

# The Communicative Theory of Law in the Context of Digitalization: Social Consciousness and Communicative Memory

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## ABSTRACT

The article deals with the problem of communicative theory of law methodological improvement in the context of digitalization, initiating changes in law at the level of legal ontology. The authors analyzed the basic theoretical postulates of A.V. Polyakov's communicative theory of law: the idea of the Other as a subject of law provides interiorization of powers and obligations necessary to overcome the alienness of law to a person. However, the analysis showed the non-reflexivity of the integrity of the Other as a subject of law. The authors believe that the communicative theory of law needs to reassemble the figure of the Other, taking into account not only its active rationality, but also a passive register of irrational beliefs, prejudices and pre-understandings that also motivate law communication. This combination is possible when taking into account the interaction of social consciousness and communicative memory, which plays a key role in the work of the apparatus of legitimization of law. This interaction is sensitive to the digitalization process, which provides an increase in the density of interaction with the untypified real Other in the intersubjective world of everyday life. The authors conclude that the digitalization of interactions with the Other's figure requires the calibration of the communicative theory of law research optics in order to make it suitable to adequately reflect the increasing variability of the Other's communicative repertoire in digitalized legal communication.

**Keywords:** *philosophy of law, communicative theory of law, digitalization, social consciousness, communicative memory, the other*

## 1. INTRODUCTION

Digitalization is actively being introduced into legal life, transforming the practice of rule-making and law enforcement. Digital technologies are increasingly embedded in a wide range of legal relations, making them more flexible and increasing their efficiency. It is obvious that digitalization enhances the dynamics of legal processes, increases their transparency, functionality and manageability.

However, such a statement does not remove the question of how fundamental the consequences of digitalization are as a new form of social communication organization for legal being, do they affect it superficially, or initiate a transformation at the level of legal ontology? The answer can be obtained only at the ultimate level of generalization of legal life, represented by the philosophy of law. If digitalization is fundamental, then searches should be focused on the level of law enforcement. Classical types of the latter were formed long before the communicative turn,

and therefore are insensitive to the specifics of the modern communication revolution. Almost the only exception is the communicative theory of law, which advances communication as the ontological basis for the integrality of law and synthesizes the modes of its being on the basis of post-non-classical rationality [1]. The main advantages of the communicative theory of law are related to the fixation of communicativeness as the foundation of legal reality construction, intersubjectivity, its human dimension, practical reproducibility, mental, sociocultural conditionality and contextuality, which meets the requirements of increased communicativeness of social subsystems.

The methodological approaches of communicative legal understanding are formulated in this century. The interest in them is obvious both in Western European and in Russian legal thought. In our country the foundations of the communicative theory of law are laid by A.V. Polyakov. A.V. Polyakov became a pioneer in this field, the western version of the communicative theory of law appeared after the publication of his key works. The premises of the communicative theory of law include the

ideas of the St. Petersburg school of philosophy of law, laid down by L.I. Petrajitskiy at the beginning of the twentieth century, modern German philosophy of law (V. Kravitz, N. Luman, G. Shelski, J. Habermas, G. Toibner), as well as studies of the social world intersubjectivity in the mainstream of phenomenological sociology and integrative searches of the modern St. Petersburg school philosophy of law in order to ensure the synthetic integrity of law.

The fundamentals of communicative legal understanding are contained in the scientific report of A.V. Polyakov "The Communicative Concept of law", which is the dissertation's introductory statement on defense of the dissertation "The Communicative Concept of law: Genesis and Legal Rationale" [2, p. 8]. A.V. Polyakov interprets communication as a way of human existence in the world; a person gains his human essence through communicative interaction with "the Other" [2, p. 9].

Sociality reduces to communicativeness, and communicativeness to sociality, since the second is an invariant of the first. The specificity of legal communication lies in the fact that the communicants are aware of the existence of each other's competencies and their respective responsibilities. The warrants and legal obligations operate in textual form, they are determined by a legal norm based on "legitimate texts" [2, p. 46]. In this way, the basic elements of legal communication are determined - the subjects of law, legal norms, legal texts and legal relations.

