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The Phenomenological Approach to Social Reality

History, Concepts, Problems

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Chapter 1
Social Reality – The Phenomenological Approach

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Abstract Phenomenological investigations about social reality could be argued to center around three general concepts: Social and Institutional Facts, Collective Intentionality and Values. Even though it is certainly not possible to speak of one unified theory that phenomenology as such puts forward about social reality, the systematic interconnections between these concepts make the single contributions of phenomenologists tesserae of a larger mosaic. This introduction is an attempt to sketch this mosaic by situating these notions within the debate about social ontology as conducted by phenomenologists roughly from 1910 to 1927. It also highlights the systematic connections between phenomenological insights and contemporary discussions on social ontology.

Keywords Phenomenology • Social ontology • Collective intentionality • Social facts • Values

1.1 Introduction

Social science has been more favorable to the phenomenological tradition than social philosophy. Phenomenological sociology and its offspring, such as ethnomethodology and framework analysis, have always maintained some reputation for phenomenology in social science, especially in qualitative social research. Philosophers, however, have tended to be rather skeptical concerning the phenomenological tradition, and have often flatly denied the suitability of phenomenology as an approach to the nature, structure and perhaps essence of social reality. Particularly in the second half of the twentieth century, and especially in the German speaking world – the home of large parts of the early phenomenological tradition in

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the first decades of the century – it was almost routinely claimed that phenomeno-logical analysis of intentionality and consciousness commits to a basically solipsistic position, and that the philosophy of the social world needs to be based on an analysis of the pragmatics of linguistic communication (cf., e.g., Habermas 1981). Together with other factors, this "paradigm shift" away from intentional analysis largely condemned the wealth of early phenomenological approaches to social reality to oblivion.

The suggestion to revise this attitude came from a rather unexpected source. About a quarter of a century ago, some philosophers from the analytical tradition (where intentional analysis and the philosophy of mind had an astounding revival) started to extend their focus from individual minds and actions to the domain of the social world. A central idea that drove much of this development is that, in order to understand the nature of such entities as groups, social norms, and institutions, it is necessary to understand how individuals can think and act together. Labels such as joint intentions, we-intentions, and collective intentionality thus became the key terms of a renewed interest in the construction of the social world. The basic view was that intentionality – the power of mind to be directed at objects, matters of fact, states of affairs, or values – can be shared, and that any understanding of the way in which institutions are real should account for their being collectively accepted or recognized as such.

The sharing of intentional attitudes such as intentions, beliefs, desires and perhaps emotions quickly became the focus of intense debate, which attracted the interest of a great number of neighboring disciplines such as economics, linguistics, and developmental psychology. Part of what made this topic so fascinating is that the debate oscillates between two extremes delimiting the spectrum of the many different positions in between. On one end, one can observe the attempt to reduce shared intentional attitudes to individual intentional attitudes with some structure of social cognition (or common knowledge). On the other is the idea that collective intentionality is basic, primitive and hence irreducible to a structure of interlocked individual attitudes.

To those philosophers who had not forgotten about the phenomenological tradition, this debate sounded eerily familiar, and it was pointed out that there is much to learn about collective intentionality from those early phenomenologists who had developed their accounts of collective intentionality almost a century ago (Mulligan 2001). A closer survey of the relevant phenomenological literature unearthed a surprisingly rich quarry of insights. It is certainly wrong to speak of "the" ready-made phenomenological conception of collective intentionality. But it is equally obvious that the systematic analysis of collective intentionality profits a great deal from taking the debates among phenomenological philosophers into account (cf. Schmid 2005, 2009).

A similar story can be told about the idea of group agents and group persons. Many phenomenologists have endorsed some such conception, and they have developed rich taxonomies and intentional analyses of the ways in which collective subjects are constituted. Postwar German social philosophy has dismissed any such notion as overly collectivist and simply unacceptable. Yet recent analytical social

ontology has put this idea back on the map as a key issue in current research (List and Pettit 2011). Again, the current debate seems to return to issues that had already been taken up and treated with great intensity by the philosophical tradition that was then interrupted by the adversities of the political history of the twentieth century. As an epitome of the potential relevance of the phenomenological tradition to current social ontology, it deserves to be mentioned that, to our knowledge, it was Edmund Husserl himself who coined the term 'social ontology' in 1910.[1]

The obvious affinities between early phenomenology and issues in current social ontology were among the key topics of two large consecutive research projects by the titles of "Collective Intentionality – Phenomenological Perspectives" (2006–2010) and "Objective Mind – Metaphysics of the Social World" (2010–2012) that took place at the Universities of Basel (2006–2011) and Vienna (2011–2012) and were sponsored by the Swiss National Research Foundation. The contributions to this volume go back to papers presented at the concluding workshop of the Viennese project in March 2013. The idea was to invite philosophers from various backgrounds and traditions to investigate the history of phenomenological thought on the nature, structure and essence of the social world with an eye on current issues.

The tripartite structure of the present volume reflects the thematic orientation of its fourteen contributions. These crystallize around three general concepts that can be argued to be at the very core of social ontology: *Social and Institutional Facts*, *Collective Intentionality* and *Values*. Even though it is certainly not possible to speak of *one* unified theory that phenomenology as such puts forward about social reality, the systematic interconnections between these notions make the single contributions of phenomenologists *tesserae* of a larger mosaic. What follows is an attempt to sketch this mosaic by situating these notions, and the papers tackling them, within the debate about social ontology as conducted by phenomenologists roughly from 1910 to 1927.

1.2 1900–1910: The Phenomenological Pathway to Social Ontology

When in 1900–1901 Edmund Husserl publishes his *Logical Investigations* (cf. Husserl 1975, 1984), he sets what has to date been considered to be a philosophical benchmark. Like all classics, so can the *Logical Investigations* be

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[1] This phrase appears in the title of a manuscript that in its complete form reads: "*Die Gegebenheit konkreter sozialer Gegenständlichkeiten und die Klärung auf sie bezüglicher Begriffe. Soziale Ontologie und descriptive Soziologie* [*The Giveness of Concrete Social Objectualities and the Clarification of the Concepts Related to Them. Social Ontology and Descriptive Sociology*]" (Husserl 1973: 98). Due to the fact that the editors of the Husserliana volumes have formulated some of the titles of Husserl's manuscripts, the authorship of this expression could have been – and has been – challenged. However, perusal of Husserl's handwritten manuscript has established that, indeed, the expression does stem from his hand (sincere thanks go to Thomas Vongehr, the archivist of the Husserl Archives in Leuven, who has checked this on our behalf).

subjected – as it has been – to a multitude of different interpretations. Questions about the ontology underlying the philosophical project initiated in that work, or about the adequate understanding of Husserl's anti-psychologism, are still intensively debated today and are far from being settled. Yet, *one* element seems to be rather uncontroversial: Husserl's six investigations appear to center around one adamantly formulated goal – this is the ambitious objective to develop a sound theory of intentionality. Said another way, Husserl's plan in the *Logical Investigations* seems to provide a conceptual framework able to explain how minds refer to objects and states of affairs. And there can be no doubt that the minds at stake are *individual* minds.

This, i.e., a sound theory of *singular* intentionality, is what Husserl – very much in tune with one of his most important philosophical inspirations, i.e., Franz Brentano – maintains to be the basis from which solutions to other philosophical problems would have to be tackled. Against this background, it would come as no surprise that this research agenda, in its attempt to locate Archimedes' Lever in the individual and in her mind, has been interpreted as in principle indifferent, if not eventually even hostile, to any genuine ontology of the social world, that is, any ontology that takes seriously the notions of groups, of collective experiences in their variegated multitude, of social and institutional facts, etc. And it is tempting to formulate the idea behind this interpretation in terms that resonate with methodological individualism: whatever explanation the social world deserves, eventually this dimension of reality would have to be traced back to individuals and to the way in which individuals think of, feel about or act upon the world. It is perhaps not too gross a simplification to argue that, for a large part of the previous century, this has been the received picture of the phenomenological (and specifically Husserlian) approach to social reality within the literature.

And, yet, this picture cannot withstand close scrutiny: it is simply wrong with respect to Husserl's phenomenology, and totally untenable if one tries to apply it to the phenomenological movement in its entirety. Not only was the very concept of an ontology of social objects and facts present and lively discussed within phenomenology but, as we have seen, even the very term "social ontology" was not alien to this tradition of thought. Although this expression might well be an ἅπαξ λεγόμενον, as it seems to appear only once within Husserl's entire *opus*, the concept that it captures finds a clear place within his philosophy, for it can plausibly be argued that, by this expression, Husserl refers to that "material" or "eidetic" ontology which is about the essences of *social* objects and facts (cf. Salice 2013). In other words, Husserl's main idea seems to be that at least *some* constituents of social reality exemplify essential properties – properties that the object at issue has to display in order to be the kind of object it is. One crucial conclusion could be drawn from this: if there are (certain) social objects and facts that exemplify essences, then these entities constitute an ontological realm that cannot be traced back to entities and facts that are not intrinsically social.

This idea allowed phenomenology to literally uncover an entire *terra incognita* of research. One of its regions is explored by Husserl himself: as Thomas Szanto illustrates in his paper, "Husserl on Collective Intentionality," some of the funda-

mental building blocks of social reality that Husserl describes are so-called "persons of higher order," that is, groups which are held to genuinely instantiate mental properties. Here, Husserl seems to be in line with other phenomenologists in arguing that there are different ways in which a mental state can be said to be "shared," and Szanto devotes his paper to sorting out these different kinds of jointness. Husserl's "alternative account of collective intentionality" opens up the question of how this account squares with the more general inclination towards transcendentalism that characterizes the later phase of his thought. Husserl's transcendentalism is still a matter of debate today and yet, however his trajectory of thought has to be assessed, his fine-grained analysis of forms of togetherness clearly shows that the received view of his philosophy of sociality is illegitimate.

A further confirmation of this can be seen in the fact that, as Szanto also points out, some of Husserl's most important manuscripts about collective intentionality are written over a long period of time, one that spans almost 20 years, stretching from 1910 to the 1930s. During these decades, Husserl's attempt to approach social reality from a transcendentalist angle seems to have substantially influenced other thinkers within the field of phenomenology. Among the philosophers for whom Husserl's specific approach played a more prominent role, Tomoo Otaka (Husserl's 'best Japanese student,' as Husserl himself describes him) surely represents one of the most original. In 1932, Otaka publishes a monograph study in German by the title of *Grundlegung der Lehre vom sozialen Verband* (*Foundations of the Theory of the Social Bond*) that represents the starting point of a long-standing investigation into the state as a peculiar kind of social group. In their contribution ("The Actuality of States and Other Social Groups. Tomoo Otaka's Transcendental Project?"), Genki Uemura and Toru Yaegashi tackle Otaka's unique attempt to square a form of transcendentalism directly inspired by Husserl with his own serious concern for the actual and legal reality of states. Uemura and Yaegashi's suggestion is to look at an alternative "but still Husserlian scheme of constitutive analysis" that puts the focus on the modality in which social and collective actions could be said to turn states into real or actual institutions.

