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## ПОСТМЕТАФІЗИЧНЕ МИСЛЕННЯ У ПРАВІ: ПРИКЛАД ГЕРМЕНЕВТИЧНОЇ ФІЛОСОФІЇ

**Анотація.** Статтю присвячено проблемі постметафізичного мислення у праві, про актуальність якої свідчить криза фундаментальної юриспруденції як наслідок властивої сучасній думці в цілому відмови від осмислення граничних підстав. З метою виявлення умов можливості постметафізичного мислення у праві, використовується метод історико-філософської реконструкції, що він водночас виявляється герменевтичним проясненням. Проблема розкривається у три кроки. Спершу в широкому історико-філософському контексті розглянуто поняття метафізики та чинники, які зумовили критику метафізичного мислення. Далі виявлено основні мотиви постметафізичного мислення та розкрито сенс філософської герменевтики як постметафізичного проєкта. Нарешті, визначено особливості постметафізичного мислення у праві та роль герменевтичної філософії права в епоху постметафізики. Метафізичність (що її характеризують передусім ідеалізм і пріоритет теорії) мислиться як одвічна складова філософії, що виявляється у парадоксі теоретичного досвіду, який головно її інспірує критику метафізичного мислення. Відповідно, перевершення метафізики виявляється перманентним самоперевершенням філософії, яке, разом з тим, стає домінуючою спонукою сучасного (постметафізичного) мислення. Герменевтична філософія, або феноменологічна герменевтика, розглядається як приклад реалізації позитивної стратегії критики метафізики, основним мотивом якої є переосмислення класичного пріоритету теорії над практикою та відновлення цілісності людського досвіду. У свою чергу, досвід права розглядається як парадигматичний приклад досвіду у власному розумінні слова, що він завжди є фронтальним досвідом, тобто таким, що поєднує теорію, практику та мистецтво. При цьому герменевтична філософія права постає як онтологічна теорія природного права, що локалізує граничні підстави права у самій структурі фундаментального досвіду як досвіду розуміння. У такий спосіб етика поєднується з онтологією й водночас уможливорюються як постметафізична філософія, так і постметафізичне право.

**Ключові слова:** постметафізичне мислення, феноменологія, герменевтична філософія, досвід, фронтенісис.

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## POSTMETAPHYSICAL THINKING IN LAW: AN EXAMPLE OF A HERMENEUTICAL PHILOSOPHY

**Abstract.** *The scientific paper covers the matter of post-metaphysical thinking in law, the relevance of which is evidenced by the crisis of fundamental jurisprudence as a consequence of the refusal to comprehend ultimate grounds inherent in modern thought. To identify the conditions for the possibility of post-metaphysical thinking in law, the method of historical and philosophical reconstruction is used, which itself constitutes a hermeneutical clarification at the same time. The issue is elucidated in three steps. First, in the broad historical and philosophical context, the concepts of metaphysics and the factors that caused criticism of metaphysical thinking are considered. Further, the main motives of post-metaphysical thinking are listed and the meaning of philosophical hermeneutics as a post-metaphysical project is revealed. Finally, the features of post-metaphysical thinking in law and the role of hermeneutic philosophy of law in the post-metaphysics era are identified. Metaphysicality (characterized primarily by idealism and the priority of theory) is imagined as an integral component of philosophy, manifested in the paradox of theoretical experience, which mainly inspires criticism of metaphysical thinking. Accordingly, the transcendence of metaphysics is a permanent self-transcendence of philosophy, which, at the same time, becomes the dominant motive of modern (post-metaphysical) thinking. Hermeneutic philosophy, or phenomenological hermeneutics, is considered as an example of the implementation of a positive strategy of critique of metaphysics, the main motive of which is to reinterpret the conventional priority of theory over practice and restore the integrity of human experience. In its turn, the experience of law is considered as a paradigmatic example of experience proper, that it is always a phronetic experience, meaning that it combines theory, practice, and art. With that, the hermeneutic philosophy of law appears as an ontological theory of natural law, which localizes the ultimate grounds of law in the very structure of fundamental experience as an experience of understanding. In this way ethics is combined with ontology and makes possible both post-metaphysical philosophy and post-metaphysical law.*

