

THEME OF COMMUNICATION IN CONTEMPORARY LEGAL PHILOSOPHY

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Abstract

Nowadays Law acquired a prominent position becoming regulatory instance of social life. Equally, communication is the social binder. We are almost always in a law and communication situation simultaneously.

Sometimes the impression is that law invades all aspects of social life. One may talk about a true inflation of law in modern society, especially regarding economic activity and fiscal relationship with the state. So, any interaction in the social sphere means the use of a communication way, regardless we express our agreement or disagreement through which we report to law elements.

This experience may stimulate us to pay attention to the way in which communication by all its forms influence the e the existence and immediate significance of legal links that affect us and bring us closer to the profound significance of the law and especially to the basis of the law.

The last of the passages recorded in the history of occidental philosophy is that from the theme of knowledge to the theme of communication: to be means now to be communicated (everything depends on communication).

Theme of communication is specific to the present philosophy and implicitly to legal philosophy.

Although a simple definition of legal philosophy of communication is not enough and the interaction of these two must be analyzed intimately. Moreover, in the case of theme of communication it has to be analyzed the way in which communication influences, completes or deforms the legal.

Keyword: *law, legal philosophy, communication.*

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1. Introduction

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Nowadays Law acquired a prominent position, becoming instance for regulating social life. In equal measure communication is the social linker. We are almost always simultaneously in a law and communication situation.

Sometimes the impression is that law invades all aspects of our social life. One may talk about a true inflation of law in modern society especially regarding economic activity and fiscal relationships with the State. So, any interaction in social sphere means to use a way of communication, regardless we express our agreement or disagreement, through which we report to law elements.

2. Theme of communication

One of the steps recorded in history of occidental philosophy is that from the theme of knowledge to the theme of communication: to be means now to be communicated (everything depends on communication).

“Theme of communication is the characteristic of the present stage of occidental philosophy, the one that we are living now. Unfortunately no philosopher can present this theme, respectively this period as clear as the other previous two.

That is why framings and situations, explanations and interpretations are more hesitant, less pregnant and shiny. Even the formulation of the theme suffers: if we may say with enough clarity and pregnancy about the theme of existence or knowledge in what it consists, which is their content and how their implications are highlighted at different levels of great philosophic systems, in the case of theme of communication is not as simple.

Hesitations extend even from formulating the theme: it is difficult to fix on a term that fully contains the sense of that new theme, which is formulated both as a theme of communication and language or significance both in philosophy and occidental legal philosophy.” (Codoban, 1992)

The first philosophical thee classification, that of existence sustained that in this world of changes, of inconsistency, there is something real, something consistent and persistent, the successor in fact and in law of the sacrum, the absolute, the reason, the principle.

The second theme, of knowledge, reduced the real to what is known according to the formula: to be means to be known.

The sense of the third theme, of communication, reduces the real to what can be communicated or signified, or to the language, it exists only what is expressed, communicated, signified.

Reported to the first theme, which is effectively ontological, the other two are the start point for the two philosophic criticisms: of knowledge and of communication.

The initial ontology is skimmed, diluted, but practically extended to the two criticisms, which are not recognized as ontology. Once with the third

classification what exists becomes co-existent with the language, with the communicable.

The world becomes practically the world of significations. Man lives in the world or more precisely has a world not an environment, as animals do, only because language exists.

That means that the whole human life is not only strictly linked to significances but even impossible without significances.

We think we can find this theme in the three tendencies still alive in occidental philosophy: analytic Anglo-Saxon philosophy, philosophy of the Being of Martin Heidegger, German philosophy where originates both French existentialism and philosophic hermeneutics, but which is very much more and finally French philosophy of language, French structuralism, structure semeiology.

Of course, circulation forms of philosophy are not reduced to those in the content of our world. But the other forms practically ceased to be alive and are only erudite or academic survivals of what philosophy once used to be.

Among these three live tendencies of occidental philosophy, analytic philosophy is in fact the closest to its anterior form, of theme of knowledge. Its other name of Anglo-Saxon philosophy is due to its extension mainly in cultural environments of English language.