1.3   1913: A Crucial Year

In the light of the considerations put forward in the previous section, it appears reasonable to argue that the *Logical Investigations* does settle a research paradigm centered around individual minds, but one that has the potential to accommodate forms of collectivity that go far beyond the mere aggregation or summation of individual minds. Despite the many unpublished manuscripts Husserl devotes to this topic, the event that could be said to literally mark the beginning of a phenomenological line of research focused on the ontological foundations of the social sciences is the publication of the first volume of the *Jahrbuch für Philosophie und Phänomenologische Forschung* (1913). It is arguably from this moment on that the philosophical movement that Husserl so forcefully contributed to initiating starts to generate extensive and insightful contributions to social ontology.

Among the main artificers of this quite literal explosion of studies one can find Adolf Reinach and Max Scheler who, in 1913, respectively publish *The A priori Foundations of the Civil Law* and the first volume of *The Formalism in Ethics and the Non-Formal Ethics of Values.* These two studies soon become points of reference especially for the phenomenologists of the so-called Munich and Göttingen circles (cf. Salice 2015). Just by browsing the titles of phenomenological publications of that period, one can easily detect that many (if not even the majority) of them either explicitly or implicitly refer to problems or issues of direct relevance to the philosophy of sociality. But what makes these publications so influential?

1.3.1   How to Make a Social World with Social Acts

In the first book, Reinach tackles an admittedly limited domain of investigation. This domain, as the title of the first book suggests, is about those elements that he believes to be at the basis of the *Civil Law*. Reinach's idea is that positive law (as well as other social sciences, like sociology, the theory of the state, etc.) takes for granted certain concepts that, insofar as they are about genuinely primitive constituents of social reality, cannot be logically analyzed in terms of more basic concepts. Especially when it comes to the *Civil Law*, Reinach argues that this discipline must be supplemented by an ontology (an "a priori theory of objects," cf. 2012: 6) of such fundamental entities as promises, commitments, rights, enactments, etc. More particularly, he stresses that both "social acts" (this notion broadly encompassing what today falls under the category of "speech acts," i.e., promises, orders, bets, etc.) and their effects (most notably, deontic states of affairs such as commitments and claims, rights and duties, etc.), have an ontological status of their own and deserve an investigation which lies outside the perimeter of positive law itself (given that positive law presupposes their ontology).

Reinach describes social acts as intentional acts characterized by an intrinsic "need of being heard" by their addresses. That is, such acts are successful or unsuccessful depending on (among other factors) whether or not they are understood by their addressees. The idea that the requirement for securing uptake is grounded in the essence of these acts has to be understood in the sense that, without this property, the corresponding experiences would not be of the kind that they are. In particular, social acts cannot be traced back to inner (non-social) acts, i.e., to acts that do not need to be uttered (because the latter do not need to secure uptake). So, e.g., asking a question differs from having the desire to know something: the latter can motivate the former, but does not coincide with it. Another difference between inner and social acts is the capacity that many of them have to generate social effects, i.e., to produce social entities. According to Reinach, it belongs to the essence of, e.g., a promise to produce a claim and an obligation once the act is successfully realized. By contrast, the mere assertion that I am willing to do something does not bring me under the obligation to do so.

Although Reinach claims that social acts generate social facts by ontological necessity, the main gist of his project is that the generation of social reality can be *normed* – and that it can be normed by means of, again, social acts of a given kind that are issued by legislators (so-called dispositions or enactments [*Bestimmungen*]). For instance, even if on Reinach's view it is essential for promises to bring about commitments, promises issued by minors do not: they do not, Reinach contends, because legislators can *enact* that promises issued by minors are not valid. That is, when it comes to social and, especially, legal reality, the validity of essences can be regimented: just as promises generate commitments, so do enactments generate legal states of affairs that directly affect social reality. In his paper "Persons and Acts – Collective and Social. From Ontology to Politics," Kevin Mulligan focuses on this view, which seems to have had a profound impact on the thought of other early phenomenologists. In particular, he highlights the relevance that this idea has for Edith Stein and for her claim that the authority with which legislators are bestowed has its origin in the state, which she conceives of as a *quasi*-person. In this contribution, Mulligan also draws important parallels between John Searle's social ontology (by zooming in on his claim that there is a constitutive relation between language and social reality, cf. Searle 1995) and the approach to this discipline adopted by early phenomenologists. For instance, he pinpoints the striking similarity between Reinach's idea of enactments and Searle's notion of declarations as acts with a "double direction of fit," i.e., as acts that generate the very facts they are about (e.g., the act of adjourning a meeting, if successful, brings about the fact that the meeting is adjourned).

Reinach's idea that positive law is grounded in social ontology is contrasted by the so-called "Vienna School of Jurisprudence" and especially by Felix Kaufmann and Fritz Schreier. In the paper, "Legal Reality and its A Priori Foundations – a Question of Acting or Interpreting? Felix Kaufmann, Fritz Schreier and Their Critique of Adolf Reinach," Sophie Loidolt highlights the alternative account of legal reality propounded by these two authors. Kaufmann argues that it is not by means of social acts that the legal "ought" is created, as Reinach wanted to have it. Rather, the "ought" has its origin in the subject's position-takings – said differently, the "ought" is the ideal objectification of volitive stances; it is the idealized right way to intentionally act upon the world. By vindicating the complete autonomy of positive law from metaphysics, Schreier adopts an even more radical position. According to him, positive law is not about entities, which pre-exist the law and which are posited or brought about; rather, it merely consists in the interpretation of legal propositions. Consequently, Schreier shifts the focus of the investigation from social acts to the legal acts of interpreting the law.

In light of these criticisms, one could argue that the resistance Reinach encountered in Vienna especially focused on his idea that the *Civil Law* is erected upon a domain of entities that are intrinsically social (the term 'entity' is used here in the broadest sense to also include intentional experiences). Still, this idea has to be seen against the background of his more general take on social reality, which is not

delimited by those entities that are normed by – and grounded in – positive law. As he writes:

> There are after all vast areas of social life which are untouched by any positive legal norms. Here […] we find […] specifically legal (as they are usually called) entities and structures, whose independence from the positive law we assert, and here […] of course […] apriori laws […] hold. Just as the general mode of being of these entities is of interest for ontology and epistemology, so their content is important for sociology. Together with certain other laws they form the apriori of social intercourse, even for areas of it which fall outside the scope of any positive law. (Reinach 1989: 146, Eng. trans. 6)

These considerations proved to be seminal for phenomenology. They not only seem to substantiate the concept conveyed by Husserl's expression, 'social ontology,' but they also inspired and laid the foundation for the work of many other phenomenologists. One of them is Czesław Znamierowski, as Lorini and Zelaniec show in their "Czesław Znamierowski's Social Ontology and its Phenomenological Roots." Although the name of this Polish philosopher of law is not even mentioned in Herbert Spiegelberg's monumental *Phenomenological Movement* (Spiegelberg 1982), several elements speak in favor of treating Znamierowski as a phenomenologist. First, it is Znamierowski himself who established a historical link to phenomenology by crediting Reinach with substantial philosophical merits. Secondly, and more importantly, his phenomenological lineage is clearly signaled by the anti-constructivist, ontological and *eidetic* framework that he adopts in his approach to social reality. In particular, the authors illustrate that Znamierowski's arguments about 'society in a generic sense,' i.e., the form of all possible forms of social aggregations (a '*societas formaliter spectata*'), can be inscribed in the very same line of thought initiated by Reinach.

1.3.2   Social Reality: Values and Collective Intentionality

Scheler's *Formalism* is the other classic published in the first volume of the *Jahrbuch*. Just as in the case of Reinach, the impact that this work had on debate about social ontology within phenomenology can hardly be underestimated. In this work, Scheler pursues at least two lines of investigation that deeply inspired further research into social reality: the first is the theory of collective intentionality (mainly developed in the second volume of the book, published in 1916) and the second is axiology.

The first of the two topics is addressed by Matthias Schloßberger in his "The Varieties of Togetherness: Scheler on Collective Affective Intentionality." In this contribution, Schloßberger discusses the parallel Scheler draws between kinds of groups and the different senses in which an attitude can be said to be 'social' (in Scheler's parlance: 'forms of being together [*Formen des Miteinanderseins*]'). For instance, certain forms of crowd behavior can be explained by means of (in particular: emotional) contagion. The paper especially zooms in on the specific form of co-experiencing (or what nowadays could be labeled "collective" or "we"

intentionality *tout court*) and on its relation to sympathy (or fellow-feeling). What makes Scheler's position so compelling and forceful is the idea (cf. Scheler 1954: 530) that, when we co-experience something, such a collective attitude cannot be traced back to individual I-experiences plus the mutual knowledge among individuals that they have the same experience and that they know that everybody knows it, etc. (i.e., this is an epistemic situation addressed today with the expression, "common knowledge"). This negative claim, which is also at the core of the contemporary debate about collective intentionality (cf., e.g., Bratman 2014: 5ff), triggers a series of investigations about what it means then to have a we-experience.

Scheler's take on this issue might be interpreted as a version of what has nowadays been qualified as the "subject" approach to collective intentionality (cf. Schweikard and Schmid 2013), meaning that what makes an experience a collective experience is its subject, namely, a plural subject or a *we*. Scheler's insightful description of communities as genuine bearers of experience that are intrinsically distinct from "societies", and that in certain cases even have the status of "personhood" (on this, cf. Mulligan and Salice in this volume), sets the conceptual ground for further discussion within phenomenology.

One of the most interesting developments is to be found in Hermann Schmalenbach's theory of "Bond" or "Communion [German: *Bund*]," which is mined by Hans Bernhard Schmid in his "Communal Feelings and Implicit Self-Knowledge. Hermann Schmalenbach on the Nature of the Social Bond." Whereas Scheler mainly operates with three kinds of groups (these are: crowds, societies and communities),[2] Schmalenbach refines this taxonomy by means of a fine-grained analysis of collective intentionality. This analysis leads him to divide the notion of community into *two* different notions. Schmalenbach calls "communions" or "bonds" those communities whose members explicitly articulate their experiences in we-terms. By contrast, he reserves the label "communities" for those groups whose members have not (or not yet) acquired explicit plural self-awareness. The question then arises as to what kind of awareness is constitutive for communities – Schmid theorizes that, in these cases, it is sensible and plausible to speak of a pre-reflective plural self-awareness that is construed along the same lines as implicit *singular* self-awareness.

These theories develop against the rather uncontroversial background that individuals are born into groups and that individuals generally find themselves to be members of – already constituted – groups. And, yet, one could argue that such groups must have had an origin and that, in any case, it is always possible for individuals to create new groups. But, then, what is this process of group formation? Felipe León and Dan Zahavi, in their "Phenomenology of Experiential Sharing: The Contribution of Schutz and Walther," look into some phenomenological resources that might be able to provide an answer to this question. The interesting insight shared by both Schutz and Walther is that, for them, the possibility to share

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[2] Under certain circumstances, however, communities can become 'collective persons,' which makes it possible to differentiate between *four* kinds of groups in Scheler's taxonomy (cf. Salice 2016).

experiences crucially relies on the ability to grasp others' mental states. According to these accounts, experiential sharing presupposes empathy (described as an understanding of others' experiences which, in paradigmatic cases, is perceptual in nature). Despite their similarities, there is, however, a key difference between the two accounts: whilst Schutz describes the sharing of experiences as arising from a reciprocal Thou-orientation, Walther's account crucially recognizes an additional dimension: to form communities, individuals' empathic acts are not sufficient, for the individuals also have to "unify" themselves – i.e., communities crucially require reciprocal unification.

