

Abstract

This article is a comparison of sociological theories of Niklas Luhmann and Jürgen Habermas, specifically by their relation to law and the way it acquires its justification in society. The key difference of both attitudes is a result of different approaches to concepts of system. Jürgen Habermas holds a concept of an open system and it makes him think about law as institutionalization of communicative rationality of the lifeworld. The theory of Niklas Luhmann shifts to the concept of a closed system and it characterizes law as an institution which lives its own life, normatively closed to the social environment. Comparison of both theories by legitimacy of law leads us to ask about their relation to positivistic concepts and the concepts of natural law. We argue that the sociology of Law presented by Jürgen Habermas has its similarities with natural law concepts and autopoietic law of Niklas Luhmann has much in common with legal positivism. In spite of both having different attitudes to rationalization of law, they describe legitimization of law in terms of procedure. Finally, we argue, that there is a possibility to find common elements and that those theories can understand each other.