Melkevik in the context of classical jurisprudence: Instead of a preface // Melkevik B. Habermas and Rolls: reflections on democracy / per with French E.G. Samokhina; scientific ed. I.L. Chestnov. M.: RG-Press, 2020, p.6.

[272] Luhmann N. Law as a Social System. Oxford: Oxford University Press, 2004, 498.

[273] Habermas J. Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats. Berlin: Suhrkamp, 1992, 666 s.

Luhmann's closed approach is sometimes referred to as "hermetic" and is a consequence of his systematic approach to society, one of the most complex in modern social theory. Luhmann considers social systems by analogy with biological systems in terms of their ability to reproduce themselves. Autopoiesis – the key term of Luhmann's philosophy – as self-organization and self-reproduction of the system suggests that the basic element of the social is communication. Luhmann categorically rejects the possibility of identifying communication and action, considering both concepts as "sedimentary" ("residue") relics that obscure the impenetrability of social systems to an external observer: "they are usually used in relation to the subject. They assume an author, designated as an individual or as a subject to whom communication or action can be attributed. But at the same time, the concept of "individual" or "subject" is used only as an empty formula for one highly complex fact in itself, which falls out of the competence of psychology and is no longer of interest to sociologists".[274] Communication is what allows the system to differentiate with the world and maintain this differentiation. It represents the procedural unity of the selection of information, communication and understanding; for each triad of selections, a subsequent one is layered. The success of communication creates redundancy of the system – the emergence of memory, necessary for the sequence of selections. The observer does not have direct access to these selections, since communication is a pulsation of meanings within the system; In order to fix them, the observer is forced to create his own explanatory constructions external to the observed system. And it is precisely because of the nature of communication that Luhmann's legal theory, just like social theory,is devoid of subjectivity.

The autopoiesis of the Luhmann social system ultimately boils down to a reassembly of the communication specification based on the principle of systemic self-organization. In other words, the system permanently redefines its elements from available resources in such a way that they maintain their configuration over

[274] Luman N. What is communication? // A sociological journal. 1995. No. 3, p. 114.

time, responding to each other's signals, but maintaining their autonomy. The redefinition rules act as a special code. Law as a high-level element (subsystem) is structured on the basis of its own code, which justifies the norms developed by law in such a way that they are suitable both for maintaining the legal code and for regulating other subsystems. Actually, the function of law in the social system is to create such norms and resolve conflicts based on them for other subsystems. The right "observes" other subsystems.

Its implementation is determined by the logic and impulses of development internal to law. The core of the legal system for Luhmann is justice, since he "argues that we can understand how justice is able to operate within the entire legal system without the phenomenon of natural law defining part of the legal system as non-law, if justice is considered as a formula for unforeseen circumstances of the legal system...".[275] His legal and legal systems are differentiated, the first is broader as "mobile positivity", the second as "the way in which law creates itself based on itself",[276] meaningfully coinciding with law enforcement activities. As S.I. Arkhipov shows, in Luhmann's theory, the law and the constitution belong to the political system: "The law does not belong to lawyers (perhaps it never belonged to them), it is part of the political system, an integral element of the mechanism of power. The only thing that is still in the hands of the legal community is justice".[277] It is difficult to identify Luhmann's legal and legal systems directly with the whole and the part, there is a gap between them, since the mechanics of lawmaking and judicial decisions (legal and legal systems, respectively) are multidirectional and belong to different system worlds. Legal dogmatics and legal technique are able to coordinate them.

Law stabilizes behavioral societies because the legal norm structures the social expectations of legal communication (all social communication in Luhmann

[275] Nobles R., Schiff D. Introduction // Luhmann N. Law as a social system. Oxford, 2004, p. 22.

[276] Cit. by: Poskonina O. V. Niklas Luman on the political and legal subsystems of society: monograph. Izhevsk, 1997, p. 78.

[277] Arkhipov S.I. Ideas about the law of Nicholas Luman // Electronic appendix to the Russian Law Journal. 2016. No. 1, p.8.

is the realization of expectations of expectations, since the selection of communications involves taking into account assumed expectations[278]). It acts as a form of response, a reaction to signals from other subsystems produced by the legal system. Expectations are a key moment for autopoiesis, since they are a temporal structure of communication, assuming a vector of intended actions in the future and linking completed and hypothetical selections in anticipation of the future, which in fact is always completely uncertain. In front of us, Luhmann de facto builds a living and continuous connection of times in autopoiesis. The law primarily binds problematic communications in such a way that a very likely gap in breeding is prevented. That is why law is the immune system of society.[279]

I would like to note that due to the fact that the law translates expectations into the status of normative, expectations that are unjustified by the actual state of affairs are preserved and maintained. I.e., it does not so much directly regulate behavior as it corrects expectations, protecting those who share them and creating advantages for them.[280]

If the meaning generated by communication refers to the opposition of the legitimate/illegal, then communication is legal, as such it is an element of the legal system. Systems external to the law (primarily political ones) can pass off their code as legal. Such an intrusion without procedures for "translating" the code is destructive for the legal system, since only it can determine what belongs to the law.

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[278] The Luhmanian meaning of social expectation is clearly clarified by A.Y. Antonovsky: "The theoretical breakthrough that Richard Dawkins made in relation to populations, depriving them of the status of evolving subjects in favor of regrouping genes each time in a new way, Niklas Luhmann implements in relation to groups of people. It is not groups of people that evolve, embodying the characteristics peculiar to this particular group. Communication systems (quasi-phenotypes) are evolving, but this process is based on the evolution of their structures – expectations that form into programs, i.e. verbal instructions for building communications, concentrated in her language codes. Communication structures are the communicative expectations that coordinate its construction.

Expectations in this sense should be understood as a set of possible meanings of a word or a linguistic expression, i.e. a kind of highly probable possible worlds that communication participants have to reckon with as soon as an expression is uttered. The genotype of communication is the language of communication. At the same time, some of its implementations (established, well-established linguistic expressions as forms of the medium) in the course of evolution turned out to be the most evolutionarily successful, i.e. the most generalized in a particular area. This means that they connect the largest number of specific situations in the expected, i.e.E. generalized, and, therefore, make it possible to calculate the future development of the state of affairs, and ultimately ensure the connection of expected future communications focused on a particular linguistic expression" (See: Antonovsky A.Y. Nicholas Luman: an epistemological introduction to the theory of social systems. M.: IFRAN, 2007, p. 42).

[279] Luhmann N. Law as a Social System. Oxford, 2004, p. 171.

[280] Ibid., p. 150.

The code itself only establishes the difference between legal and non-legal, but establishing compliance with the legal/non-legal situation requires additional instructions for use (according to the formula "if ... then ..."), therefore, the structure of the legal system unique to the social system is represented by both code and instructions. This is how Luhmann's thesis stands for that only law itself can say what law is.[281]

For an external observer, there is no way to differentiate between the legal and the non-legal in any other way than relying on the self-description of the legal system, which in itself already presupposes second-order observation (the observer observes the observers). Such a construction of Luhmann's legal system allows V.A. Slyshchenkov to state that Luhmann's system theory "trusts the story of law about itself", and its key qualities, in addition to self-reproduction, self-attribution, self-description of self-observation, include self-significance. However, all these qualities do not give self-justification. [282]

The justification of law within law is impossible due to the paradox of self-application ("the legal/illegal code cannot be applied to itself without leading to a paradox blocking further observations"[283]), which arises because logically the property of a subset cannot be automatically extended to a set. A right that says there is a right cannot prove that it is a right itself, just as a Cretan who claims that all Cretans are liars loses the logical validity of the truth of his own self-determination. Any justification of the legality of the law through the law goes into a bad infinity. As a result, the foundation of the legal system is paradoxical, and such a paradox is incompatible with functionality. Therefore, the legal system acts as if there is no paradox. For Luhmann, a logical contradiction does not imply a functional conflict, since the latter is solved by functional means. The law continues to define its own boundaries, making its paradox invisible, hiding it. The mechanics of concealment

[281] Ibid., P.85.

[282] Slyshchenkov V.A. The legal theory of Nicholas Luhmann and the crisis of modern society // Lex Russica. 2016. No.2 (111), C.189.

[283] Luhmann N. Law as a Social System. Oxford, 2004, p.102.

initiates the internal development of law, complicating the systems of argumentation of its instructions, i.e., its structure.

The absence of internal foundations of law presupposes its transcendence. Therefore, in Luhmann's concept, the legal system is subordinated to the political one, since it is there, as noted above, that autopoetically establishes what is legal and what is not, and the constitution is a mechanism for connecting these two systems. In such a model, the right will be that which has declared itself to be a right too broadly and vaguely obtained, regardless of its content. Of course, this conclusion leads us to an excess of breadth and uncertainty in the legal understanding. Luhmann tries to overcome this contradiction with the help of his own concept of justice, within the framework of which, according to the apt remark of K. Schulze, "he reformulated all the basic concepts of traditional legal philosophy and devalued their functions. Thus, only the word "justice" itself remains unchanged, but it's meaning no longer has anything to do with the original concept of justice".[284] By linking justice with continuously changing social attitudes, Luhmann gets the opportunity to consider it as an adequate complex of changing social interests and the internal stability of the legal system. As a result, he gets access to the mechanics of the internal self-adjustment of the social system necessary for its preservation in time – the system itself strives for what he calls functional justice.

Luhmann's views on law tend towards universalism – they describe the organization of legal regulation in any social system. For him, law does not arise "from the pen of a legislator", but is formed by the development of a communicative autopoiesis, the logic of which in societies that have undergone modernization is universal, precisely because it is functional and can have various material grounds.

On this basis, V.A. Slyshchenkov shows the approach of Luhmann's concept to legal pluralism, noting that the real transition to the latter on the basis of the system theory was carried out by G. Teubner, according to which "legal pluralism is ... a multiplicity of different communicative processes that observe social activity

[284] Schulze K. Post-metaphysical thinking and rethinking the law of reason (justice in the perception of Luhmann, Habermas and Derrida) // Lex Russica. 2015. No.2 (XCIX), p. 21.

through the prism of the legal/illegal code. <...> It is the explicit or implied use of the legal code that underlies the phenomenon of legal pluralism — ranging from the official law of the state to the unofficial laws of markets and the mafia".[285] Luhmann's concept of legal pluralism was also developed by W. Kravitz, who considered law as an institutionalized normative communication, through which the orders of public relations are established through the correlation of human behavior and related experiences. The peculiarity of legal communication in his concept is its necessary connection with the institutions supporting it, the network nature of information and communication systems, as well as the openness of sociology, which leads to the problems of legal pluralism. Kravitz, focused on the transformation of national law in the context of globalization and the history of the law of the European Union, explicitly declares the need to take into account legal pluralism: "along with formal statist directives and legal norms, it is necessary to pay special attention to informal, non-governmental, truly social lawmaking. Without letting the state-organized legal system out of sight, it is necessary to take into account in particular applied communication networks and structural bundles, which require further formalized and orderly creation of normative proposals (constitution, laws, etc.) in relation to various law-making institutions, organizations and social systems. Consequently, further analysis of the problem needs to be based not only on formalized legal communications, although representatives of legal positivism actively defend such a vision of the problem. The analysis should also concern simultaneously occurring informal communication processes".[286]

Criticism of legal pluralism usually focuses on its characteristic blurring of the essence of law, the willingness to overestimate any social norm as legal. The same problem, in principle, is characteristic of Luhmann's theory.[287] In addition, its

[285] Slyshchenkov V.A. The legal theory of Nicholas Luhmann and the crisis of modern society // Lex Russica. 2016. no.2 (111), p.190.

[286] Kravitz V. Legal communication in modern legal systems (theoretical and legal perspective) // Jurisprudence. 2011. No. 5, p. 21.

[287] Tikhonova S.V. Conceptual foundations of the Western communicative theory of law: Niklas Luman // Izvestiya Saratov University. A new series. Series: Economics. Management. Right. 2022. Vol. 22, No. 1. DOI 10.18500/1994-2540-2022-22-1-60-64. p. 63.

non-subjective nature and subordination of the legal system to the political system problematize the humanistic status of law, since they block compatibility with the theory of natural law. In general, the autopoiesis model itself is weakly sensitive to the axiological dimension of legal existence, since it is focused on the processes of social self-organization. Despite the complexity of Luhmann's theoretical constructions and his love of radically redefining commonly used scientific categories, his concept itself as a kind of systematic approach is quite correlated with traditional structural and functional analysis, and her description of positivization is with legal positivism.

Now let's move on to the open approach. Like Luhmann, Habermas[288] offers a concept that claims to be close to an exhaustive explanation of social reality. But its distinctive feature is politicization, since it is precisely democratic processes that are the source of a just social order. If in Luhmann politics stands above the right, controlling its paradox, then in Habermas democratic communication lies at the very heart of rightogenesis.[289] The practical turn of social philosophy allowed Habermas to bring social practice and language closer through communication, turning the mind of the Luhmann transcendent instance, which imposes legal ideals, imperatives, values and norms into a real network of their joint social construction. Habermas "disenchants" reifying legal concepts using a model of communicative action that generates communicative rationality. The theory of communicative action is designed to expand the evolutionary perspective of the unfolding of the life world, and, at the same time, to identify the mechanisms of integration of social subjects into a single social whole. In this case, the social action, interpreted as a

[288] For further analysis, it is important to clarify the author's position on Habermas' belonging to the Frankfurt school. Habermas' "school" status in the context of his relationship with the Frankfurters is ambiguous. Disagreements with Horkheimer, revisionism of Marxism, defense of a doctoral dissertation in Marburg, rapprochement with the phenomenological tradition, modern logic and philosophy of language in the development of the theory of communicative action – all these circumstances allow some researchers to deduce the figure of Habermas from the school context. Habermas himself negatively assessed attempts to unite very different thinkers into one school. However, in my opinion, the head of the Frankfurt department after Horkheimer, the relationship with Adorno, the genetic connection with the Marxist tradition and the general critical pathos of Habermas's socio-political ideas quite allow him to remain within the framework of the Frankfurt School.

[289] On this basis, the concept of Habermas is considered, among other things, as a theory of law, see, for example: Glebova V.K. Jurgen Habermas's Concept of law. Abstract of the dissertation. ... cand. legal sciences. Voronezh, 2020, 31 p.

communicative act, is pragmatically, illocatively oriented. The practical attitude allows Habermas to combine the instrumentality of pragmatism, the ability to rationally argue his aspirations and social interaction.

Habermas interprets communicative action as an action aimed at achieving mutual understanding and agreement. But this agreement is initially not a simple logical convergence/identification of opinions, but a rational basis for joint action. In order to reconcile the phenomenological and the practical, Habermas distinguishes four types of social action.[290] Teleological action is aimed at practical success, its kind is utilitarian strategic action, when the acting subject maximizes his own benefit. It structurally includes the subject, the objective world and the social world. A normatively regulated action is typical for members of a group united by common values, structurally includes the subject and the social world. The dramatic action "concerns the participants in the interaction, forming an audience for each other, in front of which they present themselves",[291] includes the subject, his subjective world and the public (the social world). Communicative action is characterized by the fact that linguistic mutual understanding becomes a mechanism for coordinating at least two subjects, "moreover, the speaker and the listener establish relations – based on the horizon of their already interpreted life world – simultaneously to something in the objective, social and subjective world in order to develop a common definition of the situation".[292] Relatively speaking, the preceding types of social action are the constituent elements of a communicative action. Habermas emphasizes its purpose for dialogic interaction, since it "refers to the interaction of at least two subjects capable of speaking and acting who enter (through verbal or non-verbal means) into interpersonal relationships. The actors seek mutual understanding regarding the situation of action in order to coordinate their action

[290] Habermas J. Attitudes to the world and rational aspects of action in four sociological concepts of action // The Sociological Review. 2008. Vol. 7. No. 1. pp. 10-11; it is considered in more detail in the work of Habermas Yu. Theory of communicative activity: Volume 1. Rationality of action and social rationalization; Volume 2. On the criticism of the functionalist mind / translated from German by A.K. Sudakov. M.: Publishing house "The Whole World", 2022, pp. 107-126.

[291] Habermas J. Attitudes to the world and rational aspects of action in four sociological concepts of action, p. 10.

[292] Ibid., p. 19.

plans, and therefore their actions, in a mutually coordinated manner. The central concept of interpretation is primarily related to the development of definitions of the situation that can lead to agreement. In this model of action, language gets, as we will see, a defining meaning".[293] In order for subjects to understand each other, language must make the objective, social and subjective worlds accessible to them, and each of the subjects must position themselves in relation to these three worlds.

The communication model used by Habermas is quite specific. In communication theory, existing models emphasize specific aspects of communication, revealing the connection between message and meaning, meaning and behavior of communicants, code and channel. The Habermas model goes back to the model of K.L. Buhler, which received the name "organon" after Plato, who considered the word as a tool in the dialogue "Cratylus".[294] The idea of the model is that people use language as a tool (organum) in order to communicate things to each other. Buhler believes that the function of language is threefold, in this threefold capacity it is represented by expression (expression), appeal (motivation) and representation. Therefore, in his model of a sign/speech act, he includes a symbol demonstrating correlation with objects and the state of affairs); a symptom (sign, index) reflecting dependence on the sender, whose internal state he expresses, and a signal suggesting an appeal to the listener, whose external behavior or internal state he controls in the same way as other communication signs.[295] According to V. Verenich, Buehler's model "implies a transition from a closed linguistic sign to a pragmatically open utterance",[296] complementing the semantic validity of the act of communication with pragmatic validity. Indeed, Habermas himself connects his model of communicative action with Buehler's model: "Buehler's functional scheme leads to the assumption that with the help of a speech act leads to the assumption that with the help of a speech act 'MP', S simultaneously establishes a relationship

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[293] Ibid., p. 11.

[294] "The name is a kind of tool for teaching and distributing entities" (Plato, Cratylus, 388b).

[295] Buhler K. L. Theory of language // https://classes.ru/grammar/111.Karl_Buller_Teoriya_yazika/html/27.html (accessed 07.29.2021).

[296] Verenich V. The communicative act in the theory of Jurgen Habermas: the experience of semiotic analysis // Melkevik B. Habermas and Rolls: reflections on democracy, p. 111.

with something in the objective world, with something in the subjective peace and with something in the social world".[297] Using this model, Habermas gets access to intersubjective communication, which unites communicants dialogically.

Indeed, the model used places the message in the center of a triangle, the vertices of which are objects/situations and communicants. The message is thus positioned between the communicants and the objective situation common to them, thus communication is strictly intersubjective, and, therefore, its meanings are intersubjective. The subject can choose the type of action according to the situation, thereby choosing the type of rationality, but if he addresses another subject as a goal, then the result of their joint activity will be intersubjective communicative rationality. Communicative actions allow the subject to identify the reasons for his choice, to argue them and to receive recognition of their own importance from another subject. Recognition of importance coincides with understanding.[298]

It is obvious that Habermas works in the paradigm of social phenomenology, while his model of communicative action is quite correlated with the tradition of defining social action in sociological theory. O. Verbilovich rightly notes that "the construct of communicative action J. Habermas is rather the result of the modernization of Weber's theory, an attempt to look at the history of the development of social action from the angle of different sociological paradigms: the revision of Parsons' theory, which, as it turned out, relied heavily on Weber's understanding of social action, the transition to interactionism and the dramatic sociology of Irving Goffman".[299] Thus, the concept of Habermas remains open to the classical core of social theory, is directly related to social constructivism and is easily integrated into modern socio-philosophical and sociological research.

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[297] Habermas J. Postmetaphysical Thinking Philosophical Essays tr. W.M. Hohengarten (Boston: M.I.T. Press) 1998. P. 73-76. Cit by: Verenich V. The communicative act in the theory of Jurgen Habermas: the experience of semiotic analysis // Melkevik B. Habermas and Rolls: reflections on democracy, p.111.

[298] Tikhonova S.V. Theoretical foundations of the Western communicative theory of law: Jurgen Habermas // Bulletin of the Saratov State Law Academy. 2022. No. 1(144). DOI 10.24412/2227-7315-2022-1-25-36. p. 29.

[299] Verbilovich O. Theory of communicative action: key categories and cognitive potential // Verbilovich O., Malinova O.Yu., Semenov A.V., Trubina E., Hartblay K., Yarskaya-Smirnova E.R., Yasaveev I. Public sphere: theory, methodology, case study. Moscow: 2013, p.40.

What happens to the law in this concept? To begin with, we note that the Habermas concept assumes the demarcation of the life world and the social system, but it denies their autonomy. The life world and the system are open to interpenetration, moreover, the second is formed by the first, as the life world gradually differentiates.

A detailed analysis of Habermas' legal views was carried out by B. Melkevik.[300] Briefly, the logic of its analysis can be reproduced as follows. Habermas interprets law in two ways – as an institution and as a means. Law as an institution is connected with the processes of legitimization of positivist procedures regulating relations directly related to morality (he includes murder, abortion, rape, etc.) and therefore always conflicting. Understanding the essence of these relationships is rooted in the experience of the multiplicity of intersubjective worlds of the life world as a possible horizon for each participant in a communicative action. Such an understanding requires the mobilization of cultural meanings common to all participants in order to reconcile different points of view formed by largely coinciding (and yet different!) worlds.

Coordination is equivalent to the development of a norm, with the claim to the importance of which all participants involved in the problem agree and thereby make it significant. Habermas proposes to control the development of norms by the ethics of discourse, which has a procedural character. Discourse serves as a "communicative court" (B. Melkevik's term[301]), since it launches a speech (dialogical, subject-subject) argumentation in which the foundations of a communicative action are recognized and their significance is established. Let me remind, that the phenomenological constructivism of Habermas' position allows him to combine the cognitive and pragmatic contexts of communication. As a result, "the prospect of coordinating actions leads to the conclusion that the impartial formation of judgment is expressed in a principle that forces any interested person to accept

[300] Melkevik B. Jurgen Habermas and the communicative theory of law. St. Petersburg, 2018, 95 p.
[301] Ibid., p. 53.

the perspectives of all other participants in the discussion".[302] Since all participants in the discussion recognize each other as subjects, they inevitably "exchange roles" when assessing each other's perspectives and interests and eventually universalize a common perspective. Since communication is subject-to-subject, manipulation is impossible in it. Since the position of an individual in the life world is concrete, the result of communicative discourse is a consensus that arises on a specific occasion (we remember that not all relationships are in conflict, i.e. consensus is not required everywhere) before the next change in life worlds. In other words, coordination begins every time the established tradition fails to cope with a new challenge. As notes B. Melkevik, "the perspective of the life world automatically excludes the dream of total revision, the totalitarian dream of "starting from scratch", because the transformation of law can always be launched, explained and justified based on the real context of the life world".[303] In other words, the content of law as an institution can only change in portions, "in parts", in accordance with how people master the new agenda in their daily practice.

The practical result of the work of the communicative argumentative discourse is "the public use of reason as a social force asserting itself in an endless process of linguistic actions".[304] This is how the communicative sovereignty of the rule of law is formed. Since each participant in the situation is involved in the formation of legal norms (and Habermas's communicative discourse is part of lawmaking), the law ceases to be repressive.

Law as a means is a tool for organizing social subsystems (power, money, management), which are characterized by relatively independent self-organization. These spheres are instrumental in themselves, they are needed in order to organize more complex networks of the life world. Law as a means serves their internal logic of coordination. This is a right in its functional dimension. From the point of view

[302] Ibid., p. 57.
[303] Ibid., p. 47.
[304] Ibid., p. 67.

of legitimation, it is secondary to the law institution, its work does not require material justification.

As a result, Habermas distinguishes between right and wrong by objectifying the Other – as soon as he(she) is included in the basis of the law institution, the right turns into wrong. Subjectivation of the Other is always the basis of genuine law. As we have seen, it is the result of a series of coherent communicative acts related to the subject situation. In this sense, it is local, but it is a procedural locality that claims to be self-referential when it comes to similar subject situations.

To what extent is Habermas's position correlated with the theory of natural law? B. Melkevik directly opposes these two approaches to law, using the theory of social contract (contractualism) as a demarcation. Melkevik takes into account two stages in the development of contractualism – the statist (Bodin, Hobbes, Machiavelli) and the revolutionary (Locke and Rousseau), but believes that both of them boil down to the legitimization of political institutions: "the social contract is only a means of nullifying or confirming the so-called “natural rights”".[305] This legitimization eventually alienates the political will from the subjects, and democracy itself turns into an instrument for protecting the fundamental principles of law. Neither can modern contractualism do anything about this attitude, to which Melkevik refers the philosophy of law of Rawls, in which democracy "can only be a tool, a construction that supports the original moral contract".[306] Habermas, on the other hand, insists that social consent based on comprehensive communication legitimizes and approves any norms and institutions or cancels them. Citizens' commitment to the political order becomes an unnecessary, redundant construct where there is mutual confirmation of subjects as authors of "any autonomous legal and political order": "if everything should be divided on democratic grounds between subjects of law, it follows that we should not recognize any other body of legitimization, except for proper democratic processes, which in practice, this

[305] Melkevik B. Social contract or democracy: a question of philosophy // Melkevik B. Habermas and Rolls: reflections on democracy. M.: RG-Press, 2020, p. 82.

[306] Ibid., p. 90.

requirement is confirmed".[307] The legal system is turning into a common effort to assert each other as the authors of our own rights. It has no transcendental grounds or extrademocratic sources.

Such overcoming of the "aristocratic" principles of law is equivalent to a transition to the level of subjects of law and their interests, where communication procedures prevent the alienation of justice, human rights, and the common good into suprasubjective entities. A one-time, fundraising social contract of a universal kind is being replaced by a series of local social contracts related to a specific agenda. Of course, this situation brings completely new risks. At first glance, the democratic processes of communicative rationality have an anarchic nature, poorly compatible with the stable reproduction of the legal system. Their pure voluntarism suggests that absolutely any norms and institutions can be abolished and created, which cannot but cause alarm. The realism of deliberation, expressed in its determinism by the real objective situation, easily turns into total relativism.

However, Habermas's theory quite clearly limits it to the procedural nature of communicative rationality, which is equivalent to the requirement of universality. Habermas formulates the latter as follows: "Every effective norm must satisfy the condition that the direct and side effects that general adherence to it is supposed to have to satisfy the interests of each individual can be accepted without any coercion by all to whom it concerns".[308] This formulation assumes that each individual affected by the norm is rational enough to realize their interests, relate them to the interests of Another and accept their realization in the name of their mutual benefit. Such "sufficient" rationality is postulated as universal, and in this sense corresponds to the understanding, recognition and affirmation of the rational nature of man, supported by all versions of natural theory of law. The value core of humanism, which makes up the meaning of natural theory of law, is equally in demand by Habermas's theory, moreover, it is protected by its procedural norms. Therefore, within its framework, in principle, it is impossible to democratically adopt a norm

[307] Ibid., p. 94.
[308] Habermas J. Moral consciousness and communicative action. St. Petersburg, 2000, p. 179.

that would blatantly contradict fundamental values – for example, one according to which, for example, a person would be arbitrarily deprived of the right to life for the entertainment of the majority.

But are the protective barriers of rationality so reliable? The rationality of public discourse, both from the point of view of its possibility and from the point of view of its prevalence, is the Achilles heel of the theories of deliberative democracy. I.L. Chestnov formulates the key questions that the latter cannot answer: "Who forms the agenda of the extremely broad – universal – political forum at which constitutional norms are being developed; who selects those positions that are worthy of discussion; what criteria are used to "determine the winner" in the competitive struggle of ideas presented at this forum?"[309] Sh. Muff turns to socio-political ontology, showing that the model of deliberation ignores the conflictual nature of democratic politics and "leaves aside the decisive role played by "passions" and collective forms of identification in the field of politics".[310] S.S. Bodrunova cites a similar position of the Finnish critics Habermas – R. Kunelius and S. Sparks: "the emphasis on rationality in the classical formulations of Habermasian theory is sharply inadequate to the urgent reality of public discourse… Interest and passion ... are not only present in practice in all existing political situations, but also do not provide serious grounds for their exclusion".[311] Mythologized forms of thinking have always dominated public opinion. In the twentieth century, public discourse was traditionally identified with the discourse of the media, Habermas himself interpreted the public sphere as the sphere of mass media, which exerts a regulatory influence on society as a space for the formation of public opinion.[312] Of course, Habermas assumed the breadth of access to the public sphere, although he took into

[309] Chestnov I.L. The communicative theory of Bjarne Melkevik in the context of postclassical jurisprudence: Instead of a preface // Melkevik B. Habermas and Rolls: reflections on democracy / translated from French by E.G. Samokhina; scientific ed. by I.L. Chestnov. M.: RG-Press, 2020, p. 17.

[310] Mouffe Ch. Deliberative Democracy or Agonistic Pluralism // Reihe Politikwissenschaft / Political Science Series 72. Institut für Höhere Studien (IHS), Wien. December 2000. URL: https://www.ihs.ac.at/publications/pol/pw_72.pdf (accessed 08/31/2021).

[311] Bodrunova S.S. Concepts of the public sphere and mediacratic theory: the search for common ground // Journal of Sociology and Social Anthropology. 2011. Vol. 14. No. 1, p. 121.

[312] See: Habermas Yu. Structural change in the public sphere: a study on the category of bourgeois society. Moscow: 2016.

account the filtering influence of capitalism and the state. Nevertheless, the twentieth century is characterized by vertical media systems in which the positions of stakeholders are represented by journalists. If powerful subjects and elites can directly influence journalists, then ordinary people in the mass media rarely received a voice. The possibility of dialogue in such a complexly mediated communication is low, while in principle recognition and understanding are costly processes in terms of cognitive, emotional and time resources of the individual. The more participants there are in the discussion, the less likely they are to be recognized as counterparties. The rise of the Internet and social networks has expanded access to the public sphere, moreover, it has brought to life specialized platforms for discussing rulemaking and lawmaking, but it hardly contributed to the rationalization of public discourse. In any case, in media studies, his condition is characterized by the concept of "post-truth" as a communicative strategy of appealing to personal beliefs and emotions instead of objective facts, poorly correlated with rational argumentation. Agenda control has never been available to the masses, it has always been alienated from them. How to control the rationality of public discourse is more than an open question.

However, the vulnerability of rationality in Habermas' theory goes much deeper than the problems of public discourse, and is related to the problem of the subject. Habermas's subject of law is always a phenomenological subject. However, the question of the rationality of the phenomenological subject, if it was unambiguous, was extremely short-lived. Traditionally, it was considered rational in E. Husserl's phenomenology. However, today there are attempts to rethink rationality even in classical phenomenology. So, V. Plotka believes that Husserl's phenomenology is a moderate form of rationalism, in which the problems of irrationality are not excluded, moreover, rationality itself is understood as a correlate of the irrational.[313] Irrationality is associated with possible indefinite levels and degrees of evidence, clarifying the essence of reason, constructing the figure of

[313] Plotka V. Husserl's moderate rationalism and the question of evidence // Horizon. Studies in phenomenology. 2019. No.8 (2), pp. 389-408.

Another, phenomenology does not so much put forward rational arguments as constantly distinguishes it from "unreason", exploring irrational evidence, among other things.

In Merleau-Ponty phenomenology, at the starting point of philosophizing, instead of Husserl's stream of consciousness, we find bodily "feeling" as the primary contact with the world, consciousness itself is inextricably linked with physicality, and "genuine intersubjectivity is found not "inside" the space of consciousness, but "outside" – in the contact of bodies, where the perceiver and the sensed can never they coincide in their perceptions, but naturally complement each other".[314] Understanding the Other in this case goes far beyond the cognitive framework, representing a harmonization of one's intentions and the intentions of the Other, rooted in the corresponding phenomenological bodies.

In the phenomenological sociology of P. Berger and T. Luckmann (and Habermas, of course, was influenced by it), the construction of the subject includes pre-rational and non-rational processes. This is the role of imitation in the processes of typification, and the mythological apparatus of internalized norms. Since Berger and Luckmann understand by knowledge "everything that is considered "knowledge" in society, regardless of the validity or unreasonableness (by any criteria) of such "knowledge", the rationality of their phenomenological subject always presupposes the presence of some "degree". The existential-phenomenological approach in social psychology combines subjectivity with emotional-existential states of anxiety, anxiety, etc., allowing in (post) the phenomenological tradition, subjectivity is based on the experience of desire, trauma, over- passion, or instability.[315]

The rationality of a phenomenological subject is not automatic, its spontaneous and spontaneous manifestations often go out in a hostile environment.

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[314] Ferroni V.V. The body and the other (the problem of the other in the phenomenological concept of M. Merleau-Ponty) // Bulletin of the Voronezh State University. Series: Philosophy. 2015. No. 3(17), p. 46.

[315] For more information, see: Sholokhova S.A., Yampolskaya A.V. Preface of the compilers // (Post)phenomenology: new phenomenology in France and beyond / Comp. S.A. Sholokhova, A.V. Yampolskaya. M.: Academic Project, 2014, pp. 3-8.

Habermas's communicative theory of law significantly needs to specify the conditions and limits of rationalization of the subject, clarify its connection with irrational components, clarify the vectors of their mismatch and complementarity in dialogical communication, underlying understanding and recognition.

Conclusions:

The considered approaches to the analysis of law relate to projects of post-metaphysical thinking in social theory. Communication communicates in N. Luhmann's social system, therefore, the concept of Luhmann belongs to the number of non-subjective ones. The autonomy and closeness of the legal system is the basis for designating Luhmann's approach as closed. The legal system in it is formed by the differentiation of communications, thanks to which a legal code arises. On its basis, specific communications are redefined, being included in the legal system. The function of the legal subsystem is to stabilize other subsystems by rationing the expectations of counterparties and "monitoring" all subsystems. Luhmann shows that the justification of law within law is impossible due to the paradox of self-application – law cannot determine whether it is law itself. The logical paradoxical nature of law does not negate its functionality, since the basis of law is transcendent and brought into the political system. The Luhmann model of autopoiesis is not correlated with natural theory of law, since it is focused on the processes of social self-organization. It reflects the classical explanatory schemes traditional for legal positivism, since positivization is ultimately subordinated to the transcendent political foundation of law.

J. Habermas's open approach is based on an appeal to the democratic foundations of legal genesis, which ensures the correlation of Habermas's legal understanding with natural theory of law and legal positivism. Habermas's approach to law is a compromise strategy that allows us to establish the humanistic foundations of law as a subjectivation of Another, without allowing the elimination of the processes of positivization of law. The K.L. Buhler's model of communication, used by Habermas, allowed him to differentiate the explanation of the logic of the functioning of law as an institution and law as a means. For Habermas, the main tool

for the demarcation of right and wrong in the foundation of the law institution is the processes of subjectivation and objectification of the Other. In this capacity, Habermas's legal understanding is quite correlated with natural theory of law; legal positivism corresponds to Habermas's analysis of law-means. The points of vulnerability of Habermas's legal understanding are established – the ambiguous status of rationality of public discourse and the phenomenological subject.

The key difference between their approaches is as follows. Luhmann's subjectless systematic approach, which purposefully excludes the problem of individual consciousness from the structure of communication, emphasizes the processes of objectification of the subject. In Luhmann's theoretical constructs, which carefully avoid the appearance of subjectivity, analogs of subjectivity can be found when it comes to the formation of an individual by communication (i.e., society). But these processes are external to the "absent" consciousness. That is why Luhmann has to justify the transcendent foundation of law in the political system, opening up a broad perspective for recognizing the suppression of someone else's will and violence as a right. Habermas, on the contrary, roots law in the consciousness of the subject, blurring it into an intersubjective world, thereby forming a line of subjectivation. Thus, both concepts are fundamentally diametrically centered.

With this fundamental difference, they also have a certain similarity. Firstly, both are close in describing the process of positivization of law, reproducing the classical explanatory schemes traditional for legal positivism. Secondly, legal institutions in both theories are adjusted and adjusted to the development of system-forming elements for law. Legal education, external for Luhmann and internal for Habermas, guides and regulates positivization. However, this interpretation really obscures the conflict of institutional structures. The latter can directly block autopoiesis itself and the democratic processes of the formation of communicative sovereignty. In general, both approaches, for all their polarity, do not reveal the essence of law, but establish its functional role in the social whole on the basis of the concept of "communication" without analyzing the basic provisions of legal dogma,

i.e. they are a kind of social theories about law. Therefore, the construction of "communicative and legal theories" will be used to designate them.

§ 2.2. Axel Honneth : the limits of legal freedom

The further development of Habermas's open approach to law is carried out by A. Honneth. Honneth, as a student of Habermas, is very careful about the ideas of the teacher, but places them in a new conceptual horizon. He directly addresses the legacy of the Frankfurt School, which was of little interest to Habermas, not without virtuosity builds bridges between the strategies of the critical tradition and the genealogy of social theory in the twentieth century, and enriches the agenda formulated in this way with a new interpretation of G.W.F. Hegel's texts. To do this, he needs to distance himself from Habermas's views, allowing, if necessary, to return to the model of communicative rationality after its limitations and gaps are revealed.[316] M. Ivkovich defines the theoretical prerequisites of Honneth's thought, separating its logic from Habermas's logic, as follows. Firstly, Honneth bases his social ontology on the theory of social action, which assumes a dialectical connection between the interactive flows of everyday social interaction and the fragile and unreliable social frameworks that form them (it is on this methodological platform that Honneth, from the earliest periods of his research work, declares the sociological deficit of critical theory).[317] For him, the basic modern institutions (the market and the state) lack epistemological autonomy. Secondly, the conflicting understanding of social dynamics and social change – history for Honneth is the accidental result of a long series of conflicts between social groups that are fighting for the right to redefine and justify this institutional order based on their normative orientations to action. Thirdly, the human need for the development of an "undistorted personality", the very presence of which both presupposes the fundamental incompleteness of the human being and the statement that most everyday actors do not meet the requirements of Habermas's communicative

[316] Penner R. V., Tikhonova S. V. Generations of the Frankfurt School: the genesis of critical theory and its modernity // Bulletin of St. Petersburg University. Philosophy and conflictology. 2024. Vol. 40. Issue 1. https://doi.org/10.21638/spbu17.2024.107 . p. 88.

[317] Strydom P. The sociological deficit of contemporary critical theory – Axel Honneth's theory of recognition, part 1 // https://thenewpolis.com/2019/10/15/the-sociological-deficit-of-contemporary-critical-theory-axel-honneths-theory-of-recognition-part-1/. (accessed 25.08.2022).

rationality[318]. The chosen strategy allows Habermas to respond to all the "pain points" of our time, addressing the widest range of socio-legal discourse.

Of course, the initial "continental" orientation of Honneth's thought makes it difficult for those who are more familiar with the logical moves of the analytical philosophy of law to perceive it. In this regard, M.A. Kukartseva's assessment seems justified, according to which "in the United States, Honneth's ideas are generally little recognized by sociologists, as well as social philosophers. Fitting into the European intellectual space, organized by philosophical discourse colored in Hegelian, Marxist, existentialist tones, makes Honneth's concept poorly recognizable for most of his American colleagues, who think in the context of the analytical tradition of philosophizing and the conviction of their self-sufficiency".[319] Honneth cannot be accused of indifference to the achievements of the Anglo-Saxon tradition, but his logic brings Mead and Hegel, Hegel and Aristotle, Hegel and Rawls equally easily together. Not all researchers agree with Honneth's Hegelian studies, and it's not so much the obvious complexity and well-known "obscurity" of Hegelian texts, but the ease of Honneth's own heuristics, which freely subordinates both philosophical, psychological, and legal traditions to independently set tasks. To free Habermas's communicative reality, in which the analysis of intersubjective acts is at best able to explain the slight swell in consensus-building, from statics, to open it in such a way as to expose the complex nonlinear canvas of social progress, to show that the world of life is an arena of conflicts and fractures, as real as the solidarity gained after overcoming them– all this is more than a large-scale research program. Perhaps that is why the result that Honneth receives is very non-trivial, and allows us to reduce, if not to a common denominator, then to common nodal points, the formation of personality, social progress and the development of law.[320]

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[318] Ivković M. The Habermasian Foundations and Aims of Axel Honneth's Theory of Recognition // Idéias. 2017. No. 2 (7), p. 99.

[319] Kukartseva M. A. Axel Honnet-sociological theorist and sociologist / / Sociological research. 2014. No. 4 (360), p. 39.

[320] Tikhonova S.V. Axel Honnet: limits of legal freedom // Izvestiya Saratov University. A new series. Series: Economics. Management. Right. 2022. Vol. 22. No. 4. DOI 10.18500/1994-2540-2022-22-4-473-479. pp. 474-475.

The core of Honneth's approach is the concept of recognition. It is a way of explaining human autonomy, social solidarity and natural law in their inseparable unity, which by no means excludes dramatic dialectics. It is no coincidence that this concept is often referred to as "conflict" in order to emphasize the role of struggle, confrontation and negative pathologies, carefully studied by Honneth, in bringing together the human community into a single whole.

Honneth defines recognition as the primary form of attitude towards the world: "our actions are primarily not in the nature of an emotionally neutral, cognitive position towards the world, but rather an affirmative, existentially colored style of caring behavior. In life, we constantly give the situational circumstances of our world their own value, which makes us think about our relationship with them".[321] Thus, recognition is an individual's positive attitude towards people and their groups, initially intersubjective, including both rationally based judgments about their own and others' abilities and achievements, as well as affective approval/encouragement, requiring empathy. Recognition for Honneth is what people owe to each other, what they are focused on, entering into an interaction that approximates the Kantian meaning of treating a person as a goal.

In order to come to this understanding of recognition in the works of different years, he needs a large-scale revision of the foundations of natural law views on the nature of human autonomy, which still define the legal doctrine of liberalism. In collaboration with J. Anderson's essay in the book "Autonomy and Challenges to Liberalism" (2005)[322] departs from the optimistic version of classical humanism, in which the core of human essence is productive activity, independence and independence in judgments, decisions and actions necessary in order to "lead your own life." Honneth and Anderson address the topic of human vulnerability, his dependence on other people, and the need to be included in their lives. Liberalism, inextricably linked with individualism, professes to limit interventions in human

[321] Honneth A. [at all]. Reification: a new look at an old idea / A. Honneth, J. Butler, R. Geuss, J. Lear, M. Jay, Oxford; New York: Oxford University Press, 2008, pp. 38.

[322] Anderson J., Honneth A. Autonomy, Vulnerability, Recognition, and Justice Pod Red. J. Christman, J. Anderson, Cambridge University Press, 2005, p. 127-149.

freedom, but constantly faces the problem of weakening the autonomy of individuals from various social groups, requiring special protection and compensation for those who do not pull out the role of atomic individuals.

For Honneth, the vulnerability of an atomic individual is not the result of accidental deviation associated with defects or weakening of the work of social institutions (for example, education or healthcare), leading to the fact that autonomy is reduced and requires the active inclusion of other individuals for its realization. Vulnerability is fundamental, ontological, primordial and primary in relation to autonomy. Based on the definition of autonomy by J. Nedelsky, "autonomy is an ability that exists only in the context of the social relations that support them, and only in combination with an inner sense of autonomy",[323] the authors interpret autonomy as an attainable (and not always achievable) quality. This establishes a model of "appreciative autonomy" in which "the real and effective ability to develop and pursue one's own concept of a decent life is achievable only under socially favorable conditions"[324]; This "achievability" of autonomy is a permanent lifelong process in which an individual learns to trust his feelings and aspirations when forming projects for himself and rely on other people in their implementation. Autonomy depends on relationships with other people, these relationships both strengthen and weaken it. Dependence itself is intersubjective: in order to act in one's own interests, an individual must treat himself in a certain way; The attitude towards oneself is formed not by a solipsistic ego, free from social connections in his thoughts, but by a person who is dramatically experiencing a discrepancy between his intentions and the assessments of his counterparties. For personal autonomy, self-respect and self-confidence are an indispensable element, the analysis of which leads Honneth to create an impressive socio-psychological version of the theory of subjectivity, based on the modern psychoanalytic tradition. A deep "introspective" analysis allows him to detail the "intraspective" context, to identify those dimensions

[323] Nedelsky J. Reconceiving Autonomy: Sources, Thoughts and Possibilities // Yale Journal of Law and Feminism. 1989. No. (1), p. 25.

[324] Anderson J., Honneth A. Autonomy, Vulnerability, Recognition, and Justice Pod Red. J. Christman, J. Anderson, Cambridge University Press, 2005, p. 130.

of the subject's external life that directly affect the core structures of autonomy. These include, firstly, legally established relations of universal respect for autonomy and dignity of the individual, secondly, close relations of love and friendship (central to self-confidence), and, thirdly, networks of solidarity and common values, within which the special value of community members can be recognized).[325]

Relying on G. Mead, Honnet shows that a person must learn to understand who other people see in him when interacting with him through norms. Collective attempts to gain recognition led to a change in norms, and, as a result, society. Thus, the patterns of ontogenesis turn out to be the key to understanding the socio-legal panorama of public life. The success of a person in a love relationship (in the broadest sense) is determined by the ability acquired in early childhood, the ability to find a balance between symbiosis and self-affirmation. Since the mother's care is an integral part of the newborn's existence in the first months of his life, so far at this stage the child is an "undifferentiated intersubjectivity", a symbiosis outside of which there is neither the baby nor the mother. The gradual acquisition of independence by everyone presupposes sensitivity to changes in the child's needs for the mother, and the gradual formation of the child's belief that the mother will definitely return and satisfy his needs. Symbiosis will be replaced by limited dependence, and the latter by attachment, and conflicts are not just inevitable on this path, they are its driving force. Love is possible only where the independence of the loved one is recognized, the recognition of this independence cannot be painless and automatic. Sympathy and attraction are not the sphere of control of those who experience them, but the way and boundaries of their expression can be chosen and constructed. A person who is ripe for autonomy trusts the maintenance of love to someone who at the moment, for various reasons, cannot directly participate in the interaction (if the mother goes to work, she does not disappear from the child's life). Trust as a communicative security is a socio-psychological ability to recognize

[325] Ibid., p. 132.

others. The task of accepting and acknowledging oneself, others, and reality for a person is never completed, but the quality of its solution changes.

Honneth sees the realization of this fundamental principle of recognizing oneself, others and reality in the expansion of the concept of natural rights (he considers them in groups of civil rights guaranteeing freedom, political rights guaranteeing participation, and social rights guaranteeing basic well-being), when the growth of a specific type of individuation in a community initiates the struggle of its members for the opportunity to be themselves in a new way. In his opinion, having rights is equivalent to being able to make socially acceptable demands, which implies that there is a legitimate way to "make it clear to yourself that everyone else respects him".[326] As a result, the experience of legal recognition suggests that a person is able to consider himself as a subject who shares with all subjects "in his community the qualities that make participation in discursive volition possible".[327] Honneth calls such a positive attitude towards himself self-respect, and he always considers this quality in an intersubjective dynamic. Then it seems logical to conclude that the purpose of law is to bring forms of recognition from the terms of class groups into general social categories, creating a basis for self–respect for each member of society, and thereby create prerequisites for social solidarity.

Honneth's theory of recognition differs very significantly from A.V. Polyakov's concept of legal recognition. The existential-emotional coloring of the first problematizes the intersubjective world of everyday life as the existential roots of a person, understood as a project or sketch in the Heideggerian sense, therefore its legal content is always subordinated to the existential and social, linking the realization of individual existences in social solidarity.

In order to identify the mechanisms of social solidarity, Honneth needed to take a new approach to interpreting Hegel's views.[328] The choice of the primary

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[326] Honneth A. The struggle for recognition: the moral grammar of social conflicts / A. Honneth, transition J. Anderson, repainted-or ed., Cambridge, UK: Polity Press, 2005, p. 120.

[327] Ibid.

