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Communicative Rationality in the Standardization of Legal Relevant Criminal Conduct

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Communicative Rationality in the Standardization of Legal Relevant Criminal Conduct

Abstract/Keywords: Theory of communicative action, ontology of the sentence, systems, subsystems, role, function, crime of breach of duty, compensation, general and special prevention, rule of law, breach of communicative rationality, institutional rivalry and competition for organization, lord of the fact, the duty of guarantor, facticity and validity, counterfactual assertion, public use of reason, prosecution, transcendental ego, self, idealism, voyage, cognitive subject, object of knowledge, hermeneutics of criminal conduct and public servant.

Introduction

This essay presented today as part of the *XXV.World Congress of Philosophy of Law and Social Philosophy / 25. Weltkongress der Internationalen Vereinigung für Rechts- und Sozialphilosophie*, is an integral part of the ongoing investigation that the author is currently carrying out on his doctoral thesis in law at the External University of Colombia, Which deals with the dogmatic category of crime of Breach of duty, their implications for the authorship and participation, and its philosophical underpinning in the tradition of German idealism.

Society in the new millennium is much more complex than its immediate reference, as a result crime has evolved in a more worrying form and society has the expectation that the rule of law, *its law/status*, provides policy responses to socio-legal reality increasingly rampant. However, all these needs are taken into account at postmodern dialectic on the sanction formulation devised by *G. F. W. Hegel (1770 – 1831).* The contextualization of its own that requires a brand new concept of the hermeneutic circle (text, context and person) they purported to at least explain the role of *the right to punish ius puniendi.* The rule of law in its punitive award must face a double tort challenge of context on these procedures; on the one hand, the behaviors performed by individuals without any special skills and are governed by the criteria of interpretation of the theory of *the lord of fact*; and other behaviors displayed by a particular obligation *(intraneus*) that serves a specific duty to clear nature of parole and not to be confused with the inherent duty to the legal. Today this concept is governed by *the theory of breach of duty crimes.* That parole duty is a normative concept that has not yet been sufficiently developed by

the contemporary doctrine and is especially relevant for the indication that will be covered by *Prof. Dr. Dr. h.c. múltp. Claus Roxin (München) with the contributions of Prof. Dr. Dr. h.c. múltp. Günther Jakobs (Bonn) explains* the concepts of *competition for organizing and institutional competition* that highlights the relevant criminal behavior thanks to the state genuinely duties. This essay is intended to mean the dogmatic development of modern German concepts with approaches undertaken by *Prof. Dr. Dr. h.c. múltp. Jürgen Habermas,* who from his works: *a) Theorie des kommunikativen Handelns. Band I. Handlungsrationalität und gesellschaftliche Rationalisierung. Autor: Jürgen Habermas. © 1981, Suhrkamp Verlag, Frankfurt am Main, b) Theorie des Kommunikativen Handelns. Band II Zur Kritik der Funktionalistischen Vernunft Autor: Jürgen Habermas. © 1981, Suhrkamp Verlag, Frankfurt am Main, y c) Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats. Suhrkamp Verlag Frankfurt am Main. 1992,* understand intersubjective relations based on substrate communicative actions (illocutionary or elocutionary) teleological actions (purpose-oriented), but always marked by the guideline language.

From the relationship between these plexuses of knowledge, which is what *Habermas* calls the *life world*, there is criminal conduct as a result of the damage itself originates from the normative expectations that society placed on the rule of law. *Legal acts* are therefore *speech acts* that affect the daily lives when the city is confident that the rule, designed in essence dialogic, radiates characteristics of intangibility and immutability.

An argumentative tour is also part of this essay that goes back to the philosophical basics known as *German idealism* and stops at the thought of one of the most expensive exponents of transcendental rationalism: *Immanuel Kant (1724-1804)* with all its conceptual stream as definitive science of criminal law.

I. Ontology of the Sentence

The crime is the breakdown of communicative rationality between *the factuality* of an action and the *validity* of the standard concrete. The sentence, in turn, is a *counterfactual* reaffirmation of the validity rules by denying the denier event that produces the crime[12.] What is communicated is

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not only regulatory contempt that inspires the subject policy, which is in itself the subject of the complaint, but breaking into the *world of the life* of the understanding of a social integration system, constitute the sanction reinstatement of this communication. In respect, there is need for two (2) warnings in the forms of contextual explanation: a) the word *action* is raised and exposed throughout this thesis in its broader Kantian connotation as a possibility for public use at any time and place, one's reason rather than naturalistic narrower sense, as an external means to the corresponding sense of doing (*default*). Public use of reason is a subjective right, understood as the power to require other (required) intervention for what it does, thanks to a certain level of competence. It is a right to intersubjective recognition of the existence of individual freedom as a compatible event with the freedom of all. It is the same *Immanuel Kant (1724-1804[3])* who appeals to the general principles of reasoning. He considers the existence of a *private reason* as

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[2] GUILLERMO FEDERICO HEGEL, Philosophy of law,Editorial Claridad, 5 th edition, 1968, Buenos Aires (Argentina), German philosopher conceives crime as a dialectical relationship between individual will and the law (p. 101 § 82), this falls as the antithesis of both in which a contradiction entails the restoration of the right to reject the denial of the crime. In § 90 (p. 103), § 91, § 92, § 93 (p. 104) man is considered a living being, so as a subject he can be subdued and subjugated, not by choice but by a law. Regulations will is synonymous with freedom, but force and violence that can seem unfair in its application involve the cancellation of the first violence (caused by the crime). Then it is a pedagogical controlled violence, overturning the barbarism and ignorance. We then have two (2) types of violence in Hegel:, a first violence, rooted in an act or omission that is what is directed against the contract, law, education or family (concept with ethical content) that violates the right to individual will and therefore violates the existence of human freedom through the crime (p. 105 § 95) and a second violence (p. 106 § 97), as a result of the other and through the criminal law, will override the first, deny it, and assert itself (self-awareness). What appears to be a vindictive response to a disease that is caused (consistent) who has caused another bad (above), should be given its logical dimension: that the offense was denied for a violation of law as law (normative) enthroned the restoration of the provision violated (pp. 107 and 108 § 99). denial of evil is a reaffirmation of freedom (p. 106 § 98). However, Immanuel Kant in his Metaphysics of Morals, editorial Tecnos, 1989, Bogota (Colombia), had already addressed this dialectical relationship based on the principle of contradiction explained as follows: the violation of freedom as a negative act is prevented by another negative act of coercion that is the power to constrain the will and compel it to respect the right, leading to a reaffirmation of freedom according to universal laws (p. 40).