Since legal norms form the structure of law itself, and legal texts relate to the legal system, systemic differentiation is formed: the social system / culture includes the legal system as a subsystem, and the latter, in turn, includes law. So in an extremely brief summary, A.V. Polyakov's communicative model of law is formulated. According to its author, its advantages are that it is, firstly, stereoscopic, so it allows you to see the multifaceted nature of law. Secondly, it is dynamic, since legal communication in its interpretation is continuous and is a product of social regulation. We add its third feature – the considered communicative model of law is distinguished by the fundamental openness of law to social reality.

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. For example, in the article "Farewell to the Classics, or How a Communicative Theory of Law is Possible" A.V. Polyakov studies the dialectics 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 for distinguishing law from non-law, and, secondly, to allow autonomous legal systems to arise, gradually included in the unification process [2, p. 104].

Such an interpretation allows us to consider law as a self-organizing system, continuously developed in the joint activity of people. In this perspective, A.V. Polyakov's legal communication reproduces the logic of self-reproduction of N. Luman's communication: when

material prerequisites are gathered together (the Universe arose, protein life arose and led to evolution, intelligent people are next to each other), there are no external reasons for communication, it creates itself in an act of autopoiesis, regardless of the goals, participants and consequences external to the communication. Likewise, legal communication does not require divine / natural laws, will, or other conditions established outside, since its essential element is social self-organization.

Advantages and limits of applicability of A.V. Polyakov's communicative theory of law was discussed many times, among the most significant discussions - the two-volume monograph "The Communicative Theory of Law and the Modern Problems of Jurisprudence" [3].

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 were highly appreciated. However, it does not mean a rejection of further conceptualization of A.V. Polyakov's doctrine, its further communicative-theoretical study. And it is the context of digitalization that allows us to open new growth points for a communicative theory of law. We will try to identify the elements of socio-phenomenological tools used by A. V. Polyakov to create a communicative theory of law that are fundamentally applicable to adequately reflect the digitalization of legal communication at the ontological level.

## **2. ESSENTIAL GROUNDS OF A COMMUNICATIVE THEORY OF LAW**

In the basis of law A. V. Polyakov puts the competence, which is the present opportunity for the subject to act justifiably and require certain actions from others. At the same time, competence is "dialectically" connected with the authority. The definition of legal eidos mainly through competence raises the question of the reasons why the author chose the methodology of phenomenological sociology for analysis. The author claims that it is the lifeworld with its communicative nature that is the kingdom of law, but in analyzing the essence of law, the researcher is much closer to the issues of legitimation and, accordingly, power than communication.

For A. V. Polyakov, it is extremely important, through a socio-phenomenological analysis of legal genesis to emphasize the legitimate nature of legal coercion, since direct violence, including that carried out by the state under the cover of law (well known by the example of the Nazi regime), does not cease to be violence and arbitrariness that destroys sociality and requiring rehabilitation of the victims. Nevertheless, the specifics of legal communication is largely related to the fundamental possibility of blocking specific communicative (social) acts, limiting the communicative activity of a communicant. In this context, the development of theories of social conflict in the second half of the 20th century is indicative: R. Darendorf not only put forward his concept of social conflict [4, p. 142-147], but also proposed an

institutionalized set of procedures for resolving it, focusing on the practice of civil proceedings. The core of the Darendorf concept is the voluntary submission of the conflict parties to the decisions of the arbitrator they recognize. In this case, the sociality of modern society "learns" from law, refusing to resort to violence monopolized by the state and relying on a dialogue dispositive model in legal communication.

At the same time, the state, represented by the competent authorities and their officials, is also a participant in legal communication. Interactions involving the possibility of applying state coercion are included in its system. Identification of communication as legal is impossible only by one of its elements, since the communicant's warrants and obligations (a distinctive feature of legal communication in the concept of A.V. Polyakov) are not localized in a single element of the communication chain.