It could be noted that, over and above their important differences between these accounts, they all have something in common, namely the idea originally propounded by Scheler that, if one has to account for the formation of groups, one has to look into what is going on in the minds of the individuals who are the members of those groups. A somewhat different suggestion is put forward by Dietrich von Hildebrand, as Alessandro Salice indicates in his "Communities and Values. Dietrich von Hildebrand's Social Ontology." Similar to the previous authors, von Hildebrand is also interested in distinguishing different kinds of groups (the most prominent role always being assigned to communities), but what makes his approach distinctive is the idea that what unifies communities (and only communities) is not – primarily – the members' (reflective or pre-reflective) awareness of being members of a community, the individuals' acts of unification or their acts of (direct or iterated) empathy; rather, it is the fact that the individuals respond uniformly to the same values. Values have, as von Hildebrand puts it, a *virtus unitiva* and are able to create "ontological domains" to the effect that: the individuals that – in virtue of their uniform response to the value – are accommodated within the same value domain can be said to form a group. For this group to act as a group and, consequently, to take responsibility for its actions, the members need to be aware that they are members of the group, but such awareness is not the ontological tie holding the individuals together, or so von Hildebrand would argue.

In his account, von Hildebrand presupposes an axiology that, in substantial respects, can be claimed to be a revised version of Scheler's axiology. We come thus to the other significant contribution that phenomenology makes to the analysis of social reality, namely the central role that this tradition ascribes to values. This topic of research can be seen as the *third* element structuring the debate around social ontology – in addition to, *first*, the eidetic ontology of social facts and objects and to, *second*, the theory of collective intentionality.

The importance of this topic is such that even those authors who do not directly contribute to the latter two topics nevertheless develop important arguments about the former. This is most notably the case for Roman Ingarden, whose contributions are discussed by Edward Swiderski in his "Ingarden's "Material Value" Conception of Socio-Cultural Reality." Ingarden seems to assign the same "agglutinating" power to value as does von Hildebrand. But in addition to that, Ingarden extends this analysis: he does not only look into the role that cultural artifacts play in solidifying and cementing we-identities thanks to the values that they instantiate, but he also investigates the link between values and interpersonal responsibility. Even if

"[i]t is by no means obvious that Ingarden's name would figure on a list of phenomenologists who contributed to themes in 'social philosophy',," as Swiderski writes, his contributions make it evident that he shared the same painstaking attention to the ontological foundation of the social sciences with his fellow phenomenologists.

Similar considerations can apply to Wilhelm Schapp, who in his early works tackles the functions that values fulfill when two individuals enter into a dyadic form of intentionality typically instantiated in the case of "rational" contracts. According to Schapp, "rational" contracts can be described as mutual promises wherein the two interactants evaluate the values instantiated by the objects of their promises: a contract is rational if I promise to give you x and you promise to give me y and I value $x<y$ and you value $y<x$. Schapp, who, not surprisingly, draws on Reinach's theory of social acts in his investigation, argues that this structure of evaluation is a priori and occurs whenever rational contracts take place. In her article "A Priori of the Law and Values in the Social Ontology of Wilhelm Schapp and Adolf Reinach", Francesca De Vecchi contests this claim and argues that such a structure is not a necessary constituent of rational contracts. Although this specific claim has to be rejected on De Vecchi's interpretation, the author sees great potential in applying Schapp's theory of values to social ontology. In particular, Schapp's idea that certain values can be instantiated *only* by groups (think of justice, e.g.) seems to be able to display an additional dimension of our social reality.

Even though it could be said that the authors so far mentioned display a favorable attitude towards a realist form of axiology that takes values to be basic elements of the social world, other, more nuanced, positions *vis à vis* the metaphysical status of values can be found within phenomenology. In particular, in her "Disenchanting the Fact/Value Dichotomy: A Critique of Felix Kaufmann's Views on Value and Social Reality", Sonja Rinofner addresses the theories of values developed by Kaufmann and Husserl and highlights their contrast. On the one hand, the author reconstructs Kaufmann's attempt to reduce judgments about values to judgments about facts; she argues that this attempt could be motivated by Kaufmann's assumption that accepting the scientific status of judgments about values would have implied accepting a Platonic domain of entities (which he considers to be "irrational"). On the other hand, the author resists Kaufmann's line of argument by emphasizing Husserl's non-Platonistic and yet at the same time non-reductivist view about values – which, according to Rinofner, is one of the theoretical virtues of adopting a specifically transcendentalist and phenomenological stance towards axiology.

1.4   1927: A Turning Point

Another important contribution to the phenomenological approach to social reality is Martin Heidegger's *Being and Time,* published in 1927. Though some social ontologists have accused it for pushing sociality to the margins (Theunissen 1964), this work has been inspiring thinking about the fundamentals of human sociality up to the current debate. Jo-Jo Koo, in his chapter, "Early Heidegger on Social Reality,"

assesses the potential significance that Heidegger's analytics of "Dasein" and, especially, his notions of *being-with* and the *anyone*, bear for social ontology. In Koo's reading, Heidegger offers a convincing account of human co-existence in a shared world that is superior to current approaches. According to Koo, Heidegger's analysis elicits a basic shift in orientation from specifying the conditions of adequacy for the *construction* of social or collective entities (an approach that, according to the author, characterizes contemporary debates in social ontology) to revealing the necessary conditions for the *intelligibility* of social and collective entities in general. Hence, the suggestion here is that the conditions for the intelligibility of social and collective entities are *prior* in the order of understanding to their conditions of construction.

Heidegger's work was so seminal that it is hard to think of large parts of phenomenology, especially in the aftermath of WWII, without its influence. One of the authors who has been particularly inspired by Heidegger's work is Karl Löwith. In his article, "Karl Löwith's Understanding of Sociality," Gerhard Thonhauser mainly focuses on Löwith's accounts of "social roles" and "co-reflexivity" in human interaction. According to Löwith, the intelligibility of social behavior depends to a large extent on the social agents ascribing roles to others. This is linked to Löwith's notion of co-reflexivity: human social action is not simply directed towards others (an idea that is already found in Max Weber) but, rather, it is already co-determined by the anticipation of their response; we relate to others in such a way that the anticipation of their potential relation to us, including an anticipation of their anticipation of our actions, co-determines our initial relation to them. For Löwith, the understanding of others as having social roles and the co-reflexivity of social interactions comprise the basic infrastructure of human sociality. They form the background that makes others and their actions intelligible and that, thereby, presents such others as potential partners for joint intention or action.

1.5   Conclusion

One concluding remark: the temporal horizon of this volume roughly covers the first 30 years of the last century, but phenomenological contributions to social ontology are by no means restricted to this segment of time. Indeed, several important works written during or in the aftermath of WWII are left almost without consideration (think of Jean Paul Sartre' *L'Être et le Néant* or of Maurice Merleau-Ponty's works, just to mention two pivotal figures of later phenomenology). There are several reasons that motivated the decision to restrict the editorial project to this thematic focus of investigation. Perhaps the most important one has to be seen in connection with the attempt to shed light on figures that are perhaps lesser known to a larger audience. That their ideas have been consistently overlooked, we believe, is unfortunate and curious especially due to the fact that they write in clear German and that many of their ideas were rediscovered, beyond phenomenology, during the twentieth century, as the contributions in this volume neatly illustrate. But this just

means that uncovering the full extent of phenomenological resources about the foundation of the social sciences is an ongoing process. This process, we hope, will not only impact different strands of the debate on social ontology, but also substantially enrich the received picture of the phenomenological movement.

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Part I
Social and Institutional Facts

Chapter 2
Persons and Acts – Collective and Social. From Ontology to Politics

Kevin Mulligan

Abstract This paper orchestrates a confrontation between the social ontology, social and political philosophy of Searle and the views on these matters of the earliest phenomenologists. According to Searle, social objects depend on declarations and on collective acceptance or recognition of the results of declarations. After first (§2) drawing attention to some distinctions and claims which go back to Reinach and which will be important in what follows, I then (§3) consider what Reinach and Searle have to say about declarations. Since collective acceptance is a type of collective intentionality I examine what Searle and the phenomenologists have to say about collective intentionality and the subjects or bearers of this type of intentionality (§4). I then look at the relation between states and social acts (§5), the relations between what Searle calls deontic powers and Reinach jural powers and some possible roles of such powers (§6) and conclude with a brief sketch of the role of primitive certainty in social ontology (§7).

Keywords Social acts • Collective intentionality • Deontic powers • Social ontology • Phenomenology

2.1 Introduction

This paper orchestrates a confrontation between the social ontology, social and political philosophy of Searle (1995, 2010) and the views on these matters of the earliest phenomenologists – Adolf Reinach, Max Scheler, Edith Stein, Gerda Walther, Wilhelm Schapp and a philosopher influenced by the phenomenologists, Nicolai Hartmann.[1] I extract from the writings of the latter some objections to Searle as well as some friendly suggestions. The interest of the confrontation derives from the fact that Searle and the realist phenomenologists claim that one key to social

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[1] Searle rejects the label "social philosophy" as a description of the project he pursues in the two books mentioned (Searle 2010, 5).

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ontology, social and political philosophy lies in the theory of what are now called "speech acts", such as promises, orders and declarations, what the phenomenologists call "social acts". They disagree on just how to turn the key. The claim common to Searle and these unusually unkantian Germans sharply distinguishes their philosophies of the social from all classical and all serious contemporary alternatives. My Germans also think that one other key to social ontology, social and political philosophy is to be found in what Reinach calls *the pure theory of right*, the theory of right, rights, claims and obligations – in the first place, of pre-legal rights and obligations, for example the obligations created by promises and orders and the facts created by declarations, and, in the second place, of the relations between the pure theory of right and the philosophy of positive law. As we shall see, at least some of the things Searle wants to say about rights and other normative phenomena are consistent with the account of pure right given by the early phenomenologists. A third key, according to Searle and the early phenomenologists, is the phenomenon of collective intentionality, of shared belief and acting together with others. But who or what is the author of collective intentionality? According to one phenomenologist, Scheler, there are collective persons, in particular collective, social persons, and such persons can perform social acts, collective and non-collective. Searle and some phenomenologists think that this ontological category is empty. As far as I can see the interest of the confrontation is not greatly affected by the fact that the pronounced anti-naturalism, indeed spiritualism, and Platonism of the phenomenologists are not at all shared by Searle.[2]

According to Searle, social objects depend on declarations and on collective acceptance or recognition of the results of declarations. After first (§2) drawing attention to some distinctions and claims which go back to Reinach and which will be important in what follows, I then (§3) consider what Reinach and Searle have to say about declarations. Since collective acceptance is a type of collective intentionality I examine what Searle and the phenomenologists have to say about collective intentionality and the subjects or bearers of this type of intentionality (§4). I then look at the relation between states and social acts (§5), the relations between what Searle calls deontic powers and Reinach jural powers and some possible roles of such powers (§6) and conclude with a brief sketch of the role of primitive certainty in social ontology (§7).