**Keywords:** post-metaphysical thinking, phenomenology, hermeneutic philosophy, experience, phronesis.

### INTRODUCTION

Farewell to the past seems to be one of the leitmotifs of modern thinking at large, which imbues almost everything with the “post-prefix”. And despite the semantic ambiguity of the corresponding terms, one way or another, it is clear that this is a self-transcendence of a particular tradition. The main philosophical movements of the 20th century, such as postanalysts, post-structuralists, post-Marxists, followed this path. “The fact that phenomenologists have not yet come to their “postism” makes them almost suspicious”, writes Jürgen Habermas in the late 1980s in this

matter [1]. We shall note, however, that these suspicions have now been removed [2]. A similar tendency is inherent in modern philosophy of law. Particular emphasis is placed on fundamental jurisprudence (philosophy and theory of law) in the post-Soviet space, which describes itself as unconventional or post-classical [3–10]. At the same time, post-metaphysics is often imagined as a defining feature that allows to distinguish between the conventional and the modern [11–14].

With that, among the countless “post-“ prefixes used in self-identification of modern jurisprudence, post-metaphysics, with its desire to overcome the “illusion of the universal”, appears to be, perhaps, the most problematic. As noted by Arthur Kaufmann, overcoming the metaphysical in law means nothing short of reducing the latter to a matter, to pure positivity [15]. In such a broad sense, metaphysical thinking only makes law possible, and, by extension, philosophy. It appears that this is what Sergei Rabinovich is referring to when he emphasizes the necessity and inevitability of metaphysics as “a feature of such a comprehension of law that seeks to know its essence” [16]. On the other hand, the empirical method of the natural sciences and the formalism of the moral and legal theories of modern times, together with the development of historical sciences and the assertion of historical consciousness in the 19th century, problematize metaphysical thinking to such an extent that we are compelled to stand behind Habermas and admit that today we have no alternative to post-metaphysical thinking [1]. However, the rejection of the metaphysical conception of absolute meanings has raised a new issue: how can the experience of meaning as something fixed (theoretical experience) be possible in the turbulent flow of human existence? It seems that the key issue of post-metaphysical thinking – the need to incorporate the experience of meaning into the dynamic existence of the finite human being – is at the same time the nuclear problem of contemporary jurisprudence, which seeks to strike a balance between the dogmatism of conventional concepts of natural law, on the one hand, and the relativistic arbitrary conduct of post-modernism. In a more radical form, this issue is formulated by the American philosopher Francis J. Muts III as a provocative question: “Is law able to outlive an interpretive turn?” [17]. In other words, is a post-metaphysical claim to justice possible?

One cannot but mention the striking image of philosophy in agony portrayed by Peter Sloterdijk: “In the face of death, she wanted to be honest and divulge her last secret. She confesses: all the big topics were total twists and turns. The excitement of thought is in vain: God, the Universe, Theory, Practice, Subject, Object, Body, Spirit, Meaning, Nothing – all this does not exist” [18]. Do the ghosts of freedom, justice, human dignity, and ultimately, law, as such, not complement this list?” [19].

Among contemporary philosophical trends that feed on the contradictions of post-metaphysical thinking, philosophical hermeneutics, including hermeneutic philosophy of law, occupies a special place. Initially focused not on the assertion of its own position, but on mutual understanding, not on denial, but on recognition, it seeks not to solve the paradox of theoretical experience (which, like any paradox, cannot be resolved), but to

develop a strategy of behaviour with it that would make both post-metaphysical philosophy and post-metaphysical law possible.

What do we mean by metaphysics, and why is it necessary to overcome it? (2.1) What is post-metaphysical thinking, and in what sense is philosophical hermeneutics a post-metaphysical project? (2.2) How is post-metaphysical thinking possible in law, and what is the role of hermeneutic philosophy of law in the age of post-metaphysics? (2.3) This essay is devoted to the understanding of the outlined issues so as to clarify the conditions for the possibility of post-metaphysical thinking in law.