Polyakov's communicative theory of law is an example of applying the methodology of social phenomenology to the study of the law essence. In accordance with it, he seeks to understand law in an essentialist way as a social phenomenon that exists in the lifeworld of person – "the real kingdom of law" [5, p. 7].

It should be noted that Polyakov considers the law to be communicative not so much because of the definition given by him of its essence, but because of the fact that the social is communicative. It is the introduction of legal dogma into the context of social communication that determines the advantages of a communicative approach to law, and at the same time it does not imply a full-scale analysis of law in the light of the achievements of the communicative approach in whole. This justifies the remark of S.I. Arkhipov, who criticizing A.V. Polyakov's concept of argues that in it "the legal text is considered as a prerequisite, the basis of legal communication, and not its consequence, result" [6, p. 20-27].

This explains the presence in Polyakov's communicative theory of crowding out the value aspect, which is characteristic of phenomenology. With regard to law, the time of crowding out becomes especially acute due to the special significance of the legitimation processes for its essence. The issues of the value side of law and legitimacy are closely interrelated, Polyakov pays attention to both of them, but does not examine in detail the nature of this relationship. He sees both issues as the external essence of law, despite the fact that they stem from his understanding of this essence. As a result, the suppression of the value aspect occurs at several levels: at the level of legal research methodology by sharing knowledge of law obtained through scientific knowledge and understanding of law, which accounts for practical philosophy that answers the question of what law should be.

Refusal to consider the value basis of law may be the result of this division, which contributes to the displacement of the value aspect from the content of the legal phenomenon. Polyakov partially overcomes the situation of "crowding out", highlighting eidetic legal values and postulating law as a value phenomenon, but he does not consider the value definiteness of law as part of its essence as a specific social phenomenon. The

researcher puts on values in the form of legal ideology, which, enclosing various types of cultural and legal codes (such as "human rights"), acts as a tool for legitimizing law. It is the question of legitimacy in the analysis of law as such that is of particular importance. In the Arkhipov's criticism we mentioned there is an implicit requirement for a theory that claims to reveal the essence of law, which consists in the concept describing this essence pointing to a way of legitimizing law. The communicative-legal approach in this case should assume that "the text is legal by virtue of it arises in the process of legal communication."

We believe that the refusal to consider the value aspect as an integral part of the essence of law is a consequence of the desire to explore law as an autonomous phenomenon. However, before making such a conclusion, we must make sure that there is no mistake that O. O'Neill identified as an abstraction with idealization [7, p. 439-459]. Is it possible in principle to include the process of legitimation of law with its value (and power) basis in the content of the phenomenon of law? And if not, can we even carry out the correct abstraction, preserving all the essential elements of law, analyzing the latter in an essentialist manner as a single phenomenon?

### **3. THE FIGURE OF THE OTHER IN THE COMMUNICATIVE THEORY OF LAW**

The most controversial element of the entire communicative theory of law is at the same time its cornerstone element - the subject of law. Model of A.V. Polyakov is fundamentally polysubjective. As noted by Yu.Yu. Vetyutnev, polysubjectivity is one of the main advantages of the communicative theory of law, because it allows you to abandon the one-sided understanding of legal regulation, to take into account the feedback and the exchange nature of law. A.V. Polyakov describing the subject composition of legal communication operates with the concept of "the Other". In particular, the author argues that the idea of legal communication is based on "the notion of the need for the Other as an accomplice to the right reality while simultaneously "prescribing" such reality with "objective" legal texts" [2, p. 9]. The Other in this case is a sign of society; in the cited texts A.V. Polyakov often refers to the generalized, social character of the Other, at the same time he interprets everyday interaction as an ordinary, simplified version of social communication, designed for personal interactions.