2.2 Social Acts, Proxy Social Acts, Jural Powers and Fit

The social ontology, social philosophy and political philosophy of the early phenomenologists have one striking feature in common with the social ontology, social philosophy and political philosophy of John Searle. In each case the philosophies in

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[2]The present paper justifies some of the claims made in an earlier paper on Searle and phenomenology (Mulligan 2003).

question are built around an account of speech acts. This feature sharply distinguishes these philosophies from all important rivals, old and new. Reinach's account of speech acts is set out in his 1913 monograph *The Apriori Foundations of the Civil Law*, in particular in §2, on claims and obligations, §3, on social acts, in §7 on representation or proxy social acts and in §8 on declarations and enactments. Reinach's monograph presents an account of what he calls the pure theory of right and of its relation to positive law. Until Searle applied his account of speech acts to the theory of social ontology and social philosophy the theory of speech acts was often considered exclusively as a chapter in the philosophy of language. But Austin was aware of the importance of the theory of speech acts for a philosophy of law:

> Only the still widespread obsession that the utterances of the law....*must* somehow be statements true or false, has prevented many lawyers from getting this whole matter straighter than we are likely to – and I would not even claim to know whether some of them have not already done so.[3]

2.2.1   Social Acts

The extension of the concept of speech act coincides in large measure with the extension of the concept of what Reinach and Reid call social acts. The term 'social act' and some of the theory of this *sui generis* type of linguistic action are to be found in the fifth of Thomas Reid's *Essays on the Active Powers of the Human Mind* (1788, chapter VI, *Of the Nature of a Contract*). Like Reinach, Reid is concerned to distinguish mental acts which he nicely terms 'solitary acts' – to which linguistic expression and uptake by an addressee are not necessary – from 'social acts' or 'operations':

> A man may see, and hear, and remember, and judge, and reason; he may deliberate and form purposes, and execute them, without the intervention of any other intelligent being. They are solitary acts. But when he *asks a question* for information, when he *testifies* a fact, when he gives a *command* to his servant, when he makes a *promise*, or enters into a *contract*, these are social acts of mind, and can have no existence without the intervention of some other intelligent being, who acts a part in them. Between the operations of the mind, which, for want of a more proper name, I have called *solitary*, and those I have called *social*, there is this very remarkable distinction, that, in the solitary, the expression of them by words, or any other sensible sign, is accidental. They may exist, and be complete, without being expressed, without being known to any other person. But, *in the social operations, the expression is essential*. They cannot exist without being expressed by words or signs, and known to the other party.[4]

Reinach agrees that social acts must be addressed to someone and must be grasped and thus that they are essentially linguistic. He notes that the social act of

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[3] Austin 1984, 19.

[4] Reid 1969, 437–438; emphases mine – KM.

accepting a promise can be performed with the help of what has been called the performative formula:

> To the 'I have inwardly assented' and the 'I shall inwardly assent' there is on the other side of the contrast only the 'I hereby accept.' One should not overlook the distinctive function of the 'hereby'. It refers to a process that is happening along with the performance of the act, that is to the 'accepting' which here as it were designates itself. By contrast there is not the slightest sense in saying 'I hereby experience an inner assent'.[5]

2.2.2 Collective and Proxy Social Acts

A promise may be performed by one person or by many persons together and in each case may be addressed to one or more persons. Social acts "in union" with others as well as what Reinach calls "external actions" (doings which are not social acts) "in union" with others, "collective actions", are two fundamental forms of collective intentionality. The first category lies at the origin of the idea that persons can be the subject of one obligation, that one claim can be had against them together. The second category should be the basis for the criminal law's concept of "complicity".[6] One species of social act which will be important in what follows is the category of social acts on behalf of someone else, of proxy social acts:

> [S]ocial acts can be performed "for" or "in the name of" another person; whoever promises in this way is not promising for himself,…but rather in the performing of the act he lets it ultimately issue from some third person. This is…a modification of social acts, which goes far beyond the world of right. For one cannot doubt that there is a requesting, an admonishing, an informing, a thanking, an advising in the name of another. To the extent that these acts when performed in one's own name have immediate effects according to an essential necessity, these effects are modified as the acts are modified when performed representatively.[7]

There is a world of difference between proxy acts such as promising on behalf of someone else and proxy acts such as thanking on behalf of someone else:

> If one thanks or informs in the name of another, there is no effect which proceeds according to essential necessity from this act, at least no effect in the world of right. It is different with a whole host of other social acts. We shall focus here only on the jurally[8] relevant ones....If I promise in the name of another to do something, I cannot thereby acquire an obligation; for I did not myself promise but rather promised in the name of the other. Instead there occurs under certain circumstances the extremely curious effect: the other, in whose name I have promised, is put under an obligation. And we find the same thing in other cases: I convey in the name of the other his rights, I impose obligations on him by performing in his name the act of assuming, I waive his claims, revoke his promises, etc. In every case the

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[5] Reinach 1989, 170 (my trans. – KM).

[6] Reinach 1989, 164–5, 167.

[7] Reinach 2012, 85. On Reinach on proxy social acts cf. Brown 1987.

[8] "Jural" is the translation of "rechtlich" and is used, for example, by Hohfeld.

extraordinary thing happens: rights and obligations arise, change, and come to an end in the person of the other without him having even to suspect it himself.[9]

What makes proxy social acts possible? As Reinach says, "every person as a person has the jural power" – a concept to which we shall return – "to produce, modify, etc. rights and obligations through his own social acts." But he does not have the jural power to produce them in the person of others.

> The problem of the efficacy of representation comes to this: how can a person acquire such a power? There is only one person who can grant it, namely the person in whom the legal effects are supposed to come about. Whoever can by his acts produce and modify rights and obligations in his own person, can perform an act which grants this power to others. This act is of course not a transferring — the one who performs this act does not forfeit his own power in the least — but rather a purely creative granting *(rein erzeugendes Einräumen)*. This jural power which is grounded in the person as such can as it were be reproduced in the person of any others; this is what gives the representative acts their characteristic efficacy. We designate *this social act* (it is also an other-directed act) *of granting* as the conferring of the power of representation or, if we follow the terminology of the jurists, the act of granting power of attorney. The content of this act can be specified very variously.[10]

2.2.3   Fit

Searle, in his account of intentionality, famously distinguishes between a mind/word-to-world direction of fit and a world-to-mind/word direction of fit:

> [T]he aim of a belief is to be true …Insofar as it is true, we can say that the belief matches, or fits, or accurately represents, the world.[11]

But desire, say, does not display this direction of fit. Reinach makes an analogous distinction between mind/word-world fit, on the one hand, and, on the other hand, acts which by being performed intend to effect a change in the world and sometimes do effect it:

> [W]e find differences in principle with respect to the way in which acts are related to their content. Judgments are acts which fit or conform *(Anpassungsakte)*: it belongs to their nature to "reproduce" *(wiedergeben)* in their positing something pregiven. Even when what is asserted is a state of affairs which does not obtain it lies in the sense of assertion to take the state of affairs to obtain. With other acts it is quite different. A question too can refer only to states of affairs; but it does not try to render anything which exists in itself....[12]

The social act of declaring or enacting, like questions and unlike judging, does not fit anything:

> The proposition, "The ability of man to be a subject of rights begins with the completion of birth," [in the German Civil Code] cannot possibly be considered to be a judgment. We do

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[9] Reinach 2012, 85.

[10] Reinach 2012, §7, 86; emphases mine – KM.

[11] Searle 2010, 27–8.

[12] Reinach 1989, 244 (my trans. – KM), cf. 341.

not have here a positing of being which, according as this being is really there or not, could be judged as true or false; we rather have an *enactment (Bestimmung), which stands beyond the alternative of true or false.*[13]

More generally:

Through [declarations/enactments] something is posited: it ought to exist; this positing character is relative to the positing acts and there is no independently existing being which runs parallel to it and to which it has to correspond….[W]e begin to see clearly the distinctive way in which a declaration is different not only from acts of fitting, judging, but also from other freely positing acts such as the question....Only acts of fit can be logically right (correct) or not right, according as that which they assert as existing, really exists....But… enactment belongs, in contrast to the judgment and to the question, to the "efficacious" acts, that is to the acts which by being performed intend to effect a change in the world and sometimes do effect it.

   [Commanding and requesting are]…social acts which, by contrast to informing (*Mitteilen*), aim by their nature at corresponding, or better, at responding activities, whether these activities really come to pass or not. Every command and every request aims at an action on the part of the addressee which is prescribed by the act.[14]

Let us now look at what Reinach and Searle have to say about declarations.

2.3   Declarations

In 1995 Searle argued that many institutional facts can be brought into existence by speech acts he calls "declarations":

In declarations the state of affairs represented by the propositional content of the speech act is brought into existence by the successful performance of that very speech act. Institutional facts can be created with the performative utterance of such sentences as "The meeting is adjourned", …"I appoint you chairman"…[15]

But ten years later Searle says at *one* point: "there is no Declarational speech act" and mentions as "the purest cases of Declaration promising, ordering and apologizing".[16] The precise details of the relations between the taxonomies of Searle and Reinach need not occupy us here. Reinach's view, as we have seen, is that there is a social act of declaring, which differs in many ways from the acts of promising and ordering. It would perhaps be in the spirit of Reinach's account to distinguish species of declaration, the enactment or decreeing of laws by law-givers, adjournings and appointings. One of Reinach's examples of a declaration, already mentioned, is not however an act but

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[13] Reinach 2012, 104 emphases mine – KM.

[14] Reinach 1989, 161 (my trans. – KM).

[15] Searle 1995, 34.

[16] Searle 2010, 13, 12.

the proposition [in the very first paragraph of our Civil Code], "The ability of man to be a subject of rights begins with the completion of birth,.."[17]

This is an example of what Searle nicely calls a standing declaration: "The actual texts [of the California Code regarding corporations] are standing declarations".[18]

Not only are there social acts of declaring that *p*, if Reinach is right, these have functions which neither ordering nor promising can have.

Orders cannot do what declarations do because (a) orders but not declarations are *other-directed*, and (b) orders but not declarations must concern (represent) specific actions. Reinach makes the first point as follows:

> Declarations are in reality anything but commands;…To begin with, both are to be understood as *social acts*. [T]hey always address themselves to others, and the need of being heard is intrinsic to them. But whereas commanding is at the same time necessarily an other-directed act, the act of declaring is not. By its very nature every command presupposes a person or group of persons who are commanded, just as with the act of promising or of granting. But declaring does not have this necessary relation to other person, just as little as do acts like waiving or revoking. Although these acts are addressed to other persons in being performed, their substance *(Gehalt)* lacks any personal moment *(personales Moment)*. Whereas I *always* promise to or command *a person*, I simply waive a claim or simply declare that something should be in a certain way.

In other words, for *x* to order is for *x* to order *y* to *F* but this is not true of declarations, waivings, or revokings:

> I hereby promise/ask/order you......
> *I hereby enact to you that p
> *I hereby waive to you my claim
> *I hereby revoke to you my promise…

> What about

> I hereby declare to you that the meeting is open ?

An utterance of this sentence does not bring it about that the meeting is open, unlike the utterance of

> I hereby declare that the meeting is open.

One may emphatically declare to a student that Derrida does not understand "rigorous" but in so doing one does not bring it about that Derrida has this property.

Searle's examples of the performative utterance of sentences dominated by "adjourn" and "appoint" behave just like performative utterances of sentences such as "I hereby declare…" in that they, too, are not other-directed although they are addressed to one or more people.

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[17] Reinach 2012, 104.
[18] Searle 2010, 97.

