

THE SENSES OF RIGHTS AND LAW IN AXEL HONNETH

From struggle for recognition to social freedom¹

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Abstract: This essay presents some ideas and justifications about the study of the different meanings of law and rights in Axel Honneth's main works *The Struggle for Recognition* and *Freedom's right*. We develop the theme from the connection between the central categories of recognition and social freedom to expose the meanings of law and rights in author's work that can be interpreted as a practical or medium resource that operate balance functions between the "I and the other(s)". A conception of law related to the "other(s)" that means a comprehension that every time a social struggle invades an institutional arena related with effectiveness, guarantee or adjudication of rights, the struggle invariably takes greater proportions, when an individual struggle for self-recognition, he or she is struggling, at the same time, for the "generalized other(s)". This perspective is allowed by the modern juridical form and produces what we call "social empathy", since in the pretension of guaranteeing recognition of rights and individual or collective self-realization, the struggle has a format that others also can reach this same condition, guaranteeing rights to indeterminate individuals. In this sense, the struggle for recognition of rights morally motivated through experiences of disrespect is also a struggle for all the society members in the future. This form of interpretation of Honneth's law and rights issues can mean an unconventional conception in the Law Philosophy area which has potential to be expanded, providing new elements for a critical legal theory.

Key words: Axel Honneth, law, rights, critical legal theory, recognition, social freedom.

I

This work presents some theoretical reflections developed within the Doctoral Research called "*The law in Axel Honneth: elements of a critical legal theory centered on the recognition category*". The thesis aims to contribute to the debate about the meaning

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and importance of law and rights in the works of the critical theory Philosopher and Sociologist Axel Honneth, trying to comprehend the choices that made the author takes the theme of law and rights in a central way in his theory of recognition (Honneth 1995) and after in his theory of justice (Honneth 2014), at the same time, grant such a different treatment to those subjects.

In the book *The Struggle for Recognition*, Honneth elaborates a social theory centered in the category of recognition, defining three recognition spheres to the self-realization through inter-subjective relations, one of them being “the rights sphere”. The meaning of rights, at this initial moment, concerns to the struggles for recognition of rights and to the social relations that refers to them, which would constitutes a fundamental part of the inter-subjective recognition process. In this sense, the denying of certain rights and the juridical exclusion could obstacle the subject capacity of a practical internal comprehension as a free and equal subject of rights.

In this sense, the dimensions of rights recognition and of the juridical relations proposed by Honneth as a condition for the self-respect satisfaction – in which the subject is fully recognized as autonomous and morally attributable – would be intimately intertwined with the individuals injustice experiences of disrespect and violations that took place within the framework of juridical relations. As mentioned by Honneth:

Whereas the first form of disrespect is inherent in those experiences of physical abuse that destroy a person's basic self-confidence, we have to look for the second form in those experiences of denigration that can affect a person's moral self-respect. This refers to those forms of personal disrespect to which an individual is subjected by being structurally excluded from the possession of certain rights within a society. We have initially construed the term 'rights', only roughly, as referring to those individual claims that a person can legitimately expect to have socially met because he or she participates, with equal rights, in the institutional order as a full-fledged member of a community. Should that person now be systematically denied certain rights of this kind, this would imply that he or she is not being accorded the same degree of moral responsibility as other members of society (Honneth 1995, p. 133).

Nevertheless, Honneth does not dedicate his efforts at this moment to the formal institutional character of law or rights, or even to a possible and determined concept of law, both remains indeterminate in his work. It is necessary to examine the treatment of law from Honneth's recognition theory in the most isolated possible form, through the theoretical change developed in *Freedom's Right* (2014), in that the author considers juridical freedom as a indispensable and necessary component to the social freedom

effectiveness and also exposes his concerns with the excessive “legalism” (Scheuerman 2017 and Honneth 2017) and the “juridification” (*Verrechtlichung*) (Honneth 2014, p. 70-94) of social relations as internal pathologies of modern law.