[3] About Immanuel Kant, what is Enlightenment?*Beantwortung der frage: Was ist Aufklärung? Berlinische Monatsschrift. Dezember-Heft 1784. S. 481-494* "However, for this illustration only freedom is required and, indeed, the most harmless of all bearing that name, namely the freedom to make public use of reason itself, in any domain. But I hear everywhere exclaim: Do not argue! The officer says: Do not argue, drill! Financier: do not reason and pay! Pastor: Do not argue, believe! (One man says in the world: ¡Argue all you want and about what you want, but Obey*!)* E*verywhere then,are limitations of freedom. But which one prevents the illustration and which, by contrast, promotes it? Here is my answer: Public use of reason must always be free, and it is the only one who can produce the* Enlightenment *of men. Private use, however, must often be severely limited without impeding progress of illustration in any particular way. I understand by public use of reason itself that someone makes it, as a scholar, and to the entire public world of readers. I call private use employment of reason which enables man in a civilian position or function entrusted to him. However, in many occupations pertaining to the interest of the community certain mechanisms are needed, through which some members have to behave as purely passive, so that, by some artificial unanimity, the government directs them toward public purposes , or at least to limit their destruction. Naturally, in this case it is not allowed to reason, but must obey. But as for this part of the machine, one is considered a member of a whole or even of a cosmopolitan society; as it is estimated as the scholar who, by letters, addresses to an audience in its own right, can reason above all, without necessarily suffering the occupations assigned to it partly as a passive member. "Thus, for example, it would be very dangerous if an officer, who must obey their superiors, began to argue loudly, while on duty, about the appropriateness or usefulness of the order received".*

logical inverse of public reason, which is defined as referring to people linked to society thanks to a direct functional relationship. The public servant shall not, in the performance of his functions and objectives as a subordinate, challenge state tax compliance plexus, since the concept of private reason obliges him to act in accordance with an institutional guarantor position and b) the communicative action is based as a *category*[4] of inter-relationship. Taking a step ahead of the site at which Kant had established, *with reference to the transcendent subject but full of individuality-*, communicative action through which addresses three (3) complex themes: i) the concept of communicative rationality as a category at the same time the action is used to treat *cognitive-instrumental* reductionism which is the subject of reason, ii) the concept of *society divided into two levels, which combines the paradigms of lifeworld and system* [5], and iii) a theory of modernity that gives an explanation to what *Jürgen Habermas (1929*) called *social pathologies* - which one might wonder whether the offense is regarded as one - under the following assumptions: *the communicatively structured areas of action are subject to the constraints of formally organized action systems that have become autonomous*[6]. Clarified before it becomes a warning: It is that the rationale that guides this thesis is its initial formulation in *the theory of communicative* action (1987) developed by *Jürgen Habermas* within a framework of *rationality and rationalization of social action (Volume I) and critique of reason functionalist (volume ii)* and in *actuality and validity (1998)-on the right and the democratic state of law in terms of discourse theory*[7] - *That* without giving up arguments raised by *Georg Wilhelm Friedrich Hegel (1770-1831),* takes the Kantian development of pure practical reason embodied in the *critique of practical reason (2005) and Metaphysics of Morals (1989)*[8] but as formulating a *theory of modernity* with all the implications that this entails. A conception of punishment,

[4] Conception of communicative action as a category implies distinguishing this a priori concept of transcendent subject (Kant) from the post concept of the thing (Aristotle), because while the former is of pure character, the second has a sensitive nature. *When the categories relate to the subject, they are time and space, while when referring to the thing, they are attributes of the self-rex, constituting its ontological reality: shape, weight, volume, capacity, quantity, color, flavor, smell, texture and gender.*

[5] JÜRGEN HABERMAS, Theory of Communicative Action I. Rationality and Rationalization of Social Action, Editorial Taurus. t. 1, second edition, Madrid 2001, pg. 10.

[6] Ibíd, p. 10.

[7] Accredited dates here correspond to the Castilian versions translated by Manuel Jimenez round of the German-language original: a) Theorie des kommunikaliven Handelns. Band I. Handlungsrationalität und gesellschaftliche Rationalisierung. Autor: Jürgen Habermas. © 1981, Suhrkamp Verlag, Frankfurt am Main, b) Theorie des Komunikativen Handelns. Band II Zur Kritik der Funktionalistischen Vernunft Autor: Jürgen Habermas. © 1981, Suhrkamp Verlag, Frankfurt am Main, y c) Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratieschen Rechtsstaats. Suhrkamp Verlag Frankfurt am Main. 1992.

[8] Castilian versions of works in German: a) *Kritik der praktischen Vernunft* y b) Metaphysik der Sitten (1.797).

which is our starting point, and restoration of communication that actually confirms the rules of society, cannot be criticized by classifying it as a remote viewing of the empirical and accused of taking refuge in nebulous spaces of *absolute idealism*. The revival of the rule with the intervention of the sentence is presented in the real world where communication is maintained throughout the complaint process and continues the execution of the sanction.

Society as a subsystem in the *world of life* is the context where the communication that is not really unknown ontological, *teleological evil against another evil*, but presented in a double connotation: *a) empirical, instrumental, b) remuneration-functional*. the sanction *is not an end in itself*, it is a means of communicative reason and is aimed at creating a budget policy of social equilibrium in the factual world, which tends to occur: a) a change in the actor *(special - preventive function)* like representing in the collective consciousness an image of containment *(general -preventive function)* [9]. Interference with the law is projected in the *socio-legal* like a demonstration, ultimately, a symbolic interaction subject to end. To ensure real trust and not merely counterfactual the sentence has a function: *cognitive safeguarding the life of the standard*[10] if the cognitive rationality is taken from an area mentioned *empirical - instrumental - teleological end action*- a concept of rationality will originate as a comprehensive statement of the society within the objective world -*modernity purely- contingent* adapted to an environment[11]. On the contrary, if the rationality is assumed from the communicative theory based on *acts of speech*, the concept of rationality acquires a major dimension carrying inside a certain area of competition (competence) -*Where there is a sentence, the legal duty parole and crime seen as a breach of that duty*- the following assumptions: a) consensus about the validity of rule of law as an imperative, b) recognition of communicative action as a category linked to the end that is inserted into the daily c) legitimization of the communicative function –*Illocutionary*- of the sentence as: i) self-emerged *as a result of the intervention of the right to punish*, as *speech act*, produced by the inter-state breakdown of existing dialogue, ii) reconfiguration of the social order through the assertion of regulatory budgets, and d) the assumption of the tangibility of extra penal

[9]GÜNTHER JAKOBS. Professor emeritus of criminal law and legal philosophy at the University of Bonn. State punishment: the meaning and purpose, pg6. German title: *Staatliche Strafe; Bedeutung und Zweck*, Opladen, 2004. Manuel Cancio Melia translation and Bernardo Feijoo Sánchez Autonomous University of Madrid.(Universidad Autónoma de Madrid).