## 1. MATERIALS AND METHODS

This paper constitutes a philosophical and legal exploration, and therefore, to some extent, it expresses not the scientific experience but the experience of reflection. With that, post-metaphysical thinking in general and hermeneutic philosophy in particular are both the object of comprehension and the perspective from which this comprehension comes. Therefore, this refers to self-reflexivity of philosophical hermeneutics as a post-metaphysical project, that is, to understanding one's own conditions of possibility. As the core of this project is the juxtaposition of monologic methodological experience with the dialogical experience of meaning, it would be appropriate not to speak of methods but rather of some motives that prompt thinking. Such motives are, among other things, the desire to imagine the world as something that is happening to us, and to find universals in the very structure of experience (the motive of post-metaphysical thinking in general), including the openness with regard to the object of comprehension (the motive of hermeneutic philosophy).

At the level of logic of thought, this refers to the primacy of interrogation (as against asserting its own methodological position), and above all the interrogation on its own grounds: "How is post-metaphysical thinking possible?", "How is hermeneutic philosophy possible?", "How is comprehension of law possible in the era of post-metaphysics?" In turn, prioritizing interrogation allows to clarify the meaning – a specific hermeneutic process that substantially differs from both factual descriptions inherent in conventional empiricism and the constructivism of German idealism, and thus may be regarded as a proper hermeneutic "method" (with some reservations, as mentioned above).

With that, as from the standpoint of hermeneutical philosophy, thought is imagined as a component of historical experience, the self-reflection of philosophy in general and hermeneutical tradition in particular can be nothing short of historical and philosophical research with its inherent reconstruction of the history of ideas and concepts which materialise these ideas. However, philosophical research is not about reconstructing the timeline of events, but identifying meaningful connections between ideas that can unfold in a non-linear space of thought. Or, as Vakhtang Kebuladze writes, "in a philosophical study, the plot line presides over the fable", and therefore any interpretation contains elements of ahistorical reconstruction.

## 2. RESULTS AND DISCUSSION

### *2.1 Main motives of criticism of metaphysics*

Born from the elements of myth, philosophy has continued its relentless struggle for centuries. The juxtaposition of logos and eidos, thinking and contemplation, intuition and discourse, “truth” and “method” in a certain form became the leitmotif of the entire European philosophy. As Karen Svasyan notes, “the struggle against myth is not its sporadic episode in the history of philosophy, but its *idee fixe*” [20]. Unlike the myth, where the first principles are clearly illustrated as the beginning of a chain of generations, in ancient philosophy, these foundations are freed from the spatio-temporal attributes and abstract to something infinite (ideal) that resists the world of the finite (material) or underlies it. Accordingly, the highest form of experience is a theory that requires the renunciation of the natural order of the world, and thus opens up privileged access to truth for the supernatural. According to Habermas, idealism and the priority of theory are the main aspects of metaphysical thinking, which seeks to explain the underlying phenomena “not in the plane of the phenomena themselves, but in something underlying the phenomena – in the entities, ideas, forms, or substances” [1]. In other words, it is a “backstage world illusion” [21] and a corresponding gesture of “penetrating the surface from the feigningly real to the depths of the genuinely real” [22].

In modern times, the concept of theory is elitist, but it keeps distance from everyday experience. This is reflected in the methodology, which reduces any mastery of the world to scientific knowledge and demands objectivity and impartiality from the scientist. As a consequence, abstract theorized scientific knowledge has virtually lost any connection with human life and its meaning. In Nietzsche’s words, everything that philosophers have used for millennia have been mummies of concepts; nothing really came alive from their hands [23]. The same problem is accentuated by Edmund Husserl, who sees the substitutionary cause of the crisis of sciences and the radical crisis of European existence as a whole in the replacement of the world of everyday life by the world of ideal entities [24]. This is what Peter Sloterdijk means when he refers to the need to “protect reality from the madness of theorists, which is to believe that they have understood it” [18]. The advantage of theory as the primacy of the method over the subject matter, and the knower – over the knowable (belligerent polemic strategy of thinking) leads, in the opinion of the philosopher, to a lack of realism and specificity. The object here can only be something that is captured by methods and models. In turn, the subject’s weakness, or reconciliation strategy of cognition, in contrast, gives things a chance to show their worth in their multiformity. And in this sense, “the weaker our methods”, the better for “things” [18].