Orders cannot do what declarations do, says Reinach, because orders, unlike declarations, must concern (represent) specific actions:

> Every command refers to an action of the person or persons to whom it is given (just as a promise refers to the action of the one who promises). A declaration, by contrast, just as it does not include in its content any person at all, also does not include any action of a person. Whatever constructions one may resort to, one cannot project the action of a person into a simple and complete declaration such as that the ability of man to be a subject of rights begins at birth. This difference is of course also reflected in the internal experiences which underlie the two social acts. Authentic commanding presupposes the intention that some action be realized by the other person. But the intention which underlies declaring refers quite generally to the fact that something ought to be.[19]

Reinach, then, disagrees with Searle's claim that "there is no prelinguistic analogue for the Declarations" but agrees with Searle that

> Prelinguistic intentional states cannot create facts in the world by representing those facts as already existing. This remarkable feat requires language.[20]

For according to Reinach social acts can create facts in the world by representing those facts as already existing and social acts must, by their very nature, be linguistically expressed.[21] But Reinach is not consistent. At one point he weakens the claim that orders must refer to actions and declarations must refer only to what ought to be. He says that declarations may refer either to actions or to what ought to be:

> A judgment…can as judgment refer only to states of affairs. Every command can by its *very* nature *refer* only to the action of another person. But an enactment can have both as its object: just as the judgment posits states of affairs as existing, so the enactment can posit that states of affairs ought to exist. But an enactment is also like a command in that its object can be an action; indeed, not only the action of other persons but even one's own action can function as the content of an enactment.[22]

Promises cannot do what declarations do either. A pre-legal declaration, a declaration made by someone other than a law-maker, requires that the author of the declaration has been granted the right to make a declaration. This social act of granting does a job that no amount of promising can do. Reinach considers the case in which two people appeal to an arbitrator who is to be thought of without any reference to positive law:

> Let us suppose that there is a dispute about who is in the right. Perhaps A and B dispute about which social acts they performed toward each other, perhaps also about the effects which derive from the acts which were really performed. They turn to C [an arbitrator] and ask him to make a decision, and C *declares*: A has a claim against B to be paid a certain sum. But B is the owner of a certain thing....Such a declaration is of course not efficacious without the fulfillment of certain conditions....What are these conditions in our particular case? *The enactment has to be preceded by another social act, in particular an act which is addressed to the enacting person by those for whom the enactment is supposed to be efficacious*. The power of producing through enactments jural effects in other persons has

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[19] Reinach 2012, 105 (trans. mod).

[20] Searle 2010, 69.

[21] Reinach 1989, 159 ff.

[22] Reinach 2012, 107.

first to be conferred by these persons. *Here too the act of promising proves to be insufficient.* A promise made by A and B to C to let the declaration of C be decisive, would degrade the declaration to something which merely gives a definite content to an already existing claim. *And besides, in this case no claim of A and no property of B would result, but rather merely a claim of C that A convey a thing into the property of B, and a claim that B produce or recognize an obligation toward A.* If the promise to let the declarations of C be decisive is exchanged between A and B, then again the declaration does not itself produce rights but simply concretizes an already existing claim. Furthermore, A indeed gets a claim against B here, but this is a claim that B produce or recognize an obligation toward A and thereby the claim in the person of A which C has prescribed; this claim of A is not the claim prescribed by C. A parallel analysis holds for the conveyance of property. So we see, and this is the crucial point: in both of these cases the enactment has no power of its own to generate right; it brings about only a concretization of rights and obligations which come from other sources. *The promise is by its very nature incapable of generating an immediate efficacy for the declaration*….[W]e are not performing any act of promising when we submit to the declaration/enactment of a third person. We rather have to do with a "yielding" *(sich beugen)* or a "submitting" *(sich unterwerfen)* to the future enactment. *We find this submitting to be an act all its own, and to be a social act* which is other-directed. It of course does not *have* to be an *unconditional* submission; it can always be limited by the extent of the sphere of right which is supposed to be subject to the enactments. But within this limitation it belongs to the act of submitting to say in effect to the addressee, "It ought to be as you enact," and thereby to confer on him the power to bring about by enacting legal effects in the person of those who submit to him.[23]

The social act of submitting to some future declaration of another person might be said to be a felicity condition for declaring. Similarly, the social act of granting to some other person the jural power to promise, order, etc. in my name might be said to be a felicity condition for social acts in my name. Reinach prefers to talk of necessary conditions.

Reinach distinguishes not only between declarations as acts and the results of these, what Searle calls standing declarations, but also (explicitly or implicitly) six types of declarations:

Legal vs Pre-Legal declarations
Immediately Effective vs Mediately Effective declarations
Declaration with deontic content vs Declarations the content of which is not explicitly deontic

Of the *declarations of positive law*, for example the enactment already mentioned, that the ability of man to be a subject of rights begins with the completion of birth, Reinach says that they

posit their content in such a way that it *ought to be*. In this respect they are all on the same level. On a level with the declaration that claims can as a rule be assigned to third persons without the cooperation of the obliged person, is the enactment of the penal code (StGB 1871 §211) that the premeditated killing of a human being is punished with death: these are neither assertions of what is the case nor commands to do something, they are rather genuine declarations of what ought to be.[24]

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[23] Reinach 2012, 110–11; emphases mine – KM.
[24] Reinach, §9 2012, 115–6; emphasis mine – KM.

And, as we have seen, there are also *pre-legal declarations*. One example is provided by the case of the arbitrator already mentioned. Two others are:

> The leader of a group can tell the members of the group that he declares that this or that should be so or so.[25]

> If…the declaration of the director of a company that a bridge should be built, is efficacious for the members of the company, then this state of affairs exists as one which ought to be. ....[26]

Although "every declaration as such aims at the realization of that which it posits as something which ought to be",[27] only some declarations are immediately effective:

> What is posited by the declaration is [either] something which ought to be and is waiting to be realized [or] it becomes real *at the moment of the positing* and *through* the positing.[28]

An example of an immediately effective declaration is:

> [The arbitrator] *declares* that claim and property ought to be, *and now something is changed in the world.* What is posited by the declaration is not merely something which ought to be and is waiting to be realized, rather it becomes real *at the moment of the positing* and *through* the positing: property and claim exist *in virtue of* the declaration.[29]

The examples of adjourning a meeting and appointing a chairman are also examples of immediately effective declarations. Reinach gives an example of a mediately effective declaration:

> Only that which can be and can also not be, which can have a beginning, duration, and an end in time, is the possible content of a declaration. We should first of all think of events of external nature and of internal nature, such as actions, omissions, etc. If such a declaration, as for instance the declaration of the director of a company that a bridge should be built, is efficacious for the members of the company, then this state of affairs exists as one which ought to be. ....If a state of affairs exists for a group of subjects as objectively required in virtue of a declaration, then action realizing the state of affairs is consequently required of these subjects.[30]

The difference between penal enactments and the enactments of the civil code is also a difference between immediately and mediately efficacious declarations:

> …whereas penal declarations cannot immediately realize that which is required by their positing—for we have here to do with actions and events of external and internal nature— the declarations of the civil code deal with structures in the purely legal sphere which attain to existence in and through efficacious enactments.[31]

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[25] Reinach 2012, 106.

[26] Reinach 2012, 109.

[27] Reinach 2012, 108.

[28] Reinach 2012, 110.

[29] Reinach 2012, 110.

[30] Reinach 2012, 109.

[31] Reinach 2012, 116.

The distinction between immediately and mediately efficacious declarations corresponds, Reinach claims, to a distinction between two distinct ontological categories:

> [I]n addition to the well-known sphere of natural objects, that is, of the physical and the mental, there is a *sui generis* world consisting of entities and structures which are in time, though they do not belong to nature in the usual sense, and which derive from the social acts [for example, the obligations and claims created by promises]. Declarations can also refer to these entities and structures, but at the same time we encounter a very curious fact. That which belongs to nature exists, in virtue of efficacious enactments, as something which ought to be for all the persons to whom the enactment is addressed, and it awaits realization. But [in the case of temporal but non-natural jural entities and structures] there is no such tension between declaration and realization. Nor does there need to be any realizing action on the part of any persons. It is rather the case that in the performing of the enactment and in positing one of these entities or structures as something which ought to be *(als seinsollend gesetzt)*, the existence of what is thus posited comes about *through the enactment itself.* What is otherwise done by that action which is required of the persons by the declaration, is here done by the act of declaring itself.[32]

Although, as we have seen, Reinach says that the content of a declaration is *deontic*, one of his favourite examples, namely that the ability of man to be a subject of rights begins with the completion of birth, is not in fact dominated by a deontic expression.[33]

2.4   Subjects, Collective Intentionality and Mode Overload

Perhaps the first explicit rejection of the attempt to understand collective intentionality in terms of mutual knowledge or belief is that given by Scheler in 1916:

> *Co-experiencing* something cannot be understood by saying: *A* experiences something that is experienced by B, and both, in addition, know of their experiencing it.[34]

Searle, too, thinks we should accept that

> not all occurrences of "we intend", "we believe", and "we desire" can be reduced to "I intend", "I believe", and "I desire" and so on, plus mutual belief .[35]

Friends of collective intentionality have to choose between individualism and anti-individualism, a choice often formulated as that between the view that the bearers of non-collective intentionality are just the very same things which are the bearers of collective intentionality and the view that collective intentionality requires

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[32] Reinach 2012, 109–10. One of Reinach's predecessors seems to be Suárez, who argues that there are jural entities which are in time and are neither physical nor logical entities; cf. Lutz-Bachmann 2011, 115–6.

[33] Cf. Stein 1970, 310.

[34] Scheler 1973, 526. According to Reinach, if two or more people make a promise together "each knows of the participation of the other" (Reinach 1989, 164, my trans. – KM).

[35] Searle 2010, 50.

something else, collective subjects. Searle is an individualist. Within early phenomenology clear formulations of individualism are given by two female phenomenologists. By Gerda Walther:

> [We-experiences] take place and are actualised completely in the *individual self*. …It is not the case that some "We" standing "behind" or "above" the individual experiences something.[36]

And by Edith Stein:

> The experiences of a community have in the final analysis their origin in the individual selves who belong to the community. A…"communal-self" is an impossibility…A communal subject as an analogue of the pure self, does not exist.[37]

Unfortunately for those who like their philosophical options to be few in number the choice between the view that there are only individual selves, the view that there are individual *and* collective or communal selves, the view that there are no selves and the view that the very idea of *a* self is absurd by no means exhausts the space of possible positions. Many twentieth century philosophers have argued, asserted or entertained the possibility that in each breast there beat two distinct subjects or "subjects": a pure, transcendental self and an empirical self (Husserl after 1913), a person and a self (Scheler), a metaphysical self and the human soul (Wittgenstein in 1921), an objective self and a person (Thomas Nagel), a metaphysical and an empirical self (Kit Fine).[38] If we bear in mind the possibility that each of these may be either individual or collective, the number of options becomes dizzyingly large. Thus Stein rejects, as we have seen, the idea that there is any sort of collective self but she endorses a collective personality made up of the we experiences of individual selves.[39] By far the most baroque taxonomy is due to Scheler, who distinguishes not only between persons and selves but also between individual and collective persons (*Gesamtpersonen*, *Kollektivpersonen*), as well as individual and collective selves, each of which is either *social* or *intimate*, and goes on to claim that none of these categories is empty.[40]

We may distinguish a wide and a narrow conception of what it is to be a social person. On the wide conception, a social person is a person whose intentional acts and states are other-directed. Then one who loves and hates others is a social person. On the narrow conception, to be a social person is to be the author of social acts – of promising, orderings, questions, declarings etc. – acts which, with some exceptions, are not only other-directed but addressed to others and require uptake. Thus the notion of a social person is understood in terms of the notion of a social act.

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[36] Walther 1923, 70.