[328] Further, it follows that this is a logical move that is close to the strategic research of A.V. Polyakov, who works with the ideological generation of I.A. Ilyin in order to discover the "phenomenological-Hegelian" perspective of the principle of ubiquitous dual-use.

source is connected with the fact that it was Hegel who first showed the need for recognition for self-consciousness, stating that self-consciousness can exist only when it is recognized by another self-consciousness.[329] Recognition is twofold, since it contains an act of direct reaction to the characteristics of the subject, and, at the same time, the act of forming a general concept on the basis of which people are classified and given status. Therefore, it combines ontological, epistemological, social, legal and ethical aspects of human existence, which opens up a very broad methodological framework for analyzing the interrelationship of existential, social and legal mechanisms of social reproduction. The task that Honneth set himself is set by the title of the second chapter of The Struggle for Recognition, in which the role of the concept of crime in Hegel's work "The System of Ethical Life" is directly described as "intersubjectivist innovation."

It is important to note that the "System of Ethical Life" is a manuscript of the Jena period (the writing dates from 1802-1803, was published in 1913), related to the topic of the article "On scientific methods of studying natural Law" (“Journal of Critical Philosophy”, 1802, vol. 2, No. 2; 1803, vol. 2, No. 3). Hegel would later revise many of the provisions of this text, they would not be included in his "Philosophy of Law" (1821) or would receive a new sound, researchers of Hegel's philosophical and legal views for this reason rarely turn to the "System of Ethical Life". P.I. Novgorodtsev[330] in his doctoral dissertation and N.V. Motroshilova[331] based on this book. H. Marcuse characterized this work as "one of the most difficult in German philosophy".[332] This is largely due to the fact that the manuscript was discovered in the archives of the philosopher after his death, during his lifetime he did not prepare it for publication and did not edit it (it was only partially rewritten), the content clearly reflects the influence of cooperation with Schelling and is

[329] Brincat Sh. Recognition, conflict and the problem of ethical community // Global Discourse. 2014. No. 4 (4), pp. 397-408.

[330] Novgorodtsev P. I. Kant and Hegel in their views on law and the state. St. Petersburg: Aleteya, 2000, 355 p.

[331] Motoroshilova N. S. Hegel's Path to the "Science of Logic": The formation of the principles of the system and metaphor. Moscow: Nauka, 1984, 351 p.

[332] Marcuse H. Reason and the Revolution: Hegel and the Formation of Social Theory. St. Petersburg: Vladimir Dahl, 2000, p. 514.

subordinated to the criticism of Fichte, who occupied Hegel at that time. Hegel's understanding of the term "morality" itself is aimed at the customs and traditions of the people, and not at what is traditionally attributed to ethics and morality. As the analysis of the "System of Ethical Life" conducted by N.A. Tatarenko shows,[333] the basic concepts of its text are not directly defined by Hegel, direct extrapolation of the meanings of the later periods of Hegel's work on them is impossible, connections with the reference texts are not established, the three parts do not yet know the sequential division in triadic logic, only the first chapter is clearly distributed according to it.

The basis of Honneth's intention when referring to the "System of Ethical Life" by J. Anderson, the translator of “The Struggle for Recognition” into English, characterizes it as follows: "Honneth borrows from Hegel the idea that the full prosperity of man depends on the existence of firmly established "ethical" relationships – in particular, the relationship of love, law and "ethical life" [Sittlichkeit] – which can only be established through the conflict process of development, in particular, through the struggle for recognition".[334] If we take the maturity of the system objectified by the author in the text as a key criterion, then the choice of Honneth may be in question. But his goal is to reveal the theoretical context of explaining social struggle in socio–philosophical thought, which was obscured by the dominance of Kantian ethics, based, according to Honnet, on individualism. Hegel's departure from individualism under the influence of the concepts of Plato and Aristotle turns out to be a fertile ground for Honnet's political thinking outside the clutches of atomic strategies of Modern political thought. And he needs an early text with sketches of the philosophy of law in order to reconstruct the fundamental possibility of thinking about society, politics and the law of the presumption of existence before socialization (understood extremely broadly, and in the socio-psychological context of ontogenesis, in line with the teachings about the

[333] Tatarenko N. A. The unnamed is understood and its interpretation in Hegel's "system of unreliability" // Historical and Philosophical Yearbook. 2019. (34), p. 102–134.

[334] Anderson J. Translator’s Introduction. Cambridge, UK: Polity Press, 2005, p. XI.

natural state of society) of isolated subjects. If the beginnings of this possibility can be discovered already at the beginning of the XIX century, then Honneth receives a reliable support for reformatting the entire subsequent history of social, political, philosophical and legal thought.[335]

Atomistic optics inevitably reveals the original egocentric motivation of the subjects, to which the need for ethical unity, integration, with each other must then be instilled from somewhere outside. This view makes it impossible to explain the development of the "ethical totality" that represents the human community, and which, according to Honnet, has been of fundamental importance to Hegel since the time of the "The Oldest Systematic Program of German Idealism (1796). Honneth repeatedly emphasizes that Hegel's ideal of the state at that time unequivocally coincides with the model of the Greek polis, the living unity of universal and individual freedom, where political communication is not based on the infringing restriction of individual freedom, but, on the contrary, allows it to fully unfold.[336]

Here he reinforces his position by referring to the text "On the Scientific Ways of Treating Natural Law", in which Hegel illustrates his position through the interpretation of a well-known Aristotelian quote ("the state belongs to what exists by nature, and that man by nature is a political being, and one who, by virtue of his nature, and it is not due to accidental circumstances that he lives outside the state, either an underdeveloped being in the moral sense, or a superman"[337]). Honneth emphasizes that with this passage Hegel demonstrates the inconsistency of the philosophical presumption about the primacy of the actions of isolated subjects, and begins the transition to postulating the primacy of "the framework of ethical relations, within which subjects are always already moving".[338]

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[335] Tikhonova S. V. The doctrine of the crime of early Hegel in the inter-subjectivist interpretation of A. Honnet // Bulletin of the Saratov State Law Academy. 2023. No. 1(150). DOI 10.24412/2227-7315-2023-1-54-60. pp. 56.

[336] Honneth A. The struggle for recognition: the moral grammar of social conflicts / A. Honneth, transition J. Anderson, repainted-or ed., Cambridge, UK: Polity Press, 2005, pp.12-14.

[337] Aristotle. Politics // Aristotle: in 4 volumes. Vol.4. M: Myshl pbl, 1983. I, 1, 12, 1253a.

[338] Honneth A. The struggle for recognition: the moral grammar of social conflicts / A. Honneth, transition J. Anderson, repainted-or ed., Cambridge, UK: Polity Press, 2005, p. 14.

However, Honneth turns to Hegel not only to neutralize socio-political atomism. He tries to establish how Hegel constructs the transition from a "natural ethical totality" to the unfolding of all the inclinations inherent in it. The ideological fulcrum is defined as a new negative version of Aristotelian ontology: the teleological development of substance into its most mature form (Aristotle) occurs through a consistent series of negations that liberate the ethical structures of society from one-sidedness and particularities. The appeal to Aristotle is fundamental for Honneth, since it obviously translates his thought into a communicative approach to the state and society. The natural initial state is disturbed by differences, the violation leads to the restoration of equilibrium, equilibria are found until the universal and the particular achieve unity (i.e., the subjective as different will be generalized). Thus, conflict turns out to be the most important feature of the development of the history of the human spirit for both Hegel and Honneth, and conflict, understood as the acquisition of universal significance by those moments that had a private character when they arose.

Honneth insists that the main problem for Hegel of the Jena period was to achieve such a description of the normative process of initial socialization that would simultaneously reconstruct the growth of public relations and the growth of personal freedom, otherwise the interpenetration of socialization and individuation (and for Honneth it is identical to the intersubjective recognition of the peculiarities of all individuals entering society) would turn out to be behind the scenes. The solution was Hegel's appeal to Fichte's theory of recognition. Honneth has to justify this Fichtean plot in the Jena Hegelian by appealing to the research (at that time still fresh) of L. Siep[339] and A. Wildt[340] in order to sideline the possible continuity between recognition in Hegel and mutual recognition in Rousseau. Honneth shows that for Fichte, recognition is "a mutual action between individuals that underlies a legal relationship: both by mutually demanding freedom of action from each other,

[339] Siep L. Der Kampf um Anerkennung. Zu Hegels Auseinandersetzung mit Hobbes in den Jenaer Schriften // Hegel-Studien. 1974. (9), s. 155-207.

[340] Wildt A. Autonomie und Anerkennung: Hegels Moralitätskritik im Lichte seiner Fichte-Rezeption / A. Wildt, 1. Aufl-or ed., Stuttgart: Klett-Cotta, 1982, 445 p.

and by limiting their sphere of activity in favor of another, subjects form a common consciousness, which then acquires objective significance in legal relations".[341] Hegel translates this model from the transcendental sphere, directly moving it into the whole variety of human action. As a result, ethical relations in society turn out to be forms of practical intersubjectivity, in which recognition reciprocates opposite subjects, and thereby ensures agreement.

This process takes place as follows. Interacting, the subject realizes that his "counterparty" (the Other) has recognized some of his, the subject's, features. As a result, in proportion to the degree of awareness, he a) reconciles with the counterparty, b) accepts his own characteristics, c) is again opposed to the counterparty about what he does not recognize. Honneth believes that this conclusion is a radical Hegelian innovation that allows the philosopher to go beyond the Fichtean strategy and create a new social ontology. Self-recognition relationships always open up opportunities for the subject to learn new things about the peculiarities of his identity, the acquisition of this new dimension of himself is equivalent to an ever deeper individuation of the subject, and each time it requires an exit from the present stage of ethical relations through conflict. Therefore, the moral system is dynamic, it is a continuous series of conflicts and reconciliations. Here Honneth brings this post-Fichtean moment of Hegelian logic closer to the Hobbesian concept of the war of all against all: for Hegel, subjects leave the existing ethical relations because their individuality is not sufficiently recognized. Since individuality is continuously deepening, it is impossible to stop the conflict process with a one-time social contract, as Hobbes suggests. By redistributing the emphasis in the ideas of Aristotle, Hobbes and Fichte, Hegel modernizes teleological nature into a panorama of sociality, constitutively including conflict as a form of continuous social struggle and moving towards an increase in the diversity of social life, honing more and more new facets of the individuality of the subjects included in it, fighting for their recognition.

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[341] Honneth A. The struggle for recognition: the moral grammar of social conflicts / A. Honneth, transition J. Anderson, repainted-or ed., Cambridge, UK: Polity Press, 2005, p. 20.

Honneth then proceeds to the stages of conflict dynamics, demonstrating how Hegel's original "natural" ethical life comes to be damaged by conflicts, and through the dialectic of recognition reaches the level of organic pure ethical life. The key concept here is the category of crime. The first social relations are established when subjects begin to free themselves from their natural definitions. In the family sphere, the initial unification of feelings requires a "shift" in order for the child to form an "inner negativity" (independence). At the second stage, legal universalization begins, the practical attitude to the world characteristic of the family is replaced by contractual relations to establish legal requirements. Legal forms of recognition concentrate negative freedoms, their content is the ability to refuse social offers. Intersubjective recognition is given to the formal aspects of the personality of the subject. Crime appears where these aspects are attacked by conflicts. Honneth believes that the concept of crime in the "System of Ethical Life" is defined by Hegel's earlier theological works, which established the relationship between forms of law and criminal acts, and can be reduced to the following definition of criminal acts: "actions related to the social premise of legal relations, in the sense that they follow directly from the uncertainty of the form of individual freedom that is simply legitimate ".[342] Since the subject as a bearer of law is negatively integrated into social life, this circumstance can be destructively used by other subjects. For Honneth, certain passages of the "System", which are very confusing and difficult to understand, are the basis for the assumption that the motive for the crime is incomplete recognition. Honneth justifies this hypothesis by saying that Hegel begins the description of various types of crime with a senseless act of destruction. Probably (in this case, you have to follow the Honneth, and not the text of the "System"), this means that the crime is initially an aimless reaction to elementary disrespect, which became possible where formal recognition appeared. In paragraph b of the section "Negative, or freedom, or crime", Hegel says that "The real withdrawal of recognition also removes this relationship, such withdrawal is

[342] Ibid.

robbery, or, since it is aimed purely at the correlated object, theft".[343] For Honneth, in this case, we are talking about the fact that the motives of a destructive act are reduced to "the very experience of abstract legal recognition".[344]

Hegel explicitly calls the active resistance of the victim a struggle, and we are faced with a struggle of "person" against "person", in which the victim is fighting for his integrity, and the criminal is fighting for a separate interest, which presupposes the victory of the victim. Theft goes into a phase of coercion of the criminal, and then denial begins – a struggle for honor, in which it is not always possible to establish from the Hegelian text who is fighting whom. Since honor is "the position I take in relation to myself when I positively identify myself with all my features and peculiarities",[345] Honneth gets a direct reason to interpret the Hegelian struggle for honor as a struggle for recognition, a life–and-death struggle, the drama of which goes far beyond a formal legal framework, since the whole person as a whole is at stake. Basically, we are talking about the struggle of an individual for self-recognition, but its scheme is easily implemented in the context of the struggle for recognition of Another.

The chapter on crime in the "System of Ethical Life" for Honneth becomes a doctrine of the gradual (and step-by-step) expansion of individuals' claims to their own identity, where each stage becomes the basis for more mature recognition relationships characteristic of a society of free citizens. He reinforces the intersubjectivist sound of his interpretation, showing that Hegelian conflicts have educational moral and practical potential, each «provocation» gives new horizons in self-understanding of identity features, in its recognition and in cognition of the interdependence of subjects. The logic of intersubjective conflict at the level of individuals is easily transferred by Honneth to community relations. «In this sense, – he notes, – social conflicts that have disrupted the natural ethical life [the initial

[343] Hegel G. S. F. The system is fixed // Hegel G. S. F. Political production: the memory of a philosophical mouse. Moscow: Nauka, 1978, p. 316.

[344] Honneth A. The struggle for recognition: the moral grammar of social conflicts / A. Honneth, transition J. Anderson, repainted-or ed., Cambridge, UK: Polity Press, 2005, p. 21.

[345] Ibid., p. 22.

stage of the subject's state] prepare subjects for mutual recognition of each other as individuals dependent on each other and at the same time completely individualized".[346] Concluding his analysis of the "intersubjective Hegel" (not so much newly discovered as reassembled and re-illustrated), Honneth is forced to state that in later periods Hegel loses interest in this topic, moving from the recognition model to the topic of consciousness, which became the basis for his interpretation of the existence of law in the Phenomenology of the Spirit and the Encyclopedia of Philosophical Sciences. This refusal allows him to move on to a coherent system of categories and systematic clarity of very complex content that he did not achieve during the Yen period. As a result, the world recognized and classified a completely different Hegel than the one who inspired Honneth. Of course, the vagueness and inconsistency of the "System of Ethical Life" opens up a very wide field for interpretation. However, following Honneth's argument, it is really difficult to argue that we are still dealing with Hegel. Rather, Honneth uses his reasoning as a working material, providing ready-made forms for complex and not devoid of revolutionary Honneth's thought. In the future, Honneth turned to Hegel's "Philosophy of Law", this appeal also implied a programmatic reconstruction in a narrow way, since Honneth was well aware that Hegel's philosophy of law could not be revived today – and the logical basis for the formation of his system was too complex, and Hegel's conviction in the viability of the conservative ideal of the state contradicted Honneth's own socio-political views.

In the "Law of Freedom", Honneth defines the limits of legal freedom in the formation of social freedom. As J.F. Broeckhuizen notes, throughout his book, "Honneth openly opposes the tendency to develop the foundations of the theory of justice only on the basis of legal concepts".[347] Honneth puts forward a triadic concept of freedom, which includes three models – negative, reflexive and social. As shown by A.Y. Shachina and S.V. Shachin, in the thinker's analysis, the first and second

[346] Ibid., P. 24.

[347] Broekhuizen J. P. Private law and ethical life. Honneth on legal freedom and its pathologies // Netherlands Journal of Legal Philosophy. 2013. No. 2 (42), p. 102.

models are necessary conditions for the third, which requires permanent critical doubt about the individualistic foundations of modernity.[348] Negative freedom is individual freedom, which is understood as Hobbesian freedom (categorically honed by J. Locke, J.S. Mill and J.-P. Sartre) for egocentric actions, the ability to do whatever came to mind, as long as the limits of freedom of neighbors do not interfere with this. It is worth noting that the tradition criticized by Honneth is the basic one for understanding the relationship between man and the state in the philosophy of law, within which we are talking about it is about a person as an active subject.[349] For Honneth himself, being free in an individualistic sense means "being able to realize as many egocentric, completely self-willed goals as are still compatible with the freedom of all other fellow citizens".[350] Negative freedom concentrates on achieving goals, but does not affect goal–setting, since the level of free and reasonable determination of one's own goals is already the level of reflexive freedom at which an individual realizes and ponders his own attitude towards himself. In this case, only such an action is free, which is initiated exclusively by the free and autonomous will of the subject of the action. Honneth associates the theorization of reflexive freedom with J.-J. Rousseau, I. Kant, I.H. Herder. The detrancentalization of Kant's thought, carried out by J. Habermas and K.-O. Appel in line with the transition to intersubjective foundations of freedom, is insufficient, since it does not take into account the connection between the realization of goal-setting and the existing social institutions that provide it. Communicative discourse hangs in the air, not getting to the institutional practices used by subjects to launch a dialectic of recognition with others. It is impossible to have individual freedom without being involved in specific institutions, within which the experience of recognition is shared with others. Reflexive freedom can be realized only on the basis of institutional prerequisites, which are revealed as specific norms of interaction. The norm for

[348] Shachina A. Y. Shachin S. S. Honneth A. Das Recht der Freiheit: Grundriss einer demokratischen Sittlichkeit. B.: Suhrkamp, 2011. // Kant Collection. 2012. № 1 (39), p. 94.

[349] Rybakov O. Yu., Tikhonova S.V. The problem of human-state relations in the theory of legal policy // Izvestia of Higher educational institutions. Law studies. 2011. No. 2(295). p. 36.

[350] Honneth A. Das Recht der Freiheit: Grundriss einer demokratischen Sittlichkeit. Berlin: Suhrkamp, 2011, p. 51.

Honneth is formed in the Hegelian sense, so it is by no means a mechanism for synchronizing expectations, it is a gradual unfolding of the potential of already fixed expectations. Social freedom in Honneth's understanding means that individual freedom is realized through the institutional sphere of society: "Ultimately, a subject is 'free' only when, within the framework of institutional practices, he meets with a counterpart with whom he is bound by a mutual recognition relationship because he can see in his goals a condition for the realization of his own goals".[351] Social freedom includes, as its own components, the possibility of interaction in a thematized manner. These include three spheres – love (marriage, family, friendship), the legal sphere (the market) and solidarity (the public sphere), in order to be considered fair, society must allow everyone to have access to the "institutions of recognition" of these spheres.[352] J. Schaub believes that in this triad we have two types of recognition relationships, individual freedom (in this case, we will have to understand it as both negative and reflexive) is freedom in the mode of possibility, whereas social freedom is freedom in the mode of reality.[353] The Hegelian perspective allows Honneth to consider subjects as continuously learning to put forward goals and desires that complement the goals and desires of others. In this case, the intersubjective environment is perceived as an extension of one's personality.

As J.D. Rendtorff shows, Honneth defines legal freedom based on Hegel's concept of personal rights.[354] Legal freedom creates a "protective wall" behind which a person can freely consider his own goals and desires.[355] However, in this way, with the help of the law, a form of individual freedom is formed, the conditions

[351] Ibid., p. 86.

[352] Carrá L. Beyond distribution: Honneth's ethical theory of justice // Civitas - Revista de Ciências Sociais. 2016. № 4 (15), p. 619.

[353] Schaub J. Misdevelopments, Pathologies, and Normative Revolutions: Normative Reconstruction as Method of Critical Theory // Critical Horizons. 2015. No. 2 (16), p. 113.

[354] Rendtorff J. D. Axel Honneth: The law of freedom – Institutionalization of freedom in modern societies – A reconstruction and some remarks // Nordicum-Mediterraneum. Icelandic E-Journal of Nordicum and Mediterranean Studies. 2012. No. 2 (7), p. A3.

[355] Honneth A. Das Recht der Freiheit: Grundriss einer demokratischen Sittlichkeit. Berlin: Suhrkamp, 2011, s. 145.

of existence of which he himself can neither create nor maintain.[356] Legal freedom reflects negative freedom based on the illusion that a person has the right to do as he pleases and violate obligations if the law allows it, and stop where the law prohibits it. As a result, the human will be constantly limited by law, and legal freedom is reduced to justifying the restrictions that are necessary to keep the multidirectional wills of selfish individuals from collisions. Restrictions cannot be freedom, i.e. Legal freedom develops an inherently flawed logic: "legal freedom as such in no way represents a sphere or place of individual self-realization; it guarantees the ability to suspend, question or terminate one's own projects and obligations, but it does not open up the possibility of realizing benefits or goals in themselves".[357] Freedom cannot be reduced to the restrictions, it is possible where a person becomes a creator and innovator of his own legal principles, where he strives to cooperate with other people. In the legal sphere, an individual, on the contrary, is forced to abstract from his moral and ethical beliefs in order to strategically focus on the counterparty, agreeing with the current legal norms. It is impossible to reconcile this abstraction with a lively participation in the other in the field of intersubjective recognition.

On the one hand, Honneth's approach lays a solid foundation for understanding how and why there is a rethinking and expansion of understanding of the progress of natural law in historical retrospect. J.A. Saavedra demonstrates how the Honneth perspective is advancing, compared with its predecessors, revealing that a) rights should be more than just a translation of some idealized democratic process, as follows from the writings of Habermas; b) rights should protect social relations from the threat of non-recognition; c) the legal sphere of recognition provides an opportunity for a positive attitude towards oneself, namely self-respect, which is realized through legal relations (to recognize someone means to recognize him or her equally deserving of the right to freedom, access to the political process, social rights and the burden of legal responsibility; d) the judiciary must protect the relationship of legal recognition, to allow members of society to achieve self-respect

[356] Ibid., p. 156.
[357] Ibid., pp. 154-155.

for themselves as equals to other members and to give them the right to make their own decisions about how to understand and implement their own life plans.[358]

On the other hand, J.P. Broeckhuizen shows that Honnet's desire to speak out against excessive legitimization of social life, his refusal to consider all basic social ties as legal relations, is largely due to the peculiarity of his interpretation of Hegelian texts. In his opinion, Honneth's position is set by "ignoring Hegel's fundamental understanding of the positive role of the institution of legal freedom — abstract law and its expression in positive law — for freedom in social reality. Honneth cannot fully appreciate Hegel's penetration into a positive moment, internal to the sphere of abstract law, the moment when freedom, which was previously a purely negative freedom, becomes associated with a positive understanding of freedom, expressed in the sphere of ethical life".[359] As a result, Honneth comes to underestimate the legal grounds for basic social ties (love, friendship, family). His position presupposes the internalization of law for the institutional sphere, therefore, law for him rather causes the communicative degradation of intersubjective models than gives people the opportunity to find and meet each other. Honneth's conclusion is disappointing: legal freedom is parasitic on social freedom.

Thus, Honneth's conceptual searches within the framework of this study fit into the model of communicative and legal theories, developing a panoramic theory of the social, in which the legal is involved to explain the implementation of social teleology. However, Honneth's work on rethinking Habermas' views leads to an unexpected (it is unlikely that Honneth himself planned this) effect – the removal of a fundamental logical contradiction in Habermas' open approach between the local and contextual nature of communicative action as the basis of normativity and the universal status of moral and legal norms. A.N. Pavlenko, analyzing the logical inconsistency of the idea of the "impossibility of the existence of a pure individual"

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[358] Saavedra G. A. Constitution of recognition: Towards a critical constitutional theory Pod Red. S. G. Ludovisi, Rome : [Newark, Del.]: John Cabot University Press ; Distributed by the University of Delaware Press, 2009.

[359] Broekhuizen J. P. Private law and ethical life. Honneth on legal freedom and its pathologies // Netherlands Journal of Legal Philosophy. 2013. No. 2 (42), p. 110.

developed by Habermas, on which his communicative program is based, shows the absurdity of the Habermasian logic of developing universal moral norms in local interactions,[360] analyzing its quintessence through the deconstruction of strong and weak theses ("an individual individually does not possess anything that would not be a product of the collective" and "the collective is primary, and the individual is secondary," respectively). The Honneth subject, who is forced to fight for recognition because he encounters people who deny his subjectivity, is initially constructed as a procedural constant that allows him to abstract from the basic complexes of interactions that form self-recognition and self-respect at a particular stage of his life. Nevertheless, such abstraction is only a tribute to theoretical schemes. The counterverse of the atomic subject assumes that the subject is always procedural, he can change home worlds (or he can live in one such world all his life), which intersubjectively "polish" him, the subject, in this process the individual is never alone. The intersubjective in the context of recognition cannot be transferred either to the collective or to the individual, since it always occurs between individuals, as the collective is reconstructed by science, as the personal by the subject himself.

Conclusions:

A. Honneth continues to develop an open communicative and legal approach by J. Habermas, correcting the views of the latter and carrying out an audit of the Hegelian political and legal heritage. The Hegelian tradition, as in the case of the concept of legal recognition by A.V. Polyakov, allows, with additional methods of interpretation, to detect the beginnings of social solidarity in intersubjective interactions. Honneth builds his new interpretation on the platform of intersubjectivism, discovering the unexplored potential of early Hegelian thought in the "System of Ethical Life". Thus, the analysis of legal genesis as a product of communicative rationality (J. Habermas) is subject to Honnet's attitude to establish

[360] Pavlenko A.N. The communication doctrine of morality and Pritha: a claim before renewal// The human world : the normal dimension – 2: a collection of trudes intergovernmental conference (Saratov, April 29-30, 2010) / [redcol.: I.D. Nevvadzhai (rev. krasny), etc.]; GO VPO"Saratov State Academy of Law". Saratov: Publishing house of the State Educational Institution of Higher Education "Saratov State Academy of Law", 2010. p. 49-58.

the limits of law as a mechanism for the suppression of intersubjective institutions. The opposition put forward by Honneth to the theories of the social contract with the model of the atomic individual immanent for them uses Hegel's doctrine of crime as a description of the gradual self-disclosure of mutual recognition of individuals, in which conflict plays an important role as a struggle against non-recognition. The Hegelian idea of crime as a reaction to the strengthening of formal legal recognition allows Honneth to move on to understanding the ontological interdependence of individuals preceding the establishment of legal freedom while simultaneously grasping its conflictual, dynamic nature.

The concept of recognition developed by Honneth expands the understanding of intersubjective interaction and its social and legal effects. Honneth revises the autonomy of the subject towards recognition, which means that the degree of autonomous behavior depends on the social environment and the success of the individual's intersubjective strategies in it. Socialization is a process in which a person learns to understand and recognize not only others, but also himself, trusting them and relying on them. In a world where a particular Self is devalued and rejected by others, the Self is deprived of the strength to assert itself and self-esteem. This model is diametrically opposed to the liberal doctrine based on the idea of an atomic isolated individual. Honneth's theory of recognition problematizes the intersubjective world of everyday life as the existential roots of a person, understood as a procedural project, therefore its legal content is subordinated to the existential and social, linking the realization of individual existences in social solidarity.

The experience of legal recognition suggests that a person is able to consider himself as a subject who shares with all subjects "in his community the qualities that make participation in discursive volition possible." The purpose of law is to bring forms of recognition from the terms of class groups into general social categories, creating a basis for self–respect for each member of society and, thereby, prerequisites for social solidarity. In The Law of Freedom, Honneth defined the limits of legal freedom in the formation of social freedom. Legal freedom creates a "protective wall" behind which a person can freely consider his own goals and

desires. With the help of the law, the form of individual freedom is set, the conditions of existence of which he himself can neither create nor maintain. In the Honneth triad of negative, reflexive and social freedom, legal freedom reflects negative freedom. Honneth's understanding of legal freedom is an element of his concept of social freedom, unable to independently ensure human autonomy.

§ 2.3. M. Van Hoecke's communicative theory of law

The "perspective" of understanding law as communication, put forward by M. van Hoecke, in contrast to Honneth's philosophical concept, is built by a lawyer-jurist on the traditional field of legal theory. Its development is also carried out in the conceptual space formed by the confrontation of the closed approach of Luhmann and the open by Habermas. Although it was not completed with a "breakthrough" result for the theory of law, its integrative, universalist intentions may still bear fruit in even the very distant future.

At the beginning, it is necessary to identify the ideological sources of van Hook's thought movement. These include, firstly, comparative law, secondly, theories of globalization, thirdly, legal pluralism, and fourthly, the network approach. All of them are closely interrelated both in the biographical aspect of the researcher's work and in the context of the theoretical agenda that determined the problems of his work "Law as Communication", published in 2002.

Legal comparative studies as an independent field of research have a long history, progress in which has always been hampered by doubling the requirements for a researcher, who ideally should be sufficiently erudite in at least two comparable objects, which implies a high level of proficiency in two national languages and competence in two national legal systems. As R. David showed, "comparative law shows us a lot of legal concepts. It introduces us to societies in which law is synonymous with coercion and even a symbol of injustice and is closely linked to religion and forms its sacred part".[361] It can be said that the comparativist is always immersed in legal reality, axiomatically and a priori constructed as a plurality of legal systems.

If in the middle of the twentieth century the main guideline for the evolution of comparative jurisprudence was the harmonization of national law and unifying international law, then at the turn of the twentieth-21st centuries the main trends in

[361] David R., Joffre-Spinosi K. The main legal systems of modernity / Trans. from the French V.A. Tumanov. M.: International Relations, 2009, p. 14.

legal development were the increasing role of international (supranational and transnational) organizations actively involved in legal genesis. The world of law is beginning to be interpreted as a space in which "global and local are normatively and institutionally interconnected"[362] in the processes of glocalization of legal communication.

Globalization has become an external source for the development of legal pluralism, a situation where multiple legal systems not only exist simultaneously, but when some of them operate simultaneously on the same territory. Formally, the source of the discourse on legal pluralism) is considered to be the publication in 1971 of a collection of works by J. Gillisan's "Legal Pluralism", in which field studies of customary law were conceptualized and for the first time a distinction was made between "current law" and "State law"[363]. From studies of the customary law of postcolonial countries, theorists of legal pluralism have moved on to the study of legal orders arising under the influence of globalization in the territory of the European Union. It is important to note that this concept does not imply the anarchism of the coexisting legal orders, on the contrary, it also takes into account the subordination relations characteristic of them: "none of the legal orders under consideration is completely autonomous. They [legal orders] are not isolated from society or the state – they cannot but interact with other legal orders".[364] This idea is carried out even more clearly by L.H. Urscheler and S.P. Donlan: modern elements of legal pluralism are "relative rather than supreme, dependent rather than independent, adapt rather than dominate, and are able to change their normative scope in response to other requirements".[365]

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[362] Kravitz W. Legal communication in modern legal systems (theoretical and legal perspective) // Izvestia of higher educational institutions. Law studies. 2011. No.5 (298), p. 12.

[363] La Pluralisme Judique: Études Publiées Sous la Direction de John Gilissen. Bruxelles: Université libre. Centre d'histoire et d'ethnologie juridiques, Éditions de l'Université de Bruxelles, 1971, 332 p.

[364] Burg, van der W. A Pluralist Account of Legal Interactionism // Erasmus Working Paper Series on Jurisprudence and Socio-Legal Studies, 2013, No. 13-01, May 13, Version: 1,0. Available at SSRN: https://ssrn.com/abstract=2264108 or http://dx.doi.org/10.2139/ssrn.2264108.

[365] Donlan S. P., Urscheler L. H. Concepts of Law: An Introduction // Concepts of Law / by ed. S. P. Donlan & L. H. Urscheler, Routledge, 2016, 270 p, pp.1-18https://doi.org/10.4324/9781315573298, p.11.

Studies of globalizing social orders, typical for the period under review, have brought to the fore the concept of the network as a structure that becomes an alternative to the vertical hierarchies of Modernity.[366] The network approach has been slow to penetrate into jurisprudence, since legal dogmatics always relies on a hierarchical approach, and in general cannot rely on it. As shown by G. Haarscher, the network approach in jurisprudence is based on the belief that the "network" is more egalitarian than hierarchy, and therefore more "modern" and more democratic, the network approach assumes that the classical "vertical" hierarchy will be replaced by a "horizontal" heterarchy, authority by consensus, obedience by negotiation, which in In general, the network paradigm connotes creativity, flexibility, pluralism, lifelong learning, gentleness, sociability, peaceful coexistence, it offers more complex levels of organization than hierarchy[367]. On our own, we note that the inability to exclude coercion from law, at least in any form, without blurring the clear boundary between state-organized law and social law, official and unofficial law, law and morality, does not allow us to talk about the fundamental possibility of a network reconstruction of law, devoid of hierarchy, in essence. However, this fundamental consideration does not directly relate to the subject of our study, in which we reconstruct the history of ideas in a certain context. An important role in the development of this approach was played by the work "From pyramid to Network? Towards the Dialectical Theory of Law" by F. Ost and M. van de Kirkhov[368], published in the same year 2002 as "Law and Communication". Van Hoecke cites earlier work by these authors (with one of whom, in turn, he previously worked in collaboration[369]), obviously trying not to abuse the concept of "network", nevertheless, his concept of circularity is clearly derived from the network approach.

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[366] Tikhonova S.V. Social networks: problems of Internet socialization // Polis. 2016. No. 3. p. 140.

[367] Haarscher G. Some Contemporary Trends in Continental Philosophy of Law // The Blackwell Guide to the Philosophy of Law and Legal Theory / Ed. By Martin P. Golding and William A. Edmundson. Blackwell Publishing Ltd, 2005, 357, pp. 300-312.

[368] Ost F. and van de Kerchove M. De la pyramide au re´seau? Pour une the´orie dialectique du droit. Brussels: Facultes universitaires Saint-Louis, 2002, 596 p.

[369] Hoecke van M., Ost F. Epistemological Perspectives in Legal Theory // Ratio Juris. Vol. 6. No 1. March. 1993, pp. 30-47.

Van Hoecke positions his work "Law as Communication" as a generalized view of legal theory,[370] the center of which is the analysis of communication in law and for law. The theoretical and methodological foundations of his analysis, as shown by A.V. Polyakov, are the theory of Habermas's communicative action, the provisions of psychology, linguistics, the theory of legal autopoiesis by Luhmann, the ideas of Kelsen, Raz, Fuller, Hart.[371]

Noting the diversity of approaches to the definition of law, Van Hoecke draws a parallel between the images of law that are formed at the everyday level as a result of negative or positive experiences of contact with legal phenomena, and narratives about law developed by legal theory – since theorists work with different aspects of law, they conceptualize different experiences about law. At the same time, the concepts of law acquired as a result of education inevitably diverge from experience, since law is changing. Its changes are slower than changes in the social context, and theoretical reflection is even more delayed. By the time of the broadcast, the misalignment is not only inevitable, it doubles and triples, since at the time of the formation of the image of law, there was competition between diverse approaches. At first glance, the postulation of the variability of law is a common place, but Van Hoecke goes further and argues that the historical determinism of the development of law naturally leads to the fact that different generations of people find different stages of the development of legal reality: "A theory that seemed obvious to the previous generation (often because they wanted to see it obvious: people believe what they want to believe) may seem strange at the moment. First, this new generation forgets the historical considerations that brought existing theories to life.…Secondly, the established theory no longer corresponds to reality".[372] Various aspects of law may be underestimated or overestimated in theory, but Van Hoecke

[370] Hoecke, Van M. Law as communication / Translated from the English by M.V. Antonov and A.V. Polyakov. St. Petersburg: Publishing House of St. Petersburg State University, LLC "University Publishing Consortium", 2012, p.9.

[371] Polyakov A.V. Postclassical jurisprudence and the idea of communication // Izvestia of Higher educational institutions. Law studies. 2006. No. 2(265). p. 39.

[372] Hoecke, Van M. Law as communication / Translated from English by M. V. Antonov and A.V. Polyakov. St. Petersburg: Publishing House of St. Petersburg State University, LLC "University Publishing Consortium", 2012. p.14.

focuses not so much on the problem of the discrepancy between fact and theory (although he notes that the basis of legal positivism of the XIX century. There is a naive belief in the existence of "pure facts", i.e., in fact, one of the most rational legal doctrines is based on a shaky epistemic illusion), as much as it takes the position of rigid historicism. He demonstrates it by comparing medieval and modern law: "It is very difficult for us today to understand how our ancestors imagined the phenomenon called law, but we can assume that in modern legal literature, only very few definitions can be found that would correspond to this. Concepts of law such as the Kelsen concept or the autopoietic system could not fit into the medieval worldview, not because medieval people disagreed, but because they simply could not understand these approaches. They couldn't match their worldview, which had no place for such rational, systemic approaches to reality".[373] The law of different eras can be very little alike, different legal institutions and forms dominate at different times, and it is impossible to give in theory all possible perspectives of such diversity. But it is possible, and this is where Van Hoecke sees his task, to find such an angle of view on the law that will allow you to see more of these key epochal perspectives. If an exhaustive look at the law is not possible, then this does not mean that when choosing between a narrow and a wide coverage, one should prefer the former.

The widest possible view of law is provided by its interpretation through the category of communication. This means that law is considered as an instrument of human interaction, and a procedural instrument at that. It is important that Van Hoecke proceeds from the fact that communication in law is found at different levels and in different forms, i.e. we are talking about different ways and types of communication characteristic of law, and not about specifying law to a specific type of communication with special characteristics, or its elements, to those the same legal norms, for example.

[373] Ibid., P. 18.

Based on the paradigm of intersubjectivism, the thinker insists that "pure facts" are constructs that depend on the supporting structures of the theory that develops their description (reality partially determines theory, theory partially determines law). An attempt to define law involves such theoretical work, which will take into account the existence of both constitutions, acts, legislators, courts, states, treaties and other legal facts, as well as the meaning given to law by ordinary people and lawyers in our time.[374]

This work should begin with clarifying the applicability of the communicative approach to the generally recognized[375] signs of law, analyzing the latter in terms of clarifying their content and establishing to what extent they can be explained through communication. Van Hook chooses nine signs of law for it: 1) law as a regulator of human behavior; 2) law as a set of norms; 3) law as an institutionalized regulatory system; 4) law as a product of the state; 5) law as a result of coercion: 6) law as an autonomous entity; 7) law as a closed and complete system; 8) law as a cultural phenomenon; 9) law as justice.

The researcher narrows down the first feature, proving that law does not regulate human behavior in general (it does not include what Robinson Crusoe does on a desert island alone), but only human interaction (communication), interpersonal behavior.

The second feature is clarified in the context of the limitations of the sets of norms present in society (in addition to law, Van Hoecke refers to them morality, religion, ideology, customs, customs and etiquette – the list is exhaustive). He associates the specifics of law in a number of other regulatory systems with the fact that, firstly, the sanctions of law are formulated clearly and concretely before the violation of law and, secondly, the process of imposing sanctions is also regulated

[374] Ibid., p. 26.

[375] In the title of the corresponding chapter, Van Hoecke puts the word "possible" in parentheses – "(Possible) signs of law", thereby emphasizing the controversial nature of a set of signs of law, usually cited in the legal literature as unambiguously defined, thereby problematizing existing lists.

by law.[376] In addition, the norms of law are always connected with each other, at least weakly, so they are not a "collection", but a system.

The third feature Van Hoecke details from the general to the particular, starting with formal institutionalization. Here he relies on Hart's idea that law is a unity of primary and secondary rules. The primary rules are addressed to members of the society and represent the permission or prohibition of certain actions. Secondary rules are rules about rules. Their institutionalization takes place in two aspects – structural and procedural, and leads to the emergence of two levels – lawmaking and law enforcement. A functional division into rulemaking and norm-application is found in any legal system, whereas structurally it is not necessary, since both functions can be concentrated in the same hands. The creation of rules presupposes the establishment of the meaning and boundaries of the application of the rule; therefore, institutionalization always concretizes both the definition of rules and the establishment of their applicability.

Further, Van Hoecke refuses to follow Hart, who introduces a third type of secondary rules, namely– the rules of recognition. In his opinion, these rules are societal, which means they cannot be institutionalized as something that is a fact, not a norm. These rules concerning the establishment of sources of law are constantly in motion.

Van Hoecke shares the sociological and professional institutionalization of law. He refers to the first one as "generalized recognition in a given society of the formal institutions of the legal system in question".[377] He uses this concept to be able to designate the process of social legitimization of law in such a way that it is possible to determine the degree of its effectiveness (efficiency). In this case, it should not be about the fact that established legal norms are observed in this society, but legal institutions and officials are recognized as having the power to "make the right valid", to implement it. In other words, the social institutionalization of law presupposes the recognition not of primary rules, but of secondary ones, and

[376] Ibid., pp. 32.
[377] Ibid., p. 41.

recognition itself is interpreted as a phenomenon of social psychology. Such a socio-psychological recognition allows Van Hoecke to distinguish, for example, the Italian legal system and the regulatory system of the Italian mafia. In his opinion, the norms of law established by the state in Italy may not be respected or observed less frequently than mafia rules, but the mafia cannot in any way "control the beliefs of the people in the validity of secondary rules".[378]

The professional institutionalization of law is not typical for all societies, and is not a necessary condition for the existence of law, but it is a sign of the development of the legal system. Only at the present stage are three types of independent legal professions being formed – legislators, representatives of justice and representatives of the doctrine, while the degrees and rates of their professionalization are autonomous from each other and asynchronous, a situation is possible when the judicial profession differs in a complex set of norms regulating this role, and the professionalization of the doctrine is weak. The thinker considers the professionalization of scientific activity necessary for the further development of modern law.

In the fourth feature, Van Hoecke focuses on the relationship between state and law. He proceeds from the ideas of the erosion of national sovereignty in the period of globalization, associated with the loss of some amount of power by states, decentralization and the emergence of the European Union. This implies a weakening of the rule of law established by centralized States. Referring to the new role of national and international sports organizations, churches, and associations of national minorities, Van Hoecke insists that for "the legal system, the primary is the ability to establish agreements, and not to be derived from agreements," its derivation from the state and its connection with it is obvious to him (at least for the author himself) fades into the background. The key in this case is the appeal to the phenomenon of international law.

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[378] Ibid.

Formal institutionalization as the appearance of rules about rules is universal for all legal systems, sociological institutionalization (legitimization) is characteristic of both state and non-state legal systems (for example, for canon law), professional institutionalization is more common in state legal systems, but it is possessed by the same canonical law. In other words, the institutional features of the legal system themselves are not directly related to the State. Van Hoecke suggests entering into a broad social context to answer the question of what types of structured public relations are the legal system. He unequivocally declares legal pluralism, the development of which, at the level of the definition of law, he associates with the rejection of the legal concept of the state in favor of the sociological concept of society. Since the latter is very pluralistic due to the wide range of paradigms of social theory, Van Hoecke uses the concept of society as close as possible to the needs of legal reflection, introduced by J. Finnis, according to which a society can exist "wherever, for a certain period of time, the coordination of the activities of a number of individuals takes place in the form of interactions and ideas about a common goal".[379] In this case, we are talking about a sociologically institutionalized group of people in which various functional joint interactions are distributed, and there are specific common beliefs and values that unite the group, but the division of rules into primary and secondary has not yet been emphasized. In this way, a "society" can establish a constitutional treaty and become a state that meets the classical characteristics of F. Engels. But it can also represent a smaller group within a larger one or at the "intersection" of large groups (and even "above" them). And in this group, tradition and instrumentalism, "historically developed rules and common goals"[380] will be fused, for which "new rules"[381] have been developed for the operational coordination of the existing functional tasks of social exchange. From a sociological point of view, such a group in the sense of Finnis society represents a mature type of medium-sized and large social groups, with all the characteristics

[379] Finnis J. Natural Law and Natural Rights. Oxford, 1980. P.153.
[380] Hoecke, Van M. Law as communication, p. 48.
[381] Ibid.

identified by social theorists (goal, role interaction, control, patterns of behavior, rules, sense of belonging and role expectations), allowing them to be distinguished from social movements, interest groups, imaginary communities, etc . At the legal level, Van Hoecke identifies the Finnis society with the concept of a "semi-autonomous field" by S. Moore, a classic of cross-cultural comparative legal studies. The key feature of the autonomous field is the ability to independently generate their own norms, customs and symbols, rather than cultivate general social ones. This approach is very effective in the context of legal comparative studies, since it allows the researcher to focus on multi-level legal norms brought to life by different sources of law in the same social context, without raising the question of the status of sources. It is very convenient where positive legal norms coexist with ordinary norms, precedents and treaties. But it easily turns into a marginal approach where the legal system is based on normative legal acts, and they form the empirical basis for legal qualification and scientific legal research.

Nevertheless, it allows Van Hoecke to put forward the following definition of law: law is an institutionalized normative system of the community.[382] The concept of "community" reproduces the logic of both Finnis and Moore, it applies to any social groups that produce legal norms, regardless of whether they rely on military force as a State or on international political debate as international law. Van Hoecke considers the monopoly on the use of military forces within a specific territory, the ability to structure political debates and make choices that link all legal systems operating in a particular territory to be signs of the state. Of course, he does not ignore the leading role of the state as a political community in modern processes of legal genesis, rather, he denies the exclusivity of this role.

In the analysis of the fifth feature, coercion, Van Hoecke proceeds to the fundamental grounds of his position. It would seem that this feature is easy to compromise as a direct conclusion from the outcome of the previous one: if not all legal systems are generated by the state, and the sign of the state is a monopoly on

[382] Ibid., p. 50.

coercion, then not all legal systems rely on coercion. However, Van Hoecke goes further and explores the "mechanics" of sanctions, based on the model of law established by the state. He argues that although coercion reinforces the general legitimization of power, until its crisis begins, it is insignificant for the definition of law. Firstly, the sanctions themselves are much weaker than they are usually postulated, since they may not be applied at all, rarely applied and, so to speak, "at the lower level". Secondly, sanctions are analytically significant for primary and secondary rules, not for the legal system as a whole, and they are significant as an opportunity, not a sociological fact. Most of the rules are observed spontaneously, for example, people most often marry because they want to live with a loved one, not because they want to implement a legal norm, and do not kill other people because they do not have the slightest desire to do so. Those norms that really regulate behavior can be adopted to varying degrees – completely, conditionally or forcibly, and if adopted, they can still be violated regardless of what sanction is provided for, since they are determined by motives of a different order. Similarly, the implementation of the rules may not be related to the norm itself, but may be explained by affects or economic benefits.

The sixth feature, the autonomy of law, Van Hoecke considers from the perspective of a systematic approach – law is part of the social system. Therefore, it is relatively autonomous. As I.L. Chestnov and E.G. Samokhina show, Van Hoecke's weak autonomy of law means that it is not just a matter of reflecting a set of extra-legal rules by law.[383] If law were completely autonomous, it would not need external (in Van Hoecke's terms, sociological) legitimation. But internal legitimation (self-legitimization) does not automatically imply autonomy. Van Hoecke begins the consideration of formal autonomy by criticizing the Kelsen model of legitimation of law. It is understood as a linear process in which a court decision is justified by a higher rule, and it is itself a higher one, and so on up to the basic norm. Van Hoecke shows that higher norms in the hierarchy of law not only justify lower norms, but

[383] Chestnov I.L., Samokhina E.G.b The Principle of Relativity in the Post-Classical Theory of Law // Journal of Siberian Federal University. Series: Humanities & Social Sciences. 2020. Vol. 13. No. 1, p.46.

are themselves justified by them (for example, the judiciary is subject to laws, but some courts may overturn certain types of laws). Van Hoecke calls this specificity of law circularity and emphasizes its communicative nature, since circularity is not realized automatically, but requires communicative actions and argumentation. R. Mancilla concretizes Van Hoecke's concept of circularity as follows: circularity is a heterarchical relationship by which norms are linked to each other as in a chain of circular causal processes where there is mutual influence.[384]

Then the researcher specifies the "relativity" of the closeness/openness of the legal system, since it is not enough to state that some systems are more/less open than others, it is necessary to indicate what is "opened" and what is "closed" in the system, and in what ways. Here, Van Hoecke is helped by a critique of the Luhmann autopoiesis, which he uses as a fulcrum, while simultaneously showing the vulnerability of the Luhmann schemes and suggesting their correction. Legal systems are closed promptly, i.e. they process social facts into legal facts according to their own rules, without including external social agents in this process. At the same time, cognitive legal systems are open, since they constantly interact with the "outside" world, which, by the way, includes other legal systems. It is important to note that the understanding of autonomy advocated by Van Hoecke is set by the general methodology of the systemic approach (in this case, the fact that he works mainly with his Luhmann version is unimportant, since autopoiesis is based exactly on the systemic approach), therefore autonomy does not exclude relationships of interdependence – systems can use other systems as a resource, without which their existence is problematic, or to control each other, but they cannot be parts of each other, which, of course, does not prevent them from playing the role of subsystems in an extremely common social system.