Thus, the critique of metaphysical thinking aims primarily at restoring the integrity of human experience, on the assumption that experience is never exhausted by

theory, and, accordingly, the comprehension of truth exceeds the scope controlled by scientific methods.

### *2.2 Philosophical hermeneutics as a post-metaphysical project*

Habermas – the author of the idea of “post-metaphysical thinking” – considers the last defining feature of modern philosophy and distinguishes its components as follows: 1) reduction of meaningful rationality, which was imagined as a material power that regulates the world and reads itself in it, to formal rationality that is, to right-mindedness of procedures that are capable of delivering valuable results; 2) specification of the mind, which acquires the trait of historicity and individuality; 3) the linguistic turn as a transition from the philosophy of consciousness to the philosophy of language; and 4) rethinking the classical priority of theory over practice, in particular the discovery of the foundations of theory in everyday practice of understanding [1].

It appears that the last of the tendencies outlined by Habermas not only reflects the basic motive of post-metaphysical thinking (restoration of the primary unity of experience), but also captures the tension between the two forms of knowledge that gives the history of European philosophy its internal dynamics. On the one hand, the antinomy between thinking and contemplation is the result of the separation of philosophy from mythology, and then philosophy as such is metaphysics. With that, as Svasyan notes, “the uncertain memory of the primordial natural identity [of thinking and contemplation]” haunted philosophers at all times. This is both the “substance” of Spinoza, and the “the roots common but unknown to us” of Kant [20], and – we shall add – the “phronesis” of Aristotle. And in this sense, overcoming metaphysics is a self-overcome philosophy, thus reflecting the paradox of philosophy as a theoretical experience: the self-identification of post-metaphysical philosophy as a practical philosophy, in the sense of practical (performative) knowledge, is at the same time carried out within the framework of theory. Simply put, “philosophy cannot insert single things into a text” [25].

By and large, to understand metaphysics as broadly as any theory, overcoming it is impossible, same as it is impossible to return to the primary unity of experience. This rather refers to bridging the radical gap between theory and practice, the de-transcendentalization of the former and the de-trivialization of the latter. Using the very successful, in our opinion, formulation of Ilyya Inishev, it might be said that with regard to post-metaphysical philosophy “one should refer, rather, as to a possibility and a task than as to an accomplished fact” [26]. Being understood in this way, post-metaphysical thinking expresses itself merely in the desire to imagine the world, first and foremost, not as an object of our knowledge or technical domination, but as something that happens to us, that is, as an experience.

One of the most striking episodes of the transformation of philosophy, inspired by this motif, was the phenomenological movement founded by Edmund Husserl. In con-

trast to metaphysical dualism, phenomenology refuses to seek “true” reality beyond the reality that was given to us in experience [22]. However, the path to the discovery of a unified reality of experience lies through phenomenological reduction – the transition from natural attitude (wherein the empirical subject is convinced of the existence of the world and considers itself as part of it) to the phenomenological (wherein the world is “bracketed” to enable consciousness to refer to itself). This refers to eliminating all the prejudices that interfere with seeing the meanings (phenomena) that are evidently opened to reduced consciousness [27]. At the same time, the primary attitude from which the phenomenologist proceeds is the pre-theoretical experience of consciousness, as it presupposes the rejection of all prejudices, including theoretical constructs. But the immediacy of this experience is the result of the methodical actions of consciousness itself. Thus, all phenomenological experience is a construction, and any construction lies outside the domain of phenomenology [28]. Martin Heidegger, in particular, points to this when he states that “phenomenological consideration should come from a natural attitude, that is, from the matter, as it is given from the very beginning. Through this, a preliminary view of the existential definition of matter, wherein consciousness and reason are concrete, included in the existential certainty of a particular being, called man, should be obtained” [29]. The answer to the question “what is this creature whose being is to understand” [30] has become the main motif of the phenomenological hermeneutics developed by Hans-Georg Gadamer following Heidegger.