[37] Stein 1922, 120–1.

[38] Cf. Baldwin 2013.

[39] Stein 1922, 121.

[40] Cf. Scheler 1966; Denninger 1967. Scheler's distinction between social and intimate persons and social and intimate selves is a development of William James' eloquent account of the distinction between social and non-social selves. On corporate or collective persons cf Scruton 1989. Reinach (1989, 266–7) is agnostic about collective persons.

A collective social person, then, would be something like a state or a company which, although not any individual person, is capable of promises and orders.

The choice between individualism – there are only individual persons or selves – and collectivism – there are individual *and* collective persons or selves – is in part a function of one's view about what it is to be a person or self. This trivial observation is often overlooked.

Suppose one thinks that there are individual persons or selves which are the *bearers* of intentional states and acts. One of the many versions of this view is Husserl's account of the pure, transcendental ego. On such a view, if there are collective persons or selves, then either these, too, are bearers of intentional acts and states or a quite different account of selfhood or personhood must be given in the collective case. The first possibility may well seem to be incredible. Even someone who has managed to persuade himself that he is or has a pure transcendental ego will presumably find it not quite as easy to accept that when he sings along in the choir of an evening he and the other individual transcendental singing egos are to be distinguished from some collective transcendental ego, the author and bearer of the collective activity of singing along together. The second possibility, that quite distinct accounts of selfhood or personality have to be given in the individual and the collective case looks unacceptably ad hoc.

Suppose, then, we reject the assumption that that there are individual persons or selves which are the *bearers* of intentional states and acts without rejecting the view that there are persons or selves. One alternative is the view that persons or selves are *unities* of intentional acts or states but not any sort of bearer of these. This sort of view traces its ancestry back to Berkeley and Hume. The most thorough version of it with which I am acquainted is due to Scheler, who takes persons to be unities of mental acts or states and selves to be unities of psychological functions.[41] A collective person is then a unity of those unities which are individual persons, which are in their turn unities of mental acts and states. *There is, then, no bearer of or behind the acts of an individual person.* Nor is there any bearer of or behind the acts of a collective person. Nor is there any bearer of or behind the acts of a social, collective person. This sort of view, then, sidesteps what may seem to be the greatest weakness of many collectivist or holist views, the implausible claim that collective intentionality inheres in some non-individual bearer.[42] It is a view which, of course, faces many other problems. In particular, the notion of a unity of mental acts, although perhaps less mysterious than that of a substantial ego, is in need of clarification.

What is the relation between intentionality, collective or singular, and persons or selves? If, as we have seen, persons, selves or subjects can be thought of either as the *bearers* of intentional acts and states or as *unities* thereof, it will be useful to have a term for the relation which is neutral between these two options. Let us say that acts or states *depend* on subjects. The nature of this dependence will depend on what sort of things acts and states displaying the property of intentionality are. Fortunately, for present purposes, Searle and the early phenomenologists agree that

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[41] Cf. Baldwin 2013.

[42] Cf. Scheler 1990, 49.

it is essential to such acts and states that they possess two intrinsic features, *modes* and *contents*. Thus Searle says:

> We can represent the distinction between intentional type and propositional content with the notation "S(p)". For example I can believe that it is raining, fear that it is raining, or desire that it be raining. In each of these cases I have the same propositional content, *p*, that it is raining, but I have them in different intentional types, that is, different psychological modes: belief, fear, desire, and so on, represented by the 'S'.[43]

2.4.1 Singular vs Collective Modes

How should the distinction between modes and contents be understood in the case of collective intentionality ? "How", Searle asks, "can we represent" collective intentionality "in our canonical notation for representing the structure of intentionality"? Here is part of Searle's intriguing and subtle analysis of the case where we are trying to start a car engine, I, by pushing the car, and you, by letting the clutch out at the right moment:

> ia collective B by means of singular A (this ia causes: A car moves, causes: B engine starts).
> In English this is to be read as: I have a collective intention-in-action B, in which I do my part by performing my singular act A, and the content of the intention is that, in that context, this intention-in-action causes it to be the case, as A, that the car moves which, in that context, causes it to be the case that B, the engine starts. Notice furthermore that the free variables "B" and "A" are bound inside the bracket by the verb phrases "car moves" and "engine starts," that follow the respective letters.[44]

The phenomenon described here by Searle is a phenomenon Husserl also attempts to understand. Like Searle, Husserl distinguishes between prior intentions and intentions-in-actions, between "willing in the sense of deciding to *F* (*Wollen im Sinne des Sich-zu-etwas-Entschliessen*) and willing in the sense of acting willing (*handelndes Wollen*), for example, in the execution of decision taken earlier".[45] Husserl attempts to describe one type of collective intention in action as follows:

> I bring things about through the will of another person in the sense that the aim of my will lies in the aim of the will of the another person, in the sense that I want to realise my aim through his willing and acting (personal union in the unity of shared willing (*Gemeinschaftswillens*)).[46]

As far as I am aware neither Husserl nor any other phenomenologist attempts, as Searle does, to give a precise description of the role of modes in the case of collective intentionality. But given their understanding of the mode-content distinction the phenomenologists would, I suggest, have raised a number of questions about and objections to Searle's account.

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[43] Searle 2010, 27.

[44] Searle 2010, 52–3.

[45] Husserl 1988, 103, cf. 110.

[46] Husserl 1973b, 194–5, cf. Stein 1970, 172–4.

One of these objections is that Searle's account of the mode of collective intentionality suffers from the problem of mode overload. According to Searle, we must distinguish in his example between mode and content as follows:

Mode: ia collective B by means of singular A
Content: (this ia causes: A car moves, causes: B engine starts).

The mode of collective intentionality as Searle understands it, the phenomenologists might well object, has too much complexity and it does not have the right sort of complexity. The problem is not that the mode of collective intention in action is psychologically complex. There are perhaps simple psychological modes – belief, desire, willing. And there are perhaps psychologically complex modes – for example, fear, given one view of emotions. None of the examples given to illustrate the notion of a psychological mode in Searle's account of non-collective intentionality seem to display non-psychological complexity. But this is not true of Searle's account of the psychological mode peculiar to collective intentions in action.

The *first aspect* of mode overload is this: Searle seems to be committed to a distinction between the mode of singular intentionality and the mode of collective intentionality:

intention-in-action$_{singular}$ ()
intention-in-action$_{collective}$()

In an entirely similar way, one might want to distinguish: judge$_{singular}$ () vs judge$_{collective}$ (), or fear$_{singular}$ () vs fear$_{collective}$ () and so on. Now a mental or psychological mode is an episode, a state, or a trope, or a dimension or aspect of one of these. It is a non-repeatable, dependent entity. It depends on or requires a content, propositional or, the phenomenologists would add, non-propositional. It also depends on a subject, self or person, a relation or tie which, as we have seen, can be understood in two very different ways. It is therefore doubly incomplete. The fact that a mode depends on this or that brain or person is not part of the mode. The only possible parts of mental modes are other mental modes.

However, the fact that a particular mental mode depends on this or that brain or person *is* indeed a relational property of that mode. And there is no objection to describing the mode in this way. Unfortunately, and this is the *second aspect of mode overload* in Searle's account, if a mode is a collective mode then it seems that it depends on more than one brain or person or subject; it is the mode of a plural brain or a plural person. This is acceptable to collectivists. It is indeed one of their core claims. But it should not be acceptable to individualists like Searle, Stein or Walther.

Can a mental mode (re)present anything? No. Only content (re)presents. This is the view of all the phenomenologists. And it is, I think, Searle's view. Contents can, so to speak, be coloured judicatively, doxastically, affectively and conatively. But

the judicative (affective, conative…) colouring of a content does not present or represent anything.[47] Searle however says:

> In collective intentionality I have to *presuppose* that others are cooperating with me, but the fact of their cooperation is not part of the propositional content of my part of the collective intentionality*; rather, it is specified in the form of the collective intentionality, outside the brackets*. The expression "collective B" implicitly expresses the presupposition that in performing act A I am not acting alone but as part of a collective.[48]

The word "presuppose" here presumably ascribes some intentional act or state which itself has a mode and a content. Its content, that other are cooperating with me, is, as Searle says, not part of the content of my part of the collective intentionality. But this content is not part of any mode either, since modes do not represent. No mode can express any presupposition. Modes do not represent or present anything. They simply qualify content. If the *specification of a mode* refers to a presupposition that others are collaborating with me, it refers not to any intrinsic feature of the mode but to a further representation or belief. And indeed Searle gives as a further condition on collective intentionality:

> Bel (my partner in the collective also has intentions-in-action of the form (ia collective B by means of singular A (this ia causes: A clutch releases, causes: B engine starts)))
>
> In ordinary English, this extra clause reads as follows: I have a belief to the effect that my partner in the collective also has intentions-in-action of the same form as mine, namely, to achieve a collective B by means of a singular A, in his case to release the clutch, as A, which in that context causes it to be the case that the engine starts, as B[49]

Now if individualism about collective intentionality requires this condition, then we may wonder whether this account still rejects the mutual belief or mutual knowledge account of collective intentionality. It is true that, as Searle points out, the belief just described is not part of the content of an intention-in-action but it is part of the account given of collective intentionality. And if modes do not represent, this belief and its content do not belong in the direct specification of any mode. This, the phenomenologists might say, is the *third problem* of mode overload in Searle's account.

There is a fourth possible problem. Searle, as we have seen, puts *in order to/by means of* into the mode of an intention in action. This, too, it might be thought, is to overload mental modes.

"In order to" and "by means of" are connectives. Like "because", they are connectives not dealt with by elementary logic. (Indeed Frege mentions that a logic of "in order to" is a desideratum). The different connectives correspond, Husserl thinks, to different mental operations, "intentional connectives", such as disjoining, conjoining, colligating (grouping) but also judging within the scope of a supposition (conditional judging as opposed to judging the content of which is conditional) and judging, emoting, desiring, acting on the basis of the fact that *p*. Husserl's

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[47]According to Brentano, my judging contains a perception of my judging. The perception itself contains a presentation and the mode of perceiving. But this mode does not present or represent.

[48]Searle 2010, 53, emphases mine – KM.

[49]Searle 2010, 53.

account seems to imply that mental phenomena comprise not only modes, token contents and non-intentional sensations but also such mental operations. A mental operation does not represent, it is no content. One might think that it is not any sort of mode for it connects modes and so, too, their associated contents. Husserl sometimes calls them "synthetic acts". It is not clear to me whether Husserl always thinks that such synthetic acts have modes. Perhaps he thinks that there two types of mode, one comprising modes such as judging, remembering and desiring, and the other comprising conditional judging and desiring, the conjoining of judgings and plural emotions. If so, then he would presumably agree with Searle's view that "by means of" belongs to the direct specification of certain mental modes. Perhaps Searle can accept Husserl's friendly suggestion that there are intentional connectives, for he accepts the category of implicit connectives:

> [W]e already have an implicit sentence connective when we *conjoin* two sentences in the speech act. If I say "It is raining. I am hungry", I have already said something equivalent to "It is raining and I am hungry".[50]

One may also think, as already noted, that synthetic acts do not have any mode of their own; after all operations connect modes and so, too, contents.[51]

2.5 States, Corporations and Social Acts

Searle and the phenomenologists agree that declarations can bring into being social entities. As we have seen, they do not understand declarations in quite the same way. A more important difference is that Searle grants to declarations a much greater role than do the phenomenologists.[52] One exception to the general rule is provided by Stein's account of the role of social acts in the genesis and functioning of states. As we shall see, her individualist account of states differs in various ways from Scheler's anti-individualist view that a state is a collective person.