As a result of this specific openness, the following types of legal autonomy are formed: formal autonomy (reduced to the presence of the legal system's own institutions), procedural autonomy (secondary rules), professional autonomy (legal

[384] Mancilla R. Sociocybernetics and Political Theory in a Complex World. Recasting Constitutionalism // Sociocybernetics and Complexity. 1.1 (2020) 1-120, doi:10.1163/25900587-12340001, p. 56.

professions), methodological autonomy (a special language, style and argumentation within the legal system) and doctrinal autonomy. Formal and procedural autonomy are universal, professional is typical only for developed legal systems, methodological in different systems has different degrees of complexity, doctrinal appears where there is professional and complex methodological autonomy.

The more types of autonomy a system acquires as it develops, the higher the circularity of its norms and the less it needs external legitimacy, since it itself carries out legitimation in legal terms and on the basis of legal sources, i.e. in internal ways. At the same time, the growth of autonomy inevitably leads to an autopoietic paradox: "the more legal systems develop and become autonomous as systems, the less their autonomy determines their content".[385]

Since modern legal systems are based on a common methodological autonomy (they share a common legal language, style and argumentation) and borrow each other's norms and concepts, while being linked by circularity relations, their autonomy from each other is weak, but this weakness is the basis of strong autonomy from other social systems, resulting from a synergistic effect. At the same time, primary norms have weak autonomy from external social systems (they depend on them and are determined by them), but secondary norms have a strong one. In general, it should be noted that Van Hoecke builds the analysis of autonomy as a sign of law in the Luhmann paradigm (in the Teubner's version of it), making adjustments and clarifications related to the evolution of his own vision of the systemic approach.

He continues this logic by referring to the seventh feature, to which the completeness and closeness of the law were attributed. Van Hoecke continues to defend the thesis of the relative openness of law as a system, arguing with Kelsen (static model of a closed system of law) and Luhmann (dynamic closed autopoiesis). The researcher notes that the maximum completeness of law is characteristic of state systems that have managed to cover almost all spheres of public relations over the

[385] Hoecke, Van M. Law as communication, p. 67.

past century. However, he uses this circumstance to show not only the dialectic of operational closeness and cognitive openness, but to prove that operational openness is also not absolute: legal systems cannot be completely completed at the level of primary rules (the variety of situations is inexhaustible). At the secondary level, the legal system should be closed on the basis of the "closure rule", i.e. the rule defining the algorithm of actions when a situation is detected that is not regulated by the legal system at the level of primary rules. Van Hoecke shows that the "closure rule" has a limited scope, and some of the gap situations are removed at the third level of "technical closure", where the legal system decides to use the rules of other systems to close its gaps, and this decision is determined by the fourth level, ideological, integrating non-legal values into law. Thus, even at the operational level, the legal system is never complete and closed, acting as a four-level system of gaps closed in various ways, with the last level circularly connected with the first.

The eighth feature is the connection with culture. This connection begins with common values and worldviews, then covers group values (and the very experience of group membership as a special value belongs to them), then moves to the level of the legal culture proper, differentiating into external (the ideas of ordinary people about justice, justice, law and order, etc.) and internal (the professional culture of lawyers). As I. Craiovan shows, Van Hoecke has a legal culture at its core, i.e. the basic paradigm contains key points of view on the concept of law, sources of law, methodology of law, legitimacy of law, more generally, common values and a certain view of the world.[386] Legal culture is generated by law, it can block its development or accelerate it, but, according to Van Hoecke, it depends on political will, up to the assertion that lawyers will stop changing their habits if they are forced to do so by law.[387]

And the last sign is justice. According to Van Hoecke, justice in itself is not an essential feature of law, but the pursuit of it is typical for any legal system: "law

[386] Craiovan I. On Legal Culture Concept Within Transdisciplinarity // US-China Law Review, August 2019, Vol. 16, No. 8, p. 318-323. doi:10.17265/1548-6605/2019.08.002, p. 320.

[387] Hoecke, Van M. Law as communication, p. 85

always claims to possess at least a minimum of justice and honesty".[388] This idea of "minimal justice", understood as the application of the principle of justice at the level of creation and application of law, is important for the sociological institutionalization (legitimization) of law. Neglecting it can lead to a crisis and a change in the legal system, but it does not necessarily lead to them, since the objects of social criticism on issues of justice are the rules established by representatives of the public community, as well as the actions of these representatives.

Thus, three of the nine signs Van Hoecke does not consider suitable for use, of the remaining five are redefined, mainly in the context of detailing their "particularity", or the possibility of gradation of severity. What remains? Law is a regulator of human communication, representing a system of norms, which includes primary and secondary (norms about norms) norms. Legal professions can be built around secondary norms, and the recognition of these norms by society makes the legal system work. Legal norms are created by a community that needs to coordinate social activities within itself in order to achieve common goals (justice is implicitly embedded in these goals); there are many such communities, those that are political create state legal systems that use a monopoly on subordination. The system of norms is dynamic, norms are "arranged" hierarchically, but at the same time their occurrence is circular: they can arise both at a lower level under the influence of higher-level norms, and vice versa. Formal and procedural autonomy (the establishment of the primary and secondary norms themselves and the procedures for their production) is universal, professional, methodological and doctrinal autonomy can be "built over" them. The last three types of autonomy do not arise everywhere, they arise in different combinations, legal systems with a different set of autonomies coexist and interact with each other, in relation to the community that generates them as a social system, they are operationally closed to a high degree (there is a system of gaps that make it possible to compensate for the fundamental incompleteness of norms in such a way that, as a result, the system translates,

[388] Ibid., p. 85.

"declares", non-legal (where the gap is radical) and open cognitively. The legal system produces the appearance in culture of specific values (legal) of different orders, their interaction can affect the development of the system itself.

After analyzing the definition of law and its features, Van Hoecke examines the functions of law, i.e. the work that law does in society (we are always talking about society in the specific, Finnis-Moore sense of community -a semi-autonomous field). Law structures political power by legitimizing it; it preserves social connection by integrating the social system and consolidating the legal system itself; law promotes individual life by outlining the most effective and reasonable models of social interactions in an almost infinite variety of potential actions; creates spheres of autonomy in conditions of lack of efforts of specific people; encourages individuals to achieve the desired (most convenient for everyone) coordinates and coordinates human activities; offers tools for concluding private agreements; allows individuals and their associations to concentrate resources; makes it possible for individuals to redistribute these resources safely (in the form of goods and services); provides conflict resolution.

From the consideration of the functions of law, Van Hoecke proceeds to the legal norms, which he has already divided into primary and secondary. The secondary ones act as a structure for the primary ones.[389] He considers both of them as grounds for human action, and reproduces the idea put forward by J. Raz. At once, the division of norms into binding (prescriptive in Van Hoecke's terminology), permissive and granting powers. All three types facilitate action, because a) they provide a ready-made model of action, saving thinking and b) synchronize the expectations of people predicting each other's actions. And here the question arises about who the norms help in the first place, i.e. who is the communicant in communication, the instrument of which (the message) is the norm itself and how are the communicants correlated? Van Hoecke contrasts the command theory of law, which identifies the law with the pure will of the sovereign, the realist movement,

[389] Ibid., p. 101.

which in the American version emphasizes the role of judges as standard–bearers, and in the Scandinavian version the role of citizens, and the theory of "black letters", reducing the norm exclusively to the text. This contrast allows him to "distribute" the functions of the elements of communication, showing the influence of the norm sender and the norm emitter on the norm itself, and both of them on its analysis, interpretation and implementation.

The analysis of legal norms is necessary in order to approach the systematic presentation of the specifics of legal communication and justify the model of a communicative act used by him. He clarifies the roles of communicants as follows. The standard-setter is a formal legislator, even if he does not coincide with the real communicator, since the legislative process acts as a synthesis of communications between the relevant committees of the legislature and agents of political debate about the norm. The norm recipient includes both citizens and "judges", and the latter are included in communication as "means" to change the behavior of the former.

It is the connections between norms that coincide with communicative processes that underlie legal systems. Primary norms, in his opinion, are rarely organized on a historical scale into a hierarchy, where their hierarchy is formed through a logical hierarchy of concepts, an axiological hierarchy, a hierarchy of sources of law, a systemic hierarchy of industries and their constituent institutions. The analysis of the legal system is always based on statics (it requires a hypothetical synchronic "snapshot" from a static position), whereas the analysis of the mechanism of law, by which the thinker understands the totality of relations between norms, requires taking into account dynamics, a "film". This is due to such an aspect of secondary rules as their incomplete formalization caused by circularity. Finding himself at a crossroads between hierarchical and anarchic models of legal systems,[390] Van Hoecke chooses a compromise position in assessing the real model: "no legal system can be completely "hierarchical" or completely "anarchic", but it will always

[390] Van Hoecke appeals to the work of Kerchove M. van de, Ost F. Legal System Between Order and Disorder. Oxford, 1994.

be somewhat circular".[391] For Van Hoecke, circularity turns out to be a concept that allows combining an individual strategic action focused on the actor's particular goals and a communicative action focused on a common goal, in Habermas' terminology. The embeddedness of private and general goals in the communicativeness of circularity forms the systemic structure of the legal system.

Thus, Van Hoecke comes to a key point in his concept, where he begins to apply the network model to explain system interaction. Since Van Hoecke does not work in a tradition that draws a line of demarcation between the legal system and the legal system, he does not need to raise the question of the atomic status of a legal norm. For him, law appears as complexes of primary and secondary norms connected by complex networks of mutual circulation, each of which has its own rules for building normative hierarchies. This conglomerate of norms opens "in all directions" into the social and other legal systems, the zones of disconnection are also clusters of networks. The communication of circularity rises above the mechanics of interaction due to the inclusion in the applied autopoietic methodology of the aspect of understanding, and therefore of meaning, which gathers the legal system into a single whole. That is why Van Hoecke postulates the theoretical status of the legal system, insisting that it is "not a valid fact, but a product of theory".[392] Meaning is constructed as coherence, consistency of norms, their internal unity and external connection with social facts. Therefore, in the legal system, form and content are inevitably intertwined, inextricably linked with each other. The point of view chosen for the analysis will determine the approach to the theoretical construction of the form of the observed type of law (legal family), from which the "basic element" of law relevant to this type of structure will then be derived. In other words, the primary element of law will always be the structures of communicative action that form legal norms in these historical conditions. This key conclusion of Van Hoecke is the most criticized,[393] because it does not give a specific and

[391] Hoecke, Van M. Law as communication, p. 152-153.
[392] Ibid., p. 159.
[393] For example, see: Bertea S. Mark van Hoecke, Law as communication // The Edinburgh Law Review. 2005, Vol. 9, pp. 346-347.

unambiguous answer about which element in the chain of the sender-the legal norm-the recipient makes this chain itself legal.

In defense of Van Hoecke's concept, two circumstances can be noted. First, the universality of the basic element chosen by him (the structure of communicative action) is revealed when and where the researcher works with different legal systems, and can compare and compare them only if five types of autonomy are used, which are layered on top of each other, like dolls in a matryoshka doll. These dolls are very different in size and shape, which can be, say, zoomorphic, anthropomorphic or complex stereometric. Roughly speaking, the researcher faces three such dolls, each of which has the first two layers (formal and procedural autonomy), since they are universal, two have a third layer – professional autonomy, and only one has a fourth and fifth – methodological and doctrinal autonomy. Each of the conditional "matryoshka dolls" is fully legal, it cannot be said that something in it is not/extra-legal. In the thickest "matryoshka", the methods of producing legal norms are very complex and overloaded with circular networks, in the thinnest they are "truncated" and include much fewer types of agents-communicants. If you cut the "matryoshka dolls of law" into parts and try to compare what is obtained through mechanical correlation, only differences will be revealed, meanwhile, similarities are found in the core of the layers and in the methods of their further production, which boils down to the formation of communicative structures.

Secondly, Van Hoecke details various types of legal communication, but at the same time he works with modern legal systems in which professional, methodological and doctrinal autonomy has developed. As L.H. Urscheler and S.P. Donlan show, Van Hoecke, being both a comparativist and a legal theorist, includes in his analysis legal norms that go beyond positive legal prescriptions, and raises the question of the essence of the "legal system", based on the fact that this system seems natural, and its meaning is self-evident, despite the fact that in fact it is "the invention of " continental Europe.[394]

[394] Donlan S. P., Urscheler L. H. Concepts of Law: An Introduction // Concepts of Law / by ed. S. P. Donlan & L. H. Urscheler, Routledge, 2016, 270 p, pp.1-18https://doi.org/10.4324/9781315573298.

Professional autonomy, as shown above, involves the separation of legal professions, the basic of which is the division into legislators and judges. The second involves specifying the connection of legal thinking (which, being set historically, practically and concretely, consists in decision-making[395]) and a language based on the "sender–sign–recipient" triangle, where a sign through meaning denotes reality.[396] Van Hoecke understands the meaning as the content of the message, laid down by the sender and/or interpreted by the recipient. As a result, we have a communication model that, if necessary, can be easily transformed into the classical linear Lasswell model, which establishes changes in the recipient's consciousness and behavior under the influence of the message transmitted by the communicator, or into the Osgood–Schramm circular model, which calibrates the dynamics of the message content from what the communicator laid down to what the recipient understood. On this basis, Van Hoecke describes lawmaking through the one-sided Lasswell model, where one-sided communication is based on a power relationship that subordinates' citizens as recipients to the content of the message that the legislator gives. Later, based on Van Hoecke's ideas, projects of a multi- model instrumentalist approach to lawmaking were put forward.[397] But in his concept, the linear specifics of lawmaking are subordinated to the methodology of legislation, which develops approaches to definitions and designation of logical connections between them, and defines approaches to the interpretation of laws and interpretation of legal principles.

The situation is more complicated with the attribution of legal communication carried out by judges. In the first approximation, the judge acts as an interpreter of the legislator's norms, i.e. he should have been embedded in the previous model. However, Van Hoecke insists on a circularity relationship between legislators and judges. Constitutional courts repeal laws, and higher courts sometimes adopt the

[395] Hoecke, Van M. Law as communication, p. 171.
[396] Ibid., p. 173.
[397] Butculescu C. R. Considerations regarding law as an instrument of communication // Judicial Tribune (Tribuna Judica), 2014b vol. 4(2), p. 22-29; Kłodawski M. Przepis prawny jako komunikat. Uwagi o refleksji nad komunikacją w polskim prawoznawstwie // W Komunikologia. Teoria i praktyka komunikacji. Red. Emanuel Kulczycki, Michał Wendland. Poznań: Wydawnictwo Naukowe Instytutu Filozofii UAM, 2012, pp. 205-222.

position of lower ones, changing the interpretation of the norm in a very significant way. In this case, we are talking about legal communication between a judge and a legislator, where the law enforcement norm turns out to be a message, and the new legal effect. But such a model is the resulting vector of a whole series of deliberative communication permeating judicial practice. Deliberative communication most often (but not always) approaches the dialogical model of peer-to-peer communication and leads to the emergence of special communicative spheres in which the parties are convinced, leading to their position becoming, if not consolidated, then at least not conflictual. Van Hoecke describes five such spheres.[398] First, both sides accept the decision proposed by the judge and agree with him. The second is that the higher court accepts the arguments of both sides, including the one who disagrees with the court of first instance, and the arguments of this court itself. Third, if the case is interesting enough, then it is published in educational or scientific literature, and legal scholars join the discussion. Fourth, the case receives media attention, the media joins in its discussion, it goes beyond the legal audience. Fifth, the case receives a public response, and citizens join in its discussion. As a result of the expansion of spheres on various issues, various options for a public forum responsible for public control, criticism and discussion are being formed. The multiplicity of the public forum is the realization of the circularity of judicial decisions, which at the same time in such a complex and multi-stage way ensures the legitimization of the judiciary, the recruitment of which in democratic societies is almost always carried out in an undemocratic (professional) way. As a result of this interpretation, the application of law turns out to be a multifaceted communicative process involving legislators, judges of various instances, civil servants, participants in the judicial process, legal scholars, the media and even society as a whole.

He pays special attention to the legal doctrine, the last level of legal autonomy, which is far from widespread for existing legal systems. Legal doctrine is the main

[398] Hoecke, Van M. Law as communication, p. 238.

space and, at the same time, the main tool for improving the legal language and legal methodology, which by themselves, at the level of methodological autonomy, cannot achieve high degrees of perfection. In the context of the doctrinal methodology, he hypothesizes that it is the basis for the further development of law, since it will ensure that legal "professions will use each other's activities as building blocks for building their own functional activities".[399] In fact, we are talking about the fact that at the level of doctrinal autonomy it will be possible to form communicative structures that flexibly coordinate the communication of the main legal professions in a way that does not reduce the level of their institutionalization.

The main obvious functions of legal doctrine are the description of legal norms (the development of theories of legal sources and theories of interpretation) and the systematization of legislation. But its main potential lies in the long-term development of a consensus of lawyers combining practice and theory. This consensus represents the legal culture that arises around legal research on the patterns of T. Kuhn's general scientific paradigms. Legal culture is based on the commonality of concepts in the definition of law, the establishment of its sources, the methodology of its creation and application, theories of argumentation and legitimation, as well as a common basic ideology. Discussions of basic concepts can be both explicit and implicit for most lawyers, however, they are the basis for their long-term internal intergenerational communication and communication with society as a whole. And it is they who lay down the communication structures necessary for the legitimization of law, which is especially scarce in the conditions of state law established on democratic principles. It is worth noting that the researcher details the mechanics of such legitimation, characteristic of the society observed by van Hook, in such a way as to align his ideas with the general contours of Habermasian deliberative democracy. His legal doctrine opens up into public forums, together with which he begins to form structures for a wide range of communicative actions.

[399] Ibid., p. 243.

At the beginning of his research, van Hook stated the asynchrony of theory and practice, and defined the inertia of the former as higher than the inertia of the latter in relation to social dynamics. These gaps of inertia are sometimes reduced, both in the conditions of normal science and in situations of scientific revolution. His proposed interpretation of the Luhmann autopoiesis, which van Hook himself characterizes as a completely formal and positive theoretical project,[400] consists in opening, with the help of an essentially networked concept of circularity of a closed legal system, into the deliberative communicative processes of a democratic consensus on the establishment of legitimate laws. Law is interpreted as an open system consisting of combinations of various types of communication (unilateral, multilateral, command and advisory), arranged hierarchically, but inside and on top of hierarchies, connected into a flexible whole mainly by network circularity. The theoretical reflection of such a system places high demands on legal doctrine. If she can respond to this challenge, she will be able to put forward and justify effective algorithms for building communicative structures that support communicative actions, and minimize the inertial gap by intensifying the development of law.

Conclusions:

Van Hoecke creates a communicative theory of law that allows, on the one hand, to reconcile the confrontation of closed (Luhmann) and open (Habermas) approaches to law in such a way as to show the unity of legal development as a resultant vector for multiple legal systems of the past and present. The logic of his theory is designed to take into account the increasing role of international organizations in legal genesis in the development of the two-tier legal system of the European Union. Based on legal pluralism, he abandons the dominance of tree-like models of legal communication in favor of circular models close to network models in order to form the widest possible view of law.

Van Hoecke's basic understanding of legal communication is intersubjective, in this respect Van Hoecke follows Habermas. Intersubjective communication is

[400] Ibid., p. 258.

institutionalized into a special social subsystem, which is law, in this regard, van Hook follows Luhmann, correcting his ideas so as to show the cognitive openness of the legal system and its non-absolute operational closeness. The analysis of the generally accepted signs of law in theory allows the thinker to reduce and redefine their list, abandoning the fundamental importance of such signs as connection with the state, coercion and justice.

As a result, law is understood by him as chronologically consistent, but achieved in different legal systems, the development of levels of legal autonomy: primary norms directly regulating intersubjective social communication and "gathering" into legal institutions, and secondary norms (norms on norms) in their development generate formal and procedural autonomy of law universal for all legal systems; their The complication leads to the emergence and institutionalization of basic legal professions serving lawmaking and law enforcement; the emergence of a special language among the latter and styles and types of argumentation based on it culminates in the emergence of methodological autonomy of law; the translation of methodology through the system of professional education and scientific activity culminates in the formation of doctrinal autonomy of law.

The development of levels of autonomy leads to the fact that hierarchical links between legal norms are increasingly replaced and/or supplemented by circular ones, whereas the norms themselves are the basis of legal communication. Unlike A.V. Polyakov, Van Hoecke does not distinguish between legal communication and communication about law, in his theory all communications related to law are legal, and law itself is defined through communication as such ("law as communication").

There is no universal "primary element" for all legal systems, each legal system has its own and represents certain structures of communicative action that form legal norms in these historical conditions. In other words, it is impossible to specify once and for all a specific element of the sender-legal norm-recipient chain as a source of its legal nature. But in this way, it is possible to specify the types of communication characteristic of a particular level of legal autonomy. He considers legal communication of the doctrinal autonomy of law to be the most significant for

the modern development of Western continental legal systems, since it reduces the asynchrony of theory and practice.

Based on the results of the second chapter, the following *conclusions* can be drawn.

The Western communicative theory of law, emerging as a response to the challenge of globalization and the idea of a united Europe, can be divided into two levels. The first is represented by the communicative theory of law in a broad sense, as a set of communicative legal theories formulated within the framework of the social theory of the Frankfurt School, explaining law not essentialistically, but functionally, and showing the role of law in the formation of Western democracies as a product of consensus or conflict of intersubjective communicative actions. These theories are designed to establish the democratic beginning of normogenesis both at the level of law and at the level of morality, while keeping the regulatory function of law in focus. Communicative legal theories break up into a closed approach to law, in which law is interpreted as an autopoietic autonomous subsystem of the social system (Luhmann), and an open approach showing the intersubjective foundations of legal genesis, realized in communicative rationality (Habermas) or the struggle for recognition (Honneth). The second is represented by the communicative theory of law in a narrow sense, which allows us to answer the question of how law develops in the context of the pluralism of the existence of various legal systems. The communicative theory of law uses communicative legal theories as its methodological foundation, on the basis of which a compromise approach is sought that overcomes the confrontation of a closed and open approach through the correction of the former through the introduction of network (circular) elements into hierarchical models of relations between legal norms and communicative processes associated with their creation and implementation. The Western communicative theory of law identifies elements of communicative action related to legal norms in order to explain the development of basic types of legal autonomy and to substantiate the fruitfulness of the development of European law

at the beginning of the XXI century. Based on the intensification of legal science (doctrine).

Already at this level of comparison, it can be seen that the center of A.V. Polyakov's communicative concept of law is a person from the point of view of the moral dimension of his being (while all moral principles are united in the principle of mutual legal recognition), whereas the Western communicative concept of law is focused on impersonal institutions and processes. This difference seems to be fundamental.

CHAPTER 3. The communicative theory of law in the context of the memorial turn

§ 3.1. Memorial turn: Law as a socio-forming memory in the social ontology of M. Ferraris

The memorial turn represents the actualization of research on social (collective) memory within the framework of the interdisciplinary research field memory studies, the conceptual and methodological foundations of which were laid in the works of M. Halbwacks, J. Assman, A. Assman, P. Nora and M.Y. Lotman.[401] Throughout the twentieth century, in this problematic field, there was a transition from the study of the past (the main goal of historical science at that time) to the study of collective ideas about it, including the processes of reverse determination between social transformations and historical memory.[402] If the early research of the founding fathers of memory studies touched, in principle, on local aspects of the theory of history and the theory of culture, focusing on how common memories of living contemporaries and their dead predecessors are distributed in culture, connected by generational sequence, then in the XXI century memory is a key concept for explaining the resource basis and the causes of geopolitical confrontation, the formation of social and political identities and the process of

[401] See: Halbwachs M. The social framework of memory / Trans. from fr. and the introductory article by S.N. Zenkin. M.: New Publishing House, 2007, 348 p.; Assman J. Cultural memory: writing, memory of the past and political identity in high cultures of antiquity / Translated from German by M.M. Sokolskaya. M.: "Languages of Slavic culture", 2004. 368 p.; Assman A. The Long Shadow of the Past: Memorial Culture and Historical Politics / Trans. from it. Boris Khlebnikov. M.: New Literary Review, 2014, 328 p.; Assman A. New discontent with memorial culture / Trans. from it. Boris Khlebnikov. Moscow: New Literary Review, 2016. 232 p.; France-memory / P. Nora et all. / Translated from French: Dina Khapaeva. St. Petersburg: Publishing House of St. Petersburg University, 1999, 328 p.; Lotman Y.M. Semiosphere. St. Petersburg: Iskusstvo-SPB, 2010. 704 p.

[402] Repina L.P. Historical memory and modern historiography" // New and Modern History, 2004, No. 5, pp. 33-45; Repina L. P. Cultural memory and problems of historiography (historiographical notes). Preprint WP6/2003/07. M.: Higher School of Economics, 2003, 44 p.; Savelyeva I. M. History and time: In search of the lost. M.: Languages of Russian culture: Koshelev, 1997, 796 p.; Savelyeva I. M. Knowledge of the past: theory and history: [in 2 volumes]. St. Petersburg.: Nauka, 2003. Vol. 1: Constructing the past, 631 p.; Syrov V. N. Historical memory and historical knowledge: the problem of correlation // Philosophical descriptions. 2020. No. 22, p. 9; Syrov V. N. Communication and historical cognition // Bulletin of the Volgograd State University. Episode 7: Philosophy. Sociology and social technologies. 2015. No. 3(29), pp. 84-91.

socialization.[403] Separate studies of legal memory[404] do not revoke the fact that images of the common past as a source of doctrinal legal concepts and a tool for legitimizing doctrinal legal principles remain underestimated in legal science. The image of a common History cements national identity, consolidates diverse points of view on the future of the country and the goals of state-building as projects of a common cause for citizens. The struggle for memory and the right to an active memory policy is becoming the arena of a modern redrawing of the world legal order and political regimes, in which the traditional struggle for markets for these spheres is being reformatted. Today, the memorial turn is typical for almost all areas of humanitarian knowledge, and the philosophy of law is becoming its last frontier.

It is no coincidence that V.V. Savchuk comes to the conclusion that "media is a condition that gathers and unites people into wholeness and manifests the result of their efforts in forming a new reality. They are the condition of the whole, its source and method of reproduction".[405] In this interpretation, media is memory. Anyone who has lost personal archives, paper or digital, will not consider this thesis hyperbole. Individual memory, devoid of means of objectification, is mute and almost dead. She needs a voice, but a voice is just a cultural stereotype, a cliche that the media habitually denote. In the Washington University Law Review analyzed in the previous paragraph, legal bloggers very often resorted to the metaphor of the voice to show that the blog strengthens the inclusion of their theoretical ideas in

[403] Johnson D., Malinova O. Y. Symbolic politics as a subject of political science and Russian studies: studies of the political use of the past in post-Soviet Russia // Political Science. 2020. No. 2, pp. 15-41; Heisler M.O. The political currency of the past: History, memory, and identity // The Annals of the American Academy of Political and Social Science. 2008. Vol. 617, N 1, pp. 14–24; Torsti P. Why do history politics matter? The case of the Estonian Bronze Soldier // The Cold War and Politics of History / Ed. by J. Aunesluoma, P. Kettunen. – Helsinki: Edita Publishing Ltd., 2008, pp. 19-35; Koposov N.E. Strict regime memory. History and politics in Russia. M.: New Literary Review, 2011, 320 p.; Miller A.I. Historical politics in Eastern Europe at the beginning of the XXI century // Historical politics in the XXI century / edited by A. Miller, M. Lipman. M.: New Literary Review, 2012, pp. 7-32; Miller A. I. The role of expert communities in the politics of memory in Russia // Politiya: Analiz. The chronicle. Prognosis (Journal of Political Philosophy and Sociology of Politics). 2013. No. 4 (71), pp. 114-126; Miller, A. I. The politics of memory in post-Communist Europe and its impact on the European culture of memory // Politiya: An Analysis. The chronicle. Prognosis (Journal of Political Philosophy and Sociology of Politics). 2016. No. 1(80), pp. 111-121; Malinova O. Y. Politics of memory as a field of symbolic politics // Method. 2019. No. 9, pp. 285-312.

[404] Rybakov O. Y. Russian legal policy and legal memory // Philosophy of Law. 2004. No. 4(12). pp. 25-29; Shapovalov A. A. The system of law as a special kind of socio-legal memory // Legal policy and legal life. 2020. No. 1, pp. 128-135.

[405] Savchuk V.V. The phenomenon of turning in the culture of the XX century // International Journal of Cultural Studies. 2013. No.1(10), p.103.

public discourse. The voice, of course, has a chance to be heard the first time. But the appeal to the meaning he brought is possible only in a memorial perspective, regardless of what the trajectory of repeating appeals will be, virulent in the sense of the Dawkins meme, van Raan's sleeping beauty or a short segment of a linear straight line. New media, expanding, integrating, combining, reorganizing old media in time and space, reformatted not only the configuration of the subject, but also the configuration of memory that supports different voices. In this case, the intersubjective space turns out to be a public memory, which implies a revision of the concept of text.

Objectification of memory is based on natural communication channels that use the human body to transmit messages. Artificial channels appear with the first artifacts of material culture, starting with ornaments and drawings. The development of complex artificial communication channels, primarily writing systems, is associated with the development of the state. Their distribution has never been a private matter. Up to modern times, communication technologies have never been distributed as freely as they are now, subject to censorship and various kinds of public restrictions and social censorship, the national systems of which differed in fundamental features in the history of formation and architectonics, which we can see, for example, on the examples of the Anglo-Saxon[406] and continental[407] legal systems.

In the pre-digital era, the "production" of memory as the production of texts was carried out in the logic of Modern social ensembles based on communication asymmetry. Collective memory was produced under the control of the state. The state ensured the separation of historical science into an independent disciplinary field, censored the knowledge it received and sent it to the education system. It also controlled the replication of mass culture, accumulating basic historical myths, as well as the degree of openness of library and archival collections. At the same time,

[406] Tikhonova S.V. The concept of freedom of speech in Modern times: free thought vs rebellious slander // Bulletin of the Saratov State Law Academy. 2012. No. 2(84). pp. 36-37.

[407] Tikhonova S.V. Development of the censorship legal policy of the Russian Empire under Alexander I // Legal policy and legal life. 2014. No. 3. pp. 73-74.

mass media still include an ordinary member of society in their structure only as a recipient – in these conditions, instead of individual mnemonic activity, they are offered an already prepared image of the Past. Therefore, the history of the twentieth century is sometimes characterized by the manifestation of conflicts between the official history of political discourse and its individual interpretations.

Regardless of the ratings, the fact is that digital technologies have provided the communication "emancipation" of users and a permanent censorship crisis. First, they provided individuals with direct access to mass and group communication, which had previously been determined by social stratification and elitocratic qualifications. Secondly, they made it possible to integrate mass, group and personal communication in accordance with personal tastes and needs. Thirdly, they provided tools for rapid and comfortable integration of this kind. Of course, all these characteristics did not arise simultaneously, they continue to converge during the development of various Internet services. The mass nature of digital liberation continues to gain momentum as the audience of new media grows. According to the analytical report Digital 2020 by the public creative agency "We Are Social" and the Hootsuite platform, at the beginning of 2020, more than 4.5 billion people used the Internet, while the audience of social networks exceeded 3.8 billion, almost 60% of the world's population is online, 5.19 billion people use mobile phones (half of Internet traffic accounts for on these devices), the average person spends 40% of their waking time on the Internet – 100 days a year.[408] According to the Ministry of Digital Development, Communications and Mass Media of the Russian Federation for 2022-2023, there are 101.4 million Internet users in Russia, which is 83% of the population (98.3 million of them, i.e. 81% use the Internet every day). The average time spent by users on the Internet is 3 hours 56 minutes, 91% of all time spent on the Internet is on mobile devices.[409]

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[408] Digital 2020: 3.8 billion people use social networks / We are social & Hootsuite, 2020. URL: https://wearesocial.com/blog/2020/01/digital-2020-3-8-billion-people-use-social-media (accessed 12.02.2024).

[409] Internet in Russia. Moscow: Design Studio REFORM, 2023. pp. 23, 30. URL: https://digital.gov.ru/uploaded/files/internet-v-rossii-v-2022-2023-godah.pdf (accessed 03.14.2024).

Mobile applications are used in all areas of daily life, from financial management to building romantic relationships. Using digital technologies, users consume content that they produce themselves. If before the memorial turn, the production of the past was directed only from public authorities to private individuals, today its direction includes a "decentralized" vector – from masses to masses, through nodes of filtration, oblivion and partial public control. Today, there is clearly an active role of the state, which "joins" in this process not only and not always as an "instance", but also as one of the subjects "playing by the rules", since it can legally control it, although to a large extent, but only through indirect legal influence on information intermediaries.

The ability of the Internet to act as an institution/memory resource has attracted more and more the attention of the humanities in recent years. Thus, D.A. Anikin and A.Y. Bubnov interpret the Internet as a mediator of memory, transforming the dissemination of collective historical memory with virtual communication strategies.[410] A similar position is demonstrated by A.V. Pestova, who considers the Internet as an "archive" of cultural memory.[411] The epiphenomena of the Internet as memory tools have been studied, for example, by A.V. Shutaleva and E.A.Putilova, who analyzed the role of Internet memes in the transmission of social memory,[412] as well as L.V. Zimina, who, based on a comparison of printing and electronic publishing, identified hypertext technologies as an ideal model of cultural memory.[413]

[410] Anikin D.A., Bubnov A.Yu. The politics of memory in the network space: the Internet as a mediator of memory // Questions of political science. 2020. Vol. 10. No. 1 (53), pp. 19-28.

[411] Pestova A.V. The Internet as an "archive" of cultural memory // Cultural memory and cultural identity. Materials of the All-Russian (with international participation) scientific conference of young scientists (XI Kolosnitsyn readings), Yekaterinburg, March 25, 2016 Yekaterinburg: Ural Federal University named after the first President of Russia B.N. Yeltsin, 2016, pp. 141-143.

[412] Shutaleva A.V., Putilova E.A. Internet meme as a way of reproduction of social memory // Historical, philosophical, political and legal sciences, cultural studies and art criticism. questions of theory and practice. 2017. No. 12-3 (86), pp. 219-221.

[413] Zimina L.V. Internet or network technologies of cultural memory // News of higher educational institutions. Problems of printing and publishing. 2002, No. 2. pp. 64-75.

To date, all practices of collective memory reproduction have been mediatized.[414] The Internet has absorbed and given new life to all literary genres related to memory, from diaries (and here it is necessary to recall the phenomenon of the blogosphere, in which a private diary is hybridized with the media) to memoirs, brought to life multi-user computer games on historical topics, opened archives, allowed the "reanimation" of the presence of historical figures through fake thematic accounts of social networks.[415] As shows E.N. Shapinskaya, in digital (post) historical space is juxtaposed with a variety of types of representations of the historical past, from academic discourse to purely playful forms.[416] The analysis of the mediatization of memoir testimonies in blogs and social networks allowed M.A. Ageeva to attribute to the memorial and nostalgic resources of the Runet not only thematic historical sites and classroom academic projects, but also all types of social networks, since their purpose is to update old ties, search and unite people who have a common past, among others.[417] Autobiographical, commemorative, memorial and memoir media texts are an integral element of the media space, acting as a framework for user self-presentation, narrative and storytelling. All these materials are interactive and connective, they are embedded in social communication and included in a fundamentally incomplete polylogue. Its content is redundant, conflicting and contradictory at the same time. On the one hand, classical strategies for rational work with information are problematic in an over-saturated environment, where information garbage is difficult to separate from qualitative knowledge, and where the subject is more often guided by emotional and aesthetic criteria. On the other hand, the polycentricity of the images of the Past is opposed to clear classification schemes. What is perceived today as something dubious, tomorrow may become reliable evidence of bygone days, allowing them to be reconstructed.

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[414] Artamonov D. S., Tikhonova S.V., Chebotareva E. E. Theory of niche design as a tool for media memory research // Steps/Steps. Vol. 8 No. 3 2022 p. DOI: 10.22394/2412-9410-2022-8-3-10-24. p. 13.

[415] Artamonov D. S., Tikhonova S. V. The politics of memory in Internet memes: from visualization of history to fakes // Polis. Political research. 2022. No. 5. DOI 10.17976/jpps/2022.05.06. p. 83.

[416] Shapinskaya E.N. History in digital format: the future of our past // Culture of culture. 2020. No. 1, p. 6.

[417] Ageeva G.M. Mediatization of memory: memoir testimonies in blogs and social networks // Bulletin of Tomsk State University. 2012. No.363, pp. 68-74.

Users are not just playing history in the media environment, as society ceases to be reproduced in pure offline forms. It's time to write the history of the digital society and create a digital philosophy of history.[418] Therefore, the main characteristic of the Internet as a memory space is the total digitalization of traces of the Past, when the trace itself is available for cognition by the subject only on condition that it is objectified in digital form, and the tools of its cognition are based on digital media. The main imperative of memory production is the principle of "I did not post – I did not!", which is important not only for establishing the ontological status of events, but also for their temporal comprehension. Considering that the skills of non-digital perception of the past (through printed texts and analytical contact with artifacts) at a minimum, they are simplified, and media literacy is developing, the limits of digitalization of the Past are represented by the Baconian idols of the genus. The experience of quarantine measures in connection with the COVID-19 pandemic has shown that in the conditions of a developed digital media sphere, the balance of online and offline is more a matter of chance than a conscious choice of humanity, in its totality, the crisis factor is more important than the cumulative one.

Summing up, we can say that the modern stage of the memorial turn is characterized by the transformation of the Internet into a medium of memory and its tool, ensuring the continuous production of the digital Past. The assignment of information to the status of evidence of the Past today takes place through digital objectification, and it does not matter whether it is about the results of scientific research or an online confession in a blog.

What significance does the memorial turn have for the communicative theory of law? It carries two large-scale challenges that require philosophical and legal reflection in the perspective of legal communication. First, it is the emergence of a new version of social ontology, offering a different view of the social role of law and the social status of legal communication. Secondly, it is the transformation of

[418] Artamonov D.S., Ustyantsev V.B. Digital philosophy of history: statement of the problem // Izvestiya Saratov University. A new series. Series: Philosophy. Psychology. Pedagogy. 2020. Vol. 20. No. 1, pp. 4-9.

memory into a strategic concept of national security and state sovereignty, which cannot but affect the structure of communications about law and involves a revision of the categories of justice and responsibility in the context of the conceptualization of the concepts of "historical justice" and "historical responsibility".

Rough outlines of the answer to the first challenge can be found when referring to the social ontology of M. Ferraris, called the "theory of documentality". M. Ferraris belongs to the "new realism", a trend that has many points of intersection with "speculative realism" (that is why there are many references to Ferraris in G. Harman's works[419]). Ferraris's new realism not only bridges the gap between continental and analytical philosophy, but also rethinks the relationship between ontology, epistemology and social theory. The search for a new realism is close to the tasks of flat ontologies that arose at the beginning of the XXIst century, but Ferraris is revising social ontology. His task is to identify the nature of social objects in comparison with physical and ideal objects,[420] and the media turn out to be the key to understanding sociogenesis for him.

According to Ferraris, the existence of social objects is determined by the phenomenon of recording. He constructs this thesis in the plane of a polemic with the theory of J. Serle, which he defines as "the main point of view in social ontology".[421] We are talking about the works of J. Searle "The Construction of Social Reality"[422] and "Making the Social World: The Structure of Human Civilization", [423]as far as I can tell, are extremely little in demand in Russian social philosophy and rarely cited, especially against the background of "The Social Construction of Reality"[424] by P. Berger and T. Luckmann. Ferraris needs to show the fallacy of

[419] For example, see: Harman G. The Only Exit From Modern Philosophy // Open Philosophy. 2020. No. 3(1), pp. 132-146. https://doi.org/10.1515/opphil-2020-0009.

[420] Ferraris M. Social Ontology and Documentality // Approaches to Legal Ontologies. Theories, Domains, Methodologies. Law, vol. 1. Eds.: G. Sartor, P. Casanovas, M.A. Biasotti, M. Fernández-Barrera. Berlin: Springer Verlag, Dordrecht, Heidelberg, 2010, pp. 83-97.

[421] Ferraris. M., & Torrengo G. Documentality: A Theory of Social Reality // Rivista di estetica. 2014. No.57. pp. 11-27. https://doi.org/10.4000/estetica.629.

[422] Searle J. R. The construction of social reality. Free Press,1995, 241 p.

[423] Searle J. Making the Social World: The Structure of Human Civilization. Oxford University Press, USA, 2010, 224 p.

[424] Berger P. & Luckmann T. The social construction of reality; a treatise in the sociology of knowledge. Doubleday, 1966, 249 p.

actually generally accepted ideas in social knowledge that a collective social subject is an independent entity acting due to the presence of collective beliefs that form collective identity and collective intentionality.

For Ferraris, the Searle theory is the quintessence of reductionism, in which social phenomena are reduced to the properties of their material carriers. Ferraris shows that in social reality there are objects whose existence is possible solely due to human activity; at the same time, they cannot be elevated to carriers even through their functions mediated by collective representations. These are, for example, legal and social institutions, social roles, promises, marriages, associations, enterprises, states, electronic money. Social objects depend on people, without them they would disappear. But this dependence does not mean that social objects are obedient tools in human hands, or that anyone can change the structure of social reality. On the one hand, the creation of an object can limit human will; anything that gives new freedom introduces control. On the other hand, social objects make it possible to commit social actions – buying or getting married would be impossible if appropriate social objects were not created in society.

In order to preserve the integrity of the social world, Ferraris proposes to expand the reductionist model with two intuitions: first, the identity of social objects is not directly related to people's beliefs and intentions, and secondly, social objects are determined not by the properties of the media, but by the rules of construction.[425]

If individual intentions cannot change the social world, then the latter cannot be determined by a set of individual ideas. The existence of collective representations is very often postulated, but the question of the mechanics of the transition of the individual into the collective always remains open. Specific people very often do not want to pay taxes, and if we stand on the positions of reductionism, the mass character of the position should give an appropriate collective idea, and, as a result, the rejection of taxes. However, this is not happening. Why? Ferraris insists

[425] Tikhonova S. V. M. Ferraris's Theory of documentality and social media: media hacking as hacking cultural memory // Galactica Media: Journal of Media Studies. 2022. Vol. 4, No. 2. DOI 10.46539/gmd.v4i2.262. p. 89.

that the emergence of social objects is based on a social act that establishes the content of mutual responsibilities and expectations: "it is the content created in a social act, and then recorded somewhere, that determines the nature of the actual restrictions and guarantees the longevity of the social object".[426] Its principal characteristic is fixation by writing in documents. Through documentation, the content of a social act is removed from the field of subjectivity, which allows it to be realized as an independent object, in its independence close to ideal and material objects. Where the content of a social act ceases to be subjective, it ceases to be individual; this is where the transition to the collective takes place.

For Ferraris, each social object depends on a specific document. Each document depends on the social act that initiates it. As a result, a social object depends on people who recognize the document defining it. Ferraris also tends to refer to documents as social objects, noting their special nature. Firstly, they have the character of basic ones (objects that do not have the characteristics of documents rely on them). Secondly, only documents have social content, which Ferraris reduces to propositionality, modeling the relationship between the participants in the situation. People's beliefs may not correspond to the propositional object of the document, but if specifically, these people consider such a document mandatory (Ferraris notes that recognition of obligation is related to the procedure for accepting the document), then their relationship after certification by the document will take a form close to the propositional model. Curiously, Ferraris considers it permissible to bring together (to certain limits) reductionist social ontology and his socio-ontological concept at the level of document objects, whereas "pure" second-order social objects remain, in his opinion, a blind spot for reductionism. The pathos of his concept is aimed at exposing the process of transition from the physical to the social, as a result of which both social bodies associated with physical bodies and social bodies deprived of such a connection appear.

[426] Ferraris. M., & Torrengo G. Documentality: A Theory of Social Reality. p. 16.

What is a document? In the first approximation, these are legal acts. And the very examples chosen by Ferraris, for example, the Italian Constitution, and his appeals to the procedures for the adoption of documents indicate their normative nature. It is curious that this position largely reproduces the generally accepted understanding of normativity prevailing in philosophy and theory of law, where the most significant social norms receive state protection through consolidation in laws, thus transforming into legal norms, after which the regulation of public relations by law begins, that is, their transition into the form of legal relations. However, Ferraris insists that normativity is a consequence of documentality, and not documentality is a formalization of normativity. Indeed, as part of the digitalization of the memorial turn, a change in the way of documentation becomes obvious, namely, documentation is a condition of normativity. As we have seen, the document records a social act. For the latter, Ferraris puts forward the necessary and sufficient conditions: a) the presence of at least two people performing an action (gesture, utterance or text) and b) a record of this action.[427] The number of people involved, of course, can be large; besides people, things can be involved in social objects. But in general, the necessary sufficient conditions allow Ferraris to describe a minimal social phenomenon as an atomic unit. If you remove people from it, there will remain a physical reality that is unable to produce a social reality (in this perspective, the interaction of Laturov non-humans for Ferraris will fall outside the social framework). If you remove the record, the social act immediately "dissolves" into reality, losing its ability to retain its meaning over time. A recorded act, on the contrary, acquires the ability to last as a social object, and the duration of its existence depends both on the duration of the recording and on the lives of the people included in it. So, the document for Ferraris is media, distant communication.

Usually, in social theory, the structure of a social act somehow coincides with the structure of a communication act – subjects interact with each other, communicating the meanings of their actions, hoping to change joint behavior in

[427] Ferraris M. Collective intention or documentality? // Philosophy & Social Criticism. 2015. No.41(4-5), pp. 423-433. https://doi.org/10.1177/0191453715577741.

such a way that it will lead to the desired result. The subjective meaning of the communicant is clear to him, is based on his knowledge of the current situation and is the basis of his actions. The main problem of social communication is the synchronization of the subjective meanings of communicants, which is equivalent to understanding. The main problem of social interaction is the distribution of the statuses of social subjects, equivalent to the establishment of a social structure. Social action and communication act mostly coincide, although the assumption that a social action may require a change of several communicative moves, or that several social actions may follow from one message, is quite acceptable. In contrast to this common place, the idea of Ferraris means splitting the social and the communicative with a doubling of the communicative. Communication doubles, since the very social act in Ferraris is communication (we have seen that it boils down to a gesture, a statement, a word), and the communicative nature of the recording is obvious. For now, we'll designate the communication of the social act as primary, and the communication of the record as secondary, based on their chronological order.

Primary communication is the vaguest aspect of the Ferraris concept. On the one hand, he criticizes collective intentionality, and correlates its action, as well as the action of individual intentionality, with the level of recording, designated by me as secondary communication. Accordingly, primary communication cannot be interpreted as a product of intentionality or a process of its definition. The procedural aspects belong to the recording order. It is at the level of secondary communication that the formation of a collective "We" takes place, whereas the primary one is always a meeting of only "two minds".