Indeed, in social theory, social interaction is considered to be interaction, which includes at least three participants. The interaction in pairs is considered within the framework of personality psychology, the triad changes the emotional and psychological connections adding to them the figure of a witness, guarantor or arbiter, 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 the multiplicity of communicants and the obligatory possibility of the potential inclusion of other subjects. How does the figure of the Other affect the structure of legal communication?

If the theory of legal communication was deductive, the whole variety of legal interactions could be reduced to a single model of communicative action. Communication theory knows three such models: the object-subject imitation (the communicant takes away the meanings from the recipient), the subject-subject dialogue (the communicants exchange meanings), the subject-object monologue (the communicator conveys the meanings to the recipient). In a positivist legal understanding, the monological model of legal communication dominates - the legislator establishes a rule of law that legal subjects must recognize and accept as a guide to action. This is how an imperative model of legal relations is established. In natural law doctrine, a dialogical conventional model of legal communication dominates: equal autonomous subjects establish the legal norm to which they obey. So the dispositive model of legal relations is established.

It is impossible to reduce these two models to each other; violation of the structural balance will lead to the destruction of one of them. The confrontation of the two great approaches is based on the fundamental difference in their characteristic models of legal communication; positivism has to justify the admissibility of dispositive legal communication, for example, through the distinction between private and public spheres of law, and the natural law doctrine has developed different strategies to justify the special status of the sovereign.

However, the functioning of the law requires both models. It should be noted 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, acquiring special significance during periods of legislative reform. The variability of legal communication models is dictated by the needs of social life, the need to satisfy a wide range of conflicting and diverse types of social needs. The work of the Other's figure in law has its own specifics in comparison with its role in social relations. A.V. Polyakov repeatedly emphasizes the dynamism, complexity, and processuality of legal communication: "communication, therefore, is a complete cycle and integrity that generates another communicative integrity. Communication is not facts, things, but processes and events" [2, p. 99].

The theorist builds a picture of multi-vector legal communication in which individual communicative acts are connected, interfaced with each other, rely on each other and generate each other. Participants in legal communication are always subjects of law, however, recognition of the role of a legal communicant for a subject of law does not mean the definition for the latter of a fixed communicative role (for example, a communicator or a recipient). The subject of law has various communicative roles in legal communication, and in a

specific legal relationship the subject of law can play either a passive or an active role. The variability of the communicants' communicative roles in legal communication means the presence of typical communicative relations in the context of the transition possibility existence to different types communication, the fundamental possibility of participation in its different models. In addition, the subjective composition of legal communication is also variable – a specific communicative act may have a different set of participants, from one to many.

And here the question of the communicative role of the Other in legal communication arises. Is the Other counterparty in the communication act? Ontological theories of communication in philosophy define the communication partner precisely so, for example, the M. Buber's dialogical concept defines "Thou" as the Other, the one who is not "I" and "It". The Other turns out to be a partner in live interpersonal communication in 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 the conditional two, each of which is connected by other communicative acts with the third, the Other. The Other is a participant in different acts of legal communication, infrastructural or generated for a specific act of legal communication, on the will, interests or function of which 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 must be typed. And here the paradox of the communicative and legal Other, which has been understood in a socio-phenomenological way, becomes apparent.

The communicative theory of law, therefore, is an attempt to overcome the alienness of law to human, which was somehow or another implied in the general theory of law of the classical period with only a few reservations [2, p. 46]. Regardless of who is the source of the emergence of law – the state or God, or even man himself – the law remains transcendental to its subject, and maintaining the antinomy of law and human rights can hardly be a satisfactory solution to the transcendence problem. A.V. Polyakov notes that the law, based on the communicative nature of person, is rooted in the lifeworld of human and society and is part of empirical reality. But, following Yu. Habermas in understanding human freedom as establishing partnerships on the basis of a rational awareness of goals, the author of the communicative theory of law falls into the same contradictions as Habermas himself.