The positions of its representatives, who analyze either the language of science - as Russell, Carnap, Hempel – or quotidian language - as Ryle, Austin, Strawson, Moore – are well philosophically synthesized in the person and thinking of Ludwig Wittgenstein.

A modern thinker as him, who still dares to say that not the way in which the worlds is but the fact that it is mystic deserves our attention. (Wittgenstein, 1991) In this analytic philosophy the world is the world of language only because this world is made of logic sentences.

This philosophy elaborates a method of logical analysis of the language. With the positions of this philosophy we still are partially located in the old theme and the language has not yet its moment of true and absolute autonomy.

In order to perceive in his wholeness, the moment of autonomy of the language and the philosophic theme of the communication, it is the best to do an anachronism towards Heidegger's philosophy and to discuss firstly French structuralism and the semeiology method to approach the language. It has its start point in Ferdinand de Saussure's linguistic, who as professor gave his courses at Geneva, at the border between 19th and 20th century.

Of course, never the problem of language and languages, of communication and signification was a problem among others.

Already stoic philosophers formulated in antiquity the first semeiology (which they called in Greek semiotics) and which they located on the side of

logics. For a little while Christian philosophy tried to offer a different place to the theory of the sign.

In Kantian philosophy the place is completely occulted by the theory of knowledge; in the Hegelian one, even if Hegel regrets it, the theory of signs is somewhere between psychology and logics.

It had to be formulated the linguistic theory of Saussure and to be spread for the theory of signs occupy the deserved place both in philosophy and legal philosophy. Or, more profoundly, it must be formed and spread a cultural practice of signs in order that the signs stopped being a simple object among others.

“The problem put by Saussure in the beginning of his linguistic theory is that of identifying the linguistic sign, meaning the word, on a way different of the formal one adopted by the linguist, or that of content preferred by the philosophers. For Saussure the word is neither only shape – sound of talking or written record – nor only notion, idea.

The linguistic sign, the word, suppose a link between the “acoustic image”, the sounds of talking, the significant and the “concept”, notion, idea that those sounds arise in our mind of connoisseurs of the respective language, meaning the signified.

With those we are only on the threshold of Saussure’s discovery because the analysis of the sign and the distinction of the constituents has been done before. Saussure’s discovery is that in the relation between the significant and signified there is no trace of motivation.

The relation between significant and signified is unmotivated or to use another expression of Saussure, the link between significant and signified is arbitrary. That means concretely that in absence of words our thinking is only an “amorphous and indistinct mass” a “nebulous where nothing is truly delimited”. On their tour, the sounds of talking, the significant, do not offer entities previously circumscribed.

The phonic substance is also a plastic matter that is dividing in module or in distinctive parts in order to supply the significant needed by thinking.” (Codoban, Semn și interpretare. O introducere postmodernă în semiologie și hermeneutică, 2000)

In consequence, the characteristic role of language towards thinking is not to create a phonetic means for expressing pre-existing ideas, but to serve as intermediary between thinking and sounds in such conditions that their union necessarily reaches to reciprocal delimitation of units.

This union between thinking and phonetic material is similar to the contact of air with the surface of water where from little waves are born: changing atmospheric pressure produces curls on the surface of the water which results exactly from the combination of air and water as significant and signified in the sign.

Or, similarly, language can be compared with a sheet of paper that cannot be cut out on one side without being cut out in the same time on the other side.

From this understanding of the language as system “where everything is linked” results an autonomy of the object and methods of linguistics, which makes of it a true scientific discipline, belonging to the general field of semeiology. But Saussure’s idea of system of the language overpasses by far the foundation of linguistics and semeiology and has deep philosophic-legal implications.

Noticing slightly and from exterior the situation we must concede that Saussure at least opens a new ontological region, that of the sign, of communication, of language.

If until the end of the 19th century linguists believed that language is the expression or representation of thinking and that the sole possible order among words is the order of things, Saussure’s conception of language as system contests both linguistic aristotelism – for which the language is the representation of the world – as the doctrines of those philologists and philosophers for whom the language is a simple nomenclature, in order to impose the idea of a distinct order.

The originality of Saussure’s idea according to which not only the elements but also the organization is arbitrary consisting in the fact that it institutes in the world new objects, unknown and even unpredictable prior to the order that constitutes them.