Philosophical hermeneutics imagines any experience as an experience of understanding, or an experience of meaning. With that, understanding is not one of man’s abilities, but the primary way of being in the world, “potentiality for being” (Heidegger) [31], “the primary being characteristic of human life itself” (Gadamer) [32], “the specific human way of being alive” (Arendt) [33]. In this sense, understanding is an endless process by which we accept reality, that is, “trying to be at home in the world” [33]. From birth to death, a person is learning the ropes of this world, understanding it and themselves in it and thus creating meaning. With that, there is no meaning as such, neither in the world nor in man; meaning is always a meeting of the two.

The fundamental ontological structure of experience as the experience of meaning is a circle: being-in-the-world is the whole, on which the understanding of its parts, the world and man, depends. In turn, the understanding of being-in-the-world is determined by the understanding of the world and the self-understanding of man [31]. The ontological hermeneutic circle assumes that understanding, on the one hand, is always engaged (which Heidegger defines as “oblivion”) and, on the other hand, always incomplete, that is, not something that is available but an opportunity (“project”). Thus, “human existence in its own structure is a forgotten project” [32].

In trying to overcome the aporia of Husserlian phenomenology, hermeneutics demonstrates the universal conditionality of any experience, which, however, does not impede understanding, but only enables it. In other words, while trying to cast off our preconceptions, the ultimate “unleashing” of the world is fundamentally impossible,

just as it is impossible to give up our own “I”. The paradoxical nature of this impossibility is subtly emphasized by Anna Arendt: “A person who wants to be deprived of their identity actually opens up the possibilities of human existence, which are as infinite as the universe itself. But the rebirth of a new personality is as problematic and as hopeless as the new creation of the world” [34]. In the words of Maurice Merleau-Ponty: “We can’t get away from life. We are not given the ability to see the face of either an idea or freedom” [35]. But this very idea compels us to continue to seek them out, acting in the world, and to wait for proof of our ability in the approval of others. Thus, Cézanne sees working on the canvas as an endless task, and sometimes spends an hour before applying a smear. However, in spite of the fact that it takes one hundred painting sessions to paint a still life, and one hundred and fifty posing sessions to paint a portrait, he only sees unsuccessful attempts in his works [35]. The eternal doubts of Cezanne, described by Merleau-Ponty, are the embodiment of the circular structure of our experience of the world. With that, he refers neither to the dictates of the world, nor to the absolutely free creativity of man, but rather to the dialogue between them, which changes both of its participants.

In Gadamer’s opinion, dialogue is a universal model of any experience. The hermeneutic situation in which we find ourselves in relation to the world is similar to a conversation, the participants of which try not to defend their position and not to accept the position of the interlocutor, but to understand the essence of what is being discussed. Accordingly, the logical structure of any experience is the question. Understanding that the matter is not what we believed it was, come to us through the question of what exactly is the matter, one or the other. The openness inherent in the essence of experience is precisely this openness to “one or the other”. Thus, the condition of the possibility of understanding is the acknowledgement of the interlocutor (another person, tradition or the world at large) in their claim to be heard, not in the meaning of a simple acknowledgement of their otherness, “but in the meaning that they really have something to say to me”. This refers to principled openness to different answers to the question posed and a readiness to experience as a readiness to reconsider our prejudices, because “any experience worthy of this name is at odds with our expectations”. In this case, the main result of understanding is not belief or skill; experience teaches us mainly to stay open-minded to new experiences [32].

In this meaning, primary experience is not merely a theoretical experience as an appreciation of an invariable truth, but also not an experience of art as an unlimited freedom of creativity, but an experience of meaning as a meeting. To clarify this idea, Gadamer, following Heidegger, turns to Aristotle’s *Nicomachean Ethics*, in particular, the concept of prudence (*phronesis*), which is understood as practical wisdom, the ability to act in unforeseen situations, the willingness to meet the unexpected, the unexpected based on axioms and principles. Thus, Aristotle identifies three types of knowledge that correspond to three forms of human experience: 1) scientific knowledge –

Episteme (ἐπιστήμη) – is expressed in theory and relates to things unchanged, such as the laws of nature; 2) knowledge in the field of creativity – Techne (τέχνη) – is applied in art and represents mastery, technology, ability to create something new; 3) practical knowledge – Phronesis (φρόνησις) – represents moral and practical wisdom about the right actions in a particular situation [36].

