

## Performance in the Postmodern Culture and Law

### Перформанс в культуре и праве постмодерна

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#### Abstract

The aim of the research is the reflection of law as a postmodernist cultural phenomenon, the methodological analysis of understanding simulating reality of law, the corporeity of law and its verbal structures in the interaction conceptual field. The nature of law in post-non-classical cultural space has changed significantly, has gained relativity, dynamism, and has expanded subject's opportunity. The hermeneutic procedure of law performance features democratic character, it is designed for public use, which is free from power dictatorship and able to understand the reality via the algorithm of access, creativity and participation. The advanced visualized culture actively forms the concept of new personal freedoms – the freedom of consumption, freedom of use, freedom of self-expression and self-realization. Perhaps, it is this feature of individual and public opinion that makes it possible to develop law and the triumph of legal justice on the whole.

**Key words:** corporeity, deconstruction, legal performance, reality of law, simulativeness.

#### Аннотация

Целью исследования является рефлексия права как феномена культуры постмодернизма, методологический анализ понимания симулятивной реальности права, телесности права и его вербальных структур в концептуальном поле интерактивности. Природа права в постнеклассическом культурном пространстве претерпела существенные изменения, обрела релятивность, динамизм, расширила возможности субъекта. Герменевтическая процедура правового перформанса отличается своей демократичностью, она рассчитана на массового пользователя, свободного от диктата власти и способного понимать действительность посредством алгоритма доступа, творчества и соучастия. Новейшая визуализированная культура активно формирует понятие и чувство новых личностных свобод – свободы потребления, свободы пользования, свободы самовыражения и самореализации. Представляется, что именно эта особенность индивидуального и общественного сознания делает возможным развитие права и торжество правовой справедливости в целом.

**Ключевые слова:** деконструкция, правовой перформанс, реальность права, симулятивность, телесность.

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## Introduction

The research topicality is determined by the relativity of modern theories of law and the creativity of the law subject. In the conditions of global communication, network regulation and general rethinking of the philosophic-and-law categorical and methodological concepts there is active open post-non-classical discourse related to the dynamic nature of law, expressed in its various aspects: from communication to temporality. Non-classical techniques of postmodernist culture, in particular, performance enable to create a live image of law with its numerous inter-subjective meanings. This image may be reviewed by the deconstruction of the legal semiotic field (of material, speech, text and visual objects), which, not being the substance of law, are the actual elements of multi-layered reality.

The aim of the paper is the reflection of law as a postmodernist cultural phenomenon, the methodological analysis of understanding simulating reality of law, the corporeity of law and its verbal structures in the interaction conceptual field.

The findings. Once offered by ontological hermeneutics subject's understanding being appears guaranteed by the actual presence and participation of the subject in a legal situation as in the performance. Post-metaphysical reality, stated by modern philosophers, has its ontological, anthropological, cognitive, linguistic and methodological specifics. New types of rationality, thinking, understanding, justice and the general existence of people and things are established. The law within this reality is manifested in its multiple forms, dimensions and moduses as well as in their ongoing dynamics.

## Methodology

The methodological task of the study is to apply the following methods in law understanding: hermeneutic, communicative, the method of performative utterances from analytical philosophy, discourse methods, the method of the model logic of utterances, the method of deconstruction, the method of performance; as well as such principles as: semiotic principle of intertextuality, the principle of virtuality, absolute opportunity, ostentation, interactivity, corporeity, ontology of presence, dynamism and onticality. The scientific novelty of the research findings is in the application in law of the methodological experience of non-classical

postmodernist art, in particular, the techniques of deconstruction and performance. Relevant ontological, axiological and hermeneutic problems of law require non-conventional approaches and solutions in the modern open, dynamic, information space. In this respect, principles, techniques and methods of understanding, interpretation, reflection and assessment of law, suggested herein, were borrowed from non-classical postmodernist arts and philosophy, and are filled with the creative spirit of modern culture.

## Analysis of research and publications

The participants of post-non-classical discourse on the nature and meaning of performance in the modern culture include many domestic and foreign scientists, experts in philosophy, culture and art theory. The dynamic, flexible nature of law and its technologies of self-regulation in the global cyberspace, and also the openness of the responsibility area in the self-organizing global system are discussed by in particular in the article of Russian scholars M. Beilin, L. Gaznyuk, A. Kuznetsov (2018). The idea of the need for global-scale universal and accessible values, norms, principles of cognition, methods of understanding, cultural narratives, strategies of regulation and techniques of interaction is considered in the works by such European scientists as P. Strandbrink (2018), S. Ivic (2018), M. Patzer, C. Voegtlin and A. G. Scherer (2018), M. Arce (2018).