Primary communication, apparently, is the decision of the real participants in the negotiations with the aim of consensus. At first glance, it should be the product of a conscious construction of the norm. However, Ferraris shows that although the existence of a social object requires at least two human minds, an increase in the number of participants will lead to their participation ceasing to be subjective. "Many of those involved in this process do not in any way think about the social object they are involved in creating, and at the same time somehow manage to

influence this process. At the same time, there may be many other people who really think about it, but are still unable to make such an impact (think of a financial crisis or a war). Apparently, we are putting together a puzzle: social objects, as we have seen, depend on the mind, but they are independent of knowledge (and even of consciousness)".[428] Once a social object is registered, it affects people regardless of whether they think about it or not, whether their knowledge of it is superficial or detailed. Further, Ferraris shows that normativity is not constructed as a project, in any case, it can be constructed no more than "alpha-masculinity",[429] since the individual refers to social reality not as a legislator (even if we take a historically real legislator as an example of an individual), but as a subject. The norm is given to the subject from the outside, not from the inside: "We are not constructors of meaning. At best, we are receptors of meaning".[430]

Secondary communication is a trace of the "solution". Since the trail ceases to depend on those who created it, it determines their behavior even if the creators cease to consider it a reasonable or correct guideline for their will. The trace creates a norm; if the norm is put into effect, then the document is functional, it is "strong" in Ferraris terminology. If he fails to embody himself in a series of people's actions, "normative practice", then he turns out to be "weak".

Another reason for dividing documents into strengths and weaknesses in Ferraris is to divide them into documents that record acts and documents that record facts.[431] He describes the difference between strong and weak documents as follows: "A strong document is one that has some kind of power (such documents are, for example, banknotes, tickets, contracts), while a weak document is one that simply tracks what happened, for example, expired tickets expired or contracts that are no longer valid. The latter have a simple informative power, not a normative one, although they can restore some such power in a new kind of context – for example,

[428] Ibid., p. 425.
[429] Ibid., p. 430.
[430] Ibid., p. 431.
[431] Ibid., p. 425.

when in a judicial context an expired train ticket is considered an alibi for the accused".[432] Here there is a clear parallel with the legal texts of A.V. Polyakov.

Secondary communication is interpreted by Ferraris extremely broadly. Recording can be done in any known way, using video, Internet media text, etc. Moreover, an individual's memory can be used as a recording medium: "Memories and footprints in people's heads can be documents in the sense that they are the material, the support on which the content defining the identity of a social object is inscribed (for example, when the memory of a witness to an oath is a document on which this oath depends)".[433] In other words, the memories of an individual perform the function of a document in those situations when it comes to the testimony of an eyewitness or the testimony of a witness.

Some documents may depend on other documents; there may be document hierarchies. Ferraris says that mass social interventions require updating networks of documents,[434] the interaction of which is not transparent to us. In general, the exchange of documents forms traditions and ultimately ensures the emergence of a collective "we". The documentary community is a human reality in which collective subjects are formed, including both collective identity and collective intentionality. But collective memory gathers them into a single functional whole, which in the Ferraris concept is reduced to documentality. If individual memory is sometimes suitable for performing the function of a document, then a document is always a collective memory, and as such it acts as the starting point of sociogenesis. Thus, the media that provide recording (and recording for Ferraris is identical to any method of objectification) is memory. It is not divided into living and dead, collective and historical, because social actions grow on texts. Documentality is cultural memory, strong where it generates social objects and weak where social action is exhausted. It may seem that from the standpoint of Ferraris, cultural memory, for example, about the legal customs of the ancient Romans, is weak and feeble. But to the extent

[432] Ibid.
[433] Ferraris. M., & Torrengo G. Documentality: A Theory of Social Reality, pp. 20-21.
[434] Ferraris M. Collective intention or documentality? p.429.

that it is the basis of the legal institution of property in continental legal systems, it is quite strong. At the same time, media and law as a system of texts in the sense of A.V. Polyakov for M. Ferraris, if not identical, then basically coincide, since the Ferraris document corresponds to the one used by A.V. Polyakov's concept of a legal text, emphasizing its basic social mission. On this basis, the law should be attributed to the order of record (secondary communication) and can be described as a system of strong documents, the strength of which is determined by their procedural nature, which fully coincides with the secondary rules of G. Hart. In the Ferraris version of social ontology, law cannot be reduced to the classical function of a behavior regulator and understood as a mechanism that blocks some types of human actions and provides a green corridor for others. It acts as the main (strong) way of producing social objects, which constitute the content of social reality. In this case, law refers to the deep order of social ontology as the basic source of sociogenesis, and not a closed or intermediate social sphere, whose task is to ensure coordination between the other spheres (Luhmann) or mediation of the transition from the social to the political (Habermas). Since there are no markers of demarcation between different media in Ferraris' social ontology, the textual foundation of rulemaking and law enforcement is absolutely mediocre for him, from which it can be concluded that law is social memory, in any case, its most powerful and fruitful part for sociogenesis. The radicality of this conclusion leaves far behind the typical Russian tradition and the idea that law is an element or type of social memory.[435] Moreover, in this case, the classic thesis that society creates law is replaced by the thesis that law creates society.

It should be noted that Ferraris' social ontology, like Habermas' theory, is not interested in the problems of conflict social dynamics. If I do not want to participate in the creation of a social object, its initiator will simply find another counterparty. In addition, the loss of muscle strength for Ferraris is a natural process similar to aging. Meanwhile, it is obvious that there are situations in which both individual and

[435] See the works of O.Y. Rybakov and A.A. Shapovalov cited above.

collective subjects (even if the latter are defined in the sense of Ferraris) refuse to take into account the fact that someone has "all the moves written down."

In our country, Ferraris' ideas are known mainly in the context of his reinterpretation of the document phenomenon, which is of interest to representatives of memory studies. Meanwhile, in his homeland they have long been integrated into the context of the philosophy of law. The first systematic exposition of his theory of documentality is published in the first volume of the collective monograph "Approaches to Legal Ontologies. Theories, Domains, Methodologies. Law",[436] which aims to conceptualize the theoretical landscape of legal ontology development in the context of digital semantic networks. The original problem of the monograph was concretized by members of her team, M. Fernandez-Barrera and J. Sator in a separate paper comparing the classifications of legal concepts in legal doctrine and IT ontologies.[437] The authors show that the legal discourse, for which a formal ontology can be constructed, is heterogeneous and includes the discourse of the legislator, the discourse of judges, the discourse of legal doctrine and the discourse of the theory of law. Focusing on the latter two, they try to establish their suitability for the construction of legal formal ontologies, since the peculiarity of both "legal doctrine and theory lies in the fact that they try to identify, define and organize the objects of the subject area in broader conceptual structures".[438] In this aspect, both sub-discourses contain the intellectual roots of the conceptual structures used in legal reasoning. Their analysis of the topological and semantic characteristics of the systems of legal concepts developed throughout the history of legal thought allows researchers to conclude that, in general, the conceptual structure of legal doctrine and theory generally corresponds to the modern type of conceptual modeling required for the development of ontologies. In this perspective, philosophy and

[436] Approaches to Legal Ontologies. Theories, Domains, Methodologies. Law, vol. 1. Eds.: G. Sartor, P. Casanovas, M.A. Biasotti, M. Fernández-Barrera. Berlin: Springer Verlag, Dordrecht, Heidelberg, 2010. https://doi.org/10.1007/978-94-007-0120-5. XIV, 282 p.

[437] Fernández-Barrera M., Sartor G. Classifications and the law: doctrinal classifications vs. computational ontologies // European University Institute Working Papers. LAW. 2010. №10. Available at SSRN: https://ssrn.com/abstract=1698686 or http://dx.doi.org/10.2139/ssrn.1698686.

[438] Ibid.

theory of law approach semantic ontologies as a structure of knowledge representation, and in this case, it passes as an object of analysis into the sphere of artificial intelligence theories. It seems that in this way the transition of the theory of law to the stage of digital theory is revealed.

That is why the term ontology is used in the publication "Approaches to Legal Ontologies. Theories, Domains, Methodologies. Law" easily interferes from philosophical meaning to the meaning of computer science and back. For example, T. van Engers and co-authors[439] consider ontology precisely in the context of the semantic development of the network, understanding it as "dictionaries that can be used to describe the universe of discourse. An ontology describes a domain using a set of terms used and, in particular, how these terms are structured and defined".[440] In this case, the legal discourse objectified in the public discourse of the network becomes an engineering-controlled object in which the meanings of the terms used are set when designing a semantic ontology for semantic search, which can contrast or, conversely, try on the meanings used in terms by jurists, practicing lawyers, and ordinary people rooted in the paradigm of common sense. In the same vein, the arguments of P. Kazanovas and co-authors are based, considering the inconsistencies between empirical data and semantic content in the legal sphere.[441] In this perspective, M. Ferraris's theory of documentality sets the vectors for modeling legal communication in social systems with augmented reality and a neural network component. In this case, one can observe a sequence and an internal deep connection between the work of the medial and memorial turns in the context of the

[439] Engers T., van at all. Ontologies in the legal domain // Approaches to Legal Ontologies. Theories, Domains, Methodologies. Law, vol. 1. Eds.: G. Sartor, P. Casanovas, M.A. Biasotti, M. Fernández-Barrera. Berlin: Springer Verlag, Dordrecht, Heidelberg, 2010. https://doi.org/10.1007/978-94-007-0120-5, pp. 233-261, p.234.

[440] Ibid., p. 234.

[441] Casanovas P., Casellas N., p Vallbé J.-J. Empirically-Grounded Development of Legal Ontologies: a Socio-Legal Perspective // Approaches to Legal Ontologies. Theories, Domains, Methodologies. Law, vol. 1. Eds.: G. Sartor, P. Casanovas, M.A. Biasotti, M. Fernández-Barrera. Berlin: Springer Verlag, Dordrecht, Heidelberg, 2010. https://doi.org/10.1007/978-94-007-0120-5, p. 49-67.

communicative problems of the philosophy of law, the transformation of socio-legal ontology caused by it at the level of space and time.[442]

Nevertheless, conceptual bridges from social ontology to legal ontology through logical-semantic ontology may turn out to be too long and unreliable. In this case, the convergence of the communicative theory of law and the theory of documentality can be built through the chimerical logic of metaxis, which directly integrates memorial aspects into the legal recognition of A.V. Polyakov, in which the transfer to Another human status has a beginning, but lasts exactly as long as the recognition itself lasts, i.e. it is based on the memory of the original act.

The second challenge is related to the deepening of scientific understanding of the fact that ideas about the past are an important factor in sustainable political and legal development. The versions of "how it really was" replicated in the media environment often become more influential in the public consciousness than the data recognized in historical science. The public consciousness today is oversaturated with conflicting and contradictory images of the past, each of which can be used as a resource for memorial wars as a special type of ideological confrontation. In the conditions of the media dictate of post-truth, memorial conflicts provoke protest movements and socio-political struggle, intertwining with the system of economic, political, and ethnic determinants of political instability. Therefore, modern states somehow pay serious attention to the control of History, trying to keep the unity of memories of key moments and events of their development. In historical science, such activity is fixed by the concept of memory politics (less often – historical politics). In legal science, the concept of "memory politics" has not yet received categorical development and has not been correlated with the politics of law, often the metaphor of "memory politics" most likely hides a certain legal ideology with its struggle for preferred values. A number of strategic planning documents can be attributed to the steps towards the development of the legal concept of "memory

[442] Artamonov D.S., Kalinin S.S., Kulikova S.A., Tikhonova S.V. Temporality of law in light of axiology // SHS Web Conf. Volume 134, 2022 14th Session of Euro-Asian Law Congress “The value of law” 2021, Article Number 00100, Number of page(s) 5. DOI https://doi.org/10.1051/shsconf/202213400100.

policy", among which the adoption of "Fundamentals of state Policy for the preservation and strengthening of traditional Russian spiritual and moral values".[443]

Memory policy is diverse in terms of its subject matter, since it is implemented by a variety of participants, but the state is the key actor. The legal aspects of the state policy of memory are related to the legal regulation of commemorative and commemorative practices, in which the state uses legal means to protect one or another image of the past, monuments and ways of celebrating memorable dates. Historical researchers give the state legal policy of memory a limited legal characterization. Firstly, the latter is considered most often in a negative dimension, as an activity punishing the replication of images of the Past, recognized by the state as unacceptable. Secondly, the state as the basic subject of the state-legal policy of memory is interpreted in a positivist way, as a source of legal prescriptions, conducting its own will based on its own interests. This approach negates the role of legal values in the state policy of memory, the fundamental importance of natural rights and anthropological goal-setting in law. The problems associated with overcoming this approach will be outlined in the following paragraphs.

Conclusions:

The differences in the way of documentation, which structure social reality in different ways, demonstrate the beginning of a memorial turn, the essence of which is the collapse of the asymmetric system of production and distribution of ideas about the past, developed by states in Modern times, caused by the digital revolution. The media space is becoming an arena for the struggle of individual, group and corporate voices of memory, opposing its traditional agents – states, science and education systems. Historical memory is becoming the main resource of political and geopolitical conflicts, and as such, ideas about it are beginning to penetrate the subject field of the philosophy of law. Due to the sharp actualization, the research area of memory studies exceeds the traditional volumes of research for

[443] Fundamentals of state policy for the preservation and strengthening of traditional Russian spiritual and moral values (approved by Decree of the President of the Russian Federation No. 809 dated November 9, 2022) // Official Publication of legal acts. URL: http://publication.pravo.gov.ru/Document/View/0001202211090019 (accessed 07.14.2023).

interdisciplinary fields, and the theoretical expansion of its characteristic concepts and thems in all socio-humanitarian scientific disciplines begins.

The first challenge of the memorial turn for the communicative theory of law is associated with the emergence of a new social ontology in which memory is associated with the basic processes of sociogenesis. The theory of documentality by M. Ferraris considers society as a set of social objects that cannot be reduced to physical media due to a special set of procedures for their creation. The interpretation of sociogenesis as a result of the formation of social objects based on the recording procedure allows us to rethink the memorial function of the media, identify its fundamental nature, and link it with the main structures of legal recognition and legal communication. Law as the main mode of production of social objects can be identified with memory and considered as the main source of sociogenesis. The actual synthesis here can bring together the phenomenological layers of the communicative theory of law, which consider the meaning of law in communication, with the analytical tradition, reinterpreted by Ferraris, which considers law as an action.

This interpretation is based on the equivalence relationship between the concept of a legal text formed in the communicative theory of law and the concept of a document in the theory of documentality. In addition, the awareness-recognition-interaction triad ("communicants are aware of each other's powers and corresponding responsibilities, mutually recognize themselves and them and interact on this basis") in the structure of legal communication by A.V. Polyakov, as well as maintaining the result of the act of legal recognition in further interaction is possible only in the memorial perspective. Regardless of how much memory processes are explicated in the definitions of legal communication and legal recognition, real or demonstrative amnesia will make them impossible, and in a situation where the media provide the widest opportunities for silencing, substituting and falsifying memory, its legal role becomes especially important. The very interpretation of law as memory is based on a methodological strategy of chimerical synthesis that ignores

the genetic connections between theories while emphasizing their functional similarity.

The second challenge of the memorial turn for the communicative theory of law is related to the deepening of scientific views on the scale of the contribution of collective ideas about the past to the sustainability of political and legal development. The specialization of memory politics, its transformation into state legal policy, initiates the emergence of a new categorical series with philosophical and legal content, the introduction of which affects the understanding of communication about law, and strengthens the connection between the communicative theory of law and legal communication studies.

§ 3.2. Historical justice as a new category of political and legal discourse

In the modern world, the historical past acquires a decisive character in the conduct of policies aimed at achieving social consensus. The production of historical representations becomes a means of asserting state sovereignty, the unity of the nation, the political legitimacy of the ruling elite and the identity of local network communities. It takes place within the framework of the memory policy, which is a purposeful activity to represent a certain image of the past, which is in demand in the modern political context, through various verbal and visual means.[444] The political instrumentalization of the past assumes that historical knowledge is used in order to maintain political stability and patriotic education. Modern mass ideas about history are not just a "natural memory" passed down from generation to generation. According to Pierre Nora,[445] they are the result of the activities of professional agents of historical politics who perceive the past as a large,[446] but limited set, as a limited resource that is not enough for everyone.[447]

The implementation of historical policy inevitably leads to conflicts of memory, which can escalate into memorial wars. Despite the widespread use of the term "memorial war" or its equivalent "war of memory" in the media, journalism and political rhetoric, these concepts have not been subjected to deep theoretical scientific understanding.[448] It seems obvious that memory wars are a kind of informational (semantic) wars,[449] which, according to G.L. Tulchinsky, are a product

[444] Linchenko A. A., Anikin D. A. The politics of memory as a subject of philosophical reflection // Bulletin of Vyatka State University. 2018. No.1, p. 19.

[445] Nora P., Ozuf M., Puimezh J. de, Vinok M. France-memory. St. Petersburg: Publishing House of St. Petersburg University, 1999, pp. 17-50.

[446] Achkasov V.A. "The politics of memory" as a tool for building post-socialist nations // Journal of Sociology and Social Anthropology. Vol. XVI. 2013. No. 4 (69), p. 109.

[447] Kalinin I. Battles for history: the past as a limited resource // Inviolable reserve. 2011. No. 4 (78), pp. 330-339.

[448] Mamonov F. Tambov uprising 1920-2015: "memorial war". URL: http://eurorussians.com/tambov-rebellion / (date of access: 03.11.2020).

[449] See: Labush N. S. On the question of the theory of information warfare in the conflictological paradigm // Conflictology. 2014. No.4, pp.105-128.

of discursive practices of myth-making, reflecting the conflict of interpretations of certain actions of opponents, including in the "deep" past.[450]

Thus, the memorial war can be characterized as a process of confrontation between the concepts of historical memory, aimed at achieving political, economic, military or other goals related to the formation of identities and the conduct of memory policy through the dissemination of specially selected and prepared historical information and historical sources through the media.

The competition of versions of the past is not an exclusively epistemological problem, within its framework there is a redistribution of what and why one collective entity "owes" another, and this ethical perspective becomes the basis of legal claims. Therefore, in the conditions of the "decline of globalization", historical justice becomes one of the most demanded categories in socio-political discourse. In many ways, it is connected with strategies of state and legal self-preservation, actively developed by geopolitical actors. The desire to strengthen state sovereignty actualizes work with political identity as a key resource for internal consolidation. Historical justice in this regard allows us to appeal to the general social tradition of interpreting justice, embedding political and legal goals in the ideological structures of social solidarity. As G.Sh. Aitova notes, the historical view actualizes the question of a sense of justice, which motivates a person to social and political changes in reality.[451]

Historical justice is a special case of social justice. The latter connects public order and truth as an ideal, translating their interaction into the plane of legal regulation of public relations. Social justice as a concept is closely related to the concept of the common good. As E.V. Karchagin notes, in the classical philosophy of justice, many concepts were formulated precisely on the scale of the city.[452] He gives examples of Plato's ideal state project (as a policy it acts both as a city and as

[450] Tulchinsky G. N. Historical memory in symbolic politics and information wars // Philosophical Sciences. 2015. No.5, p. 27.

[451] Aitova G.Sh. Sociocultural and historical meanings of justice: the Russian context // Alternatives. 2016. No. 2, p. 300.

[452] Karchagin E.V. Historical justice in the context of urban space // Sociology of the city. 2010. No. 3, p. 48.

a state), "Utopia" by T. More (federation of 54 cities), "City of the Sun" by T. Campanella. All these projects are characterized by the lack of demarcation of the city, the state and society. Polis syncretism in the Middle Ages was strengthened by the hermetic tradition of identifying the macro- and microcosm (recall the "As Above, so below; as below, so above" of the Emerald Tablet), the city-state turns into a model of the universe. In this perspective, the common good as the good of each individual and the good of the community is autonomously "packed" by city walls, within which justice should flourish. Moreover, since (social) justice belongs to the highest level of public goods, it is implicitly understood as universal and, in fact, eternal: what is truly true in human affairs remains so through the centuries.

It is no coincidence that in Western theories of justice, the appearance of temporal-historical conceptual constructions is a relatively late phenomenon related to modern times. Since they, one way or another, rely on the idea of personal autonomy, which is closely related to the concepts of the social contract of the natural law school, the atomicity of the individual is implicitly contained in them on the rights of a "natural fact". From this point of view, the separation of individuals in the social world is primordial, justice is actualized after people begin to enter into social relations. For example, in the theory of historical justice, R. Nozick's ownership is justified retrospectively, through the principle of equity in acquisition. D. Antseri and J. Reali, Nozick's theory is reduced to the formula "Personal property is justified if the rights to it are established through the principles of justice in acquisition, transfer and rectification (correction) from possible injustice".[453] So understood, it opposes potentially totalitarian views linking the need for the state for a fair distribution of goods and wealth. The "historicity" of Nozick's theory of justice is revealed as a sequence of procedures that ensure the fairness of the established legal order. In other words, its temporality is poorly connected with the historical process, since it emphasizes the retrospective structure of individual interactions.

[453] Reale J., Antiseri D. Western philosophy from its origins to the present day. From Romanticism to the present day (4) / Translated from Italian and edited by S. A. Maltseva. St. Petersburg: Pnevma, 2003 // URL: http://yanko.lib.ru/books/philosoph/reale_antiseri-4_tom-roman_now-2003-a.htm (accessed 04.11.2020).

As O.V. Taratun shows, in Russian culture and socio-political thought, the interpretation of social justice is characterized not by an individualistic, but by a conciliatory-collectivist character.[454] If in the Western liberal tradition all members of society are the bearers of the common good, then in the Russian tradition they include the religious and/or state community as supranational institutions. In this case, social justice is easily switched to the historical register, exposing the problem of the fate of the people, characteristic of the philosophy of history. If social justice concerns everyone, then historical justice arises where people are ethnically and nationally connected. The subject – bearer of historical justice is always collective.

It is no coincidence that Russian philosophy takes the form of historiosophy, in which the doctrine of the general principles and laws of history, based on ontological, deterministic and progressive postulates, is brought to the moral and ethical plane, where the purpose of history merges with its meaning and takes the form of deontological, religious and anthropological ideals. N. Berdyaev connects historiosophy as a philosophical tradition with the formulation of the following questions: "What did the Creator intend about Russia, what is Russia and what is its fate… Can Russia go its own special way without repeating all the stages of European history?"[455] The historical fate of Russia, its identity and place among the flourishing and disappearing civilizations formed the basis of the polemic of Westerners and Slavophiles, Eurasianism. Integrating eschatology, progressivism and the doctrine of the essence of man, historiosophy formed a special image of the course of history moving towards overcoming the alienation between Man and God. In this context, social justice took a historiosophical form – ideas were developed about the justice of History and justice in History from the point of view of the full disclosure of the mystical potential of human self-development, requiring the synthesis of national, cultural, collective and personal principles. Thus, the Russian category of "sobornost", which is significant for historiosophy and has no analogues

[454] Taratun O.V. The development of ideas about social justice in Russian society: historical context // Bulletin of the Volga Region Academy of Public Administration. 2012. No. 2 (31), p. 124.

[455] Berdyaev N.A. The Russian idea. The main problems of Russian thought of the XIX century and the beginning of the XX century. Paris: IMGA-Press, 1971, p. 36.

in other languages, incorporates social and historical justice into the idea of free spiritual unity of people in brotherhood and love both in church and in worldly life.

These two lines of interpretation of social justice, retrospective and historiosophical, autonomous and, in many ways, polar, became unreasonably narrow by the end of the twentieth century. The history of the Modern century cruelly divided, contrasted and mixed the destinies of peoples. However, the new world order that emerged after the Second World War is based on the primacy of universal panhuman axiology, which is weakly sensitive to the problems of historical subjects. Nevertheless, humanity's breakthroughs towards a unified global world are still stably limited by the course of the historical process. Social reproduction, even in the period of globalization, assumed an inextricable link between the state, national, local and cultural aspects of social life.

It is in this vein that the concept of historical justice is becoming increasingly relevant. For example, A.A. Gagaev and P.A. Gagaev put forward a concept of forms of justice focused on the macro-temporal aspects of social development, which includes such forms of justice as universal, general, private and intergenerational evolutionary, historical, ethnic.[456] Historical justice, from their point of view, is based on objective rather than constructivist models of the historical space-time continuum, historical truth is significant for it in terms of continuity between various historical forms of life of a particular ethnic entity, its identity, teleology of development (inclusion in progress/regression) and general socio-cultural dynamics. Since justice in international relations presupposes equality of races and peoples in terms of self-determination, it touches on the problems of justice of equivalent exchange between them, justice of retribution, prohibition of war and violence, and maintenance of their natural life cycles and the fundamental problem of substantiating the possibility of so-called "collective responsibility" as such from the point of view of the fundamental principles of law and justice.

[456] Gagaev A.A., Gagaev P.A. Theory of natural and historical justice // Kazan Bulletin of Young Scientists. 2017. Vol. 1. No. 3, pp. 62-65.

A.A. Shevchenko defines historical justice as the search for measures to correct some situation in the past in which there was a violation of the norms of justice (most often as a result of the application of the "right of the strong") on the part of the State or its authorized persons in relation to a group of people identified on some arbitrary basis (national, religious, geographical, etc.).[457] He considers the restoration of historical justice possible within the framework of retributive justice and compensatory justice (compensation for damage caused in the past).[458] The restoration of historical justice, therefore, is understood by him as a set of measures to achieve the desired state of affairs, which includes both punishment of the perpetrator and compensation for damage to the injured party. If we leave aside the problems of punishment and compensation (cases of their implementation are known in the international legal practice of restitution). However, in this interpretation, both the "desired state of affairs" and the "culprit" are equally problematic. Knowledge of the essence of the "desired state of affairs" is based on an adequate assessment of the past (is there really reason to believe that without the actions of the perpetrator, the injured party has reached a specific stage of historical development). As for the collective responsibility of those responsible for violating historical justice, here we come up against the problem of the indeterminacy of the historical subject.

In the cited article, A.A. Shevchenko tries to translate the problems of historical justice into the aspect of consensus and communication, which in modern social theory is fixed by the concept of "communicative rationality". He believes that the general approach of restorative justice requires, firstly, the goodwill of the agent of justice restoration, and, secondly, a joint discussion of restorative justice procedures necessary to develop compensation options. However, the model proposed by him cannot be implemented until a commonly used understanding of the subjects of history and the stages of their development is formed.

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[457] Shechenko A.A. About historical justice // Bulletin of Novosibirsk State University. Series: Philosophy. 2011. Vol. 9. No. 4, p. 49.

[458] Ibid., p. 50.

Hypothetically, general historical disciplines (philosophy of history and theory of history) should be responsible for this conceptual work, since they ensure the formation of historical truth about history on a macro scale.

However, this particular segment of historical knowledge has long been in a state of methodological crisis. The concept of world history as a common vector in the development of peoples has been undermined by the confrontation of formational and civilizational approaches. Neither the philosophy of history nor the theories of history have so far offered any alternatives for it. Moreover, the theory of history continues to be dominated by micro-approaches aimed at studying historical events and phenomena outside their connection with macro processes. The tasks of historical research in the historian (the definition of historical methodology adopted in the German-speaking tradition is a concept denoting a set of various theories and methods of historical science) are concentrated around the concept of a historical source, understood as a "monument", "trace", "remnant", "material", as well as a "representative", "eyewitness" and "a witness to the " past.[459] Social philosophy focuses on the systematization of theories of globalization and information society, which are dominated by the image of the future, which does not imply a special need for differentiation of historical subjects. The stages of development in the life of collective communities are increasingly less often considered as the result of historical patterns, they are associated with purposeful state building and management.

It can be said that society, disappointed in historical laws, turned to legal ones, trying to find in them a replacement for the lost sense of security and predictability of History. If the formational approach predicted a progressive change of formations, then this left hope that whatever happened, a better future would surely come, and the civilizational approach demonstrated the progressive development of mankind, and this also gave confidence in the future.[460]

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[459] See: Buller A. Introduction to the Theory of History: a textbook for academic undergraduate studies. 2nd ed., reprint. and additional M.: Yurait pbl, 2018, 180 p.

[460] Lyakhova L.N., Galanina N.V. The problem of objective laws of history in historical science // Bulletin of the Udmurt University. The series "Philosophy. Psychology. Pedagogy". 2006. No. 3, pp. 129-131.

The denial of the very fact of the existence of objective laws of history has called into question all the projects of the future, designed not only by scientists, but also, more importantly, by politicians. Moreover, the subjectivization of the perception of historical processes has led to the understanding that the uncertainty of the future is a direct consequence of free interpretations of past events.

Speculations with history pose a challenge to the formation of identities of national communities, which are built on the basis of constructing a common historical memory.[461] In modern society, the fine line between historical memory and history as a science is increasingly blurred, as an increasing number of Internet users participate in the production of historical knowledge, using digital technologies to search and interpret the facts of the past.[462] But if in the scientific discourse of historical science there is often a refusal to search for historical truth,[463] then for consumers of historical information the question of historical truth becomes fundamental.

In the 1990s and 2000s, one could observe the rapid growth of memorial legislation in a number of European countries.[464] These laws did not just carry out a certain policy of memory, but legally fixed the interpretations of historical events necessary for society or the authorities, which are of decisive importance for the construction of historical memory. Most memorial laws are declarative in nature, which further emphasizes their symbolic significance. However, in some countries it became necessary to adopt normative legal acts criminalizing certain views on the past, mainly for denying the Holocaust or genocide, and Article 354.1. "Rehabilitation of Nazism"[465] was introduced into the Criminal Code of the Russian

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[461] See: Hobsbawm E., Ranger T. The Invention of Tradition. Cambridge: Cambridge University Press, 1983.

[462] Wolff R. S. The Historian's Craft, Popular Memory, and Wikipedia. Writing History in the Digital Age, edited by Jack Dougherty and Kristen Nawrotzki, University of Michigan Press, Ann Arbor. 2013. P. 65 // JSTOR. URL: www.jstor.org/stable/j.ctv65sx57.10. (accessed: 04.04.2020).

[463] Smolensky N. I., Bagdasaryan V. E., Naumov O. N., Zhuravlev V. V., Sharifzhanov I. I., Resnyansky S. I. The problem of objectivity of historical cognition (round table) // Bulletin of the Moscow State Regional University. Series: History and Political Sciences. 2019. No. 4, pp. 86-114.

[464] Koposov N. The politics of memory and memorial laws // Online magazine "GEFTER". 2012. 28 Feb. URL: http://gefter.ru / archive/3302 (accessed: 06.08.2020).

[465] The Criminal Code of the Russian Federation No. 63-FZ of 07/13/1996: as amended. Federal Law No. 292-FZ dated 07/01/2021 // Rossiyskaya gazeta. 1996.16, June 19, 20, 25; 2022. March 25.

Federation. Criminal punishment for publicly expressing certain ratings on the past has become an important tool of historical policy. The rigidity of such laws creates the illusion of the impossibility of repeating the most terrible crimes of the past, gives confidence in the future, and, most importantly, corresponds to mass ideas of justice.

In ethnology, which partially inherited the problems of historical justice in a sense close to the concept cited by A.A. Gagaev and P.A. Gagaev, primordialism as a doctrine of the a priori nature of ethnic categories has been practically replaced by constructivism, insisting on the artificiality of ethnicity as a product of social construction, and instrumentalism, directly linking ethnicity with the manipulative ideological influence of elites on the masses. The understanding of the ethnic content of socio-political life is almost universally shifting to the platform of the primacy of the individual's free choice of his own national/ethnic identity. If today individuals are able to choose an ethnic community regardless of whether they belong to it by birth, we fundamentally do not fix the historical subject in terms of a "certain circle of people" necessary to establish the addressee of legal regulations involving collective responsibility.

On these grounds, for example, S.I. Posokhov notes that, from a scientific point of view, the boundaries of the concept of "historical justice" are very wide, and the semantic content is very blurred, since "it is a metaphor rooted in a variety of discourses (scientific, journalistic, ideological, ethical) and practices (political, cultural, commemorial). It is an active element of "language games" and an important link in many ideological constructions".[466]

As a polydiscursive metaphor, historical justice is connected with historical truth. Y.I. Dokuchaeva defines the latter as a kind of ideal construct of the past, which seeks to recreate the bits of information from various sources by the scientist. She connects historical truth with "historical truth" – an undistorted reflection of reality, which historical science should give as the final product of its activities, in

[466] Posokhov S.I. Metamorphoses of historical justice // People and texts. Historical almanac. 2016. No. 8, pp. 133-134.

the view of the average layman.[467] These two versions of the vision of historical reality (the historian and the layman) can confront each other, their relationship may contain conflict in an open or hidden form.

The historian does not offer his "product" in a neutral or loyal manner to the layman. The latter's ideas about history are not tabula rasa. Memory studies, as an interdisciplinary field of historical research, considers a set of individual ideas about the past as historical memory. Personal and family history refracts the perception of the historical dynamics of macro-objects, interfacing with images of the past formed by school and university education, the media, fiction, cinema and all possible "places of memory" (memorial complexes and spaces, museums). Modern digital technologies allow the mass individual to easily objectify their ideas about the past. As a result, historical memory is a polyphonic arena for the expression of heterogeneous judgments about the past of a wide range of subjects, it is conflictual, multidimensional and very contradictory. It is within its framework that the ideas of what constitutes historical justice crystallize.[468] And these ideas easily become the basis of memorial wars. From the point of view of the sociological perspective in this area, different collective and individual subjects decide the question of historical justice for themselves in fundamentally different ways, while insisting on the need to restore historical justice, promoting their own position as the basis for a correct decision.

Since historical memory is the basis for building a collective identity, which underlies patriotism and harmonious relations between the individual and the state, states pay close attention to it, forming an appropriate state and legal policy. The state-legal policy of memory concretizes the models of interaction between the state, science and society in the discourse about the past, gradually separating from the politics of memory and historical policy. In modern research, state and legal policy is increasingly associated with the interpretation of the past to solve urgent practical

[467] Dokuchaeva Yu.I. "Historical justice" in the perception of participants in the Russian-Japanese war // Yaroslavl Pedagogical Bulletin. 2014. Vol. 1. No. 4, p. 57.

[468] Artamonov D. S., Tikhonova S. V. Social media as an arena for constructing historical memory // Bulletin of the RFBR. Humanities and social sciences. 2023. No.4. DOI: 10.22204/2587-8956-2023-115-04-74-83. p. 76.

problems and is becoming increasingly important for characterizing the phenomenon of using history to achieve political goals and cultural hegemony in social space. Of particular importance is its relationship with historical science, since scientific validity is one of the key features of legal policy, it is embedded in the doctrine of legal policy as a fundamental principle, and ignoring scientific data in the process of developing and implementing legal policy is unacceptable.[469]

Today, research in the field of memory policy abroad has taken shape in a special interdisciplinary scientific direction, focused on four main topics: 1) the use of the past in the formation of national and regional identities; 2) the study of the memory of colonialism; 3) the "study of the problematic past", memory trauma, the main of which is proclaimed the Holocaust; 4) problems of memory politics in the context of transitional justice – restorative justice aimed at overcoming the consequences of systematic human rights violations related to the history of authoritarian regimes (at the same time, the very concept of an "authoritarian regime" in Western studies is obviously a tool for constructing history).[470] In Russia, along with the study of these topics, special attention is paid to the study of the role of the state and its institutions in conducting memory policy. These studies are focused on state studies, and to denote historical policy, they use the concepts of "state policy for the preservation of historical memory",[471] "state policy in the field of holidays"[472] or "state policy of memory".[473]

Inattention to historical justice entails threats to political stability and sovereignty. At the same time, upholding historical justice must also take into account the necessary measure of freedom of scientific research and opinions, which

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[469] Rybakov O. Yu., Tikhonova S.V. Legal policy as a management of positive law: a new version of the theory of legal policy // Lex Russica (Russian Law). 2015. Vol. 100, No. 3. p. 16.

[470] Efremenko D.V., Malinova O.Yu., Miller A.I. Politics of memory and historical science // Russian History. 2018. No. 5, pp. 128-140.

[471] Popp I.A., Shakhnovich I.S. State policy for the preservation of the historical memory of citizens of the Russian Federation: regulatory and legal aspect // Pedagogical education in Russia. 2018. No. 12, pp. 42-49.

[472] Efremova V.N. State policy in the field of holidays in Russia: a revision of the foundations of identity? // Bulletin of the Perm Scientific Center of the Ural Branch of the Russian Academy of Sciences. 2016. No. 5, pp. 93-98.

[473] Belyaev E.V., Linchenko A.A. State policy of memory and values of mass historical consciousness in modern Russia: Problems and contradictions // Studia Humanitatis. 2016. No. 2, p. 21.

lie on the other side of the scale. In order to pass between the dangers of extremes, as between Scylla and Charybdis, a rationally justified system of goals of the state-legal policy of memory is required, in which historical justice and historical truth will be derived from the rank of metaphors into scientifically based concepts.

Conclusions:

In modern conditions, memorial research is being updated, in which the category of memorial wars acquires special importance. In this context, historical justice becomes the banner of consolidation of alliances and escalation of conflicts, and turns from a metaphor asserting the victory of historical progress into a rational category with philosophical and legal content.

The category of "historical justice" is widely used in political and legal discourse, and its content is determined not only ethically, as a special case of social justice, but also communicatively, in the context of intergenerational ties. It is closely related to the idea of the common good and acts as a regulator of public relations. In the Western tradition, historical justice is understood as a retrospection of the legitimacy of the modern claims of individuals. In Russian interpretations of historical justice, historiosophical motives are strong, linking the historical fate of the people with ideas about the collegiate and collectivist character of Russian society.

In the perception of society and State power, historical justice is determined by ensuring human and peoples' rights, and any attempts to assassinate them cause an appeal to the past. In conditions when historical memory has become the main tool for constructing the identity of the nation and state-building, the importance of the concept of historical justice is increasing. The state uses the power of normative legal acts in its policy of memory, and this is approved in a society in which faith in historical laws has been lost. The idea of historical justice and its legal embodiment supports public trust and ensures the consensus of society with the authorities.

§ 3.3. The culture of cancellation in the context of the communicative and legal theories of J. Habermas and A. Honneth

Lethe is a river in the underworld of Hades, giving oblivion. According to the beliefs of the ancient Greeks, those who arrived in the world of the dead drank its water so that the memory of life would stop tormenting them, and those who left this kingdom by the will of the gods had to drink her water for years so that the memory would return. Some heroes were freed from the waters of Lethe by the gods in order to preserve their memory as a privilege. An alternative to Lethe was the Mnemosyne River, whose waters gave omniscience; according to some religious cults, depending on virtue, the deceased could choose which river to drink from. The mythologeme of Lethe was chosen by B. Melkevik, a legal researcher and follower in the philosophy of law of the ideas of J. Habermas, to concretize the role of the mechanisms of oblivion.[474] The work of these two memory modes is obvious in the digital age, when, on the one hand, as M. Ferraris showed, the Internet provides total mobilization of memory, archiving almost every social gesture, on the other hand,[475] the culture of cancellation becomes a way of rebelling against media influence. In the world of Big Data, the claim that we can forget something is extremely naive, but it is also obvious that people do not want to remember and know everything that is available to them, they actively protest against what violates their cognitive comfort. The mythologeme of Lethe seems to be successful and timely in the light of the aspiration on a very dark and confusing question about the nature of the culture of abolition.

The culture of abolition has become a key phenomenon that has defined the socio-political landscape of the world order in 2022. People (both living and historical figures), companies, communities, events, historical facts, and countries were chosen as the object of cancellation. Cancellation practices are diverse, but

[474] See: Melkevik B. Notes on the history of legal concepts. St. Petersburg: Alef-Press Publishing House, LLC, 2018, pp. 69-86.

[475] Ferraris M. New Realism, Documentality and the Emergence of Normativity // Metaphysics and ontology without myths. By ed. Dell'Utri and S. Caputo. Cambridge: Cambridge Scholars Publishing, 2014, pp. 110-124.

their springboard is always the digital media environment, since the basic set of communication tools of its platforms always contains certain algorithms for eliminating unwanted contacts. A side effect of digital literacy is the routine habit of easily removing the presentation of annoying information guides. On the one hand, users are brought up in the paradigm of controlling the security of the digital space, which they tend to consider private, despite all its publicity. On the other hand, the ease of social cooperation in social media becomes a source of influence when negative emotions quickly bring those who share them closer together in the fight against objectionable fragments of reality.

Various forms of social ostracism are cited as sources of the culture of abolition, but most often they appeal to its Athenian version. However, as a digital phenomenon, the culture of cancellation appears at the turn of the noughties and tenths of this century: "In the 2010s, there were blogs on Tumblr like "Your Fave Is Problematic", the authors of which collected information about ambiguous events, statements and actions of stars. This was the foundation for the emergence of a modern cancellation culture. The expression "to cancel" became a trend after a participant in the project told her boyfriend on the reality show "Love and Hip-hop: New York" that she has canceled him. Very soon, the phrase began to be used "in relation to stars and brands whose behavior or statement users condemned".[476] Very quickly, the cancellation formula began to be applied by a wide range of network movements, among which were #MeToo, #Yaneboyus, and #BLM; a wide variety of categories of celebrities, primarily associated with cinema and television – actors, directors, TV presenters, bloggers, were "canceled" on charges of xenophobia. The "culture of abolition" is often interpreted as a kind of social reaction to a decrease in the effectiveness of classical methods of legal regulation of freedom of speech in the media environment. The Internet is living at an ultra-fast pace, poorly adapting to the long bureaucratic cycles of justice. The use of legal means to protect a good name

[476] Zinoviev N. S. Culture of cancellation as an aspect of public discourse // Student science: current issues, achievements and innovations: collection of articles of the II International Scientific and Practical Conference, Penza, June 10, 2021. Penza: Science and Education, 2021, p. 270.

and business reputation requires serious time expenditures, whereas massive replication of slander, fake, defamation and trolling can be carried out during the day to an audience of millions. The first decade of the existence of the culture of abolition was clearly associated with a reaction to xenophobia, the cases of abolition clearly worked where there was public support for discrimination against all minorities labeled as oppressed in the paradigm of tolerance, while the qualification of the fact of support never corresponded to the legal standards of establishing the act, it could be reduced not only to free interpretation, but also to direct fantasy.

The humanities reacted quite quickly to the new phenomenon. At first, two polar models of its scientific assessment arose. P. Norris showed the confrontation between two groups of researchers, the first include those who see in the culture of abolition a new way of blocking public discussions, i.e. a phenomenon destructive to freedom of speech, the second include those who consider the culture of abolition a new form of appropriation of the right to vote by marginalized subjects deprived of opportunities to exercise this right in traditional forms.[477] The skeptics' camp is much broader today. Typical is the position of C. L. Cook and co-authors, who define the culture of cancellation as "a new catalyst for digital hatred, observed on various media platforms, when large groups of people publicly criticize the actions of a victim and refuse to support this victim, which leads to serious consequences for their livelihoods and well-being".[478] The focus of expert assessments is, first of all, the emotional intensity of discursive practices associated with the culture of abolition. So, E. Ng shows that the energetic core of the cancellation culture is social drama – it is not enough just to give up anything, it is necessary to do it in the most performative form, for example, burn an object associated with the object of cancellation on video, or express your protest in the most expressive way, using provocation and areal abuse.[479] As a result, it is the manifestation of social drama

[477] See: Ng E. No Grand Pronouncements Here...: Reflections on Cancel Culture and Digital Media Participation // Television & New Media. 2020. Vol. 21. № 6, p. 621-627.

[478] Whose agenda is it anyway: an exploration of cancel culture and political affiliation in the United States / C.L. Cook [et al.] // SN Social Sciences. 2021. Vol. 1. № 9, p. 237.

[479] Ng E. Cancel Culture: A Critical Analysis. Cham: Springer International Publishing, 2022, pp. 39-72.

that ensures the immersive inclusion in its process of all those whom the social situation makes in need of cathartic purification. A. Kotek interprets the culture of cancellation as a form of war for social justice, in which ostracism always follows on the heels of perfectionism, asserting an embellished reality: media personalities "adhere to high standards from their supporters, so every mistake they make is highlighted and causes a massive outbreak of disappointment";[480] the desire to be on top makes influencers quickly distance themselves from tarnished competitors, swinging the pendulum of cancellations.[481] It is important that the cancellation is centered around the concept of "public shame", the desire to publicly ostracize those who violated social norms. Network media presence is associated with the so–called parasocial effect – the feeling of a social connection forming between the owner of a public profile and his followers, as a result of which people begin to present social expectations characteristic of neighborhood, friendship and friendship to those with whom they are not even familiar. This effect determines the ultra-fast group dynamics between a network personality and her fans, which can easily move from positive forms to negative ones.

L. Alvarez Trigo shows the connection between the cancellation culture and the Social Justice Warriors movement (the ironic name characterizes the Internet activists who rallied during the infamous scandal dubbed "Gamergate" in 2015.), focuses on the structural features of the cancellation culture discourse related to the technical features of the platforms that generate it (western social networks, including those banned in the Russian Federation as extremist organizations and blocked by Roskomnadzor), namely– the fundamental dominance of short lines messages that do not include context, and a sharp selection of positions around them.[482] The radicalization of a position leads to the fact that it quickly gains

[480] Kotek A. The relationship between cancel culture and perfectionism. A critical discourse analysis of othering strategies in modern communication on the example of internet personalities // ResearchGate [Website]. DOI:10.13140/WG.2.2.34630.40006.

[481] Norris P. Closed Minds? Is a 'Cancel Culture' Stifling Academic Freedom and Intellectual Debate in Political Science? // HKS Working Paper No. RWP20-025, Available at SSRN: https://ssrn.com/abstract=3671026 or http://dx.doi.org/10.2139/ssrn.3671026.

[482] Álvarez Trigo L. Cancel Culture: The Phenomenon, Online Communities and Open Letters // PopMeC Research Blog. 2020. T. September 25, p. 2.

supporters, and the negative features of the object being canceled are hypertrophied. At the same time, people who are not included in a specific echo chamber, or information bubble, may not even know that the cancellation is taking place. Therefore, traditional media always play a special role in promoting cancellation, homogenizing the agenda in such a way as to include those whom Internet wars do not concern in the digital landscape.

As a result, the culture of cancellation fuses economic (refusal to consume a media product), parasocial (the illusion of an equal relationship with the media person associated with the product) and political (the desire to elevate one's Self through hypertrophy of personal ideological differences related to gender, race, status) aspects into a single whole an ethical gesture that radicalizes primarily an emotional attitude. Since the subject of abolition is always a collective (and, in some cases, marginalized) individual who declares his exploitability, alienation and enslavement, and those whose full-fledged subjectivity is recognized are abolished, in this phenomenon one can see not just a new form of social protest, but new ways of redistributing power in the broad sociological sense of the word.

Even in this capacity, the culture of cancellation looks like a completely extralegal phenomenon. It contradicts the presumption of innocence, avoids rational proof procedures, often relies on lies and falsification, and appeals to irrational motives. As soon as the researcher focuses on it, its extreme (and often downright extremist) contrast with the earlier liberal legal doctrine traditional for the Western media environment makes it see something completely alien to Western political and legal thought. Is this product of digital culture really so incompatible with legal thinking and should theoretically be taken outside the framework of philosophical and legal discourse? Within the framework of this paragraph, I will try to identify the philosophical and legal searches of the communicative legal theory of J. Habermas and A. Honneth as an open approach to law in the social whole. On the one hand, the conceptual worlds of these two thinkers differ significantly, Habermas's intersubjectivist communicative approach is very far from the critical pathos of the mature Frankfurt school, whereas Honneth is trying to revive this

pathos. Nevertheless, there is enough continuity between the two research programs, caused by Honnet's consistent work with the teacher's ideas. Therefore, they can be considered as two interrelated perspectives of understanding the culture of cancellation, not polar and partially overlapping, fragmentary without each other, but together allowing to form a very wide panoramic vision.