II

We aim here to develop the justifications to realize the study of law and rights in Axel Honneth central works and sketch some introductory ideas to answer the following guiding questions: 1) Why does Honneth devotes such a central role to law in his theory of recognition?; 2) At the same time, which are the motives of, as we call it, this “unconventional approach” of law?; and, 3) What are the meanings of law and rights that can be extracted between those two main works of Axel Honneth?

Regarding these questions, we justify our study project starting from three different frameworks: 1) as Honneth organizes his thinking about the motivation of social struggles for recognition and rights, the need for a better understanding of the capacity of the “legal form” and legal institutions to respond to social disputes already derived from previous experiences of denial and exclusion is unavoidable; 2) from the changes made between the works *The Struggle for Recognition* and *Freedom's Right*, Honneth allows us to understand that the category of recognition has a necessary connection with the category of social freedom, in the sense that the latter can only be acquired through social institutions that support and promote relations of mutual recognition. That is, while recognition is the key to the grammar of social conflicts, social freedom is the main ambition of struggles for recognition in modern societies (Zurn 2015, p.10); and 3) while dealing with law and rights in both works, the studies on author's approach are still very scarce, with Honneth's approach being at least “unconventional” for law scholars, although recently the category of recognition and the ambitions of social freedoms have great influence on socio-legal debates about struggles (for instance, as occurred in the Brazilian Supreme Court, with recent lawsuits and decisions about the legalization of abortion [2018], racial quotas in universities [2012], same-sex civil unions [2011], among other issues)³.

³ Furthermore, as mentioned by Christopher Zurn, the breadth and variety of social struggles that can be analyzed by Honneth's recognition theory must also be considered for its explanatory potential of contemporary social struggles: "While Honneth agrees with writers such as Charles Taylor and Iris Young that multiculturalism and identity politics are important forms of struggle for recognition, Honneth's broader model gives visibility to a much larger scope, achieving anti-violence, civil rights, and struggles for economic redistribution "(Zurn 2015 , pp. 59).

In addition to these questions and justifications, some problems found in Honneth's work already mentioned by commentators (e.g. Zurn [2015] and Scheuerman [2017]), also mentions the importance of better understanding how Honneth manipulates the theme of law and rights. Our objective in this essay, therefore, will be to justify why Axel Honneth's right has a fundamental position, not being driven by simple opportunity and having a central meaning and importance in the author's theoretical production and its changes throughout his production.

III

Therefore, the motivation for the research stems from the realization that the meaning of the law in Axel Honneth has so far remained undetermined. Despite giving great importance to the theme in his works, the author mobilizes the institutional field of law in an “unconventional” way, leaving aside classics and recent debates within Law Philosophy, as well as those about the function and meaning of law within one’s own tradition of the Frankfurtian Critical Theory.

As mentioned, in *The Struggle for Recognition* Honneth presents the “rights sphere” as one of the spaces where social recognition can take place, but considering what he calls “rights” much more as a social field than an institutional and objective one, not trying to delimitate a specific concept of law to better clarify his understanding about the subject.

In *Freedom’s Right*, in contrast to the position taken in *The Struggle for Recognition*, Honneth devotes much of the section entitled “legal freedom” to describe and criticize some “juridification” movements in Europe (Honneth 2014, p. 86-94), which would culminate in a process of transformation and reduction of individuals in something next to the sum of their legal claims, that is, in a juridical social pathology⁴ of modernity, addressing at this moment the field of law much more to the institutional framework, through the social pathology of “juridification”.

These are some aspects of why the theme of law and rights remained, in a certain way, undetermined and open to the criticism of Honneth’s works. With these factors, Honneth also sustains in a recent article (Honneth 2017) that deliberately refused to treat

⁴ In the sense that Honneth mentions: “In the context of social theory, a ‘social pathology’ indicates any social development that significantly impairs the ability to take part rationally in important forms of social cooperation” (Honneth 2014, p. 86).

law as a “compartmentalized” area, considering that the theme cannot be seen as a closed and proper sphere in social theory, clarifying that, for him, law is “omnipresent” in modern societies, and available as a “practical resource and a shared medium” to, among other functions, reject unreasonable demands, justify social reforms or give strength to institutions for newly implemented social changes.

Thus, in the author’s view, other social spheres are inevitably always connected or very close to modern law (as objective institution and as subjective sense), and cannot be considered as an "extralegal" sphere (Honneth 2017, p. 128).

IV

Towards these first considerations, motivations, problems and justifications, Honneth makes possible to understand that the theme of law and rights cannot be seriously observed only from a positivist, legislative or judiciary point of view. The law constitutes society and is constituted by it, in an extremely complex and plural form, being necessary not to compartmentalize it as the unique and only knowledge to better understand it. According to Honneth, law is at the same time a field of struggles, disputes and social resistance, as well as a field of “juridification”, conservatism and violations. That is, it is connected with social practices and constitutes a resource or medium always linked to another range of social knowledge and subjective intentions.

Between *The Struggle for Recognition* and *Freedom’s Right*, it is possible to extract a more precise understanding of law in Axel Honneth connecting the theoretical path of these both works. It is possible to separate the sphere of rights and the social institution of law, as consisting of one of the pillars of Honneth's approach to explain how social struggles in modern societies are motivated and what are their main ambitions. Institutions would be indispensable and necessary to ensure recognition and also, consequently, to guarantee social freedom.

Lawsuits for rights need to be enforced and secured through concrete social institutions, through an effective “translation” into the “legal form”, which allows from the beginning an idea of a collective struggle, rather than an individual one, as a first analysis might seem.

The law in Honneth work is a practical or medium resource to ensure the reinforcement of the obligations that we have before the figure of the “generalized

other(s)”, and through this reinforcement the law simultaneously expresses a specific type of respect to all subjects of rights. Individuals who fight for rights gain respect from being treated in the same way as all other members of the legal community to which they belong, while each recognizes all others as doing justice to the same rights.

V

A possible sense (meaning) of law in Axel Honneth would therefore be one, which the law, and also the social struggles that uses its language, is always “directed to the other(s)”. In our view, Honneth allows an understanding that whenever a social struggle invades the institutional arena related to the effectiveness, guarantee or adjudication of rights, the struggle invariably assume new and greater proportions, that is, at the same time the individual struggles for its self-recognition, he or she also struggles for the “generalized other(s)”.

This perspective of the generalized other that is allowed by the juridical form produces what we call here a form of “social empathy in a *prima facie* way”, since in the pretension to guarantee juridical recognition and individual or collective self-realization, the struggle is also undertaken so that others also reach the same condition, assuring rights to indeterminate individuals. In this sense, the struggle for recognition of rights motivated morally through experiences of disrespect is also a struggle for society.

In other words, in addition to the struggle for recognition of rights itself, it has the potential to achieve gains in self-realization and, consequently, in the autonomy of those involved in the struggle, it also allows for an extension of the protection of rights, assuming the individuals involved. Honneth seems to try to clarify the importance of this specific aspect of the “legal form”, and for this reason he leaves law in a privileged space in his theory of society centered on the category of recognition and social freedom.

Therefore, our hypothesis is that studying the meaning and senses of law and rights in Axel Honneth's work allows us to develop an unconventional understanding to Law Philosophy, observing it as a social phenomenon “clothed” in a great variety of forms, constituting only one of them the institutional form, or the “modern western legal form”, which appears in inter-subjective relations that involves struggles for affirmation of rights. In this sense, manipulating the category of recognition at the core of the understanding of a concept of law as an “institutional and social sphere” is useful to contribute to a critical

theory of law that is capable of giving support to the “redesigning” of formal institutions centered on a greater democratic and deliberative potential centered on the category of recognition.

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