[10]JESÙS-MARÍA SILVA SÁNCHEZ.From abstract right to the real right. *Recession to Günther Jakobs. State punishment: the meaning and purpose (translation and preliminary study by* M. Cancio Meliá y B. Feijóo Sánchez *), Thomson-Civitas, Madrid, 2006, 182 pp. indret magazine for the analysis of law. Barcelona October 2006.*

[11] JÜRGEN HABERMAS, Theory of Communicative Action I. Rationality of Action and Social Rationalization, p. 27.

legal duties, which are not provided by the legislature as explicit policy ingredients, specific types of substantive order, set a broadcast communication counter intuitively founded in breach of the preservation of the duty incumbent upon the special obligor.

Punishment, not being an end in itself, is redefined as an act of speech and not merely the policy response; it is the restoration of communication that reflects the social consensus to be imposed as more rational than formally ensure the configuration of the objective world as it existed before the transgression of the areas of competence. The crime does not deny the crime communicability between legal transversal category rules that connects with the individual systems and society. Denying involvement in the crime which represents the *image* by the sentence, is itself a restoration of the validity claims as a rational framework in the social context, it became a double interference: a) against the person of the author, and b) the world of life. but it should be clear that the consensus is not achieved by an expectation of signing an agreement that can be dismissed as naive and that develops between the actor's behavior and what the standard as expressed speech act in general, but by the consensus of an original social contract that requires the rule of law to restore that communication so this tax if they are entitled.

II. Communicative Functional Concept of the Crime of Breach of Duty

The social context presents relations between the basic and social subsystems that generate fields of competence: a) cultural reproduction, b) social integration, and c) economic and political socialization, that lead to consider the person as a subject capable of speech and action that makes use of knowledge so that emissions or linguistic expressions express explicitly on knowledge (know how) and teleological actions are expressed as a power, an implicit knowledge (know that). Against this, Habermas states that rationality is predicated on: a) persons who have knowledge, b) expressions that may be communicative or non-communicative, c) actions that may be linguistic or nonlinguistic d) symbolic or symbolic expressions. In modern criminal law as a cultural product of the people, this plays a decisive role in the established institutional order in which the citizen belongs to, need to adapt their behavior to the prevailing regulatory system. This importance is evident in the establishment of the dogmatic category of crime of breach of duty, discovered perhaps intuitively by *Roxin Claus (1931)* when he presented the trial *Täterschaft und Tatherrschaft (1963)*[12] as enabling writing to the Chair of Criminal Law at the

[12] CLAUS ROXIN. Authorship and Mastery of Fact in Criminal Law.Marcial Pons. Legal Issues. Translation by Joaquín Cuello Contreras y José Luis Serrano González (Universidad de Extremadura)University of Extremadura.

University of Munich, which states that over the domain category of crimes, there is a category of crime of breach of duty understood as words of prof. Roxin, such as those in which *the domain is not the fact that based upon authorship but a special duty violation parole* [13].

What is communicated in such events is a response to normative expectation generating legislative text, speech act's *illocutionary* as well as going *perlocutionary* coupled with the intent and understanding of the content of text wherein the special obligation (*intraneus*) has a particular target. This subject communicates with his conduct in accordance with its functional role, a security policy response to the breach of duty of which he is guarantor.

However, the assumption in this historical moment in that category is not occasional tort is the result of an evolutionary process that runs in the so-called *German idealism*, which needs to be conveniently explained.

III. The Criminal Legal Voyage of German Idealism in the XVIII and XIX Centuries

The rational view of the law by the German idealism of the *XVIII and XIX* centuries was not uniform, being able to say that every one of their representatives, viewed as edges of a complex geometric figure, did not speak in unison. It was to some extent, the special features that these philosophers printed on their line of thinking. However, there is a common denominator in all this concept building that remains intangible through the various schemes that integrate argumentative, giving life epistemological and by frequent recurrence in each of these rational structures can be examined from a historical perspective with a continuity solution: i) *the idealism* does not come from the assumption of reality as the realization of external things, given in the world, but from I, also known as subject or consciousness, ii) The being is contained in the subject's consciousness, there emerges the real fact that comprehensive *ontos* is the object of knowledge. iii) the subject *(I)* is the creator, generator of *anti-normative* behaviors that fall short of expectations balance of civil society by the *other subjects (alter).* But society in turn, supports such negative feedback mechanism of the act of infringement, that at the end and dialectically is but the affirmation of the validity of normative postulate. To reach this point of the question, recognition of the event itself that *the guideline of the philosophy of criminal law passed by Germany*[14] must make clear who was *Cartesius Renatus (1596-1650),* who as a hinge

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Madrid 1998 taken from the 6 th edition of *Täterschaft und Tatherrschaft. Edit. Walter de Gruyter & Co. 1994.*

[13] Op. Cit. Pág. 700.

[14] As such, but for the understanding of philosophy in general, Eusebi Colomer, German thought from Kant to Heidegger, Editorial Herder. t. 1, 1993, p. 1.

between two worlds the medieval and the modern, lays the foundation of rational knowledge from *cogito, ergo sum*, where the subject is an individual in is self-confident and reconstructs reality from that knowledge. Cartesian philosophical system will present a vision that moves the body and installs the *individual subject*, what prevails is not the external event but *me and my thoughts*. Against the existence of others, which stand as a Pharaonic monument is *doubt as an anti-error method*[15] , because only there you have the virtue of being thought of in terms of certainty by the subject (me). The struggle between *Cartesian idealism*[16] *and metaphysical Cartesian* with their problems *(the world, me and God)* is evident.

Ego idealism (subject to conscious understanding and will) will have decisive influence in criminal legal science. Immersed in a world where there is no solo, intersubjectively will understand that the scope of their actions will have daily impact on specific Print value of the other subjects.

[...] Man is understood in its core essence as a subject for which the body becomes an object of thought. the beginning of the Cartesian philosophy, with its famous cogito, ergo sum, modern thought definitely focused around the human subject [...][17]

The subject is an individual, who eagerly seeks alone and perhaps with anguish the ultimate foundation of the thinking structure, of its cognitive capacity, creating thought as a proper element of rationality. Ontological separation between the object of knowledge and the cognitive subject, there for the universe of beings is displaced by a new activity that is inherent to me: The ability to think rationally and infer the intended purpose. At this point and time of philosophical thinking begins what *Platon (428-347 a.c.) denominated in his context δευτερος πλους* –second

[15] With respect, MANUEL GARCIA MORENTE, preliminary lessons of philosophy, editorial Zaragüeta Bengoechea, 1947, Madrid, p. 108 et seq, for whom the virginity and innocence of the second discards sailors has been completely lost because of the huge burden of lived experiences and contexts over the past twenty centuries preceding Parmenides as the first rider. Descartes has the huge responsibility of bringing the ship to safety philosophy and perhaps avoiding shipwreck aground in the rough waters of finding skepticism quietest on the direct relationship between the subject and thought and not between the subject and the thing with the intermediation of the concept of something so dear to the Aristotelian system.