So, the first perspective of the theoretical "legitimization" of the culture of abolition is Habermasian. As it was shown, the idea of communicative rationality as a source of legal genesis is based on the concept of a special democratic status of the public sphere. The analysis of Habermas' views in relation to the culture of cancellation was carried out by Kh.M. Bridges. Habermas viewed the public sphere as an open space designed for public rational debates of citizens on issues of government. It is in the public sphere that the crystallization of public opinion is carried out, acting as a guideline for the state in the "democracy of the law". According to the researcher, Habermas's ideas are still significant for scientific models of the socio-political mission of the Internet, but in the digital environment, the risks and dangers that Habermas associated with the commercialization of the public sphere of capitalist society, corrupting the subjects of discourse with an entertaining and hedonistic format, are increasing. The early stages of the development of the Internet involved the most educated part of the population in the digital world, and rationality seemed to be an attribute of the new man-made space. The heyday of social networks has shown that the Internet really gives a simple and cheap entrance to the new agora to the broadest masses, but the rational discussions of the masses do not automatically become in it. Moreover, the network presence obeys cognitive comfort when any system of arguments is opposed by an alternative set of facts (or a set of alternative facts) that allow communities locked in echo chambers to remain captive to their solipsistic illusions and demand that society be brought into line with them: "Indeed, commentators today are less inclined to claim that the Internet saved democracy, and more They tend to complain that the Internet has sent democracy into a dead loop. On social media, rational debate – a hallmark

of the civic discussions that took place in the public sphere of Habermas – does not dominate".[483]

Bridges appeals to the very long-standing research results of P. Dahlgren, showing an exponential increase in expressive political participation on the Internet against the background of instrumental participation (the second is aimed at achieving a goal, i.e. purposefully in terms of Habermas, and the first pursues the achievement of emotional discharge).[484] Expressive participation is exhausted by the act of participation itself, and if it is not enough for socio-political changes, then it is enough to concentrate the negative assessment that falls on the object of cancellation. Since the mid-noughties, the trend noticed by Dahlgren has only been increasing, which is confirmed by sociometric studies of the dominance of false information in social networks.[485] It should be noted that it is extremely difficult to find rational debates in the post-truth of social media, but there are plenty of intersubjective representations that form the basis of a collective consensus on the object being canceled.[486] Perhaps this suggests that rationality for public space is a quantitative characteristic rather than a qualitative one, and it is necessary to raise the question not about its presence/absence, but about the degree of its severity. And in this sense, the culture of abolition does not necessarily have to be considered as an ugly caricature of the ideal of Habermas, rather, we have before us his simple deromantisation associated with the thinker's overestimation of the basic attribute of man as a species being. People who freely and on the basis of democratic procedures decide in the public space that other people do not belong among them is the expected effect in a model that has not provided for the possibility of dehumanization

[483] Bridges Kh. M. Language on the Move: "Cancel Culture," "Critical Race Theory," and the Digital Public Sphere // The Yale Law Journal - Forum. 2022. T. January 26, p. 770.

[484] Dahlgren P. The Internet, Public Spheres, and Political Communication: Dispersion and Deliberation // Political Communication. 2005. Vol. 22. № 2, p. 147–162.

[485] Vosoughi S., Roy D., Aral S. The spread of true and false news online // Science. 2018. Vol. 359. № 6380, p. 1146–1151.

[486] Sidorov S., Faizliev A., S. Tikhonova. An Extension of the Susceptible–Infected Model and Its Application to the Analysis of Information Dissemination in Social Networks // Modelling. 2023. № 4. https://doi.org/10.3390/modelling4040033. P. 597.

at the theoretical level and has not put forward a safety mechanism at the practical level.

In the above work, B. Melkevik, developing the concept of Habermas, differentiates the concepts of "memory" and "collective past". He unambiguously associates memory with an individual with unique memories, but the collective past, in his opinion, is something that can be overcome. Without going into the problem of the ontological status of collective memories, I note that Melkevik's views in this part contradict the data accumulated in the research tradition of memory studies. The question of Melkevik's memory is primarily an ethical issue related to the so–called "duty of memory", which is imposed by society. The duty of memory is closely related to the idea that descendants should be responsible for the crimes of their ancestors, in which echoes of blood feud, biblical reminiscences of God's choice and the curse of the "tribes", and the retrospect of such collective identities as the nation and the people are intertwined. In this case, even the epistemic status of the original acts itself is not fundamental (how reliable is the information that they took place), since Melkevik poses his question about memory as follows: "how ethical is it to hold descendants responsible for any actions of their ancestors?"[487] When answering it, he categorically connects the issues of memory and publicity, all crimes with collective subjects and victims must be made public, it is necessary to speak them out in public discussion (here Melkevik is close to the psychoanalytic tradition, insisting on the healing nature of speech about trauma). Only in public discourse can the accused descendants express their sympathy to those who consider themselves victims and share their horror and grief with them. Silencing or denying traumatic events blocks empathy, because you can't sympathize with what didn't happen. Publicity becomes a form of crime prevention, turning memory from an ethical privilege into an open socio-legal construct – after the victims have satisfied their anger with sympathy, from the author's point of view, the memory of trauma is not needed, since it only separates the descendants of the victims and the executioners.

[487] Melkevik B. Decree. op., p. 78.

It is obvious that Melkevik explicates the concept of communicative rationality by J. Habermas to memory. Recall that in Habermas, the development of basic legal norms is controlled by the ethics of discourse, which has a procedural character, i.e. discourse serves as a "communicative court".[488] Why doesn't this court deal with memory? Rational discourse, from this point of view, should come to the conclusion that there are no ethical obligations and obligations in the field of memory. This is how the ethicization of memory is denied, it is completely removed from the plane of ethics, ceases to be an object of protection and is sacrificed to modernity: "it is modernity that can appear in the best light and rush into the future without repeating the mistakes of the past, if we forget this past".[489] However, there is a natural question about what kind of future we are talking about today, since there is no single civilizational project shared by the population of the planet. In addition, as shown earlier, the Habermas model is phenomenological. Firstly, it is focused on the separation of the common experience of intersubjectivity, the basis of which allows us to conceptualize the norm in democratic procedures.[490] At first glance, collective memory relies on intersubjective experience. However, memory itself is an extremely unreliable data source. The "reliable past" is formed not by the voices of memory, but by historical science based on rational work with traces of the past – historical sources. Of course, historical science is unable to answer all the questions about "how it really was." But the purely conventional assertion of a certain historical truth lays a time bomb under the consensus – any thoughtful appeal to its traces will undermine unrelated and contradictory pictures of past events. Issues of expert assessment are fundamentally not resolved by democratic procedures. Secondly, the Habermas model is in principle dialogical, and any interruption of communication in the spirit of a "culture of cancellation" will not allow it to be implemented.

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[488] See: Melkevik B. Jurgen Habermas and the communicative theory of law. St. Petersburg, 2018, p. 53.

[489] Ibid., p. 84.

[490] Artamonov D.S., Tikhonova S.V. "Merciless Merciful Summer" B. Melkevik: collective responsibility and culture of abolition in memorial wars // Theoretical and applied jurisprudence. 2022. No. 2(12), pp. 15-21. DOI 10.22394/2686-7834-2022-2-15-21.

At the same time, Melkevik's discursive "open" memory in itself is not a reliable basis against the possibility of imputing collective responsibility (which objectively remains the subject of scientific discussion), which is understood as a situation where the actions of one or more members of an unspecified group are responsible (both moral and legal) for those who did not commit actions, but the whole group. Collective responsibility is most often assigned on a national basis, although any other one can be used, from gender to social group or place of residence. Responsibility is expressed in punishment, assignment of duties, and sometimes encouragement, in the collective case concerning not only those involved in any action, but those related to the people who committed it, in the broadest sense, up to national identification.

The concept of collective responsibility is historically very archaic, it goes back to the political and legal structure of the tribal community, where communities were responsible for the actions of their kinsman or a member of the community due not only to blood ties, but also because of cohabitation.

In the modern world, the idea of collective responsibility contradicts the presumption of innocence, and the imposition of guilt for acts on persons not involved in them is perceived negatively. However, the practice of applying collective responsibility can be found in the history of the twentieth century, in the recent past, and in the political reality of today.[491]

The use of collective responsibility in resolving political or economic disputes and contradictions may have short-term benefits, but in general it has negative consequences even for those who apply it. From an ethical point of view, collective responsibility in the legal sense of these words reduces or eliminates individual responsibility altogether, and the direct perpetrators can escape punishment. This kind of the collective responsibility is provoked by irresponsible behavior and consumer culture of mass society, as noted by V. Hesle, "... an individual's remorse subsides if he takes part in actions for which he is not solely responsible".[492] The

[491] See: Tokareva S. B. Collective and personal responsibility in society // Power. 2012. No. 3, pp. 44-48.
[492] Hesle V. Philosophy and Ecology. M.: Nauka, 1993, p. 102.

elimination of the personal aspect of the commission of an act, whereas only the individual is the center of the moral act and is responsible for it, leads to negative consequences of the application of collective responsibility, since it is perceived as a "dishonest system of moral imputation".[493]

The issue of collective responsibility is in the focus of public attention in connection with the practices of its implementation. One of them was the culture of cancellation applied in public and political discussions taking place in the modern media space. The concept of collective responsibility is defined in them as not so much a legal one as an ethical construct. Meanwhile, the status of the cancellation culture is not legally defined in general due to the fact that its application ignores accepted legal norms, and its ethical definition causes serious disagreement. The culture of abolition uses social pressure as a method of influencing dissenters, which causes negative consequences and condemnation, however, it can also be perceived as a "soft power" capable of forcing an individual or a community of people to fulfill the moral requirements prevailing in the modern world. Cancellation leads to the termination of support for a social subject (a well-known person, company, brand) in order to oust him from the media sphere, social or professional communities, and force him to publicly repent and change his behavior model. All verbal messages of a "canceled" social subject are punished by boycotting all forms and channels of communication available to him, until a public apology is made and the declaration of the condemned views is terminated. However, even after that, the return to the public space of the subject subjected to the culture of cancellation remains difficult due to the negative effects on his reputation, although there are cases when "cancellation" led to an increase in the popularity of the personality, and a surge of interest in his work and products. In this regard, the culture of abolition can be considered as an analogue of lynching or a form of censorship practice, but at the same time, it is a mechanism for media regulation of public opinion, arising spontaneously or applied purposefully.

[493] See: Platonova A.V. On the way to the concept of collective responsibility: problems and prospects // Bulletin of the Tomsk State Pedagogical University. 2013. No. 5(133), p. 132.

The culture of cancellation is fundamentally retrospective, the statute of limitations does not matter to it, it does not know the proportionality of the act and pressure, collective and individual are not differentiable for it. All these features lead to the fact that the cancellation culture becomes a threat to the model of subjectivity and subjectivity developed by world culture and legal thought. Some subjects in the context of culture turn out to be non-subjects, and the methods of cancellation are not conventionally established.

The Honneth perspective of recognition theory came closest to the problem of dehumanization and denial of the status of the subject. Recognition is an intersubjective dialectical process of accepting oneself and the other as a subject. Honneth needed to carry out a total revision of the concept of autonomy of the subject, including the theory of subjectivity. He connects its foundations in the Western liberal doctrine with the model of the atomic individual, put forward in Modern times in the theories of the social contract. A social contract is concluded by equal individuals who have free will and are confident in their right to act in accordance with it. The social contract creates boundaries for the arbitrariness of the individual, because according to a well-known formula, his freedom ends where the freedom of others begins. Honneth shows that the abstract atomic individual is as utopian as the original social contract itself, the real traces of which have not been found by any jurist since the time of the historical school of law. Of course, today the concept of a constitutional treaty dominates legal thought, describing the relations between citizens and the state established by their will in a modern constitution, although theories of social contract are practically nowhere part of legal doctrine. But the alpha and omega of modern legal thought – the idea of an adult as a legally capable subject – is as little in line with social realities as Hobbes's doctrine of ending the war of all against all by transferring powers to the sovereign.

The standard anthropological situation assumes that an individual always forms his own self-image for a long time in the process of socialization, based on self-concepts objectified by significant others, first of all, by the mother or persons replacing her, and then by all those who turn out to be an authority for the individual.

To act according to your will, you need to know that you have this will, you need to make sure over and over again that your counterparties take it into account. Next, you need to have a certain self-discipline that allows you to differentiate your own affects from your personal self-design strategy, which, again, means a high level of rationality and critical thinking, which is extremely rarely possible without appropriate education. As a result, autonomy turns out to be an ideal that is very poorly realized consciously by most adults. And if a person suffering from, say, alcohol addiction may be legally limited in legal capacity, then a weak-willed person, traumatized by violence and dislike, is legally autonomous, but in real social life he never is.

A short essay "Autonomy, Vulnerability, Recognition and Justice", published by Honneht in collaboration with J. Aderson, in the book "Autonomy and Challenges to Liberalism",[494] is devoted to conceptualizing the problem of autonomy in this vein. The authors focus on "public commitments to reduce the vulnerability of individuals to an acceptable minimum".[495] The individualistic (atomistic) understanding of autonomy obscures the scale of the problem, since liberalism usually proceeds from the idea that marginalized individuals are usually dependents, who are rather an exception to the general rule of full autonomy; defects in their autonomy are corrected by the instrument of guardianship. The authors insist that vulnerability is a fundamental characteristic of autonomy: "individuals – including autonomous individuals – are much more vulnerable and dependent than they have traditionally been represented by the liberal model",[496] which should lead to a total revision of the picture of social justice requirements. For them, autonomy exists only in the context of a) social relations and b) taking into account the internal attitude of the subject to himself. It is an appreciative model of autonomy, in which self–actualization is a path that "we cannot walk ... alone, and we are vulnerable at every

[494] Anderson J., Honneth A. Autonomy, Vulnerability, Recognition, and Justice // Autonomy and the challenges of liberalism: new essays / edited by J. P. Christman, J. Anderson. Cambridge, UK; New York: Cambridge University Press, 2005, p.127-149.

[495] Ibid., p. 127.

[496] Ibid., p. 129.

stage of the path to autonomy – undermining injustice – not only to interference or material deprivation, but also to the disruption of social ties that are necessary for autonomy".[497] The integral components of autonomy – self-esteem and self-confidence – are the emergent result of a long process of intersubjective relationships, where each person is an object of care and takes care of the other. Self-esteem is not formed as a result of thinking alone, it is the product of those assessments that we receive in response to our own responses to the needs and feelings of our loved ones. Autonomy implies both an emotionally loaded self-esteem and the ability to make claims against others in such a way that their behavior corresponds to this self-esteem. The lack of self-respect, external respect and self-confidence destroys autonomy, which the authors demonstrate with examples of trauma (experienced experience of rape or torture). Therefore, achieving autonomy cannot be a private and individual matter of an individual, it requires collective efforts both within local groups (parents, relatives, teachers, etc.) and in society as a whole.

If it is difficult to disagree with the humanistic pathos (very close to E. Fromm's reflections on human self-actualization) of such statements, then the applied conclusions are not so obvious and bring us closer to understanding the ethical and social mechanics of the work of the culture of cancellation.

They are formulated in the section of the essay under consideration, designated by the authors as "Self-assessment: Semantic vulnerability". Here, the authors insist that even those who have not been in the role of a victim can reduce their autonomy through undermining self-esteem, "as a result of stereotypes of humiliation and vilification, as well as in such a way that a person becomes less capable of self-determination in relation to their projects".[498] In other words, guarantees of social justice require the control of semantic resources necessary for positive self-interpretation. Since individuals cannot exclusively independently determine the meanings of their speech actions, the concepts they choose as key to

[497] Ibid., p. 130.
[498] Ibid., p. 135-136.

self-description can be (and, of course, are) denotatively and connotatively negatively semantically loaded (as an example, they cite the "father-householder"). The evaluative nature of the semantic-symbolic field of self-description cannot but influence the recognition autonomy. A marginal (in the broadest sense) lifestyle can become a genuine choice of a person only when he is distinguished by personal stability, has subcultural support and constantly makes efforts to maintain his self-image. In other words, there should be a wide range of "roles" in the semantic environment for self-determination, and these roles should be freed from denigration: "to the extent that a person lacks the feeling that what he is doing has meaning and significance, it becomes difficult to engage in it wholeheartedly. There is at least a tension between living this lifestyle and thinking of yourself as doing something that makes sense".[499] As a result, the socio-cultural environment, positioning the individual's chosen role as insignificant or directly hostile to it, is a demoralizing factor of autonomy. Of course, the authors stipulate that we are not talking about a direct threat to autonomy, but a possible one, which depends on the "degree" of vilification. We suspect that the degrees of denigration are as difficult to quantify as the degrees of rationality. However, Honneth and Anderson conclude that "because of how they can undermine self-esteem, systematic forms of vilification thus pose a threat not only to happiness or self-identification, but also to the freedom of action of those affected".[500]

Thus, the role of the symbolic-semantic environment as a resource of autonomy is twofold. Firstly, a rich and diverse environment that "meets" people's aspirations, strengthens their life projects and gives them a rich self-interpretation. Secondly, a hostile environment restricts freedom of choice and behavior, discrediting specific meaningful life projects, it turns people away from them. Therefore, in the work of Honneth and Anderson, the idea of protecting the semantic environment from the "threat of vilification" is drawn as a red line.

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[499] Ibid., p. 137.
[500] Ibid., p. 137.

This essay was published some years before the first episodes of the cancellation culture appeared, how they are recognized in modern society. Accusations of defamation have themselves turned into a real threat and socio-political force. The semantic environment cannot be the subject of total control, and this is not a legal issue, but an epistemological one – meanings, despite all their subjectivity, evaluativeness and intersubjectivity, are formed on the basis of an adequate (at least, verified by practice) objective reflection of reality. However, thinking, speaking and acting subjects are part of the semantic environment, which does not exist without them (if people disappear from the planet, and books, for example, remain, the semantic environment will disappear anyway). The culture of cancellation is obviously connected with new practices of identifying subjects and objects in the digital environment, and here the Honneth concept of forgetting recognition is very relevant for us.

In his Tanner lecture "Reification: A View of the theory of recognition",[501] Honneth introduces the concept of forgetting recognition, linking it with reification proper. He considers reification based on the concept of G. Lukács, and sees in it a type of human behavior that violates moral or ethical principles, considering other subjects not in accordance with their characteristics as people, but as objects deprived of life and will (things or goods).[502] Honneth insists that recognition and empathetic participation are primary to cognition and detached understanding of social facts. If recognition retains a living empathic connection with the other as a subject, then the second implies reification. If for Lukács reification is something like a mental habit, the strengthening of which leads to the fact that a person loses the ability to empathize with living people, then Honneth concentrates on how "a genuine, involved human perspective is neutralized to such an extent that it eventually turns into an objectifying thought,"[503] i.e. shows the transition between

[501] Honneth A. Reification: A Recognition-Theoretical View // The Tanner Lectures on Human Values. https://web.archive.org/web/20080228090803/http://www.tannerlectures.utah.edu/lectures/documents/Honneth_2006.pdf. 2005, pp. 89-135.

[502] Ibid., p. 94.

[503] Ibid., p. 125.

involved participation and an act of detached reflection. For Honneth, it is important to show that in different social contexts, the relevance of recognition and objectification are variable, these are literally two modes, two registers of attitude towards people that need to be able to switch. Honneth insists that the criteria for changing the register should be external to the subject, since they are related to social functions, but does not give a clear answer to the question about their mechanics, stating its vagueness. Objectification, reification presuppose the loss of the living content of recognition, and it is about this loss that Honneth speaks through an appeal to oblivion. He describes the experience of reification as follows: "our social environment appears here, much like in the world of perception of an autistic child, as a collection of simply observable objects devoid of any mental impulse or emotion".[504] To be replaced by reification, recognition cannot simply disappear from our consciousness. But it can go from the foreground to the background if we change the concentration of attention on different goals, so a tennis player, focused on playing and winning, forgets that her playing partner is a close friend, a dear person to her. In addition, recognition is blurred if we obey external thought patterns containing certain ways of selecting information, and here we do not so much forget as, obeying prejudices, turn to "denial" and "defense".[505]

It should be noted that the importance of the Honneth concept is also great because it is applicable not only to individuals, but also to collective identities, which are backed by groups of people. It is possible to switch attention, forget, and deny both people and things, and dehumanization as a variant of a personalized cancellation culture fits directly into the explanatory schemes of Honneth. Of course, it is obvious that Honneth developed his model of forgetting recognition to describe the work of individual consciousness, and not for collective action. However, in the collective practices of the culture of cancellation, we easily find those cognitive moves that the philosopher so diligently details.

Conclusions:

[504] Ibid., p. 129.
[505] Ibid., p. 131.

The culture of abolition as a form of social protest, radical in terms of consequences, based on everyday practices of Internet interactions, has become the main trend in the socio-political landscape of the redistribution of the world order in the global confrontation between Russia and the collective West in 2022. From a scientific point of view, the contradiction between the culture of abolition of the presumption of innocence and rational proof procedures is a logical consequence of the communicative and legal theories of J. Habermas and A. Honneth.

The theoretical legitimization of the culture of abolition in the Habermasian perspective is based on the absolutization of communicative rationality. Introduced in the context of Habermas's ideas, B. Melkevik's concept of "Lethe" presupposes the conventional establishment of a regime of oblivion for historical memory. The culture of cancellation characteristic of the digital media environment blocks the Habermasian model of communicative rationality used by Melkevik. In modern society, examples of a "new ethics" may be considered, suggesting the possibility of placing blame for the actions of one person on the group with which he identifies. The concept of collective responsibility itself, which was often used in the twentieth century in geopolitical relations, did not receive proper philosophical and legal development and in its present form contradicts the basic ideas of natural law theory about the nature of natural rights used by the communicative theory of law.

The Honneth perspective of legitimizing the culture of abolition is associated with the model of limited autonomy of the individual, whose subjectivity depends on its recognition by other people. Vulnerability as an ontological characteristic of Honneth autonomy implies a revision of social justice from the point of view of equality in the distribution of semantic resources necessary for positive self-interpretation. If the media space becomes an environment hostile to the autonomous choice of fate, then it turns out to be logical to conclude that it is necessary to clean up this environment, eliminate traumatic content from it, which can become a demoralizing factor for autonomy. In this case, the mechanics of the work of forgetting recognition change, which was conceived by Honneth as the infrastructural basis of the dialectic of recognition, providing pauses in his beats. It

is transferred from individual actions to collective actions, and radicalized to a scale in which there is no place for recognition itself.

Two perspectives, Habermasian and Honneth's, allow us to consider the culture of cancellation as a practice of new political and legal work with memory, radicalizing the potential of communicative discourse in digital conditions of its rationality deficit and laying the foundations for a new understanding of subjectivity, where the possibility of gradation of its expression is likely to become a new threat to formal equality. This crisis can be overcome on the basis of the communicative theory of law, in which the mechanisms of legal recognition are ontological and transcendental, and as such precede the self-actualization of the individual, rather than complete it.

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Based on the results of the third chapter, the following *conclusions* can be drawn.

The main challenges of the memorial turn are, firstly, a new perspective of rethinking legal communication in the context of the category of memory, which allows us to establish the continuous contribution of law to sociogenesis. The methodology of the Russian communicative theory of law can be expanded and deepened by establishing the role of memory in the awareness-recognition-interaction triad, which underlies legal communication and legal recognition. Such a theoretical strategy is simultaneously a response to the challenge of the medial turn, since it involves the implementation of a metamodern chimeric synthesis.

Secondly, the introduction of new categories of the memorial agenda into the philosophical and legal discourse is becoming a new challenge. The category of historical justice, which ensures the political consensus of the state and citizens on acute issues of foreign policy, not only requires philosophical and legal reflection, but also actualizes the assessment of the problem of formalization of collective responsibility. The practice of cancellation culture emerging in the media space as a form of ethical, including historical, lynching is legitimized by the discourse of Western communicative theories on the rights of continuation of their logic. The

Russian communicative theory of law contains conceptual motives that potentially meet this challenge of the memorial turn, which can be applied to develop philosophical and legal interpretations of collective responsibility based on the inviolability of the natural legal foundations of legal communication.

CHAPTER 4. The medial turn: communicative strategies of modern philosophy of law

§ 4.1. The communicative theory of law in the context of the medial turn

As it was shown, the emergence of communicative theories of law was a response to well-defined social macro processes. The Russian version was subordinated to the need to modernize the foundations of legal understanding after the collapse of the USSR, linking, on the one hand, a new methodological project with a pre-revolutionary theoretical context, and, on the other – to ensure the inclusion of the ideas of Western legal theoretical thought in legal discourse and to carry out their critical rethinking. The Western version responded to less radical in tragedy, but broader in scale, requests related to the crisis of the traditional mass media system that accompanied the heyday of the Internet, the processes of globalization and, already, European integration, and the humanistic legitimization of the social and legal order of late capitalism. Both of them acted as a certain axiological alternative for the total relativism of the social paradigm of postmodernism. This doctrinal agenda is becoming a thing of the past, giving way to the conceptualization of new civilizational realities.

The memorial turn can only be understood in its connection with the medial turn. The term "medial turn" has been formulated for quite a long time in this century as the final in a series of methodological metaphors of "turn" (ontological, linguistic, iconic, theological, performative, narrative, spatial, etc.), revealing the movement of philosophical thought since the beginning of the twentieth century. Initially, the turn as a tectonic shift of thought approached the meaning of moving backwards, characteristic of reflection, and took the form of a return to the origins. Savchuk establishes as the starting point of the history of turns the appeals that replace each other in the philosophy of Modern times: "back to nature", "back to Kant", "to Freud", "to things themselves", "to the pre-socratics", "to the pre-myth".[506] In the

[506] Savchuk V.V. The phenomenon of creativity in the culture of the XX century // International Journal of Cultural Studies. 2013. No.1(10), p. 93.

twentieth century, the direction of turns was transformed, their angle changed – the original 180° meant turning to what was behind. The angle of rotation was reduced, it was able to become a conditional turn "to the right" or "to the left" (which had a completely politicized discursive basis in the context of the confrontation between neo-Marxism and "bourgeois" philosophy), while maintaining its radicality due to striving for new horizons. The latter surfaced more often as the interdisciplinarity of non-classical rationality developed, when the synthesis of autonomous research areas regularly turned into a breakthrough into the unknown.

Interest in the mechanics of a turn implies an appeal to its components and conditions. P.I. Chubar identifies three key points characterizing a philosophical turn – 1) a change in the style and nature of human thinking of a certain era; 2) socio-cultural changes; 3) the internal logic of the development of philosophy itself .[507] This means that a turn in philosophy is possible when the masses begin to think differently, because the level of standard education has increased, one or another religion or ideology has become widespread, catastrophic events have led to a reassessment of values – the twentieth century knows quite a few circumstances of this kind; people's way of life has changed, for example, migration or urban trends have increased; philosophy itself has "grown up" to the appearance of new concepts, improved its optics by calibrating the old one or building new methodological "gadgets". From the point of view of the "choreography" of the turn bars, it is the medial turn that is unique, since it is based not only on ideal spiritual foundations, but on a new technique, the technique of media. In this capacity, it is the main line to which all other modern turns – gaming, memorial, iconic - "join".

Indeed, linguistic, theological, or narrative turns are ideological in nature. The paradigm shift necessary for them is extremely poorly determined by scientific and technological progress. As you know, history does not tolerate the subjunctive mood, nevertheless, it is acceptable to assume that conceptual processes and trends close to these turns can be found throughout the history of philosophical thought. As for the

[507] Chubar P.I. Visual and medial turns through the prism of understanding modern culture // Youth Bulletin of the St. Petersburg State Institute of Culture. 2016. No. 1 (5), p. 5.

medial turn, it is caused by the "communication explosion" (M. McLuhan) media technologies that reshaped the economic, political, social and cultural spheres of society by the end of the twentieth century. It is thanks to synchronization with the medial turn that the memorial boom (this is what the growth of interest in general humanitarian research of memory was called at the end of the twentieth century) outgrows the format of a typical topical topic and becomes a proper turn thanks to universal digital mnemonic technologies used by the world's population everywhere.

The medial turn is based on the exponential growth of digital networks, absorbing the achievements of electronic and screen culture. Subjects interpreted in a special language of media philosophy from the point of view of their "body", as it were, dissolve into a continuous stream of communication. Understanding, managing and producing any modern social phenomenon requires knowledge of its communication context, establishing its representations and ways of transmitting them. That is why, if we allow the element of hyperbole, to appropriate someone else's identity, today it is enough to steal a smartphone and get unhindered access to his data.

The content of the medial turn is most consistently revealed in the works of V.V. Savchuk, based, including, on the ideas of Stefan Munker and Reinhard Margreiter, which make it possible to fix the unity of methodological and technological in socio-ontological media analysis. The medial turn is ontological evidence of a change in reality, thanks to which being and mediality are identified and interchanged, dissolving into each other;[508] it means a special sensitivity to the influence of media on a person and the ability to establish this influence based on the media themselves. Showing that "everything is media", the researcher deduces the formula "have an image, words and things will come", which allows exposing the leading role of media in shaping reality: "a set of intermediaries creates reality: perceived, conceived and conceptually expressed, it opens up to those who reflexively approach the conditions of its production and representation".[509] New

[508] Savchuk V.V. The phenomenon of turning in the culture of the XX century...p. 105.
[509] Ibid., p. 103.

media generate their hallucinatory flicker (J. Baudrillard) a new media reality, in which a new configuration of the subject is emerging, whose distinctive feature is decentralization, elevated to the absolute, and therefore turned into omnipresence[510]. By immersing oneself in the network with attention, consciousness, body, completing and expanding the world of augmented reality, a person receives not co-existence, but participation in everything and with everyone as a new way of existence. The medial turn thus reveals connections where previously only boundaries were seen, and these connections are the result of the socialization of the media.

What does a medial turn mean for the law? An attempt (very original and promising from the point of view of heuristics) to answer this question is V.V. Arkhipov's dissertation research "Semantic limits of law in conditions of a medial turn: theoretical and legal interpretation".[511] In it, the medial turn (including digital and game turns as integral elements) is shown as a specific socio-cultural situation, in relation to which the statement is true that "before the medial turn, media reality was the object of law, but now there is an understanding that law acts in media reality and itself acts as its object".[512] The task of the study itself is positioned as an effort to give a "legal assessment of the medial turn".[513] The author seeks to discover reasonable boundaries of meaningful legal communication in social reality, which now includes intersecting forms of media space that are very different in terms of goals and methods of interaction, where the technical and social quality of simulation is so heterogeneous that not all social relations arising within their framework can in principle be regulated by law. As V.V. Arkhipov shows, "the inclusion of simulacra of the media space in the field of law is a special case of absurdity, not meaninglessness, in the application and interpretation of law. In this case, the absurdity reflects a fundamental contradiction to common sense as the

[510] Savchuk V.V. Philosophy of the era of new media // Questions of philosophy. 2012. No.10, p. 37.

[511] Arkhipov V.V. Semantic limits of law in the conditions of a medial turn: theoretical and legal interpretation: diss. ... D. of Law. St. Petersburg, 2019, 757 p.

[512] Ibid., p. 139.

[513] Ibid., 137.

implicit rationality of law. Such a contradiction is expressed in the application of "real" and "serious" law to a closed game simulacrum, including virtual reality, precisely in that special aspect, which does not imply consequences ... for the social reality of everyday life, and therefore has no intersubjective social significance".[514] By putting forward criteria of reality and seriousness to verify attribution to the legal "content" of the magic circle, which means replacing offline laws and rules with artificial computer reality, the author thereby contributes to the demarcation of the legal and social in a digital society, while simultaneously showing its new, technically mediated multidimensionality. He associates the latter with the spread of the phenomenon of "new media", described on the basis of the selected by L. Manovich the principles of their organization (existence in the form of numerical representations, fractality, automation, variability, transcoding).[515] These characteristics led to the fact that the media ceased to be an autonomous institutional world, but literally dissolved into the fabric of the social, providing it, so to speak, adhesion and cohesion[516].

That is why digital media has become the basis of the modern technological order. The digital communication revolution is changing economic, political, and cultural landscapes, reshaping everyday life, and bringing new ethical systems to life. We are facing a new stage of social development, in which society acquires a specific configuration of both statics and dynamics.[517]

Understanding this configuration very quickly led to the emergence of media philosophy. As L. Wiesing shows, even at the turn of the millennium there was no unified understanding of the purpose of media philosophy.[518] Today, the task of

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[514] Ibid., pp. 51-52.

[515] Manovich L. The language of new Media. London: Massachusetts Institute of Technology Publishing House: Cambridge, Massachusetts, 2001, 202 p.

[516] In chemistry, adhesion is the adhesion of surfaces of dissimilar bodies, characteristic, among other things, for bonding, and cohesion is the force holding the molecules of a body together and ensuring its ability to withstand external influences, using the metaphorical meaning of the chemical concept of "cohesion", they began to denote the internal cohesion of a social group in psychology and the semantic coherence of a text or sentence in linguistics.

[517] Tikhonova S.V. Internet in the subject field of legal science: problems of theory // Izvestiya Saratov University. A new series. Series: Economics. Management. Right. 2013. Vol. 13, No. 3-1. p. 352.

[518] Wiesing L. To answer the question "What is meditation?" // http://mediaphilosophy.ru/biblioteca/articles/vizing_mediaphil / (accessed 01.31.2022).

media philosophy is to develop a categorical apparatus adequate to new challenges, which forms the basis of a new research methodology sensitive to the digital realities. It is based on the main trends in digital technology research, the universalization and generalization of which can form the philosophical basis for understanding new media. They can be briefly described as follows.

First, there is a certain "socialization" of artificial intelligence theories, suggesting an interest in designing strategies for interaction between a machine (which is most often understood as the software and hardware embodiment of a mathematical model of neural networks) and a person.

Secondly, a new understanding of the interaction of science, technology and society (the latest generation of the STS, science-technology-society). The Latournian program of actor-network theory made it possible to consider scientific practices as networks uniting people and non-human objects, and meaning of the algorithms and artifacts to the increment of scientific knowledge. Attention to the material (medial in nature) foundations of scientific epistemology opens up new perspectives in understanding the essence of scientific expertise, the social responsibility of scientists and the connection between science and society through the practice of civil science.

Third, the development of the theory of mediatization. Representatives of this theory are trying to put forward qualitative assessments of the impact of media on social life. One of her most successful lines in social theory is an attempt to revise the social constructivism of Berger and Luckmann on the basis of taking into account the contribution of media to the construction of social reality, carried out by N. Couldry and A. Hepp.[519] Clarifying the role of media in the everyday intersubjective world allows us to understand how media transform social bodies, change the temporality and spatial structures of the social world.

Fouth, the institutionalization of the theories of the digital society. The data accumulated by the theory of the information society on the transformation of state

[519] Couldry N., Hepp A. The indirect construction of reality, Cambridge: Polity Press, 2016.

and social management through Internet communication are moving into the digital phase,[520] when researchers focus on specific platforms and services used for state-building, developing generic characteristics of Internet networks in various ways (M. Castells, G. Rheinhold) in formats adapted to new media.[521]

Fifth, the development of digital anthropology. The research of this block is aimed at clarifying the prospects and possibilities of the transformation of human nature under the influence of the spread of human self-improvement practices.

The use of flat ontologies is typical for certain areas of media philosophy, but it cannot be argued that their use is necessary for the reconstruction of the concept of the medial turn and, moreover, its use in legal discourse. An example can be the previously mentioned concept of V.V. Arkhipov, focused on the search for «real» and, to a certain extent, hierarchical values, as the antithesis of the simulacra of the digital space.

All these trends can be systematized through correlation with the main sections of philosophical knowledge (in this case, the order of enumeration will change somewhat), but their appearance and development are nonlinear and heterogeneous. Their understanding allows media philosophy to go beyond the statement of the medial turn and move on to a qualitative philosophical analysis of the Digital era. Perhaps, work in this direction will lead to an institutional transformation of media philosophy itself, a change in its theoretical status in the system of sections of philosophical knowledge. This question is beyond the scope of this study. In its context, it is much more important that the philosophy of law, like any other independent field of philosophy, cannot and should not directly reproduce the trends of media philosophy, since it deals with the processes studied by media philosophy within its subject and through the prism of its own methodology.

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[520] Tikhonova S.V. Communication space as an object of legal policy: Theoretical problems of the formation of a spatial approach // Izvestiya Saratov University. A new series. Series: Economics. Management. Right. 2014. Vol. 14, No. 2-2. p. 441.

[521] Tikhonova S.V. On the way to the political and legal development of the information society: "Strategy for the development of the information society in the Russian Federation for 2017-2030" // Izvestiya Saratov University. A new series. Series: Economics. Management. Right. 2017. Vol. 17, No. 4. DOI 10.18500/1994-2540-2017-17-4-452-457. p. 454.

Therefore, the communicative theory of law cannot simply "pick up the flag" from media philosophy, clearly implementing the indicated trends, which does not mean that it refuses to search in the context of acute problems put forward by media philosophy.

The first frontier of such a search is theoretical contact with new media phenomena within the framework of their subject area, and this experience is presented in V.V. Arkhipov's dissertation. Less exotic than the simulation worlds of computer games on this theoretical front are the processes of general digitalization of legal technologies, leading to the emergence of new research objects along the semantic axis of interaction "state-personality". They have been studied quite well over the past decade,[522] and although theoretical developments of this kind do not directly fit into the structure of the communicative theory of law, they can be attributed to legal communication studies as an interdisciplinary direction adjacent to the communicative theory of law, implemented in the sciences of various branches of law.

Schematically, the content of this direction can be represented as follows. The current stage of the development of the information society, caused by the informatization of the public sphere, is represented by intensive processes of the legitimization of information and communication technologies (ICT). In the perspective of their development, the basis of law-making and law enforcement is an electronic document that assumes new creation procedures that expand access to participation in its production.[523] The dominance of electronic documents in the

[522] Gribanov D.V. Legal regulation of cybernetic space as a set of information relations: abstract ... cand. Of Law. sciences. Yekaterinburg: Ural State Law Academy, 2003, 22 p.; Tedeev A.A. The subject of information law in the conditions of the Internet // Information law. 2006. No. 3, pp.3-6; Bogdanovskaya I.Yu.: The concept of an "electronic state" (comparative legal aspects) // The fourth conference "Law and the Internet: theory and practice", Moscow, 2009. URL: http://www.parkmedia.ru/conf.asp?ob_no=346. (Date of address 08.12.2022); Fedoseeva (Telekhina) N.N. Virtual space control as a line of activity of the Russian state. Murom: Publishing and Printing Center of the Moscow State University, 2010, 205 p.; Andryushchenko E.S. Internet relations: Concept and classification // Bulletin of the SGAP. 2010. No. 3, pp. 150-154; Vaskova M.G. Problems of building an electronic state: theoretical aspects // Socio-economic phenomena and processes. 2010. No. 3, pp.278-280; Fedoseeva N.N., Tchaikovsky M.A. The concept and essence of the concept of an electronic state // The Russian justice system. 2011. No. 11, pp. 6-10.

[523] Tikhonova S.V. Theoretical foundations of communication legal policy on the Internet // Philosophy of Law. 2013. No. 3(58). p. 98.

legislative system is a new frontier in the development of the electronic state, defined as a set of network services for the provision of public services and legal information online, as well as electronic platforms that support the activities of the basic branches of government.[524] We should immediately note that in this context, related to the change in the tools of legal practice as part of the legal culture and legal system, we are talking, figuratively speaking, not about replacing one rod in a ballpoint pen with another, but about replacing the pen itself, and together with paper, with a completely different way of implementing information processes.

Currently, the evolution of the information society is interpreted as the expansion of ICT into the public sphere. The logic of this process is as follows. In the 90s of the twentieth century, a communication boom began, associated with the rapid development and spread of the Internet. Digital inequality has required significant smoothing measures from governments of various countries. The formation of the technical infrastructure of the information society was proceeding at a high pace, and the number of Internet users was steadily growing. Online electronic communication with its efficiency, simplicity and equality of participants was routine, social expectations and communicative customs were formed on its basis, a significant part of which has yet to be studied. This circumstance should be emphasized in particular: for more than a decade (or two, depending on the jurisdiction) of using the Internet before the relations mediated by it became the direct object of regulation by state-organized law, these relations were formed and successfully implemented on the basis of legal custom and contract – albeit in that isolated part of the legal the reality that the Internet has embraced. The contrast between interaction in cyberspace and traditional bureaucratic institutions operating in the public sphere complicated the relationship between government agencies and individuals, reducing the effectiveness of public administration. [525] It became

[524] Tikhonova S.V. Theoretical foundations of the concept of "electronic state" // Legal policy and legal life. 2013. No. 4. p. 29.

[525] Tikhonova S.V. Evolution of the constitutional rule of law in the information society: the electronic state // Bulletin of the Saratov State Law Academy. 2016. No. 2(109). pp. 69-70.

obvious that the information society cannot but affect the sphere of politics and law, and the question arose about the content of these changes.

Firstly, this process began with the inclusion of political and then legal processes and phenomena in the problems of the information society.[526] In the public sphere of the Internet, relations between government and citizens are being designed, implemented, discussed and adjusted. In other words, cyberspace presents both public discourse on the current agenda and interaction on solving pressing problems.

Secondly, the modernization of the institutional interaction of the state, citizens and their associations has led to a rethinking of state functions and communications. First in the European Union, and then in other countries, the sphere of social activity of the state began to be interpreted as a system of services of general importance. The concept of a public (state) service is possible only when it implicitly refers to the social mission of the state, implemented in a «human-oriented» way. By the XXIst century, the most important characteristics of the quality of public services have become the breadth of access, efficiency and transparency of provision, i.e. properties that cannot be provided by classical bureaucracy, but are easily achieved in the cyber sphere.

The result of these processes was a shift in the discourse of the information society doctrine from stating the increasing role of information in economic development to articulating the problems of forming specific public and public services based on specific technological platforms. According to A.V. Andreev's apt remark, "the modern state tends to solve fewer and fewer problems using traditional management resources, and is increasingly forced to resort to "flexible strategies". At the end of the twentieth century, the state operates in networks of intra- social and transnational relationships".[527] The new opportunities for self-organization that the network provides, the state learns to direct and control. ICTs are becoming an integral means of solving legal problems.

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[526] Tikhonova S.V. Formation of a communication legal policy as a basis for building an information society // Legal policy and legal life. 2016. No. 1. p. 31.

[527] Andreev A.V. Globalization, information technologies and the formation of a "global network society" // Bulletin of Kemerovo State University. 2012. No. 1(49), p.58.

However, such a contact between law and ICT cannot leave the technologies themselves neutral. Not only legal practice is changing under the influence of informatization. The technologies themselves adapt to solving legal problems, their creation and application are set by legal norms. As a result, information and communication technology acquires the features of legal technology, obeying the substantive and procedural requirements arising from the essence of law.[528]

This idea is realized not only by legal theorists, but also by theorists in the field of legal problems of information and telecommunication technologies. For example, the idea that network architecture is a kind of social, if not legal, regulation was formulated by L. Lessig[529] in the early 1990s.

In legal science, the concepts of technic and technology have been used for a long time. The classical category is the concept of "legal technique", which is disclosed as a system of techniques, methods, means, rules for the preparation, consideration, adoption and publication by competent authorities of the most perfect in form, structure, content and presentation of regulatory, law enforcement and interpretative acts. Legal technology as a term has entered scientific circulation relatively recently, first as a specific concept in relation to legal technology, later as a generic one.[530] The generic relations of the terms under consideration can be built up in different ways, depending on the definitions used by the researcher and the methodological tradition used. However, all the approaches used demonstrate a truncated understanding of engineering and technology, emphasizing such an aspect of the technosphere as tools of intellectual labor and algorithms of intellectual activity. In this methodological way, legal technology (including legal technology) is a type of social technology, i.e. "a set of techniques, methods and influences used to achieve goals in the process of social planning and development, solving various

[528] Tikhonova S.V. Theoretical problems of specialization of legal policy in the information sphere // Information law. 2015. No. 2. p. 15.

[529] Lessig L. The Law of the Horse: What Cyberlaw Might Teach // Harvard Law Review. 1999. Iss. 13. P. 501-549.

[530] Ivanets G.I. Legislative technologies: problem statement // Law and politics. 2001. No. 2, p. 149.

kinds of social problems".[531] In this case, the semantic core of methodological interpretation is the text of a normative legal act, the logical and linguistic procedures for the creation, interpretation and application of which constitute the content of legal technologies. However, the translation of the text into electronic form means the inclusion of computers and information and computer technologies based on its use in these procedures.[532] In the XXIst century, legal practice is not carried out without the use of ICTs, and ICTs themselves are specially designed to solve legal problems in such a way that the final product is not suitable for any other purpose. In other words, such a network "computerization" of legal technologies is the result of the interaction of new information technologies and law, which "indicates that a new era of legal regulation is coming, which is particularly in need at this stage of the very ideology of regulation in a new and new way.[533]

The widespread use of Internet technologies to establish and maintain public relations has led to a change in legal practice and has made obvious a certain transformation of law and the state. There are grounds for interpreting the electronic state (both as a set of digital platforms for interaction with citizens, and as a system of digitalized law-making and law enforcement that approaches organizational unity) as a new stage in the development of a socio-legal state,[534] within the framework of which the implementation of the social mission of the state involves the use of the technological development of the cybersphere on a legal basis.

From the point of view, for example, of the Russian communicative theory of law by A.V. Polyakov, all these processes relate not to legal communication (inextricably linked with the interaction of subjects based on their awareness of each other's rights and corresponding duties and mutual recognition of them and each other), but to communication about law. In any case, as long as the very

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[531] Encyclopedia of Sociology. URL: http://dic.academic.ru/dic.nsf/socio/4220 (Date of application 15.01.2023).

[532] Tikhonova S.V. Electronic state: theoretical model and stage of state genesis // Information law. 2014. No. 6. p. 7.

[533] Gavrilenko I.V. Procedural law in the information society: general trends and prospects of development: abstract. diss ... Candidate of Law. sciences. Samara, 2009, 24 p.

[534] Tikhonova S.V. Branches of government in the electronic state // Bulletin of the Saratov State Law Academy. – 2013. – № 3(92). – P. 16.

understanding of human rights is stable. As N.V. Varlamova's work shows[535], the processes of recognizing digital rights do not yet lead to the full-fledged emergence of a new generation of human rights. According to the author, "digitalization of social life does not lead to the emergence of new human rights of a fundamentally different legal nature. It "simply" actualizes or levels certain aspects of long-recognized rights, transfers their implementation to the "digital field", creates new opportunities for their implementation and generates new threats to them".[536] Nevertheless, this analysis is based on the web 2.0 Internet format, which continues to be based on hypertext. If, for example, Internet development follows the path of increasing augmented and virtual reality (namely, it forms the material content of the "magic circle" as interpreted by V.V. Arkhipov) and even more so, through the creation of neurosimulations, the nature of digital rights will definitely change.

A more serious problem is the fact that the philosophy of law is now faced with the urgent question of the possibility of "improving human nature" using, among other things, digital technologies. In the communicative theory of law, the communicative equality of subjects is the basis of legal recognition. Moreover, A.V. Polyakov directly justifies the legal recognition of the modern theory of genetic and cultural coevolution, showing that "the process of evolutionary development of human society was associated with the formation of such adaptive and protective mechanisms that are necessary for adaptation to external conditions and for survival in a changing environment. These include both moral intuition and moral grammar, which basically contains a legal grammar, close in meaning to what L.I. Petrazhitsky called the axioms of intuitive law".[537] In the modern world, for example, the possibility of partial integration of the human body and new digital devices is being

[535] Varlamova N. V. Digital rights – a new generation of human rights? // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2019. Vol. 14. No. 4, pp. 9-46. DOI 10.35427/2073-4522-2019-14-4-Varlamova.; Varlamova N. V. Digital rights – a new generation of human rights? (graduation) // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2019. Vol. 14. No. 5, pp. 141-167. DOI 10.35427/2073-4522-2019-14-5-varlamova.

[536] Varlamova N.V. Digital rights – a new generation of human rights? (graduation) // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2019. Vol. 14. No. 5, p. 162.

[537] Polyakov A.V. Prospects for the development of the Russian philosophy of law in the context of cognitive research and neuroscientific data // Russian Justice. 2022. No. 12. DOI 10.52433/01316761_2022_12_30, p. 37.

considered that would simultaneously be part of the human body and a communication tool.[538] We emphasize that in this case we are not talking about any arbitrary "cyborgization" – this area includes, for example, modern technological methods of compensating for lost functions for people with disabilities, for example, in the field of vision. In this regard, a well-known example has been demonstrated in the production of bionic prostheses, approaching the principle of a direct brain–external technical device interface; There is a well-known experiment on "sensory telepathy" by Prof. K. Warwick (University of Reading, England), who introduced a chip receiving external electronic signals into his nervous system. He "equipped" his wife with the same device, and combined them both through a computer, after which the husband perceived his wife's actions as his own.[539] However, pharmacological practices used to enhance cognitive abilities are less attractive to the press and, accordingly, have less public resonance (for example, many Western students take a certain drug that has signs of a narcotic drug during exams[540]). From an abstract scientific point of view, pharmacological effects are technically applicable to reduce aggression, and in general, to suppress / strengthen various aspects of what constitutes the unity of the psychological forces of the human personality, which underlies modern ideas about human nature. From some points of view, this is what underlies modern ideas about human nature.[541] So, for one reason or another ambiguity in the application of the concept of subject used by the communicative theory of law.

The category of the subject is problematized not only by given the orientation of judgments. The challenge for it is an object-oriented ontology. However, this very heterogeneous trend of modern philosophy includes concepts that revise the

[538] See: Rybakov O. Yu., Tikhonova S.V. The doctrine of natural law and the philosophy of transhumanism: the possibility of communication // Lex Russica (Russian Law). 2014. Vol. 96, No. 2. pp. 143-152.

[539] Warwick K., Gasson M., Hutt B., Goodhew I., Kyberd P., Schulzrinne H., Wu X. Thought communication and control: a first step using radiotelegraphy // IEE Proceedings – Communications. 2004. V. 151. Is. 3, June, p. 185 – 189. DOI: 10.1049/ip-com:20040409.

[540] Battleday R.M., Brem A.-K., Modafinil for cognitive neural enhancement in healthy individuals who do not suffer from insomnia: a systematic review // European Neuropsychopharmacology. 2015. Volume 25. No. 11, pp. 1865-1881. https://doi.org/10.1016/j.euroneuro.2015.07.028

[541] Tikhonova S.V. Transhumanism, science and pseudoscience: in search of Neo-Modernity // Questions of philosophy. 2021. No.10. DAY: https://doi.org/10.21146/0042-8744-2021-10-29-39 . p. 37.

ontological status of an object.[542] Often the term "ontological turn" is increasingly used to refer to them. As shown by T. Kerimov, these include a body of "research independent of each other and nevertheless, at least partially parallel, related to actor-network theory, new materialism, concepts of co-production, assembly theory, agent realism, critical realism".[543] A.A. Pisarev's statement about the uniqueness of new ontologies is true: from their point of view, "it is possible to exist only in one sense, and existence is attributed to everything without exception – from physical entities to fictitious and ideal objects".[544] Therefore, object-oriented ontologies use the category "plane" to show the absence of hierarchy for existing objects (and the classical subject-object dichotomy is always vertical), their "democratic ontology", which knows neither upper nor lower limit, nor middle. From this point of view, the heterogeneity of physical, social, and ideal objects is a given and does not imply any higher (both transcendental and transcendental) instances as points of their subordination, therefore such ontologies are positioned as flat or approaching a plane.

For the communicative theory of law, this turn is not unexpected and sudden, at least for its Western versions, since the Luhmann interpretation of law through autopoiesis is already a project of subjectivity-free methodology in which there are no communicants, but communication itself communicates. We emphasize that it is here that one of the fundamental differences becomes noticeable: this “subjectivity” distinguishes the Western communicative concept of law from the domestic one in essence.

Analyzing the differences in the already developed flat ontologies would take up too much text, so we will focus only on the Latournian actor-network methodology, which can be considered as a project of transition to an object-oriented ontology. It allows you to keep attention both on the specifics of a person, previously

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[542] Pavlov A. Posthumanism: overcoming and legacy of postmodernism // Problems of philosophy. 2019. No. 5. pp. 27-36.

[543] Kerimov T. "Ontological turn" in the social sciences: the return of epistemology // Sociological Review. 2022. Vol. 21. No. 1. doi identifier: 10.17323/1728-192x-2022-1-109-130, p. 110.

[544] Pisarev A.A. Networks, planes, matter: on the use of flat social ontologies // Vestnik TvGU. Series: Philosophy. 2020. No. 1, pp. 144-157.

fixed by the concept of the subject, and on the new activity of artifacts in the digital space. Laoturnian ontology focuses on non-human objects, striving for the achievements of the philosophy of the masses. According to its representatives, her task is to use the actant construct to bring back into social theory the missing mass, which is inhuman in nature. In the status of an actor, she equates people and non-human objects, figuratively speaking, engineers and artifacts, but it is not easy to put her on a par with flat ontologies. Latour networks are topological and multidimensional (the number of dimensions depends on the number of nodes), and anything can be an actor.

Nevertheless, we note as fundamental for the inclusion of Latour's work in the subject field of object-oriented ontologies the position of G. Harman, who abstractly summarizes Latour's ontology: "the world is made of actors of all types and sizes. The human subject or Dasein are actors, but actors are also candles, stars, newspapers, express trains and gods. Everything that exists in one way or another is an actor. These are not just isolated clumps of matter — they are negotiating with each other in networks. The actor is inseparable from his qualities and does not "experience adventures in time and space".[545] In this reading, Latour's ontology is object-oriented, but it has one specific feature. Namely, the *human witness* never leaves Laturnian ontology.

Harman emphasizes this fact: "But is Latour talking about two inanimate actors interacting without the participation of a human witness? Although resources for such analysis can be found in his works, I do not recall him undertaking it anywhere".[546] Thus, Latour very actively integrates the human voice into his concept, but does so on an implicit level so as not to drown out the voice of non-human objects.

Despite the fact that Latour's main task is to give a voice to non-human objects, based on the fact that "the differences between humans and non-humans,

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[545] Harman G. Networks and assemblages: the revival of things in Latour and Deland // Logos. 2017. Vol. 27. No. 3 (118), p. 22.

[546] Ibid., p. 24.

embodied and disembodied skills, personification and "mechanization" are less interesting than the entire chain along which competencies and actions are distributed",[547] people in his ontology are quite they are embossed. Their attributes are weakness, fragility, indiscipline and carelessness (which non-humans do not sin). And, the main difference is that things in Laturnian ontology are not independent enough to speak. That is why they have not yet written treatises on the philosophy of law. This occupation, even for Latour, still involves primarily *human* work.[548]

Nevertheless, in Laturnian analysis, actants have agency, they act, and their action has, at least, social effects. Of course, Latour speaks primarily about such things as pumps, microbes, trains. But his actor-network theory obviously has applicability to objects whose very existence is directly related to and caused by the medial turn. We are talking about digital "quasi-intelligent" artifacts created using artificial intelligence technologies. This circumstance explains the transition of the student of Luhmann, G. Teubnera, to positions close to object-oriented ontology. He continues to use the postulates of the Luhmann aetopoiesis, supplemented by Derridianist deconstruction, underlying his concept of "social constitutionalism", bringing them closer to the positions of B. Latour's actor-network analysis in order to investigate the behavior of hybrid actors of artificial intelligence in and related legal regimes.[549]

As K. Litvak shows, recently massive new media developments have transformed legal science, leading to the availability of data, the rapid dissemination of current research, new collaborations, the internationalization of research and faculties, and the growth of communication with other disciplines.[550] The

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[547] Latour B. Where is the missing mass? Sociology of one door // Inviolable reserve. 2004. No.2. URL: https://magazines.gorky.media/nz/2004/2/gde-nedostayushhaya-massa.html (accessed 19.01.2021).

[548] Tikhonova S. V., Artamonov D.S. Strange time in object-oriented ontology: Harman and Latour // Bulletin of Tomsk State University. Philosophy. Sociology. Political science. 2021. No. 63. DOI 10.17223/1998863X/63/5. p. 46.

[549] Teubner G. Critical theory and legal autopoiesis: arguments in favor of social constitutionalism (D. Goebel, ed.). Manchester University Press, 2019. 408 p.; Beckers A., Teubner G. Three modes of responsibility for artificial intelligence: algorithmic subjects, hybrids, and crowds. Oxford; New York: Hart, 2021, 208 p.

[550] Litvak K. Blog as a bugged water cooler // Law Review of the University of Washington. Volume 84. No. 5, pp. 1061-1070.

digitalization of the legal science itself cannot but affect the philosophy of law and the communicative theory of law.

At the same time, it seems that the domestic communicative concept of law, which currently correlates its foundations with the principle of mutual legal recognition, cannot be considered compatible with object-oriented ontology. The very principle of mutual legal recognition can take its organic place in the system of traditional Russian spiritual and moral values.

Conclusions:

The emergence of the communicative theory of law is determined by macrosocial challenges, its further development will obviously depend on them. The first new challenge facing the communicative theory of law in the digital age is associated with a medial turn. Both A.V. Polyakov's philosophical and legal research and the analysis of the legal system at the Frankfurt School were based on methodological constructs of modeling communication within the framework of mass media theory, Van Hoecke introduced network concepts into his theory almost implicitly, through the concept of circularity. The medial turn, technological rather than ideological in nature, conceptualizes the total penetration of digital media at all levels of social reality, their ability to mediate interactions of all forms and types of social communication. Virtual and digital have ceased to fit into the traditional ideas of media as one of the objects of legal regulation, consisting of homogeneous public relations. Almost all public relations today include a digital element mediating them, so the media are becoming the key conditions for the existence of law. The main directions of the medial turn are conceptualized in media philosophy, which is developing today according to such trends as the transition to flat ontologies, the socialization of artificial intelligence, the medial (material) foundations of the development of science itself, the theory of mediatization and digital society, digital anthropology. The communicative theory of law offers its answers to the agenda of media philosophy. Their justification began with an understanding of the digitalization of legal technologies, the emergence and development of the electronic state, the development of modern technologies, including artificial intelligence,

including the "artificial intelligence of things". These circumstances are sufficient to characterize the challenges that the communicative concept of law is currently facing.

The considered approximation of philosophy and theory of law to the problems of media philosophy demonstrates the sensitivity of the former to new mutations in the methodological understanding of the categories of subject and object and the interaction between them. Unlike the subjectless Western concepts, A.V. Polyakov's communicative theory, centered on a subject endowed with freedom and responsibility, and in general having the ability to mutual legal recognition, allows us to reconcile the axiological heritage, actualized by the memorial turn, with the modern digital era.

Perhaps we are approaching the formation of a new, digital, type of scientific rationality. But while this milestone is defined, there is time to focus on the methodological processes' characteristic of the theory of law and conditioned by the medial turn. The legal assistants and bots, the use of neural network technologies in legal qualifications are no longer a matter of tomorrow, but practically today's reality. Even today, the doctrinal development of any legal understanding is influenced by the general digitalization of science. The material component of this process is conceptualized within the framework of the latest generation of STS and the digital methodology of science, while the methodological trends accompanying it directly affect the development of the communicative theory of law in the context of the medial turn.

§ 4.2. The transition to the medial turn: the open conceptual naturalism of J. Finnis

The medial turn not only leads to the emergence of new research objects and thematic areas in the philosophy of law. It accelerates the processes of methodological synthesis and the progress of communicative, dialogical methodological strategies, implemented within its framework. The study of this process is complicated the fact that it occurs as if in the background, not noticeable to the "viewer", whereas in the foreground is the external expression of the ideas of the authors in their scientific works, publicly accessible polemics, etc. The unambiguous fixation of this process is impossible without taking into account massive biographical data, showing the degree of involvement of each researcher in the processes of scientific communication related to the classical forms of printed book culture or electronic forms. In this case, it may be productive to search for a boundary, a watershed that allows us to outline a line of demarcation between different theoretical structures in terms of their belonging to different socio-technological contexts. Of course, the electronic communication revolution didn't happen in an instant, its deepening is connected both with the advent of computers, Computers in general, information and telecommunication networks, personal computers, and with the policies of national states, as well as those areas of international policy that ensured the introduction of computer and digital technologies in various spheres of economy and public life. Its beginning can be attributed to the middle of the twentieth century, and the exhaustion of its potential, which allows fixing the final point, is still a matter of the future. Nevertheless, based on the objectives of this study, the beginning of the medial turn can be conditionally attributed to the early 1980s, according to the principle of periodization of the theory of communication into classical and modern.

The latest theoretical works interpreting mass media systems as the main ones for societies of the twentieth century are considered to be the studies of D. McQuail. In 1982 with S. Windahl publishes the work "Models of Communication", which is

an attempt to systematize the theories of mass communication, and his one-man book "Theory of Mass Communication", published in 1983, already includes the theory of information society[551]. By the end of the 1980s, most researchers of mass culture were moving to the study of electronic communication, starting with commercial cable television (unlike state-owned broadcast TV, it was segmented and distributed content based on feedback from subscribers), and then directly to the Internet. Before the medial turn, scientific communication was concentrated in printed and oral forms, the first was dominated by natural science periodicals based on international expert networks and the genre of monographs in the humanities, the second was implemented in scientific forums and "backstage".[552] The medial turn has expanded the intermediate zone of informal communication, accelerating the pace of scientific discussion and crystallization of the scientific positions.[553]

This reconstruction of the chronology allows for a new look at modern theories of natural law, which in the last third of the twentieth century entered the phase of "conceptual naturalism", in which "natural law is understood as an immanent and fundamental characteristic of a positive legal system".[554] Although this statement may seem controversial at first glance, natural law theories have been and remain the foundation of the communicative theory of law. In this case, we are talking about the postulate put forward within their framework that genuine law follows from the nature of phenomena, in particular from the nature of man. In this regard, the most significant role of the fundamental treatise of the jurist and philosopher John Finnis "Natural Law and Natural Rights" (1980)[555] is most indicative. Firstly, Finnis actively integrates modern achievements of not only legal, but also socio-political thought into classical naturalism. Secondly, his

[551] See: McQuail D. Mass Communication Theory. 6th ed. London, Sage, 2010, 632 p.

[552] For more information, see Price D.J. de S. Trends in the development of scientific communication – past, present, future // Communication in modern science / ed. by E.M. Mirsky and V.N. Sadovsky. M.: Progress, 1976, pp. 1993-110.

[553] Tikhonova S. V. Scientific communication: the ethos of Science and imaginary communities in the enclaves of Russian Humanities // Sociology of Science and Technology. 2020. Vol. 11, No. 4. DOI 10.24411/2079-0910-2020-14009. pp. 163-164.

[554] Didikin A.B. Modern theories of natural law and classical tradition // ΣΧΟΛΗ. 2014. No. 8, p. 419.

[555] Finnis J. Natural law and natural rights. Moscow: ANO "IRISEN", 2012, 554 p.

understanding of the connection between community, the common good and natural rights, close to legal pluralism, is used in communicative theories of law to substantiate legal genesis (for example, M. Van Hoecke directly relies on the Finnis concept of society as "as a broader and much more convincing concept of society in its connection with law";[556] A.V. Polyakov also refers to Finnis). In many ways, the processes of methodological communication within the communicative theory of law and modern naturalism are convergent. Thirdly, their direct interaction can be established through a biographical connection: and J. Finnis and A.V. Polyakov were connected by joint work on the Russian Yearbook of Legal Theory, which included both informal contacts and scientific discussions.

The ambiguity of the term "conceptual naturalism" (A.B. Didikin) requires explanation. On the one hand, any version of natural law theory is conceptual, since it cannot do without basic concepts. An attempt to link "conceptuality" with the teleology of modern theories of naturalism,[557] their focus on the role of natural law in creating and maintaining the common good needs additional procedures to clarify the terminology put forward. On the other hand, the appeal to the internal logic of its justification is associated with the fact that it is very difficult to characterize its content if you rely on the platform of classical strategies for systematization and classification of legal understanding. It is significant that researchers analyzing the projects of modern naturalism within the framework of the history of political and legal doctrines inevitably face the difficulty of attributing them to a specific type of legal understanding. For example, if we consider the problems of understanding the creative heritage of individual key authors in this field, A.V. Polyakov, noting at the same time, even the commitment of L. Fuller's technique of analytical philosophy shows that "his legal teaching is more consistent with integral concepts of law than with the natural law approach. After all, what Fuller refers in his teaching to the natural law tradition is important, but only an integral part. Taken in its entirety, his

[556] Hoecke, Van M. Law as communication, p. 46.

[557] Didikin A.B. Formation and development of the analytical tradition in the philosophy of law of the XX century.: Abstract. diss. ... Dr. of Philosophy. Tomsk, 2016, p.25.

concept, in our opinion, fully corresponds to the communicative version of the integral legal understanding".[558] L.V. Karnaushenko designates the concept of J. Finnis as an "axiology of law" and a "metaphysical legal theory";[559] at the same time, V.Yu. Perov and A.D. Sevastyanova emphasizes that although Finnis refers to Thomas Aquinas as a "classical tradition", he tries to build a natural law concept precisely as a non-religious one.[560] Yu.Yu. Vetyutnev is forced to state that "it is not so easy to determine the affiliation of R. Dvorkin belongs to any of the classical schools of legal understanding: starting from legal positivism in the person of Bentham and G.L. Hart, at the same time he does not adhere to the sociological direction, although in some respects he is close to it. Probably, it is quite possible to attribute R. Dvorkin's approach to the natural law concept: in fact, he defends precisely this approach, which recognizes the existence of certain individual rights outside of their formal state consolidation".[561] The estimates given (the list is far from exhaustive) probably demonstrate the conditional applicability of the classical classification schemes used for post-non-classical methodological programs. There are known attempts to radically define, for example, the concept of R. Dvorkin: S.N. Kasatkin cites the proposed for it by J. Mackie the "title" of the third theory of law, which is opposite to positivism and naturalism and in a number of respects intermediate between them.[562] Such an approach to classification, of course, emphasizes the originality of the thinker's ideas, but, when moving to generalizations based on a larger number of concepts, it inevitably goes into the infinity of natural numbers, as S.N. Kasatkin himself notes: "The application of these criteria generates an infinite number of "third", "fourth", "fifth", etc. theories".[563]

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[558] Polyakov A.V. L.L. Fuller // Kozlikhin I.Yu., Polyakov A.V., Timoshina E.V. History of political and legal doctrines. Textbook. St. Petersburg: Publishing House of St. Petersburg State University. Unita, Publishing House of the Faculty of Law of St. Petersburg State University, 2007, pp. 478-479.

[559] Karnaushenko L.V. Theory of natural law J. Finnis as the Renaissance of the metaphysics of law // Bulletin of the Kazan Law Institute of the Ministry of Internal Affairs of Russia. 2019. No. 2 (36), pp. 158, 161.

[560] Perov V.Yu., Sevastyanova A.D. The problem of the moral content of law in the concept of J. Finnis // Conflictology. 2018. No. 13(3), p. 73.

[561] Vetyutnev V.V. On the legal understanding of Ronald Dvorkin // Journal of Russian Law. 2005. No. 10 (106), p.132.

[562] Kasatkin S.N. The concept of the "early" R. Dvorkin as the "third theory of law" // Bulletin of the VSU. Series: Law. 2019. No. 2, p. 98.

[563] Ibid., p. 104.

In the first approximation, the attribution of such concepts to integrative theories of law seems to be a reliable solution. Of course, their material can be used to demonstrate the processes of methodological integration, the problem is that the integrativity of theories is too general a feature, based on it, it is difficult to mark the degree, direction and quality of integration, which can manifest itself in the intentions of the researcher, in the categorical and methodological techniques used by him, in the results obtained, finally.

Of course, classification procedures allow you to use many criteria, including complex ones, there are no only correct classifications, it is more rational to divide them into more or less successful ones. All their possible diversity is an integral part of the heuristic search for the essential features of the classified object, even if it can confuse the researcher. A situation in which one classification completely negates the other occurs extremely rarely, as a rule, they overlap each other, opening up prospects for additions and adjustments. At the same time, it seems advisable to proceed from the fact that in order to clarify and correct the term "conceptual naturalism", it may be productive to turn to the analysis of the methodological features of the concepts attributed to it.

The classical versions of the legal understanding, at least, considered at the level of abstract models of their categorization, concentrated on the construction of law as a theoretical object, the development of a method of cognition for them was the second stage in the development of theory, the method directly depended on the basic definition and the tradition of its semantic clarification. That is why classification constructions in the spirit of "conceptual pluralism"[564] turn out to be either overloaded or contain gaps in the chain of definition of generic relations. At the same time, pluralism itself can refer to both unifying plurality and chaotic disunity, therefore, its "conceptuality" is significant in the search for integrity.[565]

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[564] The term was proposed by A.A. Kovalev (see: Kovalev A.A. Conceptual pluralism in foreign philosophy and sociology of law: history and modernity // Philosophy and Culture. 2020. No. 11, pp. 27-43. DOI: 10.7256/2454-0757.2020.11.33456.

[565] Tikhonova S.V. Open conceptual naturalism: communicative methodological projects of natural law // Bulletin of the Saratov State Law Academy. 2021. No. 1(138). DOI 10.24412/2227-7315-2021-1-26-36. p. 28.

The concepts referred to as "conceptual pluralism" realize the revival of metaphysics in law, and are represented by various philosophical and legal projects characteristic of various legal cultures and their features. Since these authors have already been mentioned, let us consider as their representative examples of the concept by L. Fuller, J. Finnis and R. Dvorkin. Each act as an original concept of revisionism of classical naturalism and differs in a very specific methodological feature caused by their "embeddedness" in the paradigm of postclassical rationality. Their task is not to "select" a suitable method for the existing definition of law, but to construct a new method so that it allows to formulate a new definition of law. First the method, then the key concept, the method is the way to it. At the same time, the method is not constructed from scratch, it is formed through communication with previous methodological projects in such a way that criticism always includes the criticized argument as an ideological source in the field of reflection.

This new methodological strategy can be considered especially clearly from among those presented, reproducing in the logic of J. Finnis's reasoning in the work "Natural Law and Natural Rights".[566] The choice of Finnis's work is also explained by the fact that since 1980, the year of publication of his treatise, his work has clearly been at the forefront of the revival of natural law theory at the end of the twentieth century.[567]

The original premises of Finnis: a) the existence of special universal benefits in social life that only legal institutions can provide, and b) the existence of requirements of practical reasonableness that only legal institutions can satisfy.[568] The purpose of the treatise for him is to identify these benefits and requirements and assess how legal institutions provide them. In Finnis's premises, the legal and social are distributed through a new theoretical construct, on which the method of the theorist is based. Thus, literally on the first pages of his book, Finnis introduces the

[566] Finnis J. Natural law and natural rights. Moscow: ANO "IRISEN", 2012, 554 p.

[567] Murphy M.C. Natural Law Theory // The Blackwell Guide to the Philosophy of Law and Legal Theory. Ed. By Martin P. Golding and William A. Edmundson. Malden; Oxford; Carlton: Blackwell Publishing Ltd, 2005, p.19

[568] Finnis J. Natural law and natural rights. M.: ANO "IRISEN", 2012, p. 19.

concept of practical reasonableness, a technical[569] term necessary for him to get out of the field of influence of the gap between social and normative facts. By it, he understands "reasonableness in decision-making, assimilation of beliefs, choice and execution of plans, and in general in action"; "by the term "practical" here, as throughout the book, I do not mean "suitable" as an antonym for unsuitable, effective as an antonym for ineffective; I mean "aimed at making decisions and action". Practical thinking is reasoning about what (someone) should, or should, do".[570] Finnis chooses practical reasonableness as a practical point of view – an angle that allows "assessing the importance and significance of certain similarities and differences within the subject of research, asking oneself what could be considered important and significant in this area by those whose interests, decisions and activities generate or constitute the subject of research".[571] Since the subject of research in this case is law, it is obvious that for the author, law is a derivative of important interests, decisions and activities of specific subjects, and he realizes that he will have to propose not only criteria for assessing the importance of these phenomena using the concept of "practical reasonableness", but also to outline the circle of subjects producing them.

Practical reasonableness allows the thinker to find himself in a place where it is fundamentally possible, if not identification, then coincidence of social (moral) and normative facts, since they are united in a practical point of view that determines both the legal theorist and the participant in the legal relationship. Finnis justifies this conclusion by consistently criticizing the positions of Hart and Raz, polar in fixing the "practical point of view", which serves as a starting point in analyzing what is similar and different in different legal systems, and, therefore, forms the basis of law. If Hart, at least in the most fundamental cases, relies on the "internal point of view" of the law enforcement officer, then in his early works he uses the point of view of an ordinary person, although in later works he turns to an internal legal point

[569] This is how this concept characterizes V. Rodriguez-Blanco, his logical characteristic will be presented below.

[570] Finnis J. Natural law and natural rights. Moscow: ANO "IRISEN", 2012, p. 29.

[571] Ibid.

of view (a typical opinion of a judge). Finnis emphasizes that the positions chosen by Hart and Raz do not allow us to "reject" points of view that are parasitic on law in the same way as they can parasitize morality, whereas in order to generate law as a social order, a "disinterested interest in the welfare of others"[572] is necessary. Since the practical point of view is applicable to all capable people, it takes on a universal meaning. Since practical reasonableness describes a universal position, it is neither external nor internal to law, so Finnis does not need to deny either a social or a normative approach, which he does: he recognizes both of them.

What does choosing a position of practical reasonableness mean? Firstly, from a methodological point of view, it ensures the acquisition of a reflexive balance by descriptive theory, a balance between the description of law and the assessment of what constitutes its meaning. Finnis centers this position on the Aristotelian method of identifying the focal value, which allows the growth of differentiation of the description of law not to interfere with the general status of the description itself, i.e. to remain a general theory of law. The focal value or the central case is a situation when the signs of a phenomenon described by a theoretical concept have reached the maximum degree of development. Peripheral cases may differ in undeveloped, primitive and deviant features; the central case does not displace peripheral cases from the field of analysis, but allows us to understand where the effect of the general patterns of their development is weakened. The central case of the point of view on law does not deny all the diversity of points of view on law, it exposes the structures common to all of them, relevant to the law itself.

The construction of the position of practical reasonableness by Finnes V. Rodriguez-Blanco is designated as a "conceptual argument". The conceptual argument is supported by a "functional argument", which can be summarized as follows.

Meaningful practical reasonableness means defining the horizons of human choice. These horizons are related to the assessment of the full range of opportunities

[572] Ibid., p. 33.

necessary for human well-being. Finnis tends to focus not on moral judgments per se, but on their "evaluative basis",[573] rooted in the experience of choice as a realization in the practical choice of one's own inclinations aimed at (general)for the human good. The principles of practical reasonableness are not so much applied as "embodied", i.e. the individual does not appropriate the benefit to himself in the act of choosing an action, but "joins" to it. This way of formulating axiology emphasizes that the universal good does not need proof, it is self-evident and in this capacity as a principle "is assumed in all proofs, and even in all serious statements about anything, and can be called "objective" on the same basis as any other proposal contradicting which it is inevitably falsified by the very act of its approval".[574] The detailing of the universal good is carried out by Finnis through the statement and description of its aspects, which he designates as seven "basic benefits" that contribute to a full life: 1) life (striving for self-preservation); 2) knowledge (as theoretical knowledge); 3) play (in the sense of the correct distribution of roles in society); 4) aesthetic experience (the ability to understand beauty); 5) sociability (friendship), 6) practical reasonableness (the desire to make your mind more effective in instrumental plan); 7) religion (the idea of the origin of cosmic order, human freedom and reason).[575] The choice of these values is not justified by Finnis in any way, he believes that they can be put forward as goals of human actions because "any other goal that you or I can recognize and pursue, in fact, will represent or include some aspect (or aspects) of some of them or all of them".[576] Indeed, redefining the benefits of Finnis, it is not difficult to correlate with Maslow's seven priorities of human needs (better known as the "Maslow pyramid", although Maslow himself never displayed them in graphic form), which include 1) physiological needs (hunger, thirst, etc. D.), 2) the need for security (feeling confident, getting rid of fear and failures), 3) the need for belonging and love, 4) the need for respect (achieving success, approval, recognition), 5) cognitive needs (to know, be able to explore), 6)

[573] Finnis J. Natural law and natural rights, p. 87.
[574] Ibid., p. 104.
[575] Ibid., pp. 118-122.
[576] Ibid., p. 124.

aesthetic needs (harmony, order, beauty), 7) the need for self-actualization;[577] it is easy to see that they overlap and can be reduced to each other (1 and 1, 2 and 5, 4 and 6, 6 and 3 are identical; 3, 6, 7 can be aspects of 2, 3 and 7, the opposite is possible).

However, M. Murphy believes that the list of basic benefits in the theories of natural law causes predictable disagreement.[578] He gives the following lists of benefits:

1) Aquinas: life, procreation, social life, knowledge and rational behavior;

2) Grisez, 1983: integrity, practical reasonableness, authenticity, justice and friendship, religion, life and health, knowledge of truth, understanding of beauty and play;

3) Finnis, 1980: Life, Knowledge, aesthetic pleasure, play, friendship, practical reasonableness and religion;

4) Chappell, 1995: friendship, aesthetic value, pleasure and absence of suffering, physical and mental health and harmony, reason, rationality, reasonableness, truth and its knowledge, the world of nature, people, honesty and achievements;

5) Finnis, 1996: Grisez's list, supplemented by the benefits of matrimony;

6) Murphy, 2001: life, knowledge, aesthetic experience, excellence in work and play, agency, inner peace, friendship, community, religion and happiness;

7) Gomez-Lobo, 2002: life, family, friendship, work and play, beauty experience, theoretical knowledge and integrity;

8) Crowe, 2019: life, health, pleasure, friendship, play, recognition, understanding, meaning, reasonableness.[579]

Are these lists really that different? If you present them in the form of a table (see Annex 1), you can find close to strict matches (the same concept, it is the same,

[577] Maslow A. Motivation and personality. St. Petersburg: Eurasia, 1999, 479 p.

[578] Murphy M. The tradition of natural law in ethics / translated from English by D. Serada // https://brickofknowledge.com/articles/the-natural-law-tradition DOI: 10.34704/BKN.2019.01.001.2019.19.49.117 (accessed 08.23.2020).

[579] Ibid.

but with an additional pair or its closest synonym) in 52 cases out of 68, and 11 more non-strict matches (concepts can be used as synonyms). The goods from the categories of life, social relations, knowledge, rationality, aesthetics, and play form obvious stable rows. The other categories show less unanimity, but they also open up a wide field for interpretative work, as a result of which, probably, it is possible to establish common varieties of the common good, which, however, goes beyond the scope of this study.

Let's go back to Finnis. He does not establish a hierarchy of goods, in his opinion, an individual, doomed to the finiteness of his being, is able to concentrate on one of them for a long time at a particular stage of life, but, one way or another, he needs them all, each of them will surely attract his attention precisely because they reflect the fundamental aspects of human. They are necessary for the prosperity of the individual. This logic of the drift of the focus of concentration of interest is generally characteristic of Finnis's thought.[580]

Realizing it, on the basis of a dynamic "list" of benefits, the thinker proceeds to formulate a method for establishing natural law, the essence of which is to determine the requirements of practical reasonableness. As V.Yu. Perov and A.D. Sevastyanova show, these requirements are universal and unchangeable "principles of natural law".[581] A clear plan of life, no arbitrary (only reasonable) preferences between values, no arbitrary preferences between people, detachment (prohibition of sacrificing oneself to the project), commitment (striving for the true good), (limited) significance of consequences: efficiency from the point of view of reason (the requirement of effectiveness of actions aimed at the good), attention to each of the basic values in each act (prohibition of the absolutization of specific goods), the demand for the common good, agreement with one's conscience[582] – these imperatives reveal the social functionality of goods and justify the moral

[580] Tikhonova S.V. List of basic goods: quantification of the common good in modern Naturalism // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2020. Vol. 15, No. 6. DOI 10.35427/2073-4522-2020-15-6-tikhonova. p. 52.

[581] Perov V.Yu., Sevastyanova A.D. Decree. op., p.80.

[582] Finnis J. Natural Law and natural rights. Moscow: ANO "IRISEN", 2012, pp.139-164.

responsibilities (duties) of individuals. It should be noted that Finnis uses the words "prosperity" and "well-being" as synonyms in the sense of self-institutionalization of the individual and his gaining power over himself. It is about self-actualization and self-realization of the personality.

The principles outlined by Finnis constitute the content of natural law in the ontological and methodological sense, as its essence and, at the same time, the measure of human actions. Finnis's thesis is important that the benefit of practical reasonableness structures the human desire for benefits.[583] The recognition of basic values and the morally correct choice between them requires the coordination of human intentions and actions in such a way that a combination of individual and collective well-being is possible. The law thus turns out to be "a joint activity, and the participants in the political community share the concept of the meaning or purpose of continuing cooperation".[584] This goal is a common good, common, firstly, in the sense of a set of basic values, participation in which is common to all people, secondly, in the sense of the ability of each basic value to unite people involved in it, and, thirdly, as a set of conditions necessary for members of society to reasonably set goals and enjoy the basic benefits. All three meanings are important to Finnis, but it is the latter that he brings to the political and legal plane: law is sociality as a way of people living together in the context of the common good, manifested in coordination activities – the establishment of rules. Synchronization of all types of rules is carried out based on the requirements of practical reasonableness. These rules themselves make it possible to establish an institution for the creation of sanctioned rules (it is important that the creation of rules is also carried out according to the rules). Thus, Finnis brings together law and the law, considering them as a central case of "the law and legal system"[585], defining law as norms adopted in accordance with regulatory legal norms by a certain acting authority (which itself is singled out and, according to the standard, is constituted as an institution through

[583] Ibid., p. 135.
[584] Ibid., p. 196.
[585] Finnis J. Natural Law and Natural Rights. Oxford University Press, 1980, p. 260.

legal norms) for the "perfect" community and supported by sanctions in accordance with the regulations of judicial institutions subordinate to the norms.[586] The task of legal norms and institutions is to solve any coordination problems of the community for the sake of its common good, therefore, its definition should identify the basis on which people are voluntarily and reasonably inclined to follow the law. The focal meaning of law for Finnis keeps the commonly used meanings within the limits of attention (he emphasizes that his definition of law allows us to understand lawyers, anthropologists, tyrants, bandits, theologians and moralists talking about law), but in such a way as to center them with the focal point of view of a person who is a carrier of practical reasonableness. Rodriguez-Blanco emphasizes that Finnis' functional argument "depends on a conceptual argument: it must show that the various concepts of law are unified by law as a practical reasonableness, a central case".[587]

The analysis of the connection between conceptual and functional arguments put forward by V. Rodriguez-Blanco demonstrates the uninformativity of the functional argument as not explaining why law as a practical reasonableness should be the central case of various concepts of law and self-interpretations. In her opinion, the Aristotelian model of focal meaning/central case does not relate to points of view, but to concepts.[588] Indeed, the point of view is a metaphorical construction combining the positioning of the observer and his overall life position, which is very difficult to unambiguously explicate. The binding to the concept concretizes this metaphor by detailing Aristotle's reasoning about the focal meaning. It covers the range of a class of non-identical objects associated with a common source, which for them is one (or more) of the four Aristotelian causes. The nature of the determination will determine the degree of expression of the essential features of the class in a particular object, so some objects of the class will be closer/ further to the focal value, while others will enter its peripheral range. The cases of the law of

[586] Finnis J. Natural law and natural rights. Moscow: ANO "IRISEN", 2012, p.343.
[587] Rodriguez-Blanco V. Decree. op., p. 100.
[588] Rodriguez-Blanco V. Is Finnis right? Understanding of normative jurisprudence. Part 2 // Bulletin of the Humanities University. 2019. No. 2 (25), p. 26.

practical reasonableness and positive law cannot coincide in the same class of objects, since their signs are not identical (which is required from the standpoint of formal logic), which means that both objects are associated with different concepts, i.e. they cannot be connected by a single type of determination as universal and necessary. This means that there is still a gap between them. V. Rodriguez-Blanco puts forward the thesis about the possibility of using the logic of similarity and analogy to establish the central case. Using Wittgenstein's idea of family similarity, which includes a complex network of large and small similarities in the features of objects, when the presence of similarities is distributed among objects, dividing the class into overlapping groups without a single universal feature characteristic of absolutely every object. Thus, "the concept of family similarity leaves the boundaries of any concept open to a potentially infinite number of entities, and therefore we could argue that anything has similarities with anything else. This problem has been called the "non-deterministic expansion" of family similarity concepts. One of the possible solutions to this problem is the idea of having a basic predicate that defines the expansion of the concept of family similarity. In other words, there is a subclass of members, and all members related to a particular concept must resemble other members of the subclass. @Such members must have at least one thing in common with other members of the subclass, and this is a sufficient, but not necessary condition for the entity to be assigned to a specific concept. However, some members of the general class may not have common characteristics or features".[589] This similarity search model can be applied to find the central case of law and bridge the gap in Finnis' logic. The detailed identification of the distributed key similarities between the signs of the law of practical reasonableness and positive law allows us to "grasp" the framework of one central case. The central case of law in this situation does not allow the formation of a single concept of law in the strict sense (i.e., an unambiguously defined concept), but

[589] Ibid., p. 36.

makes it possible to identify a single idea of this concept using practical reasonableness as a mediator.

What does the analytical superstructure proposed by V. Rodriguez-Blanco over Finnis's reasoning provide for understanding his concept of law and, more broadly, for legal understanding? Firstly, practical reasonableness as a way of establishing key similarities turns out to be a reliable intermediary "between different concepts and self-interpretations of law and creates its unifying concept not in terms of identity, but in terms of similarity".[590] Secondly, it allows us to systematize general interpretations of law without indicating their single universal feature. The theoretical models obtained as a result of such systematization will turn out to be quite working, suitable for increasing knowledge about law.

The main achievement of V. Rodriguez-Blanco's criticism is a clear demonstration of the openness of the Finnis method. Its flaws and gaps are not fundamentally irremediable precisely because the proposed methodology is fundamentally open, allows for clarifications, adjustments and new interpretations without losing the central ideas. Its openness is identical to communication, which means a permanent dialogue with opponents and supporters in the construction of the methodology. Of course, dialogicality is inherent in any scientific theory, but its degree can be very variable. Considering this circumstance, let's consider the main features of the communicative openness of the Finnis method.

The first point is the openness of the key concept, practical reasonableness. As shown above, Finnis defines it as reasonableness in making decisions and actions, concretizing it through practical thinking, i.e. it is a reasoning about what someone should do. In this case, although the definition of practical thinking is explicit (an equivalence is established between the defined and defining parts), it refers to the type of target, i.e. the purpose of the object is indicated in the defining part. The target definition does not establish generic relations, does not fix the origin of the object, its prevalence, qualification characteristics, but also does not block these

[590] Ibid., p. 39.

operations with composite concepts, leaves an open opportunity for them. In other words, defining practical reasonableness, Finnis emphasizes that in his field of consideration is the question of the ways of reasoning, what the subject should do, explaining what he understands by practical orientation, but does not directly define the elements of the concept – "practical" and "reasonableness". Since both categories are clarified and redefined throughout the development of philosophical thought and are not formulated as unambiguous, Finnis's thought has a very wide space for additional interpretative maneuvers.

Thus, the researchers note the evidence of Finnis's following in her definition of the classical philosophical tradition, dating back to Aristotle and the practical reason of I. Kant.[591] The practical reason of the rational part of the soul in Aristotelian psychology is the point of transition to ethics and politics, through the application of general knowledge to particular cases, a choice is made that allows the realization of the highest good in political life. Kant's practical reason regulates human freedom, is ethical, since it establishes moral laws and is focused on social relations between people. Recalling this tradition (and there are enough implicit and explicit references to it in Finnis's text), Finnis's interpreters find themselves in the specified additional field of possible definitions of the key concept.

A similar trend can be found in legal definitions. For example, in the branch of legal science, there is an appeal to the theoretical justification of the principle of reasonableness, since it plays an important role in civil law. According to L.A. Legeza, reasonableness is a subjective and objective category, since it can characterize both a person and certain phenomena in civil law (term, price, costs, etc.), therefore it has a universal and comprehensive character. The requirement to act reasonably applies to all participants in civil turnover without exception and to all civil law relations, reasonableness regulates all aspects of certain civil legal relations and exercises a regulatory influence throughout their existence, is multidimensional – In civil law it performs interpretative, complementary,

[591] Perov V.Yu., Sevastyanova A.D. Decree. oc., p.78.

corrective, as well as restrictive functions. The latter consists in a certain limitation by reasonable limits of the will of the parties to contractual obligations, which must take into account each other's interests when concluding certain contracts.[592] The principle of reasonableness is enshrined in Part 1 of Article 107 of the Civil Procedure Code of the Russian Federation in relation to procedural deadlines. As K.E. Kovalenko notes, despite widespread use, there is no legal definition of the principle of reasonableness in law,[593] since the establishment of its content is left to the discretion of the court by the legislator. Usually, the reasonableness of a court decision is associated with common sense and is interpreted as a criterion for the optimal choice between various legitimate solutions to a particular problem.[594] Thus, the principle of reasonableness is formulated as understandable in the ordinary sense, does not require an unambiguous definition and is intuitive, while open to additional clarification procedures.

The next point is the combinatorics of arguments and stable conceptual connections between alternative theories. The literature states the close connection between conceptual realism and positivism in the version of Kelsen and Hart,[595] shows a certain secondary, complementary nature of these concepts in relation to legal positivism, in an acute discussion with which they were formed. This connection begins with L. Fuller's theory: V.V. Arkhipov notes that L. Fuller considered his concept complementary to the alternative approach.[596] The starting point of integration is the dispute between Fuller and Hart, the brand manifestos of which are the articles "Positivism and the Distinction between Law and Morality" (Hart) and "Positivism and Loyalty to Law: A Response to Professor Hart" (Fuller)

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[592] Legeza L.A. Epistemological roots and socio-legal prerequisites for the emergence of principles of justice, good faith and reasonableness in the civil law of the Russian Federation // Bulletin of Tomsk State University. Right. 2019. No. 34. DOI: 10.17223/22253513/34/15, p. 163.

[593] Kovalenko K.E. Forms of manifestation of reasonableness in law // Lomonosov readings in Altai: fundamental problems of science and education. Collection of scientific articles of the international conference. Barnaul, October 20-24, 2015 Barnaul: Altai State University, 2015, p. 58.

[594] Tsvetkov I.V. Effectiveness of decisions of the Constitutional Court of the Russian Federation in 2006 // Tax expert. 2007. No.11, pp. 18-22.

[595] See, for example, Karnaushenko L.V. Decree. oc., p. 159.

[596] Arkhipov V.V. The concept of law by Lon L. Fuller: diss. ... cand. Of law sciences. St. Petersburg, 2009, 164 p.

in the Harvard Law Review. Turning to the problem of the distinction between law and morality, Hart sought to restore the intellectual authority of legal positivism, which was called into question by the fact that the crimes of the Third Reich were often committed with reference to formal rules. Fuller did not so much reject Hart's idea, as he opened the way to a constructive discussion about the distinction between law and morality. V.V. Ogleznev, analyzing the contextual aspect of the Fuller and Hart polemic, little known to the Russian reader, expands not only its chronological framework and the body of texts reflecting it, but also its philosophical, socio-legal and interdisciplinary aspects.[597] He puts forward an interesting hypothesis that is important for the classification of Hart and Fuller's legal understanding, stating the following: "the essence of these discussions is that due to Hart's influence on Fuller and the shift of analytical methodology to the field of jurisprudence, the division of types of legal understanding into legist and natural law is losing its relevance. Since the 50s of the XX century, a new integrative concept has appeared in the Anglo-American philosophy of law, uniting all existing theoretical and legal trends into one whole – analytical jurisprudence".[598] However, in the quoted texts of Finnis, Murphy, and Crowe, which are somehow related to the analytical tradition,[599] the continuation of the demarcation between legal positivism and natural law theory is more than obvious, and, more importantly, bridging the gap between them is the direct task of these texts. At the same time, the density of the "exchange" of arguments in them is much higher than in classical texts. The study of arguments is carried out not for the sake of rejecting the latter, but for their correction, development and improvement. Analytical philosophy probably acts as a breeding ground for such "communicating" argumentation systems, but it does not in any way negate their ideological content.

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[597] Ogleznev V.V. Rethinking and reinterpretation of the discussions between G.L.A. Hart and L.L. Fuller and their significance for the analytical philosophy of law // Bulletin of Tomsk State University. 210. No.330, pp. 55-59.

[598] Ibid., p. 58.

[599] See, for example: Didikin A.B. Formation and development of the analytical tradition in the philosophy of law of the XX century: Abstract. diss. ... D. of philos. Tomsk, 2016, 33 p.

Next, it is necessary to note – the reduction of categorical argumentation, the transition to the logic of convergence of "weak" arguments. The weakness of the argument in this context does not indicate its vulnerability and logical defectiveness, but the moderation of the position reflected by it, it is close in semantic terms to the political science concepts of "soft power" in the spirit of J. Nye.[600] Weak arguments soften the unambiguity of strong ones and open up ways for compromise. The transition to a "weak" logic goes back to Finnis' critique of the legal positivist ideas of Kelsen, Hart and Raz about the central thesis of natural law theory. Finnis brings together the statements of these authors about the essence of naturalism with the formulation by Ras "every law has a moral value",[601] and shows that natural law theorists have never built their theories on such an assumption. In his opinion, the formulation proposed by the positivists is erroneous due to the inability of "modern critics to interpret the texts of natural law theorists in accordance with the principles of definition that these theorists for the most part consistently and consciously used".[602] As a result, natural law theory as a theoretical doctrine is doubled, divided into "real" natural law theory, developed including by Finnis, and "imaginary", criticized by Kelsen, Hart and Raz.

Further conceptual work on this doubling will be carried out already in the context of the digital turn, by usnaturalists belonging to the digital generation – M. Murphy and J. Crowe. The difference between their methodological strategies and Finnis' methodology makes it possible to capture the influence of the medial turn on the doctrinal work of the legal theorist. So, M. Murphy conceptualized the doubling of the central thesis of natural law theory in terms of a strong and weak argument of natural law, insisting that the degree of their incompatibility with legal positivism is different.[603] Based on the teachings of Thomas Aquinas, he shows that

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[600] See, for example: Nye J. S., Jr. Bound to Lead: The Changing Nature of American power. N.Y.: Basic Books, 1990.

[601] Finnis J. Natural law and natural rights. Moscow: ANO "IRISEN", 2012. p. 47.

[602] Ibid., p. 48.

[603] Murphy M.C. Natural Law Theory // The Blackwell Guide to the Philosophy of Law and Legal Theory. Ed. By Martin P. Golding and William A. Edmundson. Malden; Oxford; Carlton: Blackwell Publishing Ltd, 2005, pp. 15-28.

in natural law theory, the law is a rational standard of behavior. Therefore, he replaces the formula attributed to imaginary natural law theory, lex iniusta non est lex (an unfair law is not a law) with the formula lex sine rationem non est lex (an irrational law is not a law). In the new formula, legality is strictly limited by rationality. Then the gap between legal positivism and naturalism is problematized as follows: if the law is irrational, and there is no reason to obey it, then why do lawyers continue to consider unreasonable laws as laws, and people obey them? In other words, to bridge the gap, it is necessary to show why and how the irrational law continues to work.