In this work the problem of legal narrative is also approached via literary semiotics (V. Podoroga (1998), N. Fateeva (2000), M. Ryklin (1998)), and poststructuralism (R. Barthes (1989), W. Benjamin (2000)), including French deconstruction that focused on the specifics of being of things in speech (J. Derrida (1967), M. Foucault (1966), P. Ricœur (1996)).

The solutions to the problem of the ontological status of a thing via post-structural thinking and language articulations are considered in a separate article by Russian philosophers V. Serkova, A. Pylkin, A. Safonova (2018), and also Finnish scholar L. Kakkori (2018). The reality is recognized fully dependent on subjects and means that provoke it. Ontology, compromised as materialist, is manifested in the postmodernist discourse, where the concept of "reality" is always given in "inverted commas" (Kakkori, 2018).

The ontological tradition of the dynamic nature of law is being developed by such philosophers of law in Ukraine and Russia as I. Chestnov (2017), V. Chetvernin (2013), A. Polyakov (2013), S. Maksimov (2013), A. Stovba (2016). The latest notable achievements in the field have been made by representatives of the communicative paradigm. For instance, J. Austin (1962) developed the theory of performative discourse, according to which speech acts of the order, demand, promise or oath, owing to their focus, are in fact an action and not just an utterance. H.-G. Gadamer (1988) also analyzed the synthesis of thought and action in the performative. H. Hart (2009), in turn, supported J. Austin and emphasized legal performative utterances and their regulatory nature in terms of the dependence on the conditions of use. Further analysis of performative utterances, their structure, meanings and efficiency is made by modern Russian researchers Yu. Gryaznova (2004) and Yu. Kupchenko (2013).

The methodology of deconstructivism, applied herein to the field of law, was borrowed from S. Zizek (2016), J. Baudrillard (1994), S. Kornev (2015) and, finally, from M. Foucault, in particular, from his mastery deconstructive analysis of the calligraphic technique and its “reverse” design (Foucault, 1973). Semantic-linguistic and communicative aspects of simulative reality were thoroughly studied by J. Habermas (2007), P. Ricœur (1996), Ye. Sidorenko (2002).

The practical turn in the modern philosophy of law, its linguistic-communicative nature, contextuality of senses in law, relative and procedural rationality of law are considered by I. Chestnov (2017). The Polish scholar Ye. Domanska (2011), noting the performative turn in the modern scientific knowledge and the domination of the textual outlook, eventually defines performativity as a new paradigm of scientific cognition and methodology. In this regard, the very technique of performance as the ontological space of presence, the specifics of applying performance in art and, finally, the role and status of subject therein is addressed by S. Kornev (2015), S. Zizek (2016), V. Rybakov (2016), P. Wajbel (2015), C. Malabou (2016) and many other Ukrainian and foreign authors. Thus, law, as well as any other cultural phenomenon, may and must be studied using non-classical postmodernist approaches, principles and methods, represented in modern philosophy and art.

## Results and Discussion

The ongoing globalizing, trans-communicative processes, cultural-integrative and axiological changes require not only legal assessment and interpretation, but also transformation of the law itself based on the principles of inter-subjectivism, dynamism and self-regulation. The main ways of legal globalization today are: legal integration, legal internationalization and implementation (Tatsiy & Danilyan, 2019). The theory of law must be as mobile and creative as possible. It is to be absolutely oriented on reality, practice and evidence. Therewith, the main function of the source or evidence is in its impartial self-expression in the well-organized legal discourse.

If the legal positivism and legalism tried to create legal senses using critical-nomological analysis of legal norms, the inter-subjectivism does it via narrative discourse. In this regard, the shift from the determined narration, conceptualization, constructivism and stereotypes might lead to the legal narrative losing its official nature and legitimacy, since within the field of the classical legal narrative the role of inviolable justice used to be performed by law. It is the pathos of uncorrectable, spontaneous and non-stereotypic installation that allows for liberating the discourse from the impact of the end (final), in other words, from determinism. This way we encounter unexpected results instead of attaining the expected ones. Ontological contacts with the past and the future, real and due, motives and effects, accusations and justifications occur in the open and public discursive narrative. A legitimating comment suppresses the essence of the fact being commented on. A non-commented fragmental detail, in turn, makes the world incomplete, thus activating interpreter’s consciousness, opening and broadening his or her cognitive horizons.