Stein's account of the state is given almost entirely in terms of certain social acts – of enacting or decreeing, orders, in particular conditional orders, and the category of representative or proxy social acts. A state is the author only of social acts and acts only through individual persons:

> The state can only perform acts through persons who represent "it", who perform acts on its behalf.[53]

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[50] Searle 2010, 79, emphasis mine – KM.

[51] For Husserl's account of intentional connectives and synthetic acts see, for example, Husserl Ideen §118, §121; on this account, cf. Mulligan 2010.

[52] Thus in her account of the way in which associations and societies are founded Stein does not refer specifically to social acts such as declarations (Stein 1922, 230).

[53] Stein 1970, 313, cf. 325, 348; on the orders and declarations of states, cf. 322; on conditional orders cf. 317. For Reinach's account of conditional social acts, cf. Reinach 1989, 163. Conditional social acts are operations but, unlike the mental operation of conditional judging already mentioned, they are essentially linguistic operations.

The state acts through its representatives, the state is the subject of its acts. In this way it can determine, order, enact, promise, commit itself etc… Can one say…that the state think, deliberates, bears a grudge, mourns etc..? Clearly here we have no more than a mere façon de parler.[54]

Ordering and enacting belong more indissolubly to the life of a state than any other act.[55]

All acts..which belong to the specific domain of the state [are] social acts.[56]

Representative social acts are acts performed by individual persons either in the name of other individual persons or in the name of non-personal entities. In the former case, an individual person grants another individual person the right to make promises, or give orders in his name. The act of granting such rights is itself a social act, as Reinach had pointed out:

If a person appoints another person as her representative, she creates in the second person a jural power, the possibility to perform jurally effective acts.[57]

And "no person can transfer to another the proxy performance of acts unless she is herself capable of performing such acts".[58]

A non-personal entity however cannot grant such rights. How, then, does an individual person acquire the right to act in the name of a state ? Stein introduces a distinction between representative social acts on behalf of x which are *in accordance with the sense or spirit of x* and those which are not. An individual person has the normative power to act on behalf of a state only if his acts are in line with the sense of the state. This condition plays the same role in the case of acts on behalf of non-personal entities as does the social act of granting the right to represent in the case of acts on behalf of individual persons:

But just which acts can in principle be performed in the name of the state is prescribed by the sense (import, spirit) of the state. It would be senseless to "forgive" a criminal in the name of the state. But to exempt him from punishment is something which makes sense.... What is not in the spirit of the person represented cannot be considered as proceeding from him. That statesmen do many things "in the name of the state" which are not in accord with the spirit of a state is no objection to this… connection. It is quite possible that such acts come to have just the same practical effects that they would have if they proceeded from the state: the citizens do not realize....that they are obeying not the state but the individual persons who are the state's representatives.[59]

There is a delimitation of the power to represent of the representatives of the state by the sense of the state.[60]

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[54] Stein 1970, 325.

[55] Stein 1970, 323.

[56] Stein 1970, 325.

[57] Stein 1970, 347.

[58] Stein 1970, 348.

[59] Stein 1970, 348, cf. 322, 347–52, 383.

[60] "Abgrenzung der Vertretungsmacht der Staatsrepräsentanten durch den Sinn des Staates" Stein 1970, 347.

Is the idea that the sense, import or spirit of x can prescribe acts which can be performed in the name of x not a mere *ad hoc* stipulation devised to solve the problem that a state cannot grant in its own name any individual person the right to represent it?[61] Stein points out that we proceed in a similar way in the case of proxy acts on behalf of non-personal entities other than states, such as corporations and children and the mad:

> The phenomenon of proxy acts is the foundation of the ability of non-personal entities [foundations, corporations, children, the mad] to have rights.[62]

In an unusually obscure but crucial formulation she says:

> The state [a non-personal entity] is constituted by a [social?] act of self-positing by the sovereign executive power…To posit oneself as the sovereign executive power is to posit oneself as a representative of the state and is an act performed in the name of state.[63]

Is this account of the coming into being of a state not circular? Stein perhaps intends to avoid the charge of circularity thanks to her distinction between states and jurally constituted states; it is not, she thinks, the case that every state has "constituted itself as a sovereign power". The proxy social acts in the sense of and in the name of a state constitute states "in the full sense of the word" but are performed in the sense of and in the name of a state which is not yet so constituted but has come into being thanks to spontaneous, non-intended behaviour.[64]

As we have noted, Stein, in contrast to Scheler, thinks that the concept of collective persons is empty. But in many respects Stein's account of states is not very different from Scheler's account. For according to Scheler states are collective persons which are exclusively social persons but not also "intimate persons" (unlike

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[61] The category of acts in the spirit of x (*dem Sinne gemäss*) is closely related to but distinct from the category of rational lawfulness, the lawfulness of reason (*Vernunftgesetzlichkeit*) which Stein elsewhere distinguishes from essential lawfulness (*Wesensgesetzlichkeit*) – what holds in virtue of the essence of something:

> …there are rational laws (*Vernunftgesetze*) for feeling, willing, and acting…as well as for thinking. Axiology, ethics, and "Praktik" take their places beside logic. This rational lawfulness is to be distinguished from essential lawfulness. It lies in the *essence* of willing that willing is motivated by feeling (*ein Fühlen*). An unmotivated willing is therefore an impossibility (*ein Unding*). It lies in the *sense* of willing (which posits something as to be realized) that it is directed to what is possible, i.e. realizable, one can rationally only will the possible. But there are irrational people who do not care whether what they have recognized as valuable is realizable or not…who attempt to make the impossible possible. Pathological psychological life shows that what contradicts rational laws is in fact (real) possible for many people (Stein 1980, 108, cf. tr. 88)

The distinction between what does and does not lie in the sense of e.g. willing is a distinction between what is and is not appropriate or rational. But appropriate and inappropriate willings are willings. A social act which purports to be in the name of x but is not in the spirit of x is not in fact a social act in the name of x. Thus Stein uses "sense" with two different meanings.

[62] Stein 1970, 332.

[63] Stein 1970, 334.

[64] Cf. Stein 1970, 356, 358.

the Roman Catholic Church or the German nation....). States are imperfect collective persons. Stein refuses to say that a state is a person. But she notes:

> The application of the term "person" to whatever is a holder of rights is an extension of this concept… *This extension can be justified if all holders of rights who are not genuine persons are founded in some form or other in genuine persons* and possess with these genuine persons the ability to perform free acts thanks to this relation of foundation.[65]

2.6 Powers, Jural and Deontic, and Justice

At the heart of Reinach's pure theory of right and his philosophy of social acts is his account of what he calls jural powers. At the heart of Searle's social ontology is his account of deontic powers. Searle, Reinach and other phenomenologists agree that it is important to distinguish normative notions which are and those which are not ethical or moral. In order to get to the heart of these two points of agreement, I put forward a fairly uncontroversial extension of the notion of social person already introduced and outline an answer to a question discussed by Reinach and Searle – what is the relation between promising and the obligation it creates ? The answer outlined employs the idea that persons have jural or deontic powers although it is not an answer given by either Reinach or Searle.

Searle says of the status functions created by declarations that these all:

> carry…"deontic powers". That is, they carry rights, duties, obligations, requirements, permissions, authorisations, entitlements, and so on.[66]

Amongst the bearers of status functions there are persons or person-like entities: presidents, professors, kings, limited liability corporations, comrades, universities and sports teams.[67]

Consider the claim introduced above to the effect that every person is a social person, where a social person is simply a person insofar as he is capable of being the author of social acts. This is in fact a specification of Reinach's view that every person who masters a natural language has what he calls jural, non-natural powers:

> a jural power (*ein rechtliches Können*) is an efficacious power over the jural social relation.[68]

> A person can promise, convey obligations, assume them, and do many other such things. Of course the essential point is not that persons are capable of performing these acts; for we are not concerned here with this ability as a natural power but with the fact that *effects in the world of right, such as claims and obligations, immediately arise from the performance of these acts.* This gives evidence of a jural power which cannot be derived from any other jural ability but which has its ultimate origin in the person as such. We speak here of the

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[65] Stein 1970, 334, emphasis mine – KM.

[66] Searle 2010, 8–9.

[67] Searle 2010, 7, 97, 104, 123.

[68] Reinach 2012, 33–4.

fundamental jural capacity or power of the person *(das rechtliche Grundkönnen der Person).*

.....every person as person has the jural power to produce, modify, etc. rights and obligations through his own social acts.[69]

Thanks to social acts such as declarations a person may acquire some jural powers. But

[s]ocial acts such as granting or transferring and the like cannot possibly function as the ultimate source of jural power, for these acts, insofar as they have immediate effects in the world of right, are themselves always made possible by jural power, and this more basic power must ultimately have some other source if we are to avoid a fallacious *regressus in infinitum.* Such an ultimate source is in fact present in the person as such.[70]

Social persons, we may say, are either thin or thick. A *thin social person* may and can apologise, promise, accept promises, order, ask questions, answer questions, inform, grant, request, submit himself, thank, etc. A person who masters a natural language is a thin social person. But it also seems natural to say that all of the following are *thick social persons*:

a CEO, (non-biological) daughter, (non-biological) father, husband, judge, lawyer, policeman, President, Prime Minister, professor, queen, Rector, soldier, spouse, (one of the) unemployed....

What is the relation between thin and thick or substantial social persons ? Many of us are thin social persons. Not every thin social person is one of the thick social persons in my list. Must every thin social person be a thick social person? Typically, every thin social person is one or more thick social persons. And every thick social person is a thin social person.[71]

We characterised thin social persons in terms of the power to perform social acts. One dimension in which social acts vary is at the level of content. One important property of thick social persons is that they can be characterised and distinguished in terms of social acts with *quite specific kinds of deontic content* or in terms of specific kinds of social act:

If x is a judge, she can and may condemn someone to death
If x is a Prime Minister, he can and may dissolve the government
If x is a King, he can and may declare war
If x is a CEO, he can and may petition for bankruptcy
If x is a priest, he can and may baptise

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[69] Reinach 2012, §7, 86 (my trans. – KM); on natural powers vs jural powers cf. Reinach 1989, 174, 2012, 33; on the relation between social acts and language cf Reinach 1989, 160, 177.

[70] Reinach 2012, 80 f. Scheler makes the ability to promise an essential feature of personhood (Scheler 1966, 473–4).

[71] Social persons have an axiological counterpart in value persons, not merely the types distinguished by Scheler – saints, heroes, statesmen….. – but also, for example, friends and hunks, fools, traitors and yobs.