The lex sine rationem non est lex argument, according to Murphy, can take strong and weak versions depending on the logic of its nomination. He compares the strong version with the proposition that a square is a figure with four sides. All figures that do not have four sides cannot be a square. However, another logic is possible, not classification, but qualification in the sense of R. Alexi, the rationale for the argument, equivalent to the justification of the judgment "cheetahs are fast runners". An animal that is unable to run fast will not necessarily be strictly a cheetah, a lame cheetah remains a cheetah. Murphy calls this logic of reading the central thesis of natural law theory weak and considers it characteristic of Finnis.[604]

The strong argument of natural law theory is fundamentally incompatible with legal positivism, since it is self-contradictory, absurd and, as Finnis showed, speculative. However, a weak argument does not imply automatic non-conflict with legal positivism. It requires additional procedures to clarify a weak argument. To do this, Murphy turns to the functional argument of Finnis, rejected by V. Rodriguez-Blanco, and proposes its own modification. From his point of view, the function of an object or institution is its characteristic activity, striving for a certain final state. Achieving this state is the task and purpose of the object/institution, and it itself represents a certain relevant variety of benefits.[605] The goal may be external, determined by the designer of the activity, or it may be reduced to self-maintenance

[604] Ibid., p.21.
[605] Ibid., p.25.

of the object. Murphy cites the heart as an example. It has a characteristic activity – it pumps blood, its task is blood circulation, the goal is to maintain this circulation. By analogy with the heart, the law ceases to perform its function when it ceases to be a rational standard of behavior. The characteristic activity of the law is to ensure that rational standards are prescribed for execution, and it establishes these prescriptions as ways to implement social order precisely because they are such ways.[606] Murphy further corrects this formulation as follows: "the characteristic activity of the law is to provide a dictate supported by convincing reasons for action, and the law that does not do this is defective as a law".[607] In this case, a law that is not a rational standard is like a sick heart that does not perform its function well, but does not cease to be a heart because of this – it remains a law.

J. Crowe continues to implement Murphy's position on the distinction between strong and weak arguments to justify the possibility of convergence of weak natural law theory with legal positivism. He shows that Moore and Murphy's work with the functional argument represents a transition to the construction of a hybrid theory in which weak and strong arguments play different roles. As an example of a hybrid theory, Crowe cites the concept of R. Alexi; he also formulates his own concept as a hybrid theory in which the function of the law is to serve as a deontic marker that creates a sense of social responsibility.[608] An alleged law that is unable to create a sense of obligation cannot perform the function of a law and cannot be qualified as a law. It should be noted that the works of Murphy and Crowe were created already in the conditions of a medial rotation, which will require special attention.

It is curious that in the texts of modern naturalists there are appeals to strong and weak versions of legal positivism (for example, J. Crowe divides jus positivism into two branches, and believes that inclusive legal positivism (LPI) is based on the thesis that social sources are the only necessary factor in determining legal status,

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[606] Ibid., p.26.

[607] Ibid., p.27.

[608] Crowe J. Natural Law Theories // Philosophy Compass. 2016. No.11/2. Pp. 91-101, DOI: 10.1111/phc3.12315, p.99.

and exclusive legal positivism (LPE) proceeds from the fact that in some legal systems recognized social sources can include rational standards in the verification of legal validity, an example is the Eighth Amendment to the US Constitution prohibiting cruel and unusual punishments[609]), i.e. The classification of arguments into strengths and weaknesses becomes a universal element of the methodological work of the philosophy of law, even if not all philosophical and legal theories become hybrid in the sense of Crowe.

The English-speaking tradition of modern natural law theory, which is in dialogue with the Russian communicative theory of law, demonstrates the beginning of the transition to digital theory.

Conclusions:

If we proceed from the fact that the beginning of the medial turn refers to the 80s of the twentieth century, then, based on the chronological milestone, it is possible to distinguish the practice of methodological organization of philosophical and legal research focused on the search for the essence of law through bridging the gap between different types of legal understanding, which is formed in different types of culture, printed books and electronic communication. The most influential natural law theory treatise on the essence of law, which immediately preceded the medial turn, is the work of J. Finnis "Natural Law and Natural Rights" (1980), which later influenced the formation of the communicative theory of law.

Before the medial turn in modern natural law theory (R. Dvorkin, L. Fuller, J. Finnis), sometimes referred to as "conceptual naturalism", integrative tendencies are increasing, however, the variety of choice of signs of law, methods and techniques of its description makes it difficult to classify them based on classical schemes of systematization of legal understanding. A specific feature of these theories is their post-non-classical logic, in which the method precedes the formation of the central concept of the theory, and does not follow from it.

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[609] Ibid., p.92.

In the case of Finnis, the search for a definition of law begins with two axiomatic statements ("social life is based on the existence of universal benefits provided by legal institutions" and "there are requirements of practical reasonableness that only legal institutions meet"). Practical reasonableness is chosen as a construct that allows to bridge the gap between social and normative facts ("people can become murderers" and "human life is the highest value"), i.e. a sociological and positivist approach to law, and, at the same time, specifies human nature ("only man has practical reasonableness"), asserting natural law.

Practical reasonableness is realized as an assessment of the potential horizons of human choice from the standpoint of the search for a good life (or self-realization), and further familiarization with one or another universal good. The universal status of a good is determined through the imperatives of practical reasonableness, which ensure a combination of the individual and the collective in it. The community of goods is understood by him both as the beginning of a social and as the beginning of a legal one that protects the general character of a particular good. At the same time, practical reasonableness is also of methodological importance, since it allows us to establish the similarity of different legal understandings. This mediation mission makes the basic concepts of the "central point of view" both stable and open to further reinterpretations and adjustments, since they are not defined unambiguously, but are formulated as a methodological project open to communication with any other projects.

Three aspects of the communicative openness of modern naturalism make it possible to clarify the concept of "conceptual naturalism", redefining it as "open conceptual naturalism", referring to it concepts that are characterized by: operating with definitions open to additional definition procedures; combinatorics of arguments and stable conceptual connections between alternative theories; division of arguments into strong and weak (compromise) and the convergence of alternative theories through weak arguments. These qualities characterize the concepts of natural law theory before the medial turn.

§ 4.3. The medial turn: diversification of methodological synthesis

As it was shown by the example of natural law theory, by the beginning of the medial turn, the established system of scientific information, based on printed periodicals and book publishing, provided a fairly high degree of openness and dialogic methodological projects. However, the medial transition to digital technologies as the main forms of representation of scientific knowledge leads to very significant transformations in science, transformations so serious that the new qualities of science began to be interpreted as evidence of the transition to a new stage of development, fixed by the term "technoscience".[610] Its content reflects the new rootedness of science in the life world, involving the inclusion of non-professionals in the production, distribution and consumption of scientific knowledge, and the emphasis on the material foundations of science, the dependence of scientific results on the subject environment used to obtain it. Technoscience as a field of scientific practice is being formed at the forefront of modern advanced technologies, blurring the line between research and an engineering/biomedical project focused not on the mass consumer, but on the needs of a specific individual or local group. The humanitarian fields of scientific knowledge, which ensure not so much the maintenance of the anthropogenic environment as the improvement of the worldview, are characterized by such a form of technoscience as digital humanities, which is understood as the use of new digital technologies for the analysis of any artifacts (it includes any aspects of the humanitarian study of digital objects, on the one hand, and any aspects of the use of digital technologies in the study of humanitarian sites, on the other hand).[611] Digital humanities strategies are predominantly inductive, i.e. they are formed mainly at the level of empirical

[610] See, for example: Gorokhov V.G., Decker M. Social technologies of applied interdisciplinary research in the field of social assessment of technology// Epistemology and philosophy of science. 2013. No.1, pp. 135-150; Yudin B.G. Technoscience and the "improvement" of man // Epistemology and philosophy of science. 2016. Vol. 48. No. 2, pp. 18-27.

[611] See: Prozorov I.E. Correlation of bibliographic and analytical activities in the digital age // Proceedings of the St. Petersburg State University of Culture and Arts. 2013. Vol.197, pp. 142-145.

research. But does this mean that they do not involve typical methodological innovations?

To date, there is not a single field of the humanities that is not influenced by research programs of digital humanities, while such influence itself is only increasing. Legal science is no exception. One of the most obvious consequences of the medial turn for it is the formation of the science of information law into an independent discipline; the influence of digitalization affects the expansion of the fields of study of the vast majority of branch sciences. But the main thing for us is that a digital turn is also planned at the theoretical level, an example is the study of methodological problems of technologization and technologies of scientific activity in the field of jurisprudence by S.V. Kodan.[612] Within its framework, the author shows how "the creation of new research technologies and the technologization of research activities is reaching a new level of combining traditional procedural and cognitive tools with the possibilities of including new cognitive technologies of various socio-humanities in the research space of jurisprudence".[613] This process involves the inclusion in the classical scheme of scientific methodology of special subordinate levels, described by B.G. Yudin, namely, a specific scientific methodology (forms the general principles and requirements of working with social information carriers) and a subordinate procedural scientific methodology (a set of methodological tools-operations related to a specific technology).[614] Expanding on this idea, S.V. Kodan puts forward the following structure of technologization and technological knowledge in scientific activity: the subject is the subjective level, the object is the objective level and the information and communication level.[615]

The digital influence of the medial turn on the methodology of legal research today does not cause much doubt, however, this influence is interpreted in an

[612] Kodan S.V. Scientific activity in the field of jurisprudence: methodological problems of technologization and technologies // Legal activity: content, technologies, principles, ideals: monograph / under the general editorship of O. Y. Rybakov. M.: Prospekt pbl, 2022, pp. 33-61.

[613] Ibid., p. 61.

[614] Yudin E. G. Methodology of science. Consistency. Activity. M., 1997, pp. 56, 64-68.

[615] Kodan S.V. Chapter 3. Scientific activity in the field of jurisprudence: methodological problems of technologization and technologies, p. 49.

infrastructural way, new technological operations somehow serve the preparation of the material, speeding up its processing. The question is whether something can change at the top level of methodology, where the basis of the theoretical work of the thinker since the time of Ancient Greece has been Aristotelian syllogistics and where, in fact, the theories themselves are put forward as a sequence of syllogisms.

To any historical and theoretical research, including legal research, digital technologies today can offer new ways of objectifying doctrinal connections, for example, through scientometric algorithms for building citation and co-authorship networks (metadata of journal publications is used), or through establishing the frequency of use of keywords within texts. Digital scientometric analysis also makes it possible to identify the processes of inclusion of innovative ideas in scientific circulation and establish their patterns reflected in the cycles of diffusion of ideas. For example, the "sleeping beauty" model is known, developed in scientometry to explain the dynamics of research attention directed at scientific articles that were ahead of their time. A. van Raan, who presented the first large-scale measurement of "sleeping beauties", considered as the latest publications that remained unnoticed for a long time (slept), and then, almost suddenly, they attracted a lot of attention (they were awakened by the "prince").[616] The "dream" of the publication is explained by the fact that at the moment there is no one to develop the ideas contained in it. When potential "princes" grow up to evaluate the content of "sleeping beauty", then awakening happens. Of course, not every uncited article is not cited just because no one understood it: in most cases, the reasons are much more trivial. Nevertheless, breakthrough articles that sink into silence for the first time after publication are not uncommon. Van Raan cites as an extreme example of a ten-year "dream" of a publication that was ahead of its time in the field of string theory. I would like to note that the applicability of the digital scientometric methodology has technical limits related to the subject of research – scientific databases that collect scientific (mainly journal publications) in digital format. Most of them have too weak depth

[616] Raan A. F. J. van. Sleeping Beauties in science // Scientometrics. 2004. Vol. 59. No. 3, p. 467–472. DOI: 10.1023/B:SCIE.0000018543.82441.f1.

(the "bottom" is the beginning of the medial turn), in addition, they display the book polemic in a very truncated form, since the source itself is not oriented towards it. The depth of most digital archives of Russian humanitarian journals does not go beyond the current century, exceptions rarely differ in good recognition quality, and the articles themselves in the tables of contents by numbers are often presented sporadically. Databases also display book polemics in a very truncated form, since they are initially focused on periodicals.

More interesting prospects may be associated with the use of neural networks to generate scientific texts. Neural networks are a nonlinear modeling method based on the method of learning by examples: the user of a neural network selects a certain sample of data («dataset»), and then runs some learning algorithm that automatically perceives the data structure and remembers the information and subsequently can successfully recognize the data in the future.[617] The method itself is mathematical and requires hardware and software implementation. The core of the algorithm is «an artificial neuron» (in the sense of a software model), that repeats the principle of operation of a living neuron, i.e. non-linearly converting the activation input signal into an output signal. Networks of neurons can communicate according to different principles of architecture; the choice of network type depends on the tasks set, from the field of solution of which examples are selected for training a neural network. Neural networks will become one of the mass components of computer technology already now, and their importance will only increase in the near future, since their applicability potential includes reading, recognition and generation of text and images, perception, speech recognition and imitation, situation analysis, improvement of robotics and bioprostheses. However, until the middle of 2022,[618] neural networks were rather exotic projects for the mass Internet user, specialists

[617] Volokitina T. S. Neural network for image recognition // Modern scientific research and innovations. 2021. No. 3(119), p. 9.

[618] On July 12, 2022, beta testing of the Midjourney social network began, integrating a neural network trained on a huge amount of content as an image generation technology and the Discord messenger chat service as an interface for transmitting a user request to the neural network. Midjourney is designed to generate images based on the user's description with the ability to transfer the style. Its use does not require technical knowledge, access to the Internet and the service itself is sufficient for it (pre-installation of Discord is assumed). As a result, the widest range of users were able to interact with the neural network.

worked with them, and ordinary people at best encountered them in the context of science journalism or science fiction, although the technology itself has been known for more than several decades. Neural networks have been turned towards the masses due to their implementation in design aesthetic projects. But even in this case, the scientific discussion of their specifics was subject to an elitist logic based on the opposition of the creator and the audience, which autonomizes the role of the agent of the use of neural networks in the context of institutionalized professional creativity.

It is quite traditional to contrast man and machine based on the ability to create. As A.N. Gurov shows, analyzing the problems of using neural networks in artistic translation, the aesthetic impact of the text is a task that neural networks cannot yet cope with.[619] However, the vast majority of researchers dealing with this topic share the confidence that such a demarcation is temporary and will be overcome. A.N. Sokolov and his co-authors analyze the use of neural networks in art, showing that from a working tool (video coloring, new combinatorics of video images, etc.), they are gradually approaching the role of a co-author, for example, films have already been created, the scripts of which were generated by a specially trained ChatGPT neural network.[620] It is important that the commercial and shareware versions of this neural network demonstrate some competitiveness as a proposed product - it is occasionally found that the shareware version overtakes the commercial one, whose algorithms receive more attention from specialists, due to a larger array of contacts with users who are also important for training. After the first breakthroughs of the third and fourth versions of ChatGPT, domestic neural networks – GigaChat, Kandinsky, YandexGPT - achieved significant success, the latter was integrated with the Yandex voice assistant Alice.

All these features of neural networks had very little to do with discussions about the development of scientific methodology in the context of digital humanities

[619] Gurov A. N. Literary translation as an insurmountable obstacle for neural networks // Kazan Science. 2021. No. 7, p. 81.

[620] Sokolov A. N., Ziganshina E. A., Kresova V. P., Solovova D. D. Neural networks in contemporary art // Bulletin of the Tyumen State Institute of Culture. 2021. No. 3(21), pp. 189-193.

until February 2023, in which RSUH student Alexander Zhadan defended a diploma in management on the topic "Analysis and improvement of management of a gaming organization", written in one evening using the ChatGPT neural network.[621] According to press reports, the time for writing the diploma was twenty-three hours. This case caused a wide public outcry, and the Ministry of Education and Science decided not to cancel his certification. The question of how high-quality the text was, which was rated "satisfactory", remains open. However, much more interesting questions are connected with the case of a neural network diploma – for which blocks of scientific articles (for example, based on the Imrad structure: "Introduction, methods, results and discussion") is the use of a neural network promising, and what can and should be done with it when creating scientific texts? Its capabilities are broader than a simple bypass of text originality verification systems, since at least it can significantly save the researcher's time/effort when analyzing relevant literature, and simplify and even standardize comparison procedures. Until now, text generators in science have been used as a "bredogenerator" to detect defects in the scientific review system (for example, the notorious article "The Uprooter"[622]), but the quality of their work was very far from today. While it can be said that the neural network can massively increase the typical materials for combinatorics, the associative search for new combinations between types continues to remain with a person.

Let's return to the changes in methodological strategies related to the scientific work of a legal researcher in terms of numbers. For theoretical research, they mean simplifying access to both the texts themselves (through digitization and posting of paper works and through the digital form of publication, which is used today by almost all periodicals and most bookstores), and accelerating informal expertise based on online discussions on blogs and social networks. Long before the era of the

[621] The neural network wrote a diploma for a Russian student in one evening. teachers are shocked – how can we test knowledge now? // https://www.msk.kp.ru/daily/27460/4714947/https://www.msk.kp.ru/daily/27460/4714947 (accessed 02.19.2023).

[622] A computer program deceived a scientific journal with the help of an uprooter // Lenta.ru. October 1, 2008. URL: https://lenta.ru/news/2008/10/01/pseudoscience / (accessed 03.14.2024).

penetration of neural networks into everyday practices, in 2006 The Law Review of the Washington University School of Law published an issue that included in the "Symposium" section a selection of materials from the Bloggership: How Blogs Are Transforming Legal Scholarship conference on April 28, 2006, devoted to various legal issues related to blogs, in which the question of the impact of blogs on legal science was actively discussed. K. Litvak, the main skeptic of this event and the only participant who does not have her own blog, believes that despite the various advantages of blogs that successfully educate, rally, influence politics and entertain, they are not able to change legal science.[623] The author bases his conclusion on the specifics of blog communication, which is not suitable for a full-fledged scientific discussion. Since potential competent commentators are not interested in communication exchanges in this environment, blog comments are loosely related to the original post and each other. Based on the fact that in the seventeen years since its publication, legal science has not turned into a blog, this conclusion can be accepted as consistent in assessing the main development of jurisprudence. But that doesn't mean that blogs haven't given him any advantages at all.

They are discussed in the rest of the articles in the column. P.L. Caron argues that successful lawyers are often successful bloggers, and blogs themselves "push" legal science to short forms with open access and without intermediaries.[624] He argues with the skeptical position of K. Litvak, showing that blogs are associated with thinking, putting forward and promoting new ideas, justifying his position through summarizing the positions of the main participants of the conference.

G. Heriot[625] adheres to "cautious optimism" in assessing whether a blog in legal science is a product of its excessive scholasticism, or acts as entertainment and "pampering" of legal scholars.[626] He considers blogs to be a continuation of the

[623] Litvak K. Blog as a bugged water cooler // Washington University Law Review. 2006. Vol. 84. Iss. 5, p. 1061-1070.

[624] Caron P. L. Are scholars better bloggers? bloggership: how blogs are transforming legal scholarship // Washington University Law Review. 2006. Vol. 84. Iss. 5, p. 1025-1042.

[625] Heriot G. Are modern bloggers following in the footsteps of publius? (And other musings on blogging by legal scholars) // Washington University Law Review. 2006. Vol. 84. Iss. 5, p. 1113-1126.

[626] Ibid., p. 1113.

American tradition since the adoption of the Constitution to publish brief informative essays on theoretical issues in newspapers for the general public. Long and heavy articles by contemporaries with a long publication period, in his opinion, have little effect on a wide audience and do not often attract the attention of a professional audience. The abstraction and spaciousness of legal science hermetically closes it in itself. Blogs return to legal scholars and legal philosophers, whom competition has practically squeezed out of public discourse as a class, the position of activists fighting for justice and acting as opinion leaders. The internal resources of the academy, in his opinion, cannot ensure their promotion in the market of ideas, and the blogosphere as an external resource can become the basis for the return of the status of a "public intellectual" to lawyers. Similar views are presented in the article by H.J. Bashman, who defends the argument that not all blogs of law professors are legal studies, but some quite meet these criteria.[627] A.M. Froomkin shows that legal blogs are an excellent tool for sharing, organizing and developing ideas, despite all their technological limitations.[628] R.E. Barnett insists that blogs are the same form of scholarship as classical legal research or oral debate.[629] It is significant that he associates most of the controversy around blogs with the "dirty secret" of the academic science of law: most law professors consider legal research too boring to seriously and constantly engage in them, while professors The rights are very adept at being able to avoid what they don't want to do. If blogs provide a sense of interest and excitement of discovery, then they are quite consistent in their fundamental purpose.

Ch. Hart and T. Yin proceed from a generational scientific analysis: they show that bloggers are more often young applicants with a degree for a position than full-time teachers,[630] linking this circumstance with a lot of leisure time for non-teaching

[627] Bashman H.J. The battle over the soul of law professor blogs // Washington University Law Review. 2006. Vol. 84. Iss. 5, p. 1257-1261.

[628] Froomkin A.M. The plural of anecdote is “blog” // Washington University Law Review. 2006. Vol. 84. Iss. 5, p. 1149-1155.

[629] Barnett R.E. Caveat blogger: blogging and the flight from scholarship // Washington University Law Review. 2006. Vol. 84. Iss. 5, p. 1145-1148.

[630] Hurt Ch., Yin T. Blogging while untenured and other extreme sports // Washington University Law Review. 2006. Vol. 84. Iss. 5, p. 1235-1255.

members of the academy. The researchers consider blogging as a risky venture that takes time away from research, opposes the author to the traditional academy, makes his mistakes well-known, his texts are superficial, and puts him in a dubious position in the context of chasing an agenda ("hype", as they would say today). At the same time, Hart and Yin concretize the connection of blogging with academic writing, characterizing the former as a new form of draft and style simulator, which allows at the same time not to break away from the context of resonant cases significant for the profession. A blog can be a tool to enhance the reputation of an author in a professional environment, but in this case, it requires high self-discipline, discretion and tact from a legal blogger. Curiously, the authors cite arguments from the blog of E. Althaus, showing that the fears of non-bloggers are working against legal bloggers: "they do not understand what bloggers are doing, and they worry that we will do something destructive or dangerous with the help of our power (such as it is!). But they also don't want to know that it's good, because it creates another fear: will I be required to blog? If blogging is good, will they be considered inferior for not blogging? And they are probably already at least a little jealous of their colleague's increased authority".[631] This demonstrates, among other things, the traditional conservatism of legal science, which nevertheless does not prevent blogs, at least in some cases, from becoming a productive means of establishing a dialogue for those who are not directly (through affiliation) incorporated into the academic profession.

The most fundamental from the point of view of analyzing the essence and forms of theoretical jurisprudence is the article by D.A. Berman, who insists that blogs, like articles and books, are just a means of communication, so the dispute about whether they can be a legal science does not make much sense.[632] He shows that the development of legal science reflects the development of mass communication media, which change the norms of both legal activity itself and its

[631] Ibid., p. 1239-1240.

[632] Berman D.A. Scholarship in action: the power, possibilities, and pitfalls for law professor blogs // Washington University Law Review. 2006. Vol. 84. Iss. 5, p. 1043.

research.[633] Blogs give the theorist's thinking brevity, freeing him from endless quoting of intermediate positions, include diverse audiences in his community, which promotes the promotion of new ideas, establishes respect for diverse forms of legal science, reunites research, practice and teaching, opens up new opportunities for interdisciplinary research, and adds to the collection of cases for the empirical research base. As a result, the lost synergy between the research, teaching and civil service of law professors increases.

The considered block of texts outlined further vectors of digitalization, which were fully justified in subsequent years. The development of Internet services has led to significant changes in the understanding of what a "blog" is. The decline of the popularity of live magazines was caused by the heyday of social networks, but if we consider a blog as a form of public comment, expanded by online standards and short by offline standards, assuming a response (from likes-reposts to voluminous responses) from all interested users, then it is quite standard for the vast majority of types of digital communication. In this format, it is not a systematic form of legal science, but in the conditions of pandemic quarantine it has become quite a routine and, if not mass, then a broad episodic practice, which is directly and or indirectly resorted to by philosophers and legal theorists, declaring their own or retelling other people's judgments. Since that time, the so-called "great gap" (the theoretical juxtaposition of digital and print culture) has been a thing of the past.[634]

Digital formats themselves depend on the national specifics of digitalization. In the United States, for example, where the development of copyright in general has led to the rapid institutionalization of scientific digital content, blogs since the beginning of the XXIst century, they have accumulated around university platforms, which ensures their stability and stability. So, in the reviewed issue of the Washington University Law Review, the blog of Posner-Becker was noted (https://www.becker-posner-blog.com /) as "fascinating", directly contributing to

[633] Ibid., p. 1045.

[634] Sidorov S., Mironov S., Grigoriev A., Tikhonova S. An Investigation into the Trend Stationarity of Local Characteristics in Media and Social Networks // Systems. – 2022. – Vol. 10, No. 6. – DOI 10.3390/systems10060249.

"interdisciplinary collaboration in the field of scientific research" and "dedicated exclusively to the expression of scientific ideas".[635] The authors themselves – Judge Richard Allen Posner and Nobel laureate Gary S. Becker – are well known to the Russian reader, the first as a philosopher of law, the second as an economist. In the literature of recent years, their blog continues to be considered an example of a successful and influential format for scientific discussions.[636] There are well-known philosophical and legal works that used the Internet subculture as a stylistic tool, among which the most striking are the works of P. Schlag.[637]

In our country, the actual author's blogs of legal philosophers are rather exceptional cases, but their representation on the Facebook network (the Meta Platforms Inc. project, whose activities are prohibited in Russia) was quite high until February 2022. During the covid period, even the most conservative jurists used online resources for communication, all specialized conferences were held in an online format, the most popular periodic event was the seminar "In Search of a Theory of Law" (Faculty of Law of the Higher School of Law-St. Petersburg, I.I. Osvetimiskaya and E.G. Samokhina). The most famous among legal theorists was and continues to be the Yurklub resource (http://forum.yurclub.ru), in which interesting discussions appeared from time to time, and, perhaps more importantly, full-texts of rare publications on philosophy and theory of law were posted. It is difficult to overestimate their benefits, however, such distribution often, from a formal point of view, occurs with violation of intellectual rights (authors, translators, publishers).

In general, the medial turn in theoretical jurisprudence was cumulative in nature, and proceeded gradually, with the exception of the leap of the covid years. First of all, he relied on the informal representation of source texts in digital form,

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[635] Ibid., p. 1043, 1051.

[636] See, for example: Breeze R. The Practice of the Law Across Modes and Media.: Exploring the Challenges and Opportunities for Legal Linguists // Legal Linguistics Beyond Borders: Language and Law in a World of Media, Globalisation and Social Conflicts.: Relaunching the International Language and Law Association (ILLA). Vol. 2. Berlin: Duncker & Humblot GmbH, 2019, p. 291-314.

[637] See, for example, Schlag P. Spam jurisprudence, law out of thin air and concern about ratings due to the fact that nothing is happening / per. E.G. Samokhina // Izvestia of Higher Educational Institutions. Law studies. 2017. No. 1, pp. 135-174.

assuming their digitization and free access to them (in our country, these were full-texts with copyright violations from the free hosting of Народ.ру). Secondly, it was associated with the institutionalization of digital periodicals accumulated on the portal today elibrary.ru, if we take only the Russian segment, as well as on similar foreign resources. At the third stage, he moved on to expanding episodic Internet discussions, preliminary and subsequent in relation to published texts, into the format of online conferences.

In general, the medial turn accelerates the introduction of new and rare texts into scientific circulation, expands the body of sources available to the researcher, and exposes the "thinking over" of the provisions and their preliminary and subsequent discussion, which in the culture of the printed book is carried out in "behind the scenes" informal communication. All this cannot but influence the strengthening of the epistemic situation of the dominance of methodological pluralism characteristic of post-non-classical science, actualizing new practices of methodological synthesis.

Acting in a situation of multiple methodologies, the researcher, even being within the framework of a specific methodological project, is forced to take into account the existence of conceptual models different from his own, at least at the stages of verification and falsification of the data obtained. However, interdisciplinary research practices are becoming so widespread that the task of methodological synthesis becomes routine.

The concept of methodological synthesis was laid down by Kant in substantiating the possibility of synthetic a priori judgments based on transcendental synthesis. The key logical role in the sequence of the transcendental method integrating the deduction of pure rational concepts with the principles of constitution, functionalism, representativeness and teleologism[638] is played by the synthesis carried out by the mind, which means "joining different representations to

[638] See: Semenov V.E. The basic principles of I. Kant's transcendental method // Bulletin of the Russian State University. Series: Philosophy. Sociology. Art history. 2008. No. 7, pp. 11-23.

each other and understanding their diversity in a single act of cognition",[639] as a result of which the diversity of the content of contemplation is subordinated through categories to the synthetic unity of apperception. Categories play a central role in this process. Kant's transcendental method is universal in the sense that it describes each specific human act of cognition, the increment of scientific knowledge and the creation of culture as such, since it includes all forms of movement from problem to subject. However, the antinomic limitations outlined by Kant himself are a kind of challenge to his modernization. In relation to the methodological problems of modern science, the appeal to Kantian transcendentalism allows us to emphasize logical and categorical work in the formation of a methodological platform for research programs. As V.L. Khramova emphasizes, a concrete scientific analysis of individual theories requires the isolation of the categorical "core" inherent in this theory, the construction of a logical scheme (model) of the theory, where "along with coordination links, subordinative links are contained"[640] (the principle of subordination). Methodological synthesis should link the coordinate and/or subordinative connections of two or more theories in such a way that they do not lose their productivity in relation to the subject to which the synthetic methodological product will be attached.

Analysis of scientific literature through the search query "methodological synthesis" on the portal elibrary.ru (93 articles as of June 2020, 141 articles as of February 2023) shows the regularity of reference to this concept in the last twenty years in a wide variety of disciplinary fields of scientific knowledge, from mathematics to history. The subject matter of the articles distributed by the request is far from the classical thematisms characteristic of the philosophy of science, it is formulated within the disciplinary space and is related to its needs. It is obvious that researchers have to turn to the concept of methodological synthesis, independently developing its understanding while testing new approaches, both fundamental and

[639] Kant I. Criticism of pure reason // Collected works: In 8 volumes, 1994. Vol. 3, p. 108.

[640] See: Khramova V. L. Categorical synthesis of theoretical knowledge. Kiev: Naukova dumka, 1984, 295 p.

applied. Science does not know a ready-made guide for the production of methodological synthesis, in each case it is a unique result of a complex heuristic search.

So, in all branches of science, methodological pluralism leads to similar problems, the main of which is confrontation, competition and inconsistency of dominant approaches. These types of relations do not necessarily differ in the acuteness and even conflict that are so characteristic of the communication of the main types of legal understanding in legal science. For example, L.V. Smorgunov states that synthetic searches in the methodology of comparative political science are formed on the basis of reducing the confrontation between Durkheim and Weber traditions in social knowledge.[641] Indeed, the century-long coexistence of the methodological lines of Weber and Durkheim has led to the emergence of many compromise branches focused on convergence and the search for similarities.

A similar convergence-similarity strategy is revealed by N.V. Mikhailova, who studies the philosophical and methodological foundations of modern mathematics. In her opinion, philosophical and methodological synthesis differs from a simple combination of principles in that it is a fusion of initial, even opposing, principles into a conceptual idea with a new meaning, the essence of which is that it sets a set of research methods as an integral part of its methodological arsenal.[642] Therefore, the basis of the unity of modern mathematics should not be the construction of a single language of science, but the finding of methodological similarity of theoretical and cognitive situations that require an additional system of concepts for their analysis, which would contribute to the elimination of subjective elements and the expansion of objective description.[643] Methodological synthesis, focused on convergence, does not complete the construction of knowledge by creating a coherent metaphysical system, it is aimed at a fundamentally different task

[641] Smorgunov L.V. Methodological synthesis in modern comparative political science // Method. 2014. No.4, p. 301.

[642] Mikhailova N.V. The principle of consistency and philosophical and methodological synthesis of the directions of substantiation of mathematics // Philosophy of Science. 2012. No.3(54), p.94.

[643] Ibid., p.100.

– to open new ways of communication in theoretical knowledge and thereby ensure the increment of knowledge. Not to put a collection of facts in neatly arranged catalog boxes, but to open the way to interaction that did not exist before. The resulting idea should give a new methodological program that continues the strategy of finding similarities, bringing together different approaches based on the search for related, identical or simply similar elements and connections in their structure.

In the theory of law, the converging strategy of similarity is characteristic precisely in the integrative search for models that reduce the conflict of types of legal understanding. Its feature is a two–level classification of legal theories, in which the basic types are divided into strong and weak/soft, forming matrix models of theoretical constructs and their properties. On its basis, they are trying to bring together theories, mainly located in weak cells of the matrix. The matrix approach is practiced implicitly, as an element of verbal reasoning, for the reproduction of which, however, it is not difficult to make a table. Mathematical operations on matrices are possible, but the work of methodological synthesis is usually limited by the general rules of formal logic: weak versions of the theory contain fewer contradictions, so they are easier to integrate into a non-conflicting conceptual construct.

The division of legal theories into strong and weak versions is so widespread that it seems to be an extremely difficult undertaking for historians of the legal science of the future to identify the pioneer of this classification; it probably goes back to the generally accepted division of philosophical teachings into extreme and moderate in the history of philosophy. At the same time, nowadays it is becoming increasingly important for methodological synthesis in the philosophy of law. For example, the demarcation of classical and mild (moderate) legal positivism (exclusive and inclusive positivism in the terminology cited above by J. Crowe) is implemented in the article by M.N. Marchenko "Moderate positivism and the rule of law in a state governed by the rule of law".[644] Kelsen's normativism is often

[644] See: Marchenko M.N. Moderate positivism and the rule of law in the conditions of the rule of law // State and Law. 2012. No.4, pp.5-10.

interpreted as a strong legal positivism by V. Rodriguez-Blanco, considering the natural law concept of J. Finnis classifies it as a weak version of normative jurisprudence,[645] M.C. Murphy qualifies it as a weak interpretation of natural law.[646]

As it was shown in the previous paragraph, with regard to the theory of natural law, M.C. Murphy proposes the use of a distinction between strong and weak interpretation[647] in order to reveal the reality of the opposition of natural law and positivism (he finds it unambiguously so only in the case of relations between a strong interpretation of natural law and positivism, which, however, does not exclude contradictions for weak interpretation). In an article expanding on Murphy's argument, J. Crowe distinguishes the theories of natural law into a strong and weak version: a strong point of view argues that a rational defect in a norm makes it legally invalid, while a weak point of view argues that a rational defect in a legal norm makes it legally defective, defective. On this basis, the author proves the affiliation of the natural law theory of J. Finnis refers to the weak version of natural law and offers an argument on the viability of hybrid theories of natural law suitable for combining strong and weak versions of it.[648]

The similarity search strategy is universal and widespread. But it is not the only possible one. A new strategy of methodological synthesis was put forward by representatives of metamodernism, a trend that developed in the XXIst century in Western metaphysics. Metamodernism unites a very wide range of so-called flat ontologies, versions of which under various "self-names" are being developed by a galaxy of philosophers of the younger generation, including G. Harman, K. Meyasu, R. Brasier, G. Harman, L. Bryant, N. Srnicek, etc.[649] Based on the critical pathos of the postmodernist project, medamodernism directs its efforts towards the free

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[645] Rodriguez-Blanco V. Is Finnis right? Understanding of normative jurisprudence. Part 1 // Bulletin of the Humanities University. 2018. No. 4 (23), pp. 92-94.

[646] Murphy M.C. Natural Law Theory // The Blackwell Guide to the Philosophy of Law and Legal Theory /E. by Martin P. Golding and William A. Edmundson. Malden; Oxfor; Victoria: Blackwell pbl, 2006, p.21.

[647] Ibid., p. 15-28.

[648] Crowe J. Natural Law Theories // Philosophy Compass. 2016. No. 11/2, pp. 91-101. 10.1111/phc3.12315.

[649] Kosykhin V. G., Tikhonova S.V. Optics of twilight: on ghostliness and darkness in the discourse of metamodern ontology // Bulletin of Tomsk State University. Philosophy. Sociology. Political science. 2023. No. 71. DOI 10.17223/1998863X/71/11. p. 108.

construction of ontology after the deconstruction of philosophical oppositions and hierarchies. As a fulcrum, he uses the conceptual practice of permanent metaxis, which involves oscillation between and simultaneous acceptance of mutually exclusive truths. Metaxis is ontologically affirmative, it abandons the negative connotations of postmodern deconstruction, increasingly considered in the philosophy of law as a nihilistic strategy, for the sake of positive assertive judgments. A. Pavlov considers metamodernism as "a new type of sensuality (the "structure of feeling"), which can turn to irony when seriousness becomes too much, and to naivety when cynicism begins to dominate in culture... The prefix "meta" means simultaneously "with", "between" and "for"... epistemologically, metamodernism is located"c" (post)modernism, ontologically "between" (post)modernism and historically "for" (post)modernism".[650] The metamodern oscillation (T. Vermeulen and R. van den Akker) between the enthusiasm of modernity and the ridicule of postmodernity involves swinging in the conceptual field "between", representing both theoretical and practical action-an act accompanied by advertising, Internet promotion, mergers and acquisitions of concepts external to the flow.

Speculative realism, B. Latour's actor-network theory, and M. Marder's post-deconstructive synthesis are united in rejecting the figure of the subject as a basic epistemic principle, which allows them to free themselves from the dictates of classical methodological schemes of modernity and reveal I. Bogost's thesis that "all beings exist equally, although they do not exist equally".[651]

The wave concept of the history of continental metaphysics, proposed by L. Bryant, N. Srnicek and G. Harman in the work "The Speculative Turn: Continental Materialism and Realism",[652] opens up a new perspective for evaluating the processes of theoretical classicalization through the metaphor of the "star", which turns the figure of the philosopher into a source of the wave process in the thinking

[650] Pavlov A. Images of modernity in the XXI century: metamodernism // The logo. 2018. Vol. 28. No. 6, pp. 1-19.

[651] Bogost I. Materials: The Stuff of Things is Many // I. Bogost Video Game Theory, Criticism, Design, 2010. February 21. URL: http://www.bogost.com / blog/materials.shtml (accessed: 06.08.2020).

[652] See: The Speculative Turn: Continental Materialism and Realism. Ed. by Levi Bryant, Nick Srnicek and Graham Harman. Melbourne: Re.press, 2011, 430 p.

of subsequent generations. In this case, the beautiful physical metaphor of starlight is a continuation of the logic of reducing the subject to an object, the pulsation of whose thought affects the intelligible field of meanings and assessments. It should be noted that metamodernism itself is based on digital culture, addressing not so much the next generations as recruiting like-minded people among contemporaries, appeals to living face-to-face in a new environment for metaphysics of online communities, open texts and the blogosphere,[653] its own objectness is by no means equivalent to passivity, it is active in increasing the permeability of the collective reason for the "light" of metamodernism itself.

The considered attitudes are the foundation of a methodological synthesis characteristic of metamodernism, in which metaxis allows us to freely dissect conventional identities and combine what was previously considered incongruous, creating a methodological chimera. The chimera, a fire-breathing mythological monster with the head and neck of a lion, the body of a goat and a tail in the form of a snake, has long been synonymous with utopian projects and unfounded ideas, showing the non-viability of composite structures. Negative connotations are very characteristic of the use of this concept in legal science. For example, E.B. Khokhlov defines a legal chimera as "as a kind of legal verbal construction that has exclusively its own greater or lesser aesthetic appeal and value... a chimera is something that externally exists, but does not have any real grounds for its existence; it is the fruit of rationalistic constructions that does not have an ontological (i.e., existential) basis".[654] According to the author, chimeras appear in jurisprudence as a result of poisoning by an "excess" of methodological freedom, they are not (evil)qualitative legal abstractions that rapidly melt away at the first encounter with reality.[655]

E.B. Khokhlov continued his anti-chimeric criticism of the philosophy of law together with Yu.I. Grevtsov in a later article devoted to chimeras in modern legal

[653] See: Knecht N. P. A new dispute about an old problem: objectively oriented ontology and speculative realism // Economic and socio-humanitarian studies No. 1 (9) 2016, pp.41-46.

[654] Khokhlov E.B. Legal chimeras as a problem of modern Russian legal science // Law studies. 2004. No. 1, p.4.

[655] Ibid., p. 14.

dogmatics, including the communicative theory of law by A.V. Polyakov.[656] The focus of the text was the concept of "absolute legal relationship", which, according to the authors, belongs to the number of concepts that not only do not help the study and explanation of general problems of jurisprudence, but also obviously direct, especially inexperienced, research thought into a dead end.[657]

However, if we proceed from the clear correspondence of abstract concepts to real objects proposed by Yu.I. Grevtsov and E.B. Khokhlov (in principle, poorly feasible), then their concept of "legal chimera" should be revised. If we continue to develop the metaphor, then in recent decades, genetic engineering has provided a new meaning to the word – in biology, chimeras are animals or plants whose different cells contain genetically heterogeneous material. Chimeras are an infrequent phenomenon among multicellular organisms, which are characterized by a universal set of genes for each cell. Nevertheless, chimeras occasionally arose as a result of mutations, recombinations, and cell division disorders until biotechnologists began purposefully creating genetically modified organisms. The emergence of viable creatures with traits determined by different genetic lines, [658]combined artificially, led to an expansion of the content of the concept of "chimera". The concept formation of metamodernism is quite comparable to the practice of creating chimeras in modern biotechnologies. Nevertheless, the existence of natural chimeras means only one thing: chimeras will inevitably appear, whereas ignorance about the mechanisms of their appearance can lead to negative consequences. A viable chimera will not necessarily be a monster, the metaphor of an "ugly duckling" that turns into a beautiful swan is quite suitable for its description, although initially the community perceived it as an ugly and alien creature.

In the philosophy of metamodernism, the conceptual figures of previous metaphysicians who determine certain lines of reasoning have become a special kind

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[656] See: Grevtsov Yu.I., Khokhlov E.B. On legal and dogmatic chimeras in modern Russian jurisprudence // Izvestia of Higher educational institutions. Law studies. 2006. No.5 (268), pp. 1-23.

[657] Ibid., p. 22.

[658] Medvedkina D. A., Matveeva T.V. Mylnikov S. V., Tikhonova S. V. Contradictions in the formation of the legal policy of the Russian Federation in the field of genetic engineering // Ecological genetics. 2016. Vol. 14, No. 1. DOI 10.17816/ecogen14134-48. p. 36.

of methodological chimeras. The dialogue with the predecessor is a supporting structure for creating a philosophical concept. What would Nietzsche's philosophy be if it were not addressed to the work of Schopenhauer? However, metamodernism does not just form a polyphonic organization of philosophical reflection, it goes much further, combining what was previously considered incongruous. It is not by chance that G. Harman called his own philosophy "an inescapable mutant, the offspring of Husserl's intentional and Heidegger's real objects";[659] it really is a fusion of Heidegger and Husserl's ideas, mixed to such an extent that Heidegger, in reading Harman, cannot be separated from Husserl and vice versa. The figure of the addressee of the source becomes a chimera, quite vital and even aggressive in its bid for consistency. Harman's characteristic love of self-explanation and self-justification, perhaps mixed up in the element of instant comment inherent in Internet journalism, easily modifies the chimera in cases of criticism. Harman overoperatively, by the standards of previous metaphysics, reworks his concepts. As O.V. Golovashina notes, Harman's metaphysical project is far from complete, "he reacts to the comments of colleagues, clarifies and complements some individual aspects of his metaphysics".[660] It is important to note here that speculative realism as a new approach was initially formed "in two houses", all the landmark events that initiated it (starting with the workshop of Alberto Toscano at Goldsmiths University of London, April 2007) were announced and discussed on the Internet, almost all its participants blog and comment on each other, post their texts in digital format both on websites and on social networks, including scientific and professional ones (including famous ones in the world Academia.edu and ResearchGate).

Curiously, the matrix principle plays an important role in Harman's thought, but not epistemological in the search for similarities, as in the methodological synthesis of smoothing, but ontological, distinguishing what was considered identical. Harman uses it in the "Fourfold Object..."; dividing all objects and

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[659] Graham Harman: "We live inside metaphysics" // Knife. URL: https://knife.media/grahamharman / (accessed: 06.08.2019).

[660] Golovashina O.V. Objective ontology? G.Harman's Metaphysics // Bulletin of St. Petersburg University. Philosophy and Conflictology. 2018. Vol. 34. Issue 1, pp. 11-12.

qualities of objects into sensual and real, he obtains a quaternary system[661] in which each element is not considered separately. The Harman quaternary matrix is needed to identify the tension between the object and qualitative poles. D. Kralechkin describes Harman's ontological matrix as follows: "the four-fold structure of the object, deduced by Harman by superimposing on each other the peculiarly understood schemes of the ontologies of Husserl and Heidegger, at the level of its own declaration, that is, explicitly written out requirements and advantages, differs precisely in that one pole never merges with another and does not follow from the other: that is, What appears to be unity in ordinary experience is here decomposed into elements that are detached from each other".[662] Kralechkin emphasizes that matrix "quadruplicity" is far from as new as Harman would like, and cites the Aristotle-Boethius schematics as an example.[663] Legal philosophers can easily draw parallels with the teachings of Thomas Aquinas on the types of laws. Nevertheless, the logic of metaxis itself, as we can see, allows us to form similarities where there has always been a difference, and to find a difference where there has always been a similarity.

Similar to Harman's procedures for creating synthetic chimerical figures can be seen in L. Bryant's "Democracy of Objects",[664] synthesizing the language of Deleuze and Guattari with the languages of Latour and Lacan. At the same time, classical schools of interpretation of the classics of phenomenology, of course, cannot agree with the product of Harman's methodological synthesis, representatives of classical trends are skeptical of Bryant's methodological innovations. The complexity of chimerical synthesis designs is often defined as excessive and far-fetched, for example, such an assessment is present in the cited article by D. Kralechkin. However, the chimerical synthesis gives very unexpected results: it

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[661] See: Harman G. The four-sided object. The metaphysics of things after Heidegger. Perm: Gile Press, 2015, 152 p.

[662] Kralechkin. D. About sealing wax and cabbage // Logos. 2014. No.4 (100), p. 308.

[663] Ibid., p. 303.

[664] Bryant L.R. Democracy of objects / translated from English by O.S. Myshkin. Perm: Gile Press, 2019, 320 p.

was thanks to the work "The Prince of Networks: Bruno Latour and Metaphysics"[665] published in 2009 by G. Harman that Latour, famous for his achievements in the field of sociology and anthropology of science, gained a reputation as a metaphysician. However, if we do not turn to the processes of classicalization, then the advantages of flat ontologies are that they correct the optics of traditional Western ontology, which, according to the apt expression of O.S. Myshkin is not so much mistaken as simply not an optimal tool in the world of technoscience, digital society, where a whole range of entities with an "intermediate" ontological status seems to hide between the opposites of "human/non-human".[666]

The considered strategies of methodological synthesis are far from equivalent in terms of the increment of philosophical and legal knowledge. If the first one is widespread, especially characteristic of the sociological and communicative understanding of law, then the second one is rather an invitation for the philosophy of law to new methodological spaces. It is very likely that the philosophy of law, which is very actively (albeit not quickly) mastering all the achievements of ontology, will be able to answer it. A very significant contribution to this process is the development of the blogosphere in the context of the evolution of social network services, enhancing the possibilities of informal expertise and strengthening the associated reputational potential both within science and in society.[667] In conclusion, I would like to note that the methodological synthesis of both strategies does not immediately receive theoretical legitimization. Although the similarity strategy tries to develop the traditions it brings together, representatives from traditions almost always perceive them as a perversion of the original theory. Only the gradual accumulation of data obtained in this way reconciles the warring parties. The challenge of the chimerical strategy of redrawing similarities and differences is even

[665] In Russian: Harman G. The Prince of Networks: Bruno Latour and metaphysics // Logos. 2014. No. 4 (100), pp. 229-248.