This new region of the existence – if we admit the prudent language of regional ontology – is besides Thing and Idea, the Signs near the reality, Truth and Knowledge, Communication near the world and Consciousness, Language.

The warranty that we are in the proximity of a new philosophic-legal perspective is offered to us by the new type of totality so proposed.

The type of totality characteristic to the first theme, of the existence is the asymmetric totality.

Asymmetric totality shapes the understanding of the reality as follows: if what exists forms a whole, then in this whole there will be aspects essential and aspects non-essential, primary qualities and secondary qualities, more important elements and less important elements, stronger parts and weaker parts.

This type of totality seems to rule over the order of things and to impose the thinking to this order in the manner of transitive causality: something (the cause) – essential, primary, important, strong – sends some of it in something else (the effect) – which as receiver is inevitably non-essential, secondary, less important, weak.

The second type of totality, synthetic totality is related to the second theme of knowledge and appears in German philosophy.

This type of totality is specific to the spiritual, ideation, logic and its characteristic resides in the fact that each element of the system reflects or contains the totality.

The third type of totality, paritetic totality is specific to the language or, in general, to the systems of signs, to signs. In this totality elements have no other existence than that coming from the assembly, no property but that one given by the system and they are perfectly equal regarding their action over the whole. This type of totality in which values are purely positional and instituted by the system highlights more than the previous two the relations, the structure as pure, absolute form of the Order.

“How can we represent communication in the perspective of this semeiology? From this new theory of signs relieves a totally new conception over the communication than that present within the other theme, of what exists and of knowledge.

The process that takes place when two people communicate becomes very similar to a game.

Let us imagine two players that stay in two rooms without being able to see one another but being able to hear one another. Each one has in front an earth globe on which are traced the imaginary lines of meridians and parallels. One of the players transmits to the other the longitude and latitude of a certain point on the map and the other player discovers in that place a locality, a mountain peak or a marine pit.

Then the second player announces a longitude and a latitude and the first discovers the respective geographic points.

In a late formulation of linguistic structuralism, things go the same way when we communicate. In our conscience there is, similar to the earth globe which is a model on reduces scale of the Earth, a model on the scale of our conscious states of the entire world.

On this model of the world, the language traces the imaginary meridians and parallels of a pure order depending on which we establish the longitudes and latitudes of our states of consciousness.

When we communicate, we do not transmit to the others states of consciousness or ideas, but we reciprocally give indications over the approximate place where is located our state of consciousness, the significance we target. Our interlocutory searches it on his map of the conscience of the world, meaning he searches it in his world.

That is what explains the lot of misunderstandings: our world, the shapes of land and seas, the peaks and canons are similar but there are not identical and that goes the same with the imaginary meridians and parallels installed in the order of the language.” (Codoban, *Filosofia ca gen literar*, 1992)

Coming back to the philosophy of Being¹ of Martin Heidegger (Heidegger, 1982), we come back to moment in the evolution of the theme of the communication, signification or of language when the theme was not formulated up to its last conclusions.

But we also come back in another alternative in formulating this theme. Because the difference between French structuralism and Heidegger's philosophy of Being is the difference between semeiology and hermeneutics in conceiving the language.

Structure semeiology with all its philosophic or theoretical implication is the result of strict consideration of the language in the unique perspective of the communication function. We may say without mistake that structure semeiology is a semeiology of communication. But it is also possible a different semeiology, which a little bit forcedly we may call semeiology of signification.

In this approach in a certain way forced and in opposition with structure semeiology constituted exclusively on the bases of the communication function of language, hermeneutics may be considered a semeiology of signification.

Same way as semeiology, the hermeneutics had several shapes and sages. Essentially and unitary, hermeneutics is a methodology of interpretation and its place is everywhere where is put the problem to re-find tradition over discontinuities and ruptures.

There is a hermeneutics rhetoric – philological, busy with the recovery of significations and senses in old texts, there is a legal hermeneutics busy with reconstituting the sense of old laws as well as of interpreting current laws, there is since the beginning of Christianity a religious hermeneutics that resides in the interpretation of Old Testament from the perspective of the New Testament, this forms having in common the principle that one can reach to the sense of the text by passing through the figurate rhetorical senses and the different ambiguities of the language.