[16] For the idealism as philosophical, the only sure thing there is of existing is the self (I) and the thing adquires relevance as it makes direct contact with me. Such a situation created by Descartes, that by way of "first man" begins the second navigation. That earned him to strong questionings about his system by the genuine German idealists of the seventeenth and eighteenth centuries, often often referred to as an *ideal realism or real idealism*.

[17] Ibíd, EUSEBI COLOMER, TheGerman thoughts of Kant to *Heidegger*, p. 8.

navigation-[18] and that would lead to a Copernican revolution where the center of gravity of the cognitive action is not the object but the subject who knows. Reversing the interpretation concerning the understanding, it is no longer the object that determines the subject but is the subject that creates and determines the object. A paradigm shift occurs between two perspectives, *that of acting and thinking*. On the one hand, classical philosophy of marked strain *onto-theological* and the other, the modern philosophy that underpins its equilibrium point in *anthropological criteria*.

Plexus implications of such criminal epistemological rupture conducted by discards are notorious because it is not needed for the mediation of the concept to define the entity (thing in itself) and convert it into thinking itself. The path was pointed out for future contractarians like *Marquis of Beccaria (1738-1794)* conceived the basis of the sentence rather than the punishment itself (real thing) but the need of *Prince* to protect and safeguard (direct and individual thought) partial transfers of sovereignty by way of deposit were delivered by an assembly of people. This way of conceiving the sentence does not need mediation from other concepts[19], the idea of crime and punishment is a result of a direct thought of the philosopher of the Italian Enlightenment when he understood the criminal law as a system of protection and safeguarding individual rights *that is central to all combinations of the globe*[20]. by stripping the power of devoting particular offenses or circumscribe the sovereign and the laws produced by the activity of a legislator who represents the representation of a community united by a social contract, makes such laws in direct object of a thought.

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[18] The term *δευτερος πλους –second navigation-was used by* Platón in his *VII* Letter *that has the title "Platónwishes luck to Dión's relatives and friends" and was written around the year* 353 a.c. when the philosopher was seventy five years old ans in its place, giving multiple interpretations to its original sense. The concept of second navigation is maritime and refers to the moment of momentum of a boat sailing in the waters. The first sailing is what is achieved by the speed of the winds and the second sailing is what is achieved by force of oars. Platón considers that the second force is the overcoming of *Φυσική* - physis by *λογότυπα* - -logos- the reason on the physical, giving rise to metaphysics which allows man to free himself from his naturalistic bonds and soar from the reality-as a platform-to the world of ideas. In the Platonic view, the second sailing is the one the philosopher makes once it his obligatory historical precedent is clear, but overcomes from rationality the concepts of *Πόλις, ο άνθρωπος και το σύμπαν – polis, man and cosmos. Plato's allegorical second navigation applies to the emergence of philosophy of modern German idealism which shines on the horizon with light.*

[19] In the Aristotelian system concepts are an approximation to the real thing from the very definition of giving a chance for doubt. One thing is typical action to the extent that fully suits the budgets previously set by a guy who embodies, but this requires having the concept of typical action has inserted the thinking subject from what others devote normatively. It is an understanding by association while the Cartesian way that requires us to dispense with concepts is already taken by the experience and create, giving rise to what Kant later would call *a priori structure of thought that will seek to explain reality as a result of the laws of logic synthesis of our thinking (García Morente, 1,947, p. 13).* An action is not typical only because it is consecrated legislatively: It is typical because the typical stands as a guarantee of freedom enshrined in the maxim: *everything that is not legally prohibited is legally permitted*.

[20] CESARE BECCARÍA, Of Crime and Punishment, Linotype Bolivar(*Linotipia Bolívar)*. Bogota, 1992 11.

The enduring recognition given to *Rene Descartes (1596-1650)* comes from the novelty of his thought, marks the boundary that distinguishes two philosophically distinct worlds; on one hand is *the philosophy of being (being)*, that during the old age reached its maximum edges in the enthronement of the thought of *Parmenides of Elea (540/539-470 a.c*) which considered the existence of the being because it was actually a being, where nothing is not and thinking was like being. The being is not a product of thought[21] but the thought thinks what is, what exist, what is real, what is tangible.

[...] In other words, metaphysical thought does not move on the ontic plane, relative to the reality as it is given, but at the ontological concerning λογος del 'ov, meaning the conditions of possibility and intelligibility of the given reality to the metaphysical reality is not pure brute factuality or meaningless: It is intelligible. And this means that in the midst of its contingency and mutability, it has some elements of necessity and permanence that allowed his claim for thought. Metaphysics is imposed by task to look at anything, at all things, these items of need, permanence, and sufficiency that make up the fabric of reality intelligible. Thought otherwise could not say: the agency is this or that. Now,this metaphysical attempt to raise the 'ov al λογος, finding the sufficiens ratio of the body, inevitably leads to a horizon of transcendence. Indeed, given the reality is hardly intelligible in itself. Its character of not -needing, pushes the thought to the assertion of a necessary substance in which it can put to rest all their claims. Metaphysics thus receives the hallmark of transcendence, which we find in Platón , and is definitively established as its structure has been called, onto-theo-logical […][22]

These initial characteristics of classical philosophy are referred to the etymological definition: *a) onto b) theo c) logic* and not the view of the context contempt with which *Martin Heidegger (1889-1976)* in *Differenza und Identität (1957)* with an indictment of the metaphysics of causing oblivion of being. In this first segment of what could be called *realism onto-theo-logical* can set the following aspects:

1st For the metaphysics of the being reality is not understood as it is given but through the subject's capacity for insight of that reality.

2nd The ontology of the being is not pure actuality, latent fact or reality without meaning, reality is understood, captured and taken by the person who knows that reality.

[21] Ibíd. EUSEBI COLOMER, p. 8.
[22] Ibíd, p. 8-9.

3rd Classical metaphysics understands reality as immutable, dynamic and essentially unique. What is understood is the fixed essence and not variable (not changing) of the thing.

4th The significance arises from the body (inside) to the other (the outside). What is real is not necessarily seen as the visible surface which itself brings deception and the role of the initial metaphysical is the knowledge of what is genuinely real, inner, necessary essence.