It is in the phronesis that Heidegger sees not only the model of his own idea of philosophy, but also the most authentic way of dealing with the world at large, that is, the initial basis of experience, which is subsequently differentiated and forgotten, which in turn prioritizes the cognitive model of theory [37]. As Bent Fleivberg fairly points out, what is indicative of the scope of “theorizing” of modern thinking is that even today there are no derivatives of European words in European languages, whereas ἐπιστήμη is found in modern words “epistemology” and “epistemological”, and τέχνη – in “technology” and “technical” [38]. Aimed at the rehabilitation of the idea of phronesis, hermeneutic philosophy departs from purely prehistoric knowledge: we are not confronted with facts that we merely establish, but are directly involved in what we know and what our actions are aimed at. This is the meaning of the title of Gadamer’s main work “Truth and Method”: the philosopher sets the scientific, theoretical experience of the world (monologic “method”) to the moral and practical wisdom (dialogical phronesis) as an experience of hermeneutical comprehension of “truth”.

Thus, philosophical hermeneutics embodies the motive of rethinking the conventional notion of the superiority of theory over practice, which is key to post-metaphysical philosophy. However, this does not refer to abandonment of the theory in favour of practice, but rather to bridging the radical divide between them. Having become a natural extension of Husserl’s phenomenology, hermeneutic philosophy, at the same time, is more consistent, demonstrating the futility of any attempt to go beyond its own historicity into the realm of eternal and immutable truths, and consider any theoretical construction as a moment in the circular motion and questions and answers as an indestructible absolute. According to Andrei Bogachov, Gadamer’s hermeneutical experience is that he recognizes the paradox of philosophy as a theoretical matter, but does not reject it [28]. In this sense, philosophical hermeneutics is a positive strategy of post-metaphysical thinking that seeks to transform metaphysical philosophy, overcoming its radical dualism, while preserving the possibility of philosophy as such [26].

### *2.3 Hermeneutic philosophy of law as a positive strategy for the criticism of metaphysics*

With regard to law, this refers to bridging the gap between law theory and jurisprudence, the dogmatism of conventional natural law theories, on the one hand, and relativistic arbitrariness of postmodern concepts, on the other hand. If the former consider the pre-existing “already-law” as the object of knowledge in law [39], from which an impartial subject derives a just decision, and the latter, on the contrary, absolutize the creative component of legal experience, considering law as the object

of our indivisible domination, then hermeneutic philosophy imagines law as something that happens to us, that is, an experience proper, or a phronetic experience of understanding.

With that, hermeneutical reading of law is of interest not only for jurists, but also for representatives of hermeneutical philosophy, because the experience of law is not an average example of hermeneutical experience, but a very special case. On the one hand, legal experience is rather an exception because of the limitations imposed by the general law. Thus, according to Albrecht Velmer, the dogmatic nature of legal texts eliminates the possibility of direct hermeneutical dialogue, claiming a truth that cannot be problematized, as some pre-emptive general applies only to something special, thus only preserving the dogmatism of the text [26]. In Gadamer's view, on the contrary, the application of law is a paradigmatic example of hermeneutical experience, capable of illuminating the general issues of hermeneutics and restoring the unity of hermeneutical problem: "A lawyer who, in the performance of his duties as a court, recognizes his own right to extend the law in comparison with the original meaning of the legislative text, does exactly what happens by itself in every understanding" [32]. Such crucial to the phenomenon of understanding element is application. The latter, according to Gadamer, is not the application of something general to the particular case, which was provided from the outset and understood in itself, to be further applied to the special. On the contrary, to understand the meaning of the text, the interpreter must not associate itself with the situation and the situation in which it is present, but relate the text to that situation. Thus, the judge comprehends the meaning of the law in terms of a particular case and for the sake of this case, which, by Gadamer, is a universal model of the relationship between past and present [32].