There is then a psychological- historical hermeneutics appeared at the end of last century and related to the name of Wilhelm Dilthey, as methodology of “sciences of the spirit” which searches the sense of expression in the intention of thought and for this reconstitutes and re-lives the psychological and historical context of the author.

Hermeneutics that we have now in view is a new hermeneutics, a philosophic – legal hermeneutics. According to it, the sense of the text and comprehension involves the Being.

The solution of this hermeneutic philosophy to the problem of communication formulated in the context of theme of language is succinctly

¹ Heidegger names, based on the reason of existence any thin or being as „Being”, term by which we understand in common language a certain life existence, we will write it with capital letter.

formulated, the following: people understand each other, they understand texts and significances in this world based on Being and their privileged report with it. So that, existentially, Heidegger dramatically reverses the formula of pre-Socratic Greek philosophy, “nothing appears from nothing”, affirming that “any being as being appear from nothingness”. Heidegger’s attempt to give reality to the nothingness has been appreciated as original but lot of commentators.

Nothingness is not exactly simply nothing. “Nothingness is the veil of Being” or in nothingness we always meet Being in a veiled manner. Nothingness is nothingness of being.

The Being, the other of any being is also the non-being and in this sense, the nothingness. The nothingness philosophically invoked by Heidegger is an active nothingness that puts in nothingness anything and makes earthquakes for the basis of the world from which it appears.

It is the negative fund of the being from which the Being emerges in a kind of rupture.

What is then the Bing? Heidegger teaches us that a true questionnaire must not be aggressive. The one who questions in this case must open to what is questioned and to become the permeable place of the revelation. In order to think the Being in Heidegger’s sense you must live it. The one preoccupied to answer at and of the question of the Being is the thinker and not the philosopher and in less case the metaphysician. Knowing how to question the Being is knowing how to wait it, if necessary, even the whole life. The only man among beings has the privilege to listen and answer the call of Being. Man’s destiny is to make the Being understood in the world, to favor its coming or to master it.

That is why he is not “master of beings” but “Being’s shepherd”.

So, interpreted Heidegger’s philosophy is framed in the philosophic- legal theme of the communication, characteristic to our époque. O course, as we said above, this communication is thought hermeneutically not semeiologically.

The relationship between man and Being is a play of interpretation, an existential hermeneutics and a provocation of the destiny a faith interpellation.

And not only the communication but the language also is very present. The Being does not exist practically anywhere in the manner transcendent principles of traditional philosophy existed. If it has a place privileged by presence different that particular being that is man, this place is certainly the language.

The language is Being’s shelter says us Heidegger in the second period of his theoretical career. And the sense of this affirmation is larger than the simple positioning of truth.

Because here it is also about a third type of truth, different of the correspondence – truth of Aristotle or the coherence – truth of Kant and namely significance truth. Generally, once with the refuse to reduce the language to a

simple tool, the idea of this type of truth is present in all orientations that share this theme.

At Heidegger, where language is the power of signification of Being, the truth is thought as a “getting out from hiding”.

Trenchant for the problem of post modernity would be highlighting an ontological model or an alternative to such a model that warrants at least the difference if not autonomy.

Theme of the existence (of “what exists” of *to on*) from the aurora époque of philosophy until the threshold of the modern one imposed the platonician model of transcendence. The sensitive world where we live is doubled by a non-comprehensible world of Ideas, spatially located *above* the first one. In the order of reality – in Eliade’s sense, for which the real is the sacred – the world of Ideas is truer because it has the essential models of the multiple sensitive copies from our world.

Aristotle’s alternative model of an ontology of the individual, which superposes by the four cause – reasons the general essences in an individual existence more real than theme, it is not so antagonist as it looks like because it left untouched the transcendence of the perfect Demiurge in relation to the world and it remained a second and recessive formula in the history of occidental philosophy.

Modern theme of knowledge imposes in the same time with Kant’s criticisms another ontological model, the transcendental one.

This model is not an ontological one but of a knowledge that built the real. Vertical transcendence is replaced by a sort of weakened transcendence or deviated, reduced to the horizontal: with the transcendental. In Kant’s philosophy the transcendental cannot in any case have the ontological – axiological significance of “outside and above this world”.