The mechanism of legal sense making is activated when correlating within one legal narrative subjective-evidence, protocol, regulatory and interpreting texts, as well as when facts, their assessments and interpretations overlap. In case of shifts, collisions and overlapping of controversial intertextual rows legal justice of harmonious and adequate obligation flickers. Each fragment of the legal hypertext, being involved in the network of texts, created prior to or in parallel with it, becomes readable in multiple dimensions, it becomes multi-sequential, deconstructive. The diffusion of sense and structure of the hypertext is oriented on forming the meta-consciousness, which

would equalize and harmonize interpretations of many authors and interpreters who participate in legal reality, providing them with free focus of legal viewing, the ways and means of understanding the law.

Following the example of poststructuralist thoughts by M. Foucault (1973) about the painting by R. Magrit it may be concluded that out of all possible narratives it is a calligram that ensures its optimal performance and deconstruction of the semantic field, that is its dynamics. The calligram is a synergetic synthesis of the text, image and action, in other words, different symbols. Understanding the context of this multi-layered structure is performed by deconstruction. According to M. Foucault, understanding of a calligram becomes successful when involving the form and the word, a mask and demonstration, nonsense and sense. However, the problem remains regarding the way of applying the calligraphic technique in the interpretation of the legal reality. How to make the legal field “speak” and “demonstrate” cohesion, ensure the performance of law via its narration?

The dynamic nature of the calligram is in line with a quite popular phenomenon in modern linguistics called “performativity”. H.-G. Gadamer (1988, 41) defined performativity as the “correspondence of thought and action”, “the standard of active thinking and the skill of informed action”. J. Austin (1962) referred “performatives” to those utterances, in which “the speech aspect coincides with the action aspect”, that is to those that are simultaneously speech and action. For J. Habermas (2007) performativity is the condition for individuality and communication. According to Yu. Gryaznova (2004), the concept of “performativity” in relation to the text means that the text not only tells something but also shows it; accompanies what is expressed, with implementation thus re-confirming the authenticity of content. Consequently, any law (legal provision) is equally performative, aiming at an action and, in particular, the one applied in a specific situation.

It is suggested that the most effective and dynamic mix of the text and the action in the legal field is a trial – the pulse of reality and semantics – binary calligrams. In its procedural form the law is performative and capable of deconstruction. It is an absolute opportunity of justice and the potentiality reconciliation. The transitive nature of a trial encourages activation of multiple realities (subjective and remote in

time), their collision and building up new legal senses. The above features and, primarily, dynamism, discursivity and openness determine the priority and even law-making functions of legal proceedings in the Anglo-American legal system. The information and communicative activity of subjects in legal relations builds up the virtual, dynamic and ambiguous space of law. It involves the interaction of a huge number of possible semantic worlds: imaginary and implied versions of committing a crime, grounds for the degree of guilt, alleged legal facts in the case, and also varied evidence and various legal verdicts.

The deconstruction in law is manifested in different ways in a legal event, being of a legal subject and in the interpretation of a legal text. These days feature a chase for the reality of things. J. Baudrillard (1994) calls this reality “fourth order simulacra”, corporeity. The intention for the production of reality shows the general essential characteristic of being – dynamism – which, as it has turned out, is simultaneously the main feature of the virtual being. The polyontic reality acts in the postmodernity as an inter-being, continuous transgression from reality to reality, a disruption of the illusion fabric and an off network emptiness. A legal event exists here as a spontaneous installation of a specific totality of subjective wills.

A legal text, in turn, as a sign narration or utterance, may be considered as the virtual being of law, i.e. the area of absolute opportunity caused by the arbitrary operation of alethic and deontic modalities within it based on the principles of modal logic of utterances. The deontic dimension of must being, discussed by S. Maksimov (2013) in, is built in the semantic field of legal categories: permission – prohibition, need – accident, obligation – wish, compulsory – allowed etc. According to A. Stovba (2016), the must is “a priori significant” in law as is, the inter-subjective sense of laws in human mind. Law gains its modus of obligation owing to the internalising (addressing) speech. The speech sets the nature of the demand, obligation, need and necessity of specific legal actions, i. e. it aims at the model prior to the experience.

According to I. Chestnov (2017), the due is being of simulacra, not that of substances. Therefore, law as the due is a dynamic, open, incomplete and flexible image, or a simulacrum, determined by the inter-subjective interaction of agents of legal relations. Hence the essence of law acts not as necessity and inevitability but as an absolute

opportunity, a structurally unlimited field of probability, the freedom of senses and rights – that is the virtual being, described by E. Sidorenko as the semantics of possible worlds (Sidorenko, 2002, 253-256). It is obvious that the problems of legality and justice are solved in the logical and semantic space – the field of utterances. The logic of judgements itself provides legal sense to any reality – contemporary or past, potential or actual, genuine or simulative.