Many centuries later, this concept would live in the German criminal legal philosopher with the development of the complex theory of action understood as a modification of the outside world and where the legally real is not measured by the objective production of a naturalistic outcome, but the valuation of the interpreter transcended internal areas of motivation and interest of the subject. From that point, the neo-Kantian views of the late twentieth century would find a teleologically directed action, governed by the will of the subject where they had room for phenomena like guilt, fraud and special spirits which were subjective elements of the criminal type. On the other hand, the second segment that purifies metaphysical thought is given in modernity with a fundamental change in architectural thinking and does not constitute a mere change of label. The foundation of cognative will not focus on the being, which is known, but rather the knower. Modernity does not sacrifice the being completely. Just overthrows the site where it was enthroned by several thousand years through the structure *onto-theo-logic* that had kept the thought of ancient and middle ages. The paradigm shift in the philosophical shed takes on the *subject* that takes a position that is no longer media but rather central in the process of knowledge. The purpose of assessment by the subject is the being that is known and that will give way to the *realism vs. idealism* controversy, meaning that the first is understanding of the thing and the second as understanding of the *idea*. At this time in the history of thought there is a multiple display of the subject (me) and will have special features for the criminal law to the extent that each of these schemes addresses the nature of repressive rule and the power of state to punish from a different mobility framework but with a common denominator. In the theory of legal duty we can say that contextualization that makes German idealism in the process of cognative where the subject occupies a central role is basilar. For this purpose it is necessary to distinguish between *the individual subject of Descartes*, the transcendental *subject* of Kant and the idealistic *absolute subject* itself[23]. In *Immanuel Kant (1724-1804*) presents an interpretive turn

[23] When approaching the understanding of German thought under the heading of idealism, one must be careful not to group in one basket three trends that although they had a common (the location of the subject) had deep differences on how to understand and explain the relationship of that individual with problematic issues such as: a) the state, b) the standard and c) the offense. Such a scenario is observed in the positions taken by Johann Gottlieb Fichte (1762-

to the transcendental subject, understood as the sum of *a priori structures* that are given in a being capable of self-knowledge (thought) to enable the understanding of the object. But in the *Königsberg thinker* the object is inevitably linked to the subject and the true *self consciousness* can only be acquired in the act of cognative the object (other). Kant lays the foundation of the modern theory of guilt, *where the understanding of the criminal act (self = intent)* is embedded in the overall policy framework and required to suppress particular behavior. The subject becomes self-conscious of his action in so far as contemplating the naturalistic dimension of his behavior and can be attributed punitive consequences, then emerging relationship of the cognative subject (the actor sanctioned event) and the object of knowledge (the behavior described normatively). The transcendental subject includes the object within a process of introjection from a priori structures of the subject *(space and time*), and their categories[24] to facilitate their knowledge. The Copernican revolution is no longer the object that determines the knowledge but the knowledge that determines the object and intervening sensitivity, understanding, and reason, where Kant refers to the definition of categories, which Aristotle had just originally conceived as pure concepts a priori given and not affected by the sensory perception of the thing[25] . The legal duty

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1814), Friedrich Wilhelm Joseph Schelling (1775-1854) y Georg Wilhelm Friedrich Hegel (1770-1831), be it notorious that the pattern of reflection in each of these thinkers was not uniform, and there is consensus in the academy to admit various stages of each of these systems. To the point of being commonly accepted labels like "the first Fichte," the old Schelling "or" the young Hegel. " references relate to the degree of maturity attained by his philosophy. However, the treatment of Immanuel Kant (1724-1804) is different because it represents the whole structure reflective system and independently of idealism as such, consistent with those in which the subject as the foundation of the knowledge process was transcendental character. His vision of law as an ethical building, governed by laws of logic, a priori synthetic judgments and categorical imperatives placed him in a seat for autonomy dominant conceptual and deserves to be studied independently and extend its line rationalist in the vector began with idealism.

[24] By the way, see : IMMANUEL KANT, *Kritik der reinen Vennunft*, Klincksieck. Berlín. 1918 p. 55, where: *Die gleiche Funktion, die Einheit gibt unterschiedliche Darstellungen bei der Verhandlung gibt auch Einigkeit über die bloße Synthesis verschiedener Vorstellungen in einer Anschauung, und dieses Gerät wird aufgerufen, mit den allgemeinen Ausdruck, der reine Begriff des Verstehens. Das wie Verständnis und mit den gleichen Maßnahmen, die in Folge logische Konzepte als Testversion von der Auswerteeinheit, legt auch durch die synthetische Einheit des Mannigfaltigen in der Anschauung überhaupt, transzendentalen Inhalt in seine Darstellungen, so llámanse diese Konzepte reinen Verstandes, die beziehen sich a priori auf Gegenstände, die im Allgemeinen nicht die Logik getan werden kann. Dies wird zu ebenso vielen reinen steigen priori Absprachen in bezug auf Gegenstände der Anschauung überhaupt, als Funktionen logisch überhaupt möglich Urteile in der obigen Tabelle wurden: für das Verständnis wird vollständig durch die Funktionen und Fähigkeiten voll ausgeschöpft umarmte. Wir nennen diese Konzepte Kategorien, nach Aristoteles, für Unsere Absicht ist die gleiche wie Ihnen, am Anfang, aber bei weitem ihre Entwicklung.*

[25] EUSEBI COLOMER, 1993. p19. *In the transcendental constitution of the object involved three faculties: sensibility, understanding and reason.each is two-fold*: It *is both active and passive the sensitivity receives sense impressions and projects on the horizon including a priori of space and time.Thus establishing the phenomenon. receive understanding the phenomena of sensitivity and subsumed under the categories. This phenomenon carried over to the object. Finally, the reason receives the items offered to the understanding and further referred to three centers of unity of experience: These three faculties are transcendental subjectivity thesis a priori structures that make knowledge possible.*

that converts the author to *intraneus* who works against an institutional role that has been awarded is within the more rigid conception of Kantian, a pure priori concept, thus this anti policy act developed is part of transcendental subjectivity of the special obligation: him and no other because he has been assigned the jurisdiction that permits him to act being a person and respecting others as persons.

That duty does not arise thanks to the ministry of law, though it is previously enshrined, it dates back to the structure of hypothetical judgments, which are formulated under the proposal:

If *A is B, then it is C,*

Where A is the parole duty to which professor Claus Roxin of München referred to when in 1963 he structured the category of *crime of breach of duty-pflichdelikte*- because it rests exclusively on the role and the state committed that acts such attribution.

B is in turn the Kantian category of *causality and dependence* because it is a category that obeys the principle of respect of the act and

C is the special status of author of that person in respect of which preaches the duty.