Special place in hermeneutical philosophy is also given to the law by Paul Ricker, considering the expression of law in the particular circumstances of the trial as a paradigmatic example of phronetic experience, which, like philosophizing, is impossible without free thinking, same as medicine is impossible without the doctor's ability to go beyond standardized guidelines and make decisions in an uncertain situation [40; 41]. Aristotle also points to the importance of the context for the legal judgment and the inevitable situationality of the latter, when he states that "any law is made for the general case, but some things cannot be said correctly in the general form". Consequently, "the fault lies not in the law and not in the legislature, but in the nature of the object, because that is precisely the substance of the acts" [36]. It is here that Gadamer sees the real problem of legal hermeneutics: patterns of behaviour are not eternal and unchanging, but at the same time they are not simple conventions, because they reflect the nature of things, and the point is that the latter defines itself every time only in application [32]. In a similar meaning, Kaufmann says that law cannot be obtained from a rule as something already contained in it; on the contrary, law first arises in justice from the rule [15].

Thus, the experience of law cannot be reduced either to science or to art, since it does not presuppose the extraction of existing legal meanings from authoritative sources with a purpose of their further application in a particular situation, and not the arbitrary construction of these meanings, but rather a new invention in every occurring dialogue. It is a matter of abandoning the claim for an impartial inference of justice from abstract principles and focusing on the circumstances of the case itself, factoring in the existing opinions. In doing so, boundaries are set not only by the context, but also by the very structure of the experience of understanding, which implies a fundamental openness and willingness to acknowledge the other party in its claim to truth, thus recognizing its equal freedom and equal dignity. This probably is the very “nature of things” that Gadamer refers to. In other words, the idea of justice is both descriptive and normative in that it both coincides with the concept of experience, or, to quote Lloyd L. Weinreb, “*the kosmos lies within ourselves*” [42].

Being interpreted in such a way, the hermeneutic philosophy of law is an alternative to both absolutism and relativism in jurisprudence, again unfolding an ontological project wherein, however, the place of metaphysical representations of the existence of independent moral truths focuses on human experience. In this sense, hermeneutics is compatible with the ontological concepts of natural law, which see the objective grounds of morality in our historical experience, affirming “the reality of our moral experience, not just as subjective feelings or beliefs, but as something objectively real, part of what actually exists” [43]. However, it is impossible to deduce specific rights and obligations from this experience: this more likely refers not to the proclamation of moral truths, but merely to the recognition of the truth of moral experience [17]. In other words, the price of knowledge is the rejection of absolute knowledge. The hermeneutical concept of law reminds us that justice can only be human, never claiming a definitive judgment, which Riker brilliantly expressed as a symbol of the distinction “between Dike, the justice of the people and Themis, the marginal and twilight haven of equality between Revenge and Justice” [44; 45].

## CONCLUSIONS

It appears that legal thought not only reflects the general spiritual situation of the present, marked by a critique of metaphysics, but also vividly illustrates the paradox of post-metaphysical thinking that in law turns into a crisis of the idea of normativity or the idea of the proper. Therefore, post-metaphysical thought in law, provided that it remains a) thought and b) thought on law, is merely an attempt to imagine law as an experience. The hermeneutic philosophy of law here appears to be a very special example, since, unlike purely procedural theories of justice, it remains on solid ontological ground, thus preserving the possibility of both philosophy and law.

Thus, the hermeneutic philosophy of law is a post-metaphysical project insofar as it proceeds from the unity of human experience as the experience of its own historicity,

abandoning the claim of the theoretical mind to clarify the last grounds of justice. Contrary to popular belief, hermeneutic philosophy does not offer any method of finding a “true” right, representing not so much the formulation and assertion of a particular position on law as the experience of law as such. However, this experience awakens in us the openness and readiness to hear others, the patience and respect for another point of view, the desire for mutual understanding and responsibility for the meaning of law. The conciliatory as against polemical thinking strategy inherent in hermeneutics also contributes to actualizing the peace-making character of the law itself, it only makes it possible to distinguish it from politics, and the intellectual modesty accompanying such a strategy demonstrates the greatest illusion of lawyers – the illusion of the omnipotence of law, the belief that a reasonably organized system of institutions is capable of forcing the devils to angelic public behaviour. The hermeneutical opinion, on the contrary, highlights the fact that the possibilities of legal institutions are very limited, and the peaceful coexistence of people, including the existence of law itself, requires our constant effort and responsible judgment.

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