[666] Myshkin O.S. Facets of the inhuman: manifestations of the other in modern ontology and aesthetics //// Technologos. 2019. No. 4, pp. 88-100. DOI: 10.15593/perm.kipf/2019.4.07.

[667] Grishechkina N.V., Tikhonova S.V. Civil expertise and scientific knowledge in the digital age // Epistemology and Philosophy of Science. 2018. Vol.55. No.2. pp. 125-126.

more radical, which in fact means a separation from the "roots". However, its growth rate and recombination rate provide it with a good chance of survival.

Conclusions:

One of the most widespread consequences of the medial turn for legal science is the emergence of such a form of technoscience as digital humanities. Most extensively in the legal field, it is revealed through the emergence of digital interdisciplinary fields in industry science, the digitalization of theory is carried out at a more modest pace. The main direction of development in this area is associated with the inclusion of a special methodology based on specific digital services in the system of theoretical methods. Some of them, for example, digital tools of scientometry and bibliography, have a potentially universal character and are suitable for establishing conceptual links between theories and analyzing the continuity of scientific concepts, but their use is still sporadic.

Nevertheless, in the background, general research practices based on the culture of the printed book are being replaced by digital practices. Digitalization of the creation and dissemination of scientific texts is currently the basis of scientific periodicals and book publishing, after the pandemic period, digitalization is also characteristic of scientific events. All forms of approbation and validation of scientific ideas, both formal and informal, in a digital format inevitably accelerate the processes of their exchange in the scientific community. A very significant contribution to this process is the development of the blogosphere in the context of the evolution of social network services, enhancing the possibilities of informal expertise and strengthening the associated reputational potential both within science and in society.

The acceleration of the introduction of new and rare texts into scientific circulation, the expansion of access to the "canonical" corpus of philosophical and legal sources for each researcher, the explication of hypotheses and concepts in widely accessible network communication and their validation in formal and informal digital communication simplify the procedure of methodological synthesis,

providing him with more comfortable conditions for "reviewing" empirical and doctrinal material.

Meaningful methodological synthesis links the coordinate and/or subordinative connections of two or more theories into one in order to create a basic theoretical object. In classical science, genetically related theories are synthesized. Non-classical science works in the paradigm of searching for fundamental similarities between synthesized theories. A significant amount of the communicative theory of law is the justification of the compatibility of the approaches used, the most common method of which is reinterpretation, for example, a phenomenological reading of the psychological theory of law by L.I. Petrazhitsky and the Hegelian foundations of the idea of recognition by I.A. Ilyin A.V. Polyakov in the concept of integrative legal understanding or the phenomenological reading of early Hegel by A. Honneth.

After the medial turn, two new types of methodological synthesis appear. The first is the rhetoric of strong and weak arguments aimed at finding compromise versions of opposing approaches and their subsequent integration, removing the original conflict. The second is the use of metamodern metaxis for the free dismemberment of conventional identities in classical theories and the combination of what was previously considered incongruous in a methodological chimera combining unrelated concepts into a working methodological tool. Mastering these strategies of methodological synthesis becomes the main challenge of the medial turn for the communicative theory of law.

§ 4.4. Digital communicative theory of law: definition of the content of the concept and the point of growth of the phenomenon

Digital humanities are one of the most relevant trends in the sciences of man and society in the current century. The potential of digital research in this area looks so large-scale that, perhaps, we are on the verge of very significant changes in scientific disciplines traditionally integrated into the culture of the printed book. An example is the research of S. Raper, who, using the Gephi program and on the basis of Wikipedia information resources, developed a comprehensive scheme for visualizing the main philosophical approaches and teachings of individual philosophers, identifying the most significant and popular;[668] L. Manovich, who analyzed 270 million images of 100 urban areas with geotags posted on Twitter in the Visual Earth project, in order to study ideas about improving life in the city;[669] or the project of Italian researchers "Mapping Dante", dedicated to the geography of the "Divine Comedy" with the clarification of the locations of literary spaces;[670] in historical science, the study of the past using the methods of digital humanities allows you to solve problems of studying the social structure of societies, modeling socio-economic processes, virtual reconstruction of architectural objects, etc.[671]

In the near future, both an increase in the results obtained (the increment of new knowledge) and an increase in the "density of coverage" of subjects of humanitarian study (the development of white spots, strengthening the empirical quality of substantiation of hypotheses) are possible. But the most interesting thing is happening in the field of digital humanities methodology. Actually, the definition of the disciplinary status of this direction is connected precisely with the reflection

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[668] Guryanov N.Yu., Guryanova A.V. The phenomenon of digital humanities in the context of modern multidisciplinary convergence // Bulletin of the Samara State Technical University. Series: Philosophy. 2021. No. 4(9). pp. 92-97.

[669] See: Chebotareva E.E. Digital Humanities projects as a stage in the development of humanities: an attempt at a meta-digital view // Epistemology and Philosophy of Science. 2023. Vol. 60. No. 2. pp. 224-240.

[670] Gazzoni, A. Mapping Dante: A Digital Platform for the Study of Places in the Commedia // Humanist Studies & the Digital Age, 2017, vol. 5, no. 1, pp. 82–95.

[671] Artamonov D.S., Tikhonova S.V. Garage of History: the digital turn of "independent historical research" // Dialogue with time. 2020. Issue 72. pp. 237-254.

of the specifics of its methodological foundations. So far, the dominant position remains that digital humanities are rather a new interdisciplinary field than an independent discipline. E.V. Samostienko, for example, connects digital humanities with the concept of "trade zones" by P. Galison considers it as an exchange zone, "which includes a large number of autonomous zones and creates something like a dispersed cognitive laboratory containing not only ideas, but also an information technology base, a set of communication practices and tools with which this sphere is inscribed into a broader socio-cultural and technological infrastructure".[672] After her, R.I. Mamina and E.E. Yelkina sees convergent models and practices of a global network project in digital humanities, the emergence of which is associated with "the transformation of the object and subject of research, the weakening of criteria for the objectivity of scientific knowledge, the methodological and instrumental nature of interdisciplinarity, mainly the applied nature of research".[673] Nevertheless, E.K. Pogorsky emphasizes the transdisciplinary nature of digital humanities,[674] and transdisciplinarity is today interpreted as one of the key epistemic characteristics of modern scientific knowledge.[675] Its task is to bring together not only academic actors, but also civil experts in the process of integrating various methodological projects into a working tool, into a "hybrid community" dominated by the "heterogeneity of the various specifications of the collective".[676] These integral "alloys" are characteristic of both fundamental areas and local strategies. Thus, although digital humanities continue to be a methodologically loose discipline, it may well develop and naturally develop methods that are sufficiently broad in applicability, capable of linking into a single whole, if not all digital humanities, then quite large areas of it. If so, far the main approach to studying the development of

[672] Samostienko E. V. Digital Humanities in a Russian-speaking context: the trajectory of institutionalization and mechanisms of formation of autonomous zones // Bulletin of Vyatka State University. 2018. No. 4, p.38.

[673] Mamina R. I., Yelkina E.E. Digital Humanities: a new science or convergent models and practices of a global network project? // Discourse. 2020. Vol. 6. No. 4. DOI 10.32603/2412-8562-2020-6-4-22-38, p. 34.

[674] Pogorsky E. K. Features of digital humanities // Information humanitarian portal Knowledge. Understanding. Ability. 2014. Vol. 5, p. 7.

[675] Grishechkina N.V., Tikhonova S.V. Civil expertise as a factor of transdisciplinarity of scientific knowledge // Bulletin of Tomsk State University. 2020. No. 452. DOI: 10.17223/15617793/452/8 . p. 73.

[676] Rybakov O.Yu., Tikhonova S.V. Information risks and effectiveness of legal policy // Journal of Russian Law. 2016. № 3(231). DOI 10.12737/18030. p. 90.

digital humanities has been an institutional approach related to the analysis of established digitally oriented research centers,[677] their missions and projects, then in the beginning of the decade we have grounds to fix precisely the methodological dynamics of digital humanities.[678] Further, digital humanities will be understood as the transition of the humanities to the digital stage of development, at which a specific branch (jurisprudence, philosophy, sociology, psychology, economics, philology, etc.) combines digital theory and digital empiricism. The latter is developing more intensively everywhere due to the automation of specific, "field" methods of collecting and analyzing primary data; In jurisprudence, they are represented by legal informatics,[679] which covers not only digital objects, but also puts forward digital methods that cannot exist without a certain degree of methodological theorization. As for digital theory, any theory can be considered as such if its subject is the so-called digital objects (social objects whose ontological status is determined by digital technologies), or it uses digital methods of conceptualizing its objects, or it fulfills all these conditions.

The range of digital technologies used as working tools in humanitarian research is very diverse, as are their functional roles. It is no coincidence that E. Arnold insists that it is necessary to separate four different meanings in which the concept of digital humanities is generally used today: firstly, it is digital humanities as a research service; secondly, digital humanities as a research method; thirdly, the study of digital services for the humanities, and fourthly, the study of digital methods

[677] Mozhaeva G. V. Digital Humanities: a digital turn in the humanities // Humanitarian Informatics. 2015. No. 9, pp. 8-23.

[678] Sidorov S.P. Tikhonova S.V. Instrumental methods of media space analysis in digital humanities // Sociology of Science and Technology. 2023. Vol. 14. No. 3. DOI: 10.24412/2079-0910-2023-3-118-131. p.121.

[679] In our country, evidence of the scientific institutionalization of the legal discipline is the appearance in 2012 of the specialized scientific journal "Legal Informatics", which publishes articles on two specialties of the Higher Attestation Commission: 2.3.1 - System analysis, management and information processing (technical sciences) and 5.1.2 - Public Law (state law) sciences (legal sciences) by category. At the origins of the publication, the leading federal institutions of the Ministry of Justice of Russia — the Russian Law Academy and the Scientific Center for Legal Information, the thematic sections of the journal are systematized according to such blocks as general theoretical issues of information law; problems of practice in creating and implementing databases of legal information; directions for the formation and development of an information security system and building a developed information society; creation of interactive "electronic" mass media on the Internet (http://uzulo.su/prav-inf/ru/ru_i.htm).

in the humanities.[680] In the first case, the technology is not part of the research process, it plays the role of an auxiliary infrastructure for the methodology, which continues to be "classical". In the second case, the method itself is designed in such a way that it is a sequence of computer-mediated procedures, the use of a machine language or database is its essence, current developments in machine-readable law satisfy this criterion.[681] In the third case, specific technologies used in scientific research are investigated, such research itself is a kind of applied computer science. In the fourth case, we are talking about the research of digital methods themselves (Arnold as an example of the study of algorithms for automatic or semi-automatic lemmatization of text corpora – the process of bringing any verbal form to its dictionary version of the lemma). All four options are closely related to each other, but, nevertheless, it is obvious that we are faced with a detailed methodology as such – digitalization of the method infrastructure, digitalization of the method itself, digitalization of its individual procedures and stages. It is difficult to say when digital humanities will become the dominant, background mode of the existence of sciences about man and society. Long-term forecasts are based on a natural generational change (when the current digital aborigines will turn from young scientists into patriarchs of scientific schools), the nearest ones suggest the imminent emergence of revolutionary digital technologies; there are forecasts according to which the widespread spread of digital humanities is happening right now?[682] And it is now becoming obvious that scientific theories themselves can move into the digital phase,[683] in which the methodology of the theory should be suitable for digitalization, and its research field should contain many digital objects.

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[680] Arnold E. Digital Humanities: Is it Research or is it Service? // Digital Humanities München. 2020. 26 Juli.

[681] See: Ponkin I. V. The concept of machine-readable law // Legal technique. 2021. No. 15. pp. 231-236.

[682] See more details: Terras M. A. Decade in Digital Humanities // Journal of Siberian Federal University. Humanities & Social Sciences. 2016. Vol. 9. No. 7, pp. 1637-1650.

[683] Fazi B.M. On Digital Theory // Digital Aesthetic Workshop, Winter 2023 (25.02.2023). Stanford Humanities Center. URL: https://shc.stanford.edu/stanford-humanities-center/events/m-beatrice-fazi-digital-theory (accessed 12.20.2023).

Can the communicative theory of law become a digital theory? The answer to this question is closely related to the problem of the applicability of the theory under consideration.

I would like to note that the advantages and limits of applicability of A.V. Polyakov's communicative theory of law have been discussed many times, among the most significant discussions is the two–volume monograph "Communicative Theory of Law and modern problems of jurisprudence".[684] The integrative potential of the theory under consideration and its relevance in the modernization of the categorical apparatus of the theory of state and law have been highly appreciated. However, it does not mean abandoning the further conceptualization of the doctrine of A.V. Polyakov, its proper communicative and theoretical elaboration. There are two possible lines of analysis here. The first is structural, related to the further conceptualization of the phenomenon of (legal) communication itself. The second is related to the responses of the most communicative theory of law to the challenges facing the development of the humanities, reflected by the metaphors of "turns", among which the medial and memorial turns are relevant today.

Structural analysis can be carried out in accordance with the basic elements of the communication chain (communicants, channel, message, effects).

The first group of consequences concerns communicants, depending on the number and correlation of which the structure of legal communication is formed. A.V. Polyakov's model is fundamentally polysubjective. As Yu.Yu. Vetyutnev notes, polysubjectivity is one of the main advantages of the communicative theory of law, since it allows you to abandon a one-sided understanding of legal regulation, take into account feedback and the exchange nature of law.[685] A.V. Polyakov, describing

[684] The communicative theory of law and modern problems of jurisprudence. On the 60th anniversary of Andrei Vasilyevich Polyakov. Collective monograph: in 2 vols. Vol.1 The communicative theory of law in the research of domestic and foreign scientists / Edited by M.V. Antonov, I.L. Chestnov, D.I. Lukovskaya, E.V. Timoshina. St. Petersburg: Alef-Press Publishing House, 2014; Vol. 2. Actual problems of philosophy of law and legal science in connection with the communicative theory of law / Edited by M.V. Antonov, I.L. Chestnov, D.I. Lukovskaya, E.V. Timoshina. St. Petersburg: Alef-Press Publishing House, LLC, 2014.

[685] Vetyutnev Yu.Yu. Morphological aspects of legal communication // Communicative theory of law and modern problems of jurisprudence. On the 60th anniversary of Andrei Vasilyevich Polyakov. Collective monograph:

the subject composition of legal communication, operates with the concept of "Other". In particular, the author argues that the idea of legal communication is based on "the idea of the need for the Other as an accomplice of the right reality while simultaneously "setting" such reality by "objective" legal texts".[686] In this case, the other acts as a sign of society, in the texts of A.V. Polyakov there are frequent references to the generalized, social character of the Other,[687] while the author interprets communication as an ordinary, simplified version of social communication designed for personal interaction.[688] Indeed, in modern social theory, an interaction that involves at least three participants is considered social. Interaction in pairs is considered within the framework of personality psychology, the triad changes emotional and psychological connections, adding to them the figure of a witness, guarantor or arbitrator, thereby turning them into social connections. The other can be real, potential or imaginary, regardless of his specific roles, his participation modifies the relationship between the participants, changes their expectations, projects and goals. The figure of the Other brings norms and values into the interaction, legitimizes the accepted rules. Therefore, for legal communication, sociality inevitably means a plurality of communicants and the obligatory possibility of potential inclusion of other subjects. How does the figure of the Other influence the structure of legal communication?

If we were talking about building a strict deductive theory of legal communication, all the variety of legal interactions could be reduced to a single model of communicative action. Communication theory knows three such models: object-subjective imitation (the recipient takes meanings from the communicator), subject-subjective dialogue (communicants exchange meanings), subject-object

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in 2 vols. Vol.1 The communicative theory of law in the research of domestic and foreign scientists / Edited by M.V. Antonov, I.L. Chestnov, D.I. Lukovskaya, E.V. Timoshina. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 216.

[686] Polyakov A.V. Farewell to the classics, or how the communicative theory of law is possible, p. 106.

[687] For example, Polyakov A.V. Farewell to the classics, or how a communicative theory of law is possible // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 107.

[688] Ibid., p. 95.

monologue (the communicator transmits meanings to the recipient).[689] The fundamental difference between the first and third models lies in the specific role of the communicator in imitation – he may not even know that the recipient interacts with him, since communication here can be established through observation and does not involve full-fledged social interactions. In the positivist legal understanding, the monological model of legal communication dominates – the legislator establishes a rule of law that the subjects of law must realize and accept as a guide to action. This is how the imperative model of legal relations is established. In natural law theory, the dialogical conventional model of legal communication prevails: equal autonomous subjects establish a legal norm to which they obey. This is how the dispositive model of legal relations is established.

It is impossible to reduce these two models to each other, a violation of the structural balance will lead to the destruction of one of them. The confrontation between the two great approaches is based on the fundamental difference between the models of legal communication characteristic of them; positivism has to justify the permissibility of dispositive legal communication, for example, through the differentiation of private and public spheres of law, natural law theory has developed different strategies in justifying the special status of the sovereign. However, the functioning of law requires both models, possibly combined in synthetic forms. For example, the position of A.V. Polyakova, in which the legislator and autonomous subjects obey the norm, which they recognize as necessary and universally valid, standing above their private "wills", can be approximated to the Osgood–Schramm nonlinear model,[690] in which a change in the functional roles of communicants is possible and the process of interpreting the meaning of messages is emphasized. The

[689] See: Golub O. Yu., Tikhonova S.V. Theory of communication: textbook M.: Publishing and trading Corporation "Dashkov and K", 2011. 388 p.

[690] Schramm W. How Communication Works. // Process and Effects of Mass Communication. / Ed.: W. Schramm. Urbana: University of Illinois Press, 1954. P. 22-90.

rule of law in this case can be detected as a static (stable) component of the overlap of the framework of conformity of the funds of the values used.[691]

I would like to note that the communicative model of imitation, which plays a much more modest role in legal reality, is nevertheless also significant, since it manifests itself in the phenomena of legal receptions and analogies, gaining special importance during periods of legislative reforms. Is it possible in this case to talk about legal communication, if for A.V. Polyakov legal communication is possible only between subjects of law, but it is impossible as a legislator's communication with himself? Rather, in this case we are talking about communication about the law. The variability of legal communication models is dictated by the needs of social life, the need to meet a wide range of contradictory and diverse types of social needs.

The work of the figure of Another in law has its own specifics in comparison with its role in social relations. A.V. Polyakov repeatedly emphasizes the dynamism, complexity, and procedural nature of legal communication: "communication, therefore, represents a certain complete cycle and is an integrity that generates another communicative integrity. Communication is not about facts–things, but processes-events".[692] The theorist builds a picture of multi-vector legal communication, in which individual communicative acts are connected, interfaced with each other, rely on them and generate them. Participants in legal communication are always subjects of law, however, recognizing the role of a legal communicant for a legal entity does not mean defining a fixed communicative role (for example, a communicator or recipient). The subject of law has access to various communicative roles in legal communication, and in a particular legal relationship, the subject of law can play either a passive or an active role. The variability of the communicative roles of communicants in legal communication means the presence of typical communicative relations with the simultaneous possibility of transition to communication of different types, the fundamental possibility of participation in its

[691] Tikhonova S. V. A.V. Polyakov's communicative theory of law in the conditions of a medial turn: structural points of growth // Russian Journal of Legal Studies. 2023. Vol. 10, No. 1. DOI 10.17816/RJLS181130. p. 40.

[692] Schramm W. How Communication Works.P.99.

different models. In addition, the subject composition of legal communication is also variable – a specific communication act may have a different set of participants, from one to many.

And here the question arises about the communicative role of the Other in legal communication. Is the Other counterparty to the communication act? Ontological theories of communication in philosophy define a communication partner in this way, for example, M. Buber's dialogical concept defines You as the Other, the one who is not Me and not It.[693] The other turns out to be a partner in live interpersonal communication of existential communication, a counterparty. However, the role of the Other in legal communication reproduces the general logic of social communication, where a specific communicative act proceeds between conditional two, each of which is connected by other communicative acts with the third, the Other. Another is a participant in other acts of legal communication, infrastructural or generating for a particular act of legal communication, on whose will, interests or function its ultimate success depends. In order for legal communication to exist as an integral system, the figure of the Other must be "figurative", i.e. its placement in supporting communicative acts should be typified in terms of characteristic sets of relationships with it (N. Elias). If the Other is basically assembled from figures, then his status can be attributed to what is the node of such a typical relationship. In this perspective, the prospects for a transition to a revision of the understanding of the category of subject in flat ontologies open up. Something that behaves like a person (humanely) can claim the social status and function of a person, without being such. Thus, the inclusion of the problem of strong artificial intelligence in the communicative theory of law is not marked.

The second group is connected with the channel of right communication. The channel combines the material carriers of signals and their symbolic function, the ability to convey meaning through the combinatorics of material objects and processes. Since communicants "enter" and "exit" from the figures (communication

[693] Buber M. Me and You // Buber M. Two images of faith. M., 1995, pp.15-92.

structures) of legal communication depending on their needs, the presupposition of the Other is not the only condition for the unity of the legal communication system. The key role here belongs to self-reference – the ability of legal communication to base itself through self-reference. Strictly speaking, one legal communication refers to another legal communication (sometimes to itself), but these links are always inside the system. Self-reference is an integral part of the process of autopoiesis of social systems, within the framework of constructivist epistemology, the thesis is defended that we know only reality involved in a constructive (recursive) process;[694] in N. Luhmann's texts, self-reference means the system's appeal to itself, that is, a reference to itself.[695] The essence of self-reference is revealed in the concept of code: "for the emergence of law, it is important ... to know a special code that allows you to determine the legal and non-legal, rights and obligations of addressees in a generally recognized way and act accordingly".[696] The code includes both a set of values assigned to symbols and the rules for their organization into a meaningful whole. Semiotic studies of legal norms emphasize the extension of the principles of linguistic normativity to the norms of law.[697] The specifics of legal self-reference require independent study; however, it is obvious that the procedures of legal technique and interpretation of law are of key importance for its understanding.

The concept of types and connections of legal texts developed by A.V. Polyakov is of particular importance in this context. Implicitly, it is based on the thesis about the strictly formalized nature of the textual code of legal communication. Formalization involves the presentation of a subject area through a specific language. As Yu.Yu. Vetyutnev notes, the form of legal communication is a

[694] Anokhin V.B., Bozhko N.Yu., Morozova N.A. Self-reference as a philosophical problem: second-order cybernetics, evolutionary and radical epistemology, chaos theory // Actual problems of the humanities and natural Sciences. 2009. No.6, p. 99.

[695] For example: Luman, N. The reality of mass media. Translated from German by A. Y. Antonovsky. M.: Praxis, 2005, 256 p.

[696] Polyakov A.V. Farewell to the classics, or how a communicative theory of law is possible // Polyakov A.V. Communicative legal understanding. Selected works. : Alef-Press Publishing House, LLC, 2014, p. 103.

[697] Nevvazhay I.D. Classification of norms in the semiotic concept of norms // The human world: a normative dimension – 6. Norms of thinking, perception, behavior: similarity, difference, interrelation. Proceedings of the international scientific conference. Saratov: SGUA, 2019, pp.38-49.

"general mode of clearly defined speech and behavior of people",[698] combining linguistic, documentary, procedural and visual forms. For the concept of A.V. Polyakov is characterized by the dominance of textual form (the actual documents and texts of the doctrine). He interprets social communication as a unity of three aspects: textual (a set of symbolic complexes), mental (cognitive-emotional comprehension and evaluation of texts), praxeological (interaction of subjects).[699] The legal system covers three stages. The first is the creation of textual "matrices"; the second is the cognitive construction of a legal norm based on the impact of legal texts on the consciousness of subjects; the third stage is the actualization of legal relations of the rule of law in actions.[700] Primary texts define the very possibility of the existence of subjective rights, secondary texts specify them.[701] The primary legal texts of the sources of law and political texts of state power are virtual, the legal texts created by the practice of exercising rights and obligations are relevant.[702] Virtual and actual texts are combined in the process of implementing a living rule of law, "coming to life" in the mind of the acting subject of law and his actions. The transition from textual statics to behavioral dynamics requires the conscious application of the rules of the legal code necessary for the coordination of texts of different orders.

At the same time, the text is interpreted by A.V. Polyakov as a natural way of objectifying law: "no law can exist outside its text".[703] This approach is based on the

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[698] Vetyutnev Yu.Yu. Morphological aspects of legal communication // Communicative theory of law and modern problems of jurisprudence. On the 60th anniversary of Andrei Vasilyevich Polyakov. Collective monograph: in 2 vols. Vol.1 The communicative theory of law in the research of domestic and foreign scientists / Edited by M.V. Antonov, I.L. Chestnov, D.I. Lukovskaya, E.V. Timoshina. St. Petersburg: Alef-Press Publishing House, LLC, 2014, pp. 222-224.

[699] Polyakov A.V. Communicative concept of law // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p.9.

[700] Polyakov A.V. Law and communication // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, pp.11-32.

[701] Polyakov A.V. Anthropological and communicative justification of human rights // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, pp.48-49.

[702] Polyakov A.V. Farewell to the classics, or how a communicative theory of law is possible // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p.101.

[703] Anthropological and communicative justification of human rights // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p.48.

ideas of Bakhtin and Lotman,[704] which absolutize the role of text in culture, and contradicts the idea developed in the theory of communication about the multiplicity of communication channels (natural and artificial), linking signals of different nature according to their own syntaxes (codes) into semantic messages. Translation from code to code of different media is possible, but it is always fundamentally incomplete, which is why the text read and spoken can lead to the generation of different meanings, which is why the language of emoticons appeared in digital communication, which is why cinema and television have become independent communication channels, not limited to illustrating written texts.

After the invention of writing, a stereotype was formed in culture that text is a natural form of culture, although oral speech has always been and remains such. The immanent approach to the text easily turns into the actual uniqueness of the text itself as a form of communication – the potentiality of other methods is not denied, but they are not studied. On the one hand, this position has serious grounds, since the modern Russian legal system is characterized by a textual form of legislation and legal doctrine. On the other hand, however, the appeal to classical forms of law shows the connection of some of them with the channel of oral communication and symbolic actions. At a minimum, a legal custom can also exist in oral form, which was the only possible one before the advent of writing. Can a channel other than the printed text be used to objectify legal communication? For A.V. Polyakov, a text is any sign complex capable of generating meaning in the interpreter's mind, which includes both collections of legislation and traffic lights, or even a person's facial expression.

But what happens to legal communication when modern digital forms begin to mediate it? From this point of view, the concept of "legal interactivity" by

[704] See, for example: "in the communicative, activity aspect, the text is considered not as a linguistic unit (any segment of a linearly organized stream of speech), but as a unit of communication" (Polyakov A.V. Postclassical jurisprudence, evolutionary theory and neuroscience (confession of a communicationist) // Postclassical studies of law: prospects of a research program: a collective monograph / edited by E.N. Tonkov, I.L. Chestnov. St. Petersburg: Aleteya, 2023, pp. 29-157.), here A.V. Polyakov follows the definition in the article of T.M. Dridze, and the chosen definition is identical to the message in classical communicative theory. But messages always represent an adaptation of subjective meaning to the physical capabilities of the channel, and channels, in turn, are able to affect the cognitive and emotional structures of the human psyche in different ways.

D. Howes is interesting, describing the possibility of using Internet technologies to create a new (electronic) form of law.[705] Howes compares the features of communication in an archaic society and the global "cyber village" of modernity, showing that these models of sociality are characterized by communication models radically different from the ways of creating and promulgating laws in Western European societies. Trying toto apply the highlighted by L. Fuller eight principles of creating laws (universality, promulgation, prohibition of retroactivity, clarity, absence of contradictions, feasibility, immutability over time, conformity of actions and declarations)[706] with regard to oral societies, Howes shows the inconsistency of most of them in the absence of textual communication. Of course, the spread of non-textual channels in the structure of legal communication is possible only if they are suitable for clear formalization, which can be provided, for example, by visual or procedural forms. The communicative approach to the forms of law has yet to answer the question of the transformation of legal communication in the context of the digital revolution, however, the available historical, legal and anthropological-legal material allows us to conclude that legal communication is fundamentally capable of going beyond the text. Any form of communication known to the communicant is suitable for the process of legal semeesis (text in a broad sense), understood as the generation and awareness of the meaning of law by the cognizing subject. But do electronic forms have their own special specifics? If the answer to this question is positive, it is possible to switch from understanding the text to a media text (digital text). The digitalization of legal texts leads to the folding of machine-readable law, which today implies a technology that uses mathematical algorithms to automate processes related to legal activities of various kinds.[707] For example, automated logical analysis of legal requirements, court decisions, search and interpretation of legal information, registration of documents. Neural networks are used for pattern recognition and document classification, which allows you to

[705] Howes D. e-Legislation: Law-Making in the Digital Age // Mcgill Law Journal / Revue De Droit De Mcgill. 2001. Vol. 47, p.39-57.

[706] Fuller L.L. The Morality of Law, rev. ed. New Haven: Yale University Press, 1969, pp. 41,46-91.

[707] Ponkin I. V. The concept of machine-readable law // Legal technique. 2021. No. 15. pp. 231-236.

automatically process large volumes of documents and identify keywords and phrases in them, facilitating the search for legal information. Today, examples of court decisions made with the help of artificial intelligence are appearing in the United States (American Eric Loomis was sentenced to six years in prison based on the recommendations of a neural network that revealed the defendant's entire history with the law and recognized him as dangerous).[708] In Russia in 2021 The Concept of development of machine-readable law technologies has been adopted, which provides for the creation of a system for automated document processing and management in state authorities.[709]

The third group is related to the message. The message combines a material component organized according to the rules of the code and the meaning embedded in it, taking into account the original meaning formulated by the communicator and the final meaning perceived by the recipient. As shown above, the content of legal communication in A.V. Polyakov's communicative theory of law is the powers and legal duties of subjects, while it is precisely about the awareness of communicants of the powers and duties reflected in the message. Generally speaking, awareness as a specific activity of the subject of law is probably a specific "center of power" of A.V. Polyakov's concept. Since the analyzed version of the communicative legal understanding was developed in line with social phenomenology, the communicativeness of self-awareness, which provides the ability to understand and understand each other, emphasizes the importance of addressing the formation of a communicant's conviction in the existence of law: "law exists only where people are convinced that it exists",[710] in this aspect it exists according to the logic formulated by R. Merton's "Thomas theorem", according to which if people define certain situations as real, these situations are real in their consequences. Based on legal texts,

[708] Mezhirich Ya.V. The mechanism of machine-readable law: features of the combination of mathematical principles and law // Human. The society. Society. 2023. No. 9. pp. 205-213.

[709] Mustafin R.F., Verich Yu.A. Machine-readable law: reality and prospects // Kuban Judicial Information Agency PRO-SUD-123.RU : Legal online electronic Scientific Journal. 2022. No. 1(13). pp. 57-64.

[710] Polyakov A.V. Farewell to the classics, or how a communicative theory of law is possible // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 101.

communicants understand a certain meaning as a right and convey their conviction to counterparties. Law as an intersubjective meaning is created by cognizing thinking, asserting justice in the processes of mutual recognition, mutual understanding, and mutual satisfaction. This intersubjective dimension of pravogenesis is given by the characteristic thought of A.V. Polyakov is rooted in the phenomenological concept of intersubjectivity of the social world, in which an individual is included in community with Others, jointly producing meanings reflecting their common reality. Such an approach can easily be reduced to the subjective dimension of legal genesis, to the establishment of legal meaning by the cognizing consciousness, but it is much broader, since consciousness in this case, in purely Husserl logic, is always not only mine, since the consciousness of hypothetical Others is naturally reproduced in it, it is social, and therefore objective. It is not by chance that I.L. Chestnov emphasizes the importance of intersubjectivity in the communicative understanding of law for the fusion of subjective and objective aspects of the existence of law.[711]

Each participant in legal communication carries not a solipsistic legal idea reflecting the static formula of his subjective rights, but continuously clarifies it, calibrates it in the process of interaction: "communication in a certain way rebuilds the consciousness of communicants, adapts them to each other".[712] The understanding of the law is not pre-sent to the communicator before the initiation of the communication chain, it is not attributed exclusively to the recipient after its completion. It continuously flickers, interferes (N. Luhmann) throughout the communicative act, involving all participants in the interference process. This flicker does not oblige the researcher to abandon a consistent chronological analysis of the

[711] Chestnov I.L. Prospects of post-non-classical communicative theory of law // Communicative theory of law and modern problems of jurisprudence. On the 60th anniversary of Andrei Vasilyevich Polyakov. Collective monograph: in 2 vols. Vol. 1. The communicative theory of law in the research of domestic and foreign scientists / edited by M.V. Antonov, I.L. Chestnov; preface by D.I. Lukovskaya, E.V. Timoshina. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 23.

[712] Polyakov A.V. Communicative concept of law // Polyakov A.V. Communicative legal understanding. Selected works. St. Petersburg: Alef-Press Publishing House, LLC, 2014, p. 9.

chain of a communicative act in time. But it cannot be ignored in an effort to establish the essence of legal communication.

The last group is related to the effects of legal communication. The effects can be mental (a change in the content of consciousness, the emergence of new knowledge or a change in the mark of evaluation in this knowledge) and behavioral (a change in behavior, committing acts or refusing to commit them). The problem of awareness provides access to a new interpretation of the effects of legal communication. The phenomenological interpretation is aimed at the final coincidence of the initial and final understandings of law by communicants. But this communicative situation plays the role of a rather hypothetical ideal, since the spectrum of effects of legal communication covers not only consciousness, but also human behavior. Moreover, it is behavioral changes that play a key role in the effects of legal communication. The role of law as a social regulator is primarily related to its ability to establish a framework for the behavior of individuals, limiting their actions if they carry a social danger.

For A.V. Polyakov, it is extremely important to emphasize the legitimate nature of legal coercion through a socio-phenomenological analysis of legal genesis, since direct violence, including that carried out by the state under the guise of law (well known by the example of the Nazi regime), does not cease to be violence and arbitrariness, destroying sociality and requiring rehabilitation of victims. This position is closer to the provisions of the communicative theory of law. According to Van Hoecke, "the effectiveness of sanctions and coercion in any case play a limited role in law",[713] since most often people "follow" the norms of law because they are recognized, or because they give more advantages. But A.V. Polyakov goes further, insisting that "the attitude towards a person as a goal is a subject—subject relationship, unlike an instrumental subject-object relationship, within which there is no communication. Therefore, it cannot be legal, for example, an order of the

[713] Hoecke, Van M. Law as communication / Translated from English by M.V. Antonov and A.V. Polyakov. St. Petersburg: Publishing House of St. Petersburg State University, LLC "University Publishing Consortium", 2012, p. 53.

occupation authorities requiring the observance of a curfew under threat of execution. Such an order, while generating information communication, does not generate legal communication".[714] When a legislator adopts a norm on criminal punishment, legitimate legal communication is established on the basis of a law containing a norm, "coming from a legitimate authority, the requirements of which must be obeyed as an "own" authority acting in the interests of the whole society, a "public" authority in the original sense of the word".[715]

Nevertheless, the specifics of legal communication are largely related to the fundamental possibility of blocking specific communicative (social) acts, limiting the communicant's communicative activity. In this context, the development of theories of social conflict in the second half of the twentieth century is indicative: R. Darendorff not only put forward his concept of social conflict,[716] but also proposed an institutionalized set of procedures for its resolution, focusing on the practice of civil proceedings. The core of the Darendorff concept is the voluntary subordination of the parties to the conflict to the decisions of the arbitrator they recognize. In this case, the sociality of modern society "learns" from the law, refusing to resort to state-monopolized violence and relying on a dispositive model of legal communication and dialogue.

At the same time, the state, represented by the competent authorities and officials representing them, is also a participant in legal communication. Interactions involving the possibility of using State coercion are included in its system.

Identification of communication as legal is impossible only by its one element, since the rights and obligations realized by the communicant (a distinctive feature of legal communication in the concept of A.V. Polyakov) are not localized in a single element of the communicative chain. Nevertheless, there is a semantic and

[714] Polyakov A.V. Recognition of law and the principle of formal equality // News of higher educational institutions. Law studies. 2015. No. 6(323), p. 64.

[715] Ibid.

[716] Darendorf R. Modern social conflict. // Foreign literature. 1993. No.4, pp. 236-242; Darendorf R. Elements of the theory of social conflict// Sociological research. 1994. No.5, pp.142-147.

axiological core in legal communication, in which its essence is realized as fully as possible.

The considered groups of consequences of the basic provisions of the communicative theory of law simultaneously act as points of its methodological growth, capable of developing into a digital phase. Neural networks are becoming a new milestone in the history of the medial turn, their legal application means the transition to machine-readable law. Already today, the basic digital technology for creating reference legal systems is a hyperlinked media text that modernizes the very legal dogma up to the processes of systematization of law. Such technological perspectives are capable of providing the communicative theory of law with the appearance of new digital objects in its subject field, and new theoretical digital methods. From an anthropological perspective, these methods cannot but be related to information security. The concept of legal recognition is based on the presumption of the sincerity of the communicants. But in the conditions of post-truth, lies and falsification naturally seep into the structure of legal communication. What happens to the latter if a person cannot distinguish a text created by a neural network from Another's message, and the only criterion for their demarcation is another neural network? These questions have yet to be answered if the theory intends to serve the humanistic development of law and show it anthropocentrically, as a result of human activity aimed at improving his own life.

Conclusions:

Based on the structure of communication, nodal points can be identified in which it is possible to expand the heuristic potential of the communicative theory of law, its transition to the format of a digital theory operating with digital methods and digital objects. In the part of the theory related to the consideration of communicants, A.V. Polyakov introduces the intersubjective figure of the Other, thanks to which legal communication is focused on the counterparty. However, a fundamentally different figurativeness of the Other is possible, based on the typification of polysubject communication and the combinatorics of classical forms of communication in intermediate models, which can include digital "non-human"

agents. Consideration of the communication channel reveals the possibility of correcting A.V. Polyakov's broad understanding of the text as any set of signs included in semiosis, a narrow understanding of the text as a form of communication based on M. McLuhan's idea of communication revolutions. In this case, the prospects for research on the role of media text in the legal communication of a digital society open up. The message is the material basis for transporting the meaning of legal communication. It is possible to expand the theory by analyzing the processes of interference of meaning within a single message based on the methodology of N. Luhmann's aetopoiesis. The effects of legal communication can be considered more panoramically when detailing the system of communication blocks of various types, conceptualized on the basis of R. Darendorff's theory of social conflict. Structural analysis of communication is both a strategy for detailing its features and, at the same time, a methodological technique for expanding theory through new projects of methodological syntheses with social theories.

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Based on the results of the fourth chapter, the following conclusions can be drawn.

The medial turn becomes a basic challenge for the development of the communicative theory of law. Thanks to him, not only new digital objects related to the subject field of legal communication studies appear, but also the basic categories for philosophical and legal thought change, first of all, the categories of subject and object. The reassembly of the first one is connected with the prospects of changing the understanding of the human body in the special sense of media philosophy, complicated by the digital age. A new approach to the revision of the second one is due to the fact that in the context of the claims of the metamodern to abandon hierarchical ontologies and endow the object with various active characteristics, the legal interpretation of the role and meaning of automated and largely mediated actions characteristic of the digital age can be concretized (for example, in the future, the legal fiction of the subjectivity of any objects can be justified).

In addition, the medial turn leads to an increase in integrative tendencies in the philosophy of law. Before its onset, conceptual naturalism put forward methodological programs characterized by a high degree of communicative openness. In its conditions, the digitalization of the infrastructure of philosophical and legal research creates conditions for increasing the speed and scale of methodological synthesis. In the natural law theories, methodological rhetoric of strong and weak arguments is spreading, aimed at smoothing the conflict of the main types of legal understanding through the search for a compromise between their moderate versions. In modern ontology, methodological projects for the synthesis of a chimerical type appear, combining unrelated and unrelated approaches and concepts. In these conditions, the communicative theory of law faces the challenge of mastering these strategies or developing a new program for their criticism. At the same time, its categorical series are able to evolve, bringing the theory itself to a new, digital level of development.

CONCLUSION

The results of the dissertation research devoted to the formation of the scientific concept of the development of the communicative theory of law in the conditions characteristic of the digital age of the medial and memorial turns indicate that the considered problem is relevant. Currently, there are signs of the formation of a new, digital, historical type of scientific rationality, brought to life by a medial turn, which means a transition to a new ideological and methodological situation requiring both the modernization of existing legal theories and the nomination of new methodological projects. The radical transformations of social life taking place under the influence of the development of information and communication technologies in recent years require large-scale interdisciplinary projects to be adequately reflected in scientific legal knowledge, which determines the need to modernize the categorical and methodological apparatus of the theory of law as a whole, including its block responsible for scientific, methodological, and scientific qualification of scientific theories in legal theories.

The medial turn initiated a new wave of memorial turn associated with the actualization of the state legal policy of a commemorative nature. In this regard, the importance of developing new methodological tools to explain the diversity and multidimensionality of legal genesis in modern society and taking this into account when developing teleology and legal policy tools increases. One of the main directions of the implementation of this task is the formation of categorical series (historical truth, historical justice, historical responsibility) necessary for the theoretical provision of this type of legal policy.

The study of literature on the formation and formation of the communicative theory of law, its development in a digital society, its systematization and classification allowed us to identify various areas and methods of their research,

identify the most significant works and personalities, but, at the same time, led to the conclusion that among the publications there are few special works devoted to the communicative theory of law, and more There are fewer papers with a special emphasis on the problems associated with the digital challenges facing this theory today.

In the theory of law, one's own place should belong to the analysis of the patterns of formation and functioning of modern scientific theories, its evolution under the influence of social factors, which will allow the legal theory to be quickly adapted to the urgent needs of society. The spread of information and communication technologies opens up new prospects for mankind to build a just and humane society, and, at the same time, carries new dangers of producing a system of global control and suppression, political and legal alienation of unprecedented proportions. Therefore, these processes require a new understanding in terms of legal communication and the search for solutions to minimize their negative consequences.

Having thus formulated the direction of the dissertation work, the dissertation concretized it in the definition and study of several problems of constructing a concept for the development of the communicative theory of law, attempts to solve which led to the results set out below.

The communicative theory of law, created by A.V. Polyakov, fits into the philosophical context of domestic legal theories and corresponds to modern Western teachings on law, taking into account the influence of communication processes on the formation of legal relations and norms. The methodological strategy chosen by the author of the theory is based on a phenomenological approach and allows, taking into account the relevant data of social theory, to give a consistent description of the subject of law and the legal norm, removing the contradictions between legal positivism and natural law theory.

The synthesis of the pre-revolutionary theory of law and social phenomenology, supplemented by an appeal to the theory of communication, allowed A.V. Polyakov to develop the doctrine of legal recognition as the foundation

of legal genesis, in which the boundaries of the behavior of subjects are based on understanding and continuously mutually agree in the process of communication. Legal recognition is based on the fact of the ontological existence of the Other as a representative of the human race, in respect of whom there is a voluntary assignment of duties corresponding to the rights of the Other, and on whom expectations about their own rights are projected.

The category of legal communication used by A.V. Polyakov allows us to answer the question "what is law?" on the basis of a two-level essentialist theory. The first level reveals the transcendental foundations of legal communication, and the second brings it to the plane of ontological facts, real interactions and norms of law. This two-level theory describes legal communication as a thought communication, a symbolic complex, or simply a text objectifying it. This understanding of legal communication is relevant in the digital age, when new forms of legal relations are emerging in which digital technologies, including artificial intelligence, are involved.

The Western version of the communicative theory of law is represented by the socio-legal concepts of N. Luhmann, J. Habermas, A. Honneth, M. Van Hoecke, representatives of the Frankfurt School of social theory. They explain law from a functional perspective as a product of consensus or conflict of intersubjective communicative actions shaping Western democracy. They associate elements of communicative actions with legal norms in order to explain the fruitfulness of the development of European law in the XXIst century on the basis of legal science.

The medial turn has become a challenge to the development of the communicative theory of law, but at the same time, it has shown its effectiveness as a concept that allows for a consistent explanation of "what is law?" in a changing digital world. The era of digitalization has not only clearly demonstrated the comprehensiveness of media as an intermediary and a condition of communication, but also led to the emergence of digital subjects and objects whose legal status needs to be determined due to the evidence of their great role in the social life of society and man. The communicative theory of law is able to take into account the

participation of digital technologies in legal genesis, which makes it possible to talk about digital legal theory.

The medial turn was the trigger for the appearance of the memorial turn, which has an impact on modern concepts of law. The communicative theory of law in the context of a memorial turn is forced to turn to the category of collective memory to determine the essence of legal genesis, which develops in the process of continuous communication. The digital communicative theory of law will necessarily include memory along with the awareness-recognition-interaction triad, which are the basis of legal communication and legal recognition. This will allow us to speak not only about the inviolability of the natural law foundations of legal communication, but also to raise the question of developing philosophical and legal interpretations of collective responsibility.

The array of empirical material reflecting the realities of the processes of developing modern theorization leaves a wide space for the development of communicative theory and enriching it with specific data. In the dissertation work, based on the communication approach, an attempt is made to identify methodological points of growth of the communicative theory of law, which, under the influence of a medial turn, can lead to the transition of the theory itself to the digital stage of development.

The perspective in the study of the formation of the communicative theory of law can be formed by such directions as: the formation of a digital categorical apparatus within the theory based on the development of a narrow understanding of the text as a communication channel, which allows fixing the specifics of digital forms of law-making and law enforcement. But the main one, according to the dissertation, is the problem of redefining the subject of law, which arises in a situation of the possibility of technological self-modification of a person and the rapid development of self-learning artificial intelligence capable of moving to a strong form.

These provisions open up prospects for theoretical, legal, political, and sociological research on the development, justification, and implementation of new

information and communication technologies aimed at harmonizing the relationship between the individual, the state, and technical actors.

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Annex 1

Table 1. Comparison of the lists of basic benefits according to Murphy, 2019

Author	*life*	*reproduction*	*social relations*	*knowledge*	*rationality*	*aesthetics*	*game*	*integrity*	*religion*	*health*	*authenticity*	*other*
Aquinas	life	procreation	social life	knowledge	rational behavior							
Grisez, 1983	life and health		Justice and friendship	knowledge of truth	practical reasonableness	understanding of beauty	game	integrity	religion		authenticity	
Finnis, 1980	life		friendship	knowledge	practical reasonableness	aesthetic pleasure	game		religion			
Chappell, 1995	pleasure and the absence of suffering		friendship, the world of people	truth and its knowledge	reason, rationality, reasonableness	esthetic value	achievement	physical and mental health		physical and mental health	harmony	world of nature honesty
Finnis, 1996	Life and health	the benefit of matrimony	justice and friendship	knowledge of truth	practical reasonableness	understanding of beauty	game	integrity	religion	life and health	authenticity	
Murphy, 2001	life		community friendship	knowledge	agency	aesthetic experience	excellence in work and play	inner peace	religion		happiness	
Gomez-Lobos, 2002	life	family	friendship	theoretical knowledge		experience beauty	game	integrity				work
Crowe, 2019	life		friendship	understanding	intelligence		game	sense		health	recognition	pleasure


strict matches (the same concept, it is the same, but with an additional pair or its closest synonym)
non-strict coincidences (concepts can be used as synonyms)