Dogmatic approach as hypothetical trial, because it is possible to check, the consequence for violation of a duty and not the domain of fact paves the way for the nature of that duty. Both the Kantian categories and the Kantian judgments expressed in all transcendental analytic can be summarized as follows:

We cannot ignore that this constellation of thinkers is situated *on the European horizon of modernity* [26],which historically has a break between the classical view and consists of the *metaphysics of being*, in which man acts, exists and lives on "*in Depending on where in all beings* "[27] and the modern view of the *metaphysics of the subject*, which in turn understands the man from another perspective, placing him in the center of the universe, conceiving him as a guiding principle of all processes of intervention in the reality and lead to his knowledge. This philosophical path assures the man himself as a subject, a self that knows the extent of his will, his positive or negative actions that take part of the conscious and directed to the end. The object of knowledge does not constitute as an unknown being, metaphysically unattainable, because his

[26] Ibíd, EUSEBI COLOMER p. 7.
[27] Ibíd, p. 8.

place is taken by the knower (I), acquiring the idealistic perception, an anthropological foundation.

The Cartesian view that involves the initiation of a claim for the autonomy of the individual subject's consciousness, nurtured by Kant with the figure of the *transcendental subject* will reach its ultimate limits, imposing great heights in understanding the system of thought of *Georg Wilhelm Friedrich Hegel (1,770-1831)* with the *absolute self,* passing through the stages of the self target *Johann Gottlieb Fichte (1762-1814) and the subjective self in Friedrich Wilhelm Joseph Schelling (1775-1854).*

IV. The Metaphysical Foundation of the Dogmatic Category of Legal Duty in the Transcendental Subject of Immanuel Kant

Understanding of the Kantian system must be addressed from the particular theory of knowledge which involves fundamental aspects of metaphysics, ethics, morality and teleology of nature, however, the law, religion, and history are treated as aspects of a great philosophy of culture. From the start, Kant located the law as a particular epistemological of your *Metaphysik der Sitten (1797)*[28] and as reasonable consequence of your *praktische Kritik der Vernunft (1788)*[29] that tries to answer the question, *What should I do?*

Kant believes that there is a lack of freedom in the man that is within the margins of the social pact: but it is not a nostalgic memory of the freedom he enjoyed in the state of nature, absolute freedom and chaos that was assigned, at least partially, to recover it after in a formal way by the intervention of a subject created, *the legislature*, located in head of the rule of law. The lack of freedom that concerns the great thinker is *the inability to do always and everywhere public use of reason itself*[30], Kant finds this statement in the historical constitution of the Prussian society of the XVIII century that rested on four pillars; a) the crown, b) the property, c) the Lutheran clergy and d) public administration and justice, which demanded compliance with his orders, to the point that was cited, not without some irony, the popular phrase of *Federico II of Prussia (1712-1786) Begründen sie, wie sie und über das, Was Du willst, aber gehorcht!* [31] This was to be expected in a typical monarch, representative example of enlightened despotism. Public use of pure practical reason allows of no limitation, no space or time, is part of that countless core

[28] Metafísica de las Costumbres.
[29] Crítica de la Razón Práctica.
[30] *Was ist Aufklärung?*
[31] ¡Razonad cuanto queráis y sobre todo lo que queráis, pero obedeced!

personality called access to knowledge. From there, the access to courts or get access to prompt and effective response from the administration materialized with the establishment of the right of petition (art. 23 c.pol.) and different rituals are the result of procedural Kantian conception of guarantee unrestricted free public use of reason. The person is not deprived, in criminal matters, but of one their rights, the freedom of movement and that is temporarily because there is no constitutional mandate beyond redemption penalties. Therefore the other freedoms, speech - spoken or written-suffrage, equality of religion, association, education and teaching, are intangible.

The duties of citizenship derive then the public use of reason in a free manner, embodied in the obligation of the citizen who has to answer for their tax burdens while preserving the freedom to express or not agree with the tax burden. The duty of the administration of justice by providing a straight and effective justice, prompt and complete, and there are differences among their staff regarding their operation or convenience. Kant is where it first appears, perhaps receiving the echoes of the French Revolution, the freedom to apply to certain laws, the principles of: a) conscientious objection and b) civil disobedience.

Metaphysics of morals unites two major methodological structures metaphysical principles of law and the metaphysical principles of morality based not on the morality of the action, but its legality.

The crime *in genere* will therefore be, in the strictest Kantian sense, a violation of the law. Marked by legal regulatory framework, enshrined as a warning but a ban, the legal consequences for the implementation of this act, Therefore, there is a duty that is limited to the field of ethics or morals, That does not interest the criminal law. But there is a legal duty, detached from personal motives and interests, enshrined in the law that imposes a specific course of action for the citizen and the official. That has limits to the exercise of justice and is based always on the faculty that, the obligation that the other has, is fulfilled.

Kant is based on *a priori synthetic* judgment that could be described as follows:

The power that a citizen has to require another citizen the obligation to fulfill the duty is the result that my freedom is compatible with the freedom of others.

The principle of Universality of Duty Work outside in such a way that the free use of your will *(willkür*) may be subject to the freedom of all as a universal law.

Kant used a foundation of general logic,

$$- x - = +$$

The negation of negation leads to an affirmation. You can say that when the state prevents the violation of freedom (negative behavior) of an act that violates the freedom (negative behavior) states freedom. The act that prevents the violation of freedom is legitimate violence, allowed for the protection of that extra-legal basis. This is a principle of law is that freedom is a consequence of complying with a duty by the state and its servers. This parole duty to which Roxin referred to is none other than an obligation for guaranteeing freedom of partners. When a special obligation *(intraneus)* gives in to a term extension of seeking an illegal and freedom of a person, what actually happens is that it guarantees the principle of freedom of public use of reason. In the same way the judge who compels another to obtain for himself or a third party money or promise thereof to provide a decision favorable to their interests, in breach of the duty free exercise of practical reason that requires honesty and transparency. While the legal relationships between individuals are ruled by the *principle of mine and yours*, respect for contractual freedom of others and non-interference in private protection orbits outside. This would have strong descent in the domain theory made based on the Latino principle *neminem laedere* and *subsequently bonn radical functionalists rotularía offenses under organizational competence*. The use of freedom for the citizen must be compatible with the freedom of other citizens under a universal law. This law would not harm the other which comes from the modern contractualism although *Cicerón* already referred to it.

Legal relations between the special required and participants in the criminal action of Kant, who conceived of man as part of a society, a people, acquiring its maximum expression in the criminal legal thought of *Günther Jakobs,* for whom the person lives in a world already formed (*crimes institutional competence)* and their rules are those that are established to ensure balance between the relationship of those individuals who assume the social role of citizens. *Kant* himself defines what is meant by *area:*

A set of rational laws that govern the actions of the company he built under the social pact.