In legal practices, operative investigatory proceedings frequently require thorough and detailed restoration of the range of events, related to the specific legal situation. Logical reasons speculate for a virtual chain of events, building a reasonable context. The task of a lawyer is to monitor the development of the situation, in other words, carry out the process of event reconstruction, facilitate history self-development, but not just to reenact determining details. Procedurality is crucial for the law enforcement. It stands to reason that the essence of justice itself is in the word “process”, symbolizing systematized and consistent restoration of justice – the dynamism as the reality of law. In postmodernity the dynamism of law is not only in the textual dimension, but also in its very existence, as well as in the social content, phenomenological significance, dialogue nature, communicative reality and the behavioral field of legal human actions, procedurality and, finally, the temporal structure of a legal event. For instance, deconstruction of the legal event enables to understand it as a kind of a reference to the consequences – the flicker of pure law being.

The dynamism is a sign of law simulativeness, virtuality, lack of its substance-and-institutional features, which however, does not deprive it of being sensitive to the changeability and instability of the world. While turning from the mental substance into an ether simulacrum law, *inter alia*, changes its function dramatically. It is no longer a stabilizing objective model, but it becomes a set of individual tools, fully dependent on the place and time. However, it is absolutely open, accessible, active and effective in the subjective experience of the rights protection. Thus, it is appropriate to speak about the loss by law of its universal imperative nature, objectivity, supremacy and own value versus its gaining the meaning of private and situational remedy. Based on the variety of ontological statuses of law, the success of its dynamic deconstruction may occur at the intersection of all these forms, or the realities of law (situation –

law – legal solution – action). This ensures the optimal approach to the substance of law in the specific case of its application.

M. Ryklin notes that the effect of the presence of law in specific in each case and cannot be generalized. According to the philosopher, we do not know the essence of performances: something that cannot be presented and exists there as open experience (Ryklin, 1998, 108). The narrative performance engages the reader into active interpretation with an unpredictable result. In this respect, crime re-enactment and performance are very similar since the former attempts to arbitrarily restore an involuntary situation. The crime re-enactment is an attempt to grasp the most valuable and significant, something that exists only in the individual instantaneous experience and inevitably escapes thus evading any tries to protocol it. However, in case of success of the legal performance there emerges the following question: how the revealed sense of the open narrative may be adequately interpreted in the language of positive law – in its limited, formalized semantics?

Factual events (i.e. subjective instantaneous senses of things), emerging in legal interactions, destroy the narrative pathos of any statement, invalidate narration as an event in the language is when the “true” event does not happen. Modern virtualization of interpersonal relations has become compensation for the recent promotion of ideology, moralization and mythologism. W. Benjamin (2000, 126) argues that the action replaces the opinion on it. Emotions and contemplation, i.e. speculations, the attitude to peace based on the modern expressive means, provides special rationality to the process of building legal reality in the lawyer’s personal consciousness – the rationality of a game of accidents, which applies to the rules, principles and language forms of this game. A person very often tries to control the information that others receive about him/her. Self-presentation is a process, by which a person tries to control impressions that other people have about him/her; its synonym is impression management. This is just a game (Sekerin, Dudin, Gorokhova, Gayduk, Volkov, 2019). J. Derrida (1967), for example, regards a game even as a type of intertemporal communication or a way to relate to the past, which, however, cannot be called a state, but just the effect of presence, since the “game is the disruption of presence”.

The substitution of achieving justice for its production, at first sight, contradicts the official purpose of justice. However, currently its



purpose is seen in the large-scale, multi-layer and incomplete discourse of justice, where there is no place for a verdict. The legal hypertext becomes deconstructive, its structure is non-linear; the mutual determination of fragments is not accidental, it involves a system of references. This environment, N. Fateeva (2000) notes, provokes the effect of semantic multiplicity and polyphony.

In the traditions of deconstruction understanding of events must occur at the moment of their interpretation or presence in them, but not following their results. Manifestation of legal sense is at the stage of investigatory or trial discourse, re-enactment, proceedings, however, it is further substituted with the “myth of justice”, constituting the “dead” law as the “final justice”. This situation stimulates the development of the techniques of narrative legal discourse in the communicative paradigm, as well as the tactics of performance within the law dynamism paradigm. In both cases the focus is on the interactive position of the perceiving subject of law.

The formal legal justice is always absolute and specific, regardless of the principles (legalist or inter-subjectivist), used to establish it. The legal narrative requires clear, specific and final interpretation, because it entails repeated and irreversible applicable consequences. Law today benefits from semantic multivalence, meta-textual polyphony, intertextual discourse and dynamism. Nevertheless, lawyer’s final selection of one of the legally applicable senses appears to be determined by the objective priorities and values. It is the completeness, clarity, positiveness of legal conclusions and decisions makes the law positive, factual and valid. Chaos inevitably tends to order, but the order is achieved not by probability but under the impact of the most influential factors, one of which is law.