Noting the general strengthening of the rationality of the subject of law, which partly determines the transcendence of law, Polyakov prescribes the recognition of the right to person, leaving, nevertheless, the latter still the same rational subject of interaction. The rationality of law is the common place of classical legal theories. As J. Raz shows, rationality underlies the necessary truths about law; modern philosophers of law standardly relate to these truths the postulates that law is, firstly, a socially

recognized standard of behavior [8, p. 324-342]; secondly, it is necessarily a rational standard of behavior. Turning to the phenomenological analysis of the relationship between the Self and the Other in the context of the genesis of law really changes the angle of research from a certain "average" subject of law to a very specific Self, but the Other is understood very unambiguously. The Other, as noted above, is a social agent (up to a general orientation to being-in-society), the actions and aspirations rationality of which is not questioned.

Such an understanding of the Other would probably not raise doubts if the communicative theory of law itself did not require from the subjects of legal relations an ontologically inherent awareness of their competence. But in this case, to expect from such a faceless Other reason for his own experience of the Self, and to assume the primacy of reciprocity over the egoistic [9, p. 103] would be tantamount to reduction to the statist theory. If we take into account the declared typicality of the Other, the entire system of relationships, including legal ones, will be built on principles that are system-forming for the theories of the purposeful-rational action of M. Weber, the communicative action of J. Habermas, and solidarity behavior theory, widely used in general and presented, in particular, in the works of the national researcher P. A. Kropotkin [10, p. 37-46]. And even if we completely extend rationality to the sphere of digital communication, assuming that the distance of the subjects from each other can reduce the affectivity of communication, then such an attempt does not solve the problem of too much confidence in rationality. As O. Chernykh sums up, the information era demonstrates the perfection of artificially created reality, and we have no reason to question the degree of involvement of virtual communicants in communication [11, p. 41-43].

Since Husserl's apperception was taken as the basis of legal interaction (according to which the Other for the Self is present as a different consciousness, different from its own), both subjects of legal communication must satisfy the requirement of intelligible purposeful-rational behavior. At the same time, an appeal to intersubjectivity, which would make it possible to negotiate and understand each other, implies a certain field of common meanings - what A. Schütz will call social reality. In our case, the division into legal and social reality should be implied, since the author himself distinguishes consciousness from legal consciousness (which is also not too obvious within the stated goal to deprive the right of transcendence). Then the whole circulation of law in the system completely closes: law, having its source in its social nature, cannot function outside social reality. Apperceptivity and intersubjectivity suggest a typicality of both subjects' interaction, which is basically true, since in legal communication the statuses of subjects are especially important.

If the Self will also maintain typicality, the basis of a truly deep living of the subject's legal consciousness is not clear. "Typical" interacts with "typical", expelling the reflection of subjects into the status of "excess". Intersubjectivity of consciousness does not mean apodictic awareness, but, on

the contrary, justifies the construction of the same alien legal reality. Moreover, in order to maximize the rationalization of the behavior of subjects, typing would be desirable and preferred, acting as a factor in reducing the arbitrariness of communicants.

#### **4. THE REASSEMBLY OF THE OTHER'S FIGURE**

Of course, this does not mean that we must, with utmost clarity, formulate the supposed Other again and again. Moreover, this Other can be quite definite (possessing communicative agency in terms of R. Greene) [12, p. 188-206], and the implanted legal reality can be reflexive, if we pay attention to the irrational in consciousness. We can assume that if we return to subjects "life", free consciousness, and therefore irrationality, it is necessary to identify those factors that could justify the behavior patterns of the Other (and especially the Others) on the one hand, and on the other, must be realized as such. It can be said that a communicative point of view on law, appealing to the dialectics of subjective and objective, cannot exclude the presence of an irrational component in the carrier of subjective meanings, creating law in a communicative act with the Other. M. I. Pantykina mentions about such "passivities", pointing to the beliefs, prejudices, and pre-understandings of the subject, which can sometimes be the prevailing factor in the choice of legal behavior, forming a legal habit [13, p. 94]. In this case, it is possible to highlight in the basis of legal communication what J. Crowe calls "the popular view of law" [14, p. 94].