The duty of the state-based headed by each of its officers, located in different segments of competition, operates under the *principle of necessity (warranty*) to keep the exercise of human freedom. That duty is embedded in the law, but as a result of affirmative action in the legislative

process, but even then in the state of nature and obeying the principle of conservation man has a duty to act to defend you or a third party to ensure that the whole group can develop their most essential activities. The external standard as a positive act is of a later factor although there is as rational necessity of coexistence.

While it is true that the role of the state is punishing criminals who invade orbits of outside discretion when the cracking of the public use of reason is done by the head of state in their servers (duty) what is violated is the duty parole to use freely at any time and space my pure practical reason. Manifests as:

You must leave the state of pure nature to get along with others and in relationships of coexistence necessary in a state of law, that is, distributive justice.

Functionalist conceptions of *the lord of fact, made a contribution to others and institutional competence* are based on the Metaphysics of *Kant's* morals. Thanks to this, the author goes back to social contract theory of *Jean Jacques Rousseau (1712-1778)* which carries the hypothetical representation of a large assembly of people at a time and a determined place, resolved to place absolute limits on their freedom, *which incidentally is an act of absolute freedom* to place at the head of an independent third *partial assignments* that each had made. That party is none other than the state, conceived as governing body and subject of administration which would conform to enter subsystems organized justice and social control in providing it promptly and effectively.

The philosophical reason for the existence of prison is this:

¡That under the social contract, men gave up part of their right to freedom of movement and accordingly that freedom can be restricted on a temporary and provisional way when developing for the subject of agent, behavior that will seriously offend against coexistence rules!

In the same sense we can preach the philosophical foundation of the criminal procedural possibility of interception of epistolary communication, telephone or data left on the network thanks to the internet browsing; The reason is that under the social contract, the privacy rights of each of the subscribers of the covenant and people who attended the hypothetical assembly were transferred in part. In the same direction the event is referable to the legal form of entry and search where what is transferred is partly right to privacy within the framework of private property while adhering to certain circumstances and under specific conditions, which legitimate the coercive intervention of the state. The sacrifice of liberty is a partial assignment that regards the autonomy of the person. Although *Kan*t believes that the natural state of freedom as such did not exist, as the act of forming an original pact and giving up some of my rights is an act of

freedom which restricts the operability of a conception of that freedom without limits, the highest expression of self-determination of individuals, the public use of reason, but freedom anyway. Kant says that freedom is innate, savage, to get another formal freedom, but it is freedom after all, freedom pure and simple.

The duty that we are interested in for the validity of this essay is the one that arises under the original partnership agreement with a contractual view of it as to comply with the rule of law as a receiver of freedoms ceded, acquired after revival of the principle of sovereignty and operates in practice to guarantee the freedom of each of the members of the social compact. The reason why there is such a social compact is that in my freedom I decide so a third, *the State*, regulate it normatively to guarantee coexistence. When the judicial officer or public servant of the administration in any order acts, he is held under a security position that assigned freedom, the public use of pure practical reason and as a result of an agreement of wills that has legitimized the man as a legislator and has decanting into a positive normative, the rules of behavior.

The punishment as a retributive response to the breach of duty to guarantee the exercise of freedom is constituted as a *categorical imperative* since it will deny the act that prevents freedom and preventing me from enjoying my freedom, what that is doing is to ensure the exercise of that freedom. Hegel then will assume a dialectical position on this and it will pose as the ratio where capital punishment is the negation of the act that denies the norm, which is the illegal act and that ultimately what capital punishment does is an affirmation of the rule. The teleology of this duty is absolute respect for the man since Kant considered an end in itself and never as means.

Fulfilling the duty to guarantee freedom corresponds to a person's ontological connotation, which, being an end in itself should develop its freedom in the public use of reason. We will structure an overview of the Kantian view in the following context:

i) To begin with, it is necessary to make clear that the body's most powerful doctrinal Kantian argument is limited to each of their criticisms: *a) Critique of Pure Reason (1781), b) Critique of Practical Reason (1788), and c) Critique of Judgement (1790), and the Metaphysics of Morals (1797)* that culminates their critical period of reason and Applying this to the phenomena of morality and legality.

ii) The concept of *criticism* should not be taken as censure or reproach, as is fundamentally confused in colloquial language, but in the original vision of the Aristotelian language, such as

study or beginning of an activity, so *the critique of pure reason* is nothing other than the study of pure reason and *pure is a priori*, that is not yet is based on experience, hence the term: *critique of pure reason* will also study a priori reason or away from the experience.

iii) The neo-Kantians have established the purity of science to the extent that there is the same relationship or interaction systems, but we believe that the purity of a theory is based on the a priori of the same, a pure theory of law is an a priori theory of law based on pure concepts, ideals, and not contaminated with the thing itself, there is only relation to the thing when and to the extent that this becomes the object of knowledge.

iv) Kant considered the proposals, theses, or statements such as judgments, so that if you say: A infringes a duty of protection when it displays the behavior required to rescue B, we will in the presence of a proposition that essentially involves a grammatical subject (S) and a predicate (P), subject is who they say something about, predicate is what is said about the subject, therefore it is said that subject A violated the duty of protection because as a parent of B, did not display the behaviors that were due and so was the result.

These judgments, in its most primal essence, do not refer to experiences or sensitive situations, but *a priori* structures of reason, are factual statements about a specific situation, character and logical propositions that are susceptible to truth or falsity. Notice that Kant runs counter to the basis of any formal logic so far prevailed, as the realism Aristotelian syllogism was based on premises from which the trial could not be predicated of truth or falsity simply accused the trial correction. In that sense, what we have is that Kant's theory of opinion believes that there are two major structures:

1. The Analytic Judgments

Characterized in that the predicate of the proposition is contained in the concept of the subject, so that Kant, in his classic example of the *triangle* defined as *having three angles*, inferred that the *three angles* predicate is contained in the triangle concept (subject). It is about necessary universal judgments that depend on the principle of identity.

We cannot say that the legal duty is a trial analytical parole because the true nature automatically excludes the valuation is made on their ability to produce knowledge, while it will always be true and consistent legal proposition that there is a legal duty parole governing the

guiding principle of the performance of special duties is being valued as true or false. *A is B,* is a tautology because they are a *priori* in nature and are not marked by the experience (pure). The duty of the judicial officer to act emanating from inside the law, is not possible to understand as an analytical framework duty as there is no legitimacy for their existence in the subject itself but it is thanks to the incumbent or the functional position that the required special obligation acquires.

2. The Synthetic Judgments

Synthetic judgments are a posteriori, dependent on the guarantee that gives them the experience they are defined as when the predicate (p) is not contained in the subject (s) and therefore must go to the experience to establish the true dimension of the trial. These judgments are so particular, quotas and could be classified as true or false.