Thus in part the characterisation of thick social persons employs *specifications* of the social acts peculiar to all social persons. The deontic or jural powers of different specific types of thick social persons are specifications of the deontic or jural powers of thin social persons. Many non-politicians are capable of the social act of resigning from an organisation. Only a certain sort of politician can tender his resignation from a cabinet. Different kinds of thick social persons can also be distinguished by reference to types of action other than social acts:

If x is a professor, x can fail a student
If x is a judge, x can give reasons for his verdict

What makes an individual person a particular thick social person ? First, social acts of declaring or enacting, social acts of granting different types of jural powers – the power to promise, order etc. in my name, the power to revoke a promise, and social acts of submitting to declarations or enactments – just the social acts identified by Reinach. But, secondly, these different social acts must have the quite specific deontic contents peculiar to the different types of thick social persons. As Reinach says:

> We designate this social act…of granting as the conferring of the power of representation… The content of this act can be specified very variously.[72]

What sort of claims, rights and obligations are the claims, rights and obligations created by social acts performed by persons enjoying deontic or jural powers? Searle points out that

> [t]here are deontologies without institutional facts (I am, for example, under a moral obligation to help people who are in desperate need of immediate help and whom I am able to help), but there are no institutional facts without some form of deontology.[73]

Is this institutional deontology ethical or moral? Stein says of the example given by Searle:

> If I refuse to a person in need help I can give, then this is ethically wrong but it is not wrong in the sense of pure right (im sittlichen nicht im Rechtssinne "unrecht").[74]

The same claim had been made in more general terms by Reinach:

> Through [declarations] something is posited: it ought to exist; this positing character is relative to the positing acts and there is no independently existing being which runs parallel to it and to which it has to correspond. [I]t is especially *easy to confuse this ought with the objective [ethical] ought-to-be*, it is nevertheless clear that this latter ought, grounded as it is in moral value or moral rightness, has nothing to do with the positing character which exists only as the correlate of the enacting acts of a person…[*The ethical ought-to-be*] is independent of positing acts of any kind; [the ought-to-be] constituted in acts of declaring presupposes the efficacy of the enacting acts. The former is valid under all circumstances, the latter is valid only for the persons for whom the enacting act is efficacious.[75]

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[72] Reinach 2012, §7, 87.

[73] Searle 2010, 91.

[74] Stein 1970, 386.

[75] Reinach 2012, 109.

The arguments given by Reinach here will not convince everyone. But he also has an argument which is independent of the argument to the effect that ethical *oughts* are grounded in moral value or moral rightness:

> Ethical…rights *(Berechtigungen)* and duties are [to be] distinguished as sharply as possible from the rights and obligations of social transactions *(Verkehrsrechte)*….[T]he inability to transfer and to be transferred…is intrinsic to moral rights and duties.[76]

I cannot transfer my moral rights or duties. But I can transfer the non-moral obligation to transfer money to Maria created by my promise to do so. I can transfer this obligation to Sam, provided he agrees. Reinach notes that one may think that one has a moral obligation to do what the non-moral obligations created by one's promises entail.

2.6.1   From Is to Obligation vs from Jural Powers to Obligation

Promises create claims and obligations. In the essentialist terminology Reinach inherits from Husserl: "In the essence of promising, claims and obligations are grounded".[77] That is,

If x promises y to F, then necessarily y has a claim on x and x an obligation towards
    y – in virtue of the nature of promising

Predications of essence, think Husserl and Reinach, like Kit Fine more recently, entail predications of necessity but are not to be confused with these. Should Reinach's claim be understood as a claim to the effect that an *ought* follows from an *is*?[78] Or is there something essentially deontic about promising ? (This question resembles a question we may raise about thick social persons. A judge may perform certain actions which non-judges may not perform. Is the property of being a judge or a corporation simply a bundle of certain permissions and obligations?[79]) Against an affirmative answer to this question is the fact that we want to say that a certain person (or corporation) may do this or that *because* he is a judge (it is a corporation).

Reinach's account of jural powers suggest an alternative. The ability to promise is not a merely natural ability, it is a jural power, a *Rechtskönnen*, a non-natural property. Every person has this jural ability in virtue of his personhood. It is not transferable. That, we might think, is why the link between promising and *ought* is

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[76] Reinach 1989, 221–2 (my trans. – KM). Cf. Hildebrand 1954.

[77] Reinach 1989, 188–9 (my trans. – KM).

[78] Cf. Searle 1968.

[79] Husserl, for example, says of a group which is a "higher-order person" that it is "a bearer of functions", "a system of duties and rights" (Husserl 1973a, 104, 105), a connexion of "functions and duties" (Husserl 1973b, 182).

really a link between something which is in part non-natural and something non-natural:

> If *x* promises to *y* to *F*, then necessarily *y* has a claim on *x* and *x* an obligation towards *y* – in virtue of the nature of promising and of the nature of the jural power of *x* which makes this promising possible.[80]

Reinach's distinction between ethical and non-ethical rights and obligations, like Searle's distinction between ethical and institutional deontology, is controversial. But they are both committed to a distinction which is even more controversial and which belongs to a distinctive way of thinking about the social world according to which there are rights and obligations which are prior to positive law, which are pre-legal. This way of thinking comes in at least three very different flavours.

One variant is the account given by Hayek in *Law, Legislation and Liberty* and (Hayek's) Hume.[81] Hume (in the section "Of the Origin of Justice and Property" in the *Treatise*) refers to the three rules concerning "the stability of possession", its "transference by consent", and "the performance of promises". They are the result of a long process of evolution. They are "antecedent to government". They are "artificial" but do not owe their existence to particular intentions. They are not the creations of positive law and legislation aims to improve these rules.

Another variant is the theory of right of the phenomenologists. As we have seen, this theory is concerned in the first place with the structure of what Reid – but not Hume – called social acts, such as the transference of possession by consent and promises. Another part of the theory concerns the relation of ownership and the rights grounded in the nature of this relation. As the phenomenologists see things the structures which are described by the pure theory of right and wrong (*Recht* and *Unrecht*) make true propositions which are *a priori* and analytic or synthetic. They are not, the phenomenologists think, the result of any process of evolution. One application of the distinction between pure right and positive law, endorsed by many phenomenologists, furnishes an account of justice. The activity of the legislator and its result, legislation, and states themselves are *just* (*gerecht*) to the extent that they reflect and respect pre-legal rights and obligations:

> …if a positive *Rechtsordnung* is to be just it must satisfy the essential propositions which found all possible law (*Recht*).[82]

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[80] Reinach may seem to be objecting to something like this account at (Reinach 1989, 188–9) but in fact he is here objecting to introducing anything inessential to promising, e.g. that the promisors are human beings, into an account of the essence of promising. There is an alternative to all the views mentioned of the nature of the relation between promises and obligations: the Moore-Fine view that promising *normatively necessitates* an obligation. Whatever the merits of this view it is not compatible with Reinach's claim that promising necessitates obligations in virtue of its nature since normative necessitation is not rooted in the nature of anything (cf. Mulligan 2009).

[81] Hayek 1966.

[82] Scheler 1966, 533.

> Whether a state is "just" or not is measured by whether positive law is right law (*richtiges Recht*), that is, corresponds to pure Right…[83]

> In the wider sense, a law, an arrangement, an established order of things can be "just", in so far as it tallies with the idea of the right [*des Rechtens*].[84]

In their accounts of justice Scheler, Stein and Hartmann all build on the pure theory of right and of social acts set out by Reinach in 1913,[85] in particular on his claim:

> It is not only false but ultimately meaningless to call jural entities and structures (*rechtliche Gebilde*) creations of the positive law.[86]

Reinach's claim is also at the heart of the legal philosophy of the current hero of Continental Philosophy, Carl Schmitt, who seems to have been one of Reinach's few early readers.[87]

The third variant in our family, by far the best known, is the traditional theory of natural law or natural right. The phenomenologists argue almost unanimously that it is a grave error to think of the propositions of the pure theory of right as part of any natural law. Natural law, Stein says, is merely an erroneous interpretation of pure right.[88] First, because the propositions of the doctrine of pure right are not made true by any natural phenomena.[89] Second, because, as we have seen, the central propositions of the theory of pure right have no ethical or moral content.[90]

The "rules of justice" of Hume and Hayek, like the social acts and jural relations of the phenomenologists are prior to positive law. Of course, the naturalist account of the rules of justice given by Hume[91] and Hayek differs absolutely from the essential connexions which constitute the world of pure right according to the phenomenologists. Searle, too, distinguishes sharply between the deontic structure of the social world, on the one hand, and those parts of institutional reality which

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[83] Stein 1970, 99.

[84] Hartmann 1962, 420, tr. Hartmann II p. 229, tr. modified.

[85] Reinach himself never says anything about the relation between the theory of right and justice. See his passing mentions of justice at (Reinach 1989, 146, 237, 255, 269).

[86] Reinach 1989, 143 (my trans. – KM). On Reinach on property, cf. Massin 2016, forthcoming.

[87] Schmitt 1914, 20, 76. Schmitt refers in his diaries to someone called „Reinach". His editor thinks the person referred to might be Théodore Reinach (Schmitt 2003, 249). Hermann Kantorowicz, the great historian of jural entities, was also an early reader of (Adolf) Reinach.

[88] Stein 1970, 342.

[89] Right, Schmitt asserts, is not natural law. It is "a natural law without naturalism" (*ein Naturrecht ohne Naturalismus*) (Schmitt 1914, 76).

[90] Schmitt, once again, agrees: Right and ethics (*Sittlichkeit*) "cannot contradict one another since they have nothing to do with one another" (Schmitt 1914, 67, cf. 56–60, 60–66).

[91] Hume says that what he call rules or laws of justice may be called "Laws of Nature; if by natural we understand what is common to any species, or even if we confine it to mean what is inseparable from the species" (Treatise/Green II 258).

are created by positive law. The latter comes with natural language, the former uses natural language in very specific ways.[92]

2.7   Primitive Certainty

Searle and the phenomenologists agree that collective acceptance and recognition are essential if social entities are to come into being and continue to exist. Perhaps the most important type of such acceptance is a particular type of certainty, ungrounded certainty. The philosophy of this type of certainty is developed by the phenomenologists from around 1913; its explicit application in social and political philosophy comes later. One distinction often applied in this philosophy is that between the background and the foreground. This distinction makes an early appearance in the philosophy of collective intentionality.

Whether or not one thinks that collective intentionality can be analysed in terms of mutual belief or knowledge there is a question about the nature of our awareness of one another in collective intentionality. Stein talks of being intentionally directed towards shared experience (*Intention auf das Gemeinschaftserlebnis*):

> We, who feel sad, feel sad in the name of the whole group....I am sad as a member of the unit, and the unit is sad in me.[93]

She adds that "to shared behaviour belongs an experiencing as shared".[94] But what sort of experience is this ? Walther makes an interesting suggestion: the awareness of ourselves, which is essential to collective intentionality, is typically a type of background awareness:

> To…an actual we-experience in the narrower sense there belongs: each of the experiencing subjects, in addition to the union with the experiencing…of the other(s)…is also aware… that the others on their side stand in this relation of union. But this does not mean that these subjects make of all this a *particular* object of an intentional experience or expressly establish this in knowledge, judgement etc.. There may well only be a *sui generis*, immediate awareness in the background of consciousness…[95]

Searle agrees: "I simply take it for granted, in that context, that if I do my part we will be trying to achieve the goal…"[96] What might background awareness or taking for granted mean here?

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[92] "So once we have an explicit language in which explicit speech acts can be performed according to the conventions of the language, we already have a deontology. We already have commitments, in the full public sense that combines irreversibility and obligation" (Searle 2010, 82, cf. 86). On Searle's views about the relation between language and social objects, cf. Tieffenbach 2011.

[93] Stein 1970, 123, 120.

[94] Stein 1970, 168.

[95] Walther 1923, 85, cf. 71.

[96] Searle 2010, 54.

Ungrounded or primitive certainty is one answer. This is the phenomenon Wittgenstein describes in *On Certainty*. His description was preceded by the accounts of primