

## Abstract

Since the broke out of the special funds affair of Taipei mayor, the focus has been on highly abstract political issues; the value questions, which were profound and worth inquiring, fell into difficult position and were unable to discuss. This paper closely examines the basic question: what the meaning of the law ought to be? What significant value the law should represent? Should it be an instrument or an institution; should it be developed in a strategic or communicative way; and should it be rules and regulation laid down by the authority or the normative commitment of the citizens.

Habermas thought the law obtains its legitimacy through real communication and therefore the “communicative rationality” is the foundation of the law. From the perspective of legal theory, Habermas thinks modern legal order must “be self determined” to obtain its legitimacy; moreover, the citizen should elaborate and judge the making of the law through participation and communication. Habermas thus criticizes four well-known theories of law, i.e., legal realism, legal empiricism, legal positivism and Dworkin’s coherence theory. He then asserts his own proceduralist paradigm of law. Habermas believes that in the history of modern law, the most successful legal paradigms are still in competition today – one is the paradigm of the positive law, the other is the paradigm of substantive law. However, he believes both paradigms are inadequate, so he asserts the necessity of a third legal paradigm, which emphasizes the discourse theory perspective – the proceduralist paradigm of law to understand and resolve the social difficulties.

Reacting to the flooding “language violence,” “strategic language,” “ideological twisting” in the society of nowadays, effective evaluation of discourse can certainly help in clarifying the present situation, but the question is how to carry on? This article attempts to answer the question by studying the discourse theory of Habermas as the core, and discuss the relationship between law and the social culture to which it belongs. At the same time, with Habermasian concept of “the lifeworld and the system”, this paper seeks to evaluate the medium role of law in social integration to assess the reason for the intimacy between legal formation and communicative action. Finally, this paper argues that the legitimacy of law primarily comes from communicative discourse that serves as a basis to reach agreement and consensus.

Keywords: mayoral special funds, Habermas, legal validity, legitimacy, communicative reason, the lifeworld and the system , legal validity theory of discourse, Proceduralist paradigm of law