Its basis of legitimacy is denoted on the experience and that *Kant* states in his *Kritik der reinen Vernunft* with the standard formulation: *Heat dilates the body,* where heat is a concept whose sensory experience can only come through the experience of feeling in certain body somatic effects.

Accordance with the foregoing the predicate: *dilates the body*, is not contained in the subject and thanks to this we must go to the lab experience or taking the data from observation to conclude that indeed anybody (a metal) subjected to heat, undergoes expansion. Therefore they are true *if and only if* the experience supports it and live verifying continuously. At this point and time it is necessary to establish that Kant appeals to an interesting surprise attack to justify the structure of sensitive and it uses pure concepts *a priori*, not intelligible. Kant explains the synthetic lawsuit from *a priori* concept that underlies and is demonstrable not only by reason. These concepts which Kant uses and calls *categories* are none other than *time and space*.

Kant believes that all events or phenomena perceptible by reason and become an object of knowledge are framed within the parameters of time and species. Space and time is the here and now, is to *be in* and the other is *be now*, or being *before or after*. So Kant feels it cannot conceive of *the thing* without *the space* but *the space* can be conceived without *the thing*. This situation is explainable when based on the doctrine of space as a concept *a priori (pure*), understood as a constraint only where real objects (*entities*) have a place.

If a public servant coerces a person to provide for him or pay money for a proper act of his duties, this action is to take place in *a here and a now*. Kant states that the modalities of *time and*

space are pure character, not affordable by the experience or sensation but from a concept of logical reason.

The jurisdiction of the *special obligation* to act in a certain way and ultimately ensure the legal order is a problem that for Kant is categorical in nature. It is a matter of *time and space*.

The characteristics of space are that it is *a priori* category, regardless of experience; the experience takes place in space and time, in a place and at one point, the perceived thing takes place in space and is appropriate for itself as an object of knowledge.

The action described in the crime must fit into the above categories. It seems obvious because the occurrence of the event is a logical description of nature. This is where Kant refers to a three-dimensional that radical functionalism knows by the name of areas (organizational and institutional powers), what *Habermas* and before him, *Talcott Parsons* (*1902-1979*) had referred to him as *operability worlds of human behavior*.

The area within the more established stock Kant is a concept which (*mental unit*) includes beings and things. But the subject is not only subjective as to make the thing an object of knowledge. It must also project the objectivity and therefore conceives of space as a condition of knowledge of the thing.

The *intraneus* in the development of the civil service act in time and space. We cannot accept the validity of Aristotelian realism to Kant which survived as a virus, where one could not free the independent knowledge of the object itself. However, the concept of duty has no reason to be if there isn´t a person or group of persons for which preaches the need for such duty.

The concept of duty is *a priori* in which things are located, so that the duty is not part of reality and it is a mental exercise. This inference makes the duty grounds for obligation.

It does not exist in the ontic reality, in the object itself, which would take us into the realm of metaphysics, *a being called a duty*, a priori character. It exists as space and time, but not pure reason but practical reason. The nation's first conquest Kant, is to purge the legal science of faults or remnants of *Aristotelian realism*, which was not alien or even *Descartes*, who incurs in him, not the British idealists (*Berkeley and Hume*) nor the *realism of Leibniz's monadic*.

V. Recension of the Judgments and Categories

TABLE OF JUDGMENTS		TABLE OF CATEGORIES	
Depending on the amount	*Universal* "all A is B"	**Of the amount**	*Unit*
	Particular "some A is B"		*Plurality*
	Singular "This A is B"		*Total/All*
Depending on the quality	*Affirmative* "It is true that A is B"	**Of the quality**	*reality*
	Negative "A is not B"		*Negation*
	Infinite "A is not B"		*Limitation*
According to the relation-ship	*Categorical* "A is B"	**Of the relation-ship**	*Inherence and Subsistence* (substance and accidents)
	Hypothetical "if A is B, then it is C"		*Causality and Dependence* (cause and effect)
	Disjunctive "A is B,or C, D, ..."		*Community* (interaction between the agent and patient)
According to mode	*Problematic* “A can be B”	**Of the mode**	*Possible - Impossible*
	Assertoric "A is actually B"		*Existence - Non-existence*
	Apodictic "A necessarily is B"		*Need - Contingency*

The rule of law has a hypothetical structure. This is a trial where the legal consequence is the legal effect of a budget that in fact has been infringed by the subject. Criminal behavior in the course of conduct which has its roots in the parole violation of a duty and not in the domain of

causal course the existence of that duty (surveillance, protection, rescue) is not autonomous, because underlying the functional role of public servants to meet the expectations of legislation in force that builds society's own rule of law.

Conclusions

➢ Professor Jürgen Habermas considers that a *theory of communicative action* is the beginning of a theory of society. An interpretation of social time from new structures which is based (*given because of their critical canons*) and that he had already charted earlier (almost a decade) when he raised it in *zur Logik der Sozialwissenschaften*, It is a theory that structures understanding and not as an extension or approach to a theory of knowledge.

➢ The foundations of this theory of action dates back to *Talcott parssons in the structure of social action, 1957, (historical reconstruction and conceptualization*) however, and he himself admits, led him into error.

➢ Structure of his theory:

a) Concept of communicative rationality (communicative reason),

b) Concept of society, divided into two (2) *levels, which articulates the world of life and the system* and

c) A modern theory that explains the type of social pathology is now becoming increasingly visible, with the hypothesis that communicatively structured areas of action are subject to the constraints of formally organized action systems that have become autonomous.

➢ A theory involving the union in its development of concepts and history as categories of knowledge is a clear legacy of *Parssons*, where undoubtedly *Habermas* shares. Although he does it with some nuances that do not detract from the attribution of influence to classical sociology, for *Habermas*, classic is all authors that have something to say: *Weber, Mead, Durkheim and Parsons*.

➢ We could not ensure the internal rational structure of action oriented to understanding if we had not already had before us, albeit fragmentary and distorted way, the existing form of a reason to be sent embodied symbolically and historically situated. Just as he relates: *rationality is a loaded concept of normative content.*

➢ *Criminal law is conceived as the science that is based on the unlawful conduct of the person who structureS normative expectations regarding the social group.*

➢ *Criminal behavior is a breakdown in communication and illocutionary ideal brought about between the standard and the subject, consisting of respect for the legal order that splits the collective confidence in the inviolability of the same.*

➢ The legal duty to respond to normative expectations, Metal framed of the fundamental intraneus, emerges as a policy ingredient of the theory of the crimes of breach of duty, not taking the criteria of the domain of fact.

➢ Communicative rationality in the criminal legal standard is added based on the existence of the concept of duty (of salvation, protection, surveillance) is understood to be incorporated in order to the extent that it is created by the faculty of reason and/or of knowing.

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