In the indicated passive-active dichotomy the passive and typical determined by time (history, tradition) will resist the active principle of social consciousness. Social consciousness acts as the general orientation of human towards being-in-the-world-with-another in the constant questioning of the "whatness" of human, and therefore it is fundamentally subjectless, and at the same time, extremely local. Active perception of the world, the identification of the essential in perceived reality, characterize social consciousness, determining its present temporality. M. Pantykina, relying on the work of E. Husserl, indicates the presence of an active component of perception, which brings passive memory into an unstable state and is responsible for the overall modernization of the system [13, p. 36].

The appeal to this concept is not accidental. It is explicated from A.V. Polyakov's understanding of the essence of law as a generic for justice, immanent to the subject. In itself, social consciousness does not lead to legal behavior or communication, it disposes to the Other in general, while the present "typical" allows you to identify the ongoing interaction as legal and actively participate in it (realize it). The integrity of the consequences of the paradigm chosen by Polyakov leads to the conviction that for the work of the communicative theory of law it is necessary to shift the research optics from the source of law, which lies in the

essence of the communicative nature of human, to the very process of communication, in which the meanings of the subjects of law and their value landmarks are reunited, which would ultimately constitute legitimizing mechanisms [15, p. 36]. In other words, for the further development of the theory, it is necessary to replace the aspect of the foundation, which is explained by social phenomenology, to the construction of legal communication, studied by phenomenological sociology. According to the assumption of A.V. Polyakov, it is the lifeworld with its communicative nature that is the kingdom of law, but in analyzing the essence of law, the researcher is much closer to issues of legitimation and, accordingly, power than communication, which confirms the need for the conceptual transition we have indicated.

In the context of digitalization of legal interaction, consideration of the law legitimization mechanisms through the operation of active and passive / present and past consciousnesses is especially important. Digitalization is an unprecedented in its consequences process in which subjects must adapt the legal relationship system and, moreover, re-recognize their legal personality (based on a reconsideration of subjectivity in general). The advent of the "global village", the horizontal hierarchy of network interactions, allows not only to clearly outline the dialectic of the traditions of interaction, but also to demonstrate the previously hidden (regulated) process of legitimization of law "from below".

The recognition process described by A.V. Belokobylskiy and V.S. Levitskiy can be taken as a basis for the implementation of the principle of legal construction. Researchers turn to the process of recognition by analyzing the difference between general cultural meanings and subjective meanings [16, p. 42]. "Recognition" implies a subjective "acquaintance" (and in the case of legal communication this acquaintance will be mutual), the perception of the situation in accordance with previous experience. Recognition eliminates the difference between the typical and the subjective through the immanence of the first and also explains the mechanism by which a person understands what "needs to be done", the mechanism that underlies law from the point of view of A. V. Polyakov himself [17, p. 202].

Recognition is one of the universalization strategies of the intersubjective in the construction of legal reality, when a contradictory understanding of law by individuals is formed into a coherent whole through the comprehension of everyday legal knowledge that a person shares with other people in the usual self-evident everyday life. At the same time, everyday life is possible only with constant communication, which implies the correspondence of different ideas about the world and a common understanding of reality [18, p. 1-4].

Communication activity, accompanied by the mutual adaptation of meanings and ideas, carries out the construction of legal reality with varying degrees of intensity. It is important that knowledge should be understood as everything that is considered to be knowledge in society, denoting by this word subjective ideas about the supposed subjective world of the Others,

including legal norms, i.e. rules of behavior. The latter are assimilated by the individual in the process of socialization, understood as the expansion of the everyday world by increasing knowledge about the everyday worlds of the Others and adaptation his own world to the requirements of others. First, in the consciousness of an individual images of significant others are formed, then form images of a generalized other, then – ideas of one's own image in the consciousness of significant others and a hypothetical consciousness of a generalized other, i.e., without the internalization of the established objective reality, the subjective establishment of a holistic identity is impossible. L. Berger and T. Luckmann emphasize the role of disapproval / approval from significant others, forcing the individual to be guided by ethical and legal norms [19].