It designates what is anterior and permits the construction of the world in knowledge, respectively constituting the object in experience.

The ontological model of modernity based in transcendental knew two distinct alternatives.

The first one keeps the spatial model of vertical transcendence and makes it immanent distributing the categorical couple essence – appearance after the spatial metaphor of core and crust. In this case the principle is located as essence not outside and above, but inside and in centre, meaning in depth.

The other alternative is much more according to the sense of modernity because the role of space is plaid here by time. What was hidden for the old ones in spaces is hidden for the modern ones in time.

The principle becomes in virtue of anteriority origin or by a spacing symmetry of time finality, *arhé* sau *télos*, the point of start or the point of arrival of history.

If we want to see in the theme the border line between the modernity that theme classified the knowledge and post modernity then we must find the new ontological model, imposed by this theme. Or, it is enough clearly traced by Heidegger and by structuralists also as well as by the commentators more or less in goodwill of both orientations. It is about in first place about the exclusion of any transcendence and about the refusal of any ontological model of origin or depth.

Then, about the exclusion of history which is the category of modern temporality of new that gets old, surpassed by the newer new.

Because neither structuralists nor heideggerians do not exclude time understood either as development of combinatory or as destination (*Geschichte* as *Geschick*). Finally, this ontological model is no longer based on an archetypal relation between principle and its manifestations, namely on analogy but on difference.

The result is an ontology of the “significant surface” without transcendence not even in the weak form of depth or origin and articulated on the principle of difference not of resemblance. Such an ontological model is in operation in the most realized formula of post modern philosophic thinking.

Mainly at those French thinkers who as Derrida, Lyotard, Deleuze and Baudrillard achieved the paradoxical synthesis hermeneutic – semeiology or heideggerian - structuralist.

Highlighting a specific ontological model is of nature to warrantee the philosophic consistency of post modernity as époque, but unfortunately it cannot give a perfect measure of distance taking from modernity.

The displacement from one theme to another may appear as a deepening because in a more general register, knowledge, establishing truth is the particular case of communication with the object.

Then, both theme of knowledge and communication produce criticisms and not ontology. What is mutual in plus here is that both critical theoretic products of the two themes use the existing and fossilized energy of the initial ontological model.

They function only by deconstruction, first of the substance or shape in subject’s profit, the second of this subject in the profit of a language to which the world is reduced as simple significant surface. Their consequence is transforming initiation in game.

On this background we come back to a phenomenology of consciousness. The first strong shape of ontology was transcendence. Its erosion brought the formula of existential transcendence, which is less powerful than Kant’s transcendentalism of knowledge.

Today have theoretical course only the formula infinitely weaker, of de-situation, difference making, displacement and spacing. In all these moments of ontology the conscience was and remained the ultimate ontology mystery.

Once with it man is somewhere else than in environment, he is in World. And always in other World because only the conscience can save us telling: all these do not happen to you, you are not here; you are anything else and elsewhere.

The story that follows is one of adventure of conscience. It is a phenomenology of the conscience only because it is disposed to make more concessions to cold logics than hermeneutics would accept.

It points out one of the high points in the evolution of actual occidental legal philosophy, a marking point of a tendency that originates in tradition but which strategically belongs to the future of philosophy.

Because the destiny of philosophy is linked to man's destiny and dissolution of conscience means the dissolution of philosophy.

And philosophic thinking feeds the well founded in theory hope that all this contemporary history of legal philosophy has the chance to lead us, by the labor of new-structuralist and de-constructivist semeiology – which sustain that “language talks to us”, that we are talked or thought by language – over the traditional hermeneutics of “I think” and of modern hermeneutics of “I talk” to a post – hermeneutics of “I am”.

Conclusion

This experience may determine us to focus our attention on the manner in which communication by all its form influence the existence and immediate significance of legal links that affect us and bring us closer to the profound significance of law and especially to the basis of law.

Theme of communication is specific to actual philosophy, implicitly to legal philosophy too.

Although, a simple definition of legal philosophy or of communication is not enough and it has to be intimately analyzed the interaction between those two. More, in case of theme of communication it has to be analyzed the manner in which communication influence, complete or deforms the legal field.

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