The latest developments in the methodology of social-humanitarian sciences are related to the search of new forms of representation. Performance has been one of them. The essential modern trends, such as globalization, informatization, pluralism, tolerance and ecologization of ideology, put forward the task of integration of the existing visions of the world and universalization of knowledge. In the light of these tasks, the artistic worldview has a high potential for integration of spiritual and sociocultural processes (Musat, Mineev, Neskryabina et al., 2019). It is common knowledge that scientific revolutions are

characterized by change in language and linguistic means. The performance, unlike performative, is the concept typical of the ontological discourse in the postmodern art. The practice of performance is associated, in particular, with artists’ shocking attempts to arrange for the comprehensive “presence” of any objects and bodies in their works, i.e. the nature, including their own and viewer’s body.

The image of law from the standpoint of the communicative methodology is performative and not performance. However, there with J. Austin (1962) stated that using words we not only describe but also create reality. The modern Polish philosopher Ye. Domanska (2011) believes that performativity may be defined as the faith in the fact that the language does not only represent reality, but also changes it, and that some events exist to the extent they performatively repeat. Therefore, the key point that can be given to law by performative and performance is the provocation of presence of the participants of legal reality and the reproduction of the legal action with their involvement. Currently all methodological search in engineering and humanitarian sciences is oriented on the production of presence. The methodology of law is not an exception, considering the confirmation of the dynamism paradigm. The aim of performance itself is to free the law from excessive semantic rigidity and dictatorship of meanings. The language and text of law must be at the service of the event, thing and body, but not vice versa. Achieving this is probably the objective of methodological developments in modern philosophy of law as a practical aspect of philosophy.

The main concept of the culture today is the substitution of the product with the event. The product was created using signs and their meanings and it required further interpretation. The event, in turn, is performed using structural transformation and dynamics of the semiotics, which ensures the effect of presence of things themselves, but not only their meanings. Visualized reality creates virtual space. According to V. Rybakov (2016), the semiotic experience is replaced with the non-semiotic material-corporal measurements. The performance does not create senses, but the event as is. And it is critical that the event is experienced by its participants as something new, unexpected, partially understood, creative, active, deconstructive, something that is not subject to the final attribution, interpretation and mythologization. The performance depends only on the subjective view and will of the person who

participates therein, and in this regard it is relative. The French philosopher C. Malabou (2016), thinking about the capabilities of the performance, notes its dynamism as the “return of life to itself”.

A re-enacted life event is the closest to what law sciences call the “truth”. A legal event may be organized as a natural performance as the demonstration of legal documents, evidence, testimonies, proofs and arguments of text, audio- and video or material nature, and also specific rules, precedents and judgments, whose contexts are interwoven in the live controversial network, open for deconstruction and understanding. This performance leads to the interaction of artefacts and generates unexpected, but genuine justice, which cannot be fixed without losing it. Repeated reboots of the situation via performance can multiply legal justice in its performative corporeity. At the same time, semantically hardened legal verdicts, judgments, regulations, interpretations and constructions under the formal availability of law are drifting away from its real presence. This kind of interaction, involving its participants in the horizon of influence of legal and illegal situations, communicates to them not legal truths, but the very truth of law, which is to be understood as a value.

### Conclusions

Thus, the nature of law in post-non-classical cultural space has changed significantly, has gained relativity, dynamism, and has expanded subject's opportunity. In the modern multi-layered reality the effectiveness of law to a high degree depends on the method of its comprehension, understanding, way of expression and the set of its demonstrative signs and symbols. The dynamic context of various narrative and material attributes forms the space of legal simulation, or the legal space of freedom. In other words, law is valid to the degree, in which it may influence the reality. Influence and validity are the most relevant criteria of law being like any other matter in the conditions of virtualization. The dynamic nature of modern law brings about the discourse of its corporeity. Today's superficial senses and changeable significance of law enable us rather to mention its formal presence than real embodiment. The presence is the main mode of being for a subject of law. The pure human presence in numerous parallel realities frees it from moral obligations, spirituality and personal responsibility, allowing, however, for the full freedom of choice. It is possible to claim liberalization of law and

pluralization of its senses at the levels of legal discourse, narration or performance. The replacement of narration with discourse, and the performative with performance in modern communicative culture has revealed legal justice not only in the court judgment, but rather in the process of its forming and at the stage of appeal. The procedure of legal performance is democratic, it is designed for public use, free from the power dictatorship.

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