The identity of society is formed by a collective memory, in which ideas about the norms governing human relationships are stored. As Jan Assmann pointed out, "memory lives and remains in communication. If the latter ceases, or if the referential framework of communicative reality disappears or changes, oblivion comes" [20, p. 37]. Communication preserves two forms of memory: communicative and cultural. Communicative memory covers the memories of the recent past, which accumulate over time and shared by all contemporaries within one or two generations. Cultural memory is aimed at fixed moments of the more distant past, and in it the past is not preserved as such, but is folded into symbolic figures to which the memory is attached. It should be understood as a special form of not only actualization, but also the translation of various cultural meanings.

In the digital age, the cultural reproduction of significant meanings for society cannot be achieved without both the direct or indirect participation of the mass media and social networks, as translators, and sometimes the subjects of their formation. In turn, the formation and development of communicative memory are due to the everyday communication of the individual or subject-subject communication within a particular society (and the network community in digital conditions [21, p. 28]). For communicative memory, the factual reality recorded in the memories is important, while the cultural one is characterized by a myth, that is, the past fixed and internalized to the state of "justifying history" regardless of the authenticity or fictitiousness of this image [22, p. 373-374]. A myth is, in this context, a justifying history that is told to explain the present from its origin. Thus, cultural memory serves as an apparatus for legitimizing reality, which is created in communicative memory.

This apparatus of legitimation is mythological in nature and is aimed at combining the horizons of the social and the ideal. It points out what people should be to preserve the social whole and attributes the norms recognized in this community to specific behavior patterns through their objectification in everyday routine actions (prescribed by interpersonal interactions and etiquette rules). The mythological nature of the apparatus of legitimation is also revealed in unverifiable judgments about the essence of the social order, supplementing it with doctrinal rational

constructions and reasoned ideology [23, p. 374-378]. The realization of law is influenced by the processes of communication between the coexisting in society various value systems that govern it. A conglomerate of different social fields reproduces different normative orders that are synchronized by communication processes.

Communication is a closed system in the sense that for its existence there are enough interacting people and nothing more. Basic selections of communication, such as information, messages, understanding, generate a communicative and cultural memory used by all social actors in various ways, one of which is the construction of legal reality. Coexisting in the mass consciousness, both forms of memory constitute a collective memory, which is generated by the pulsation of the communication system and is an emergent characteristic of the latter, not an additional element [24]. It retains the idea of a certain order, a social regulator, ordering the vast majority of social relations, i.e., law.

Collective memory can be represented as a set of regulatory systems where, in addition to law, in society one can find morality, etiquette, customs, habits, traditions. Society will take shape in any place where a group of people will be forced to carry out joint activities for a sufficiently long time and create a communication system. Any communication system specifies its elements and structures, and this specification is carried out through law. In a communicative approach, law is understood not as an abstract prescription (will, order, norm), but as something that arises only through the procedure of coordination and understanding with the generalized Other [25, p. 45], preserved in the collective memory as a dynamically functional, pervasive, socially established network of aggregate communications and legal action [26, p. 243-263].

Thus, law is a network of communications typified through correlation with the social Other, where the communicative-cultural memory is the space and typification tool.

## 5. CONCLUSION

Thus, summarizing our analysis, we can note the methodological significance of digitalization processes for reassembling the figure of the Other in a communicative theory of law. The free play between the passivity and activity registers of social consciousness, ensuring the full subjectivity of the Other, requires deepening the processes of intersubjectivity to the temporal dimension, provided by the methodological application of the socio-phenomenological concept of “communicative memory”. Strengthening horizontal interactions in the digitalization process, increasing their power and density means not only the need to calibrate research optics, but also to increase the diversity and variability of the Other’s communicative repertoire in digitalized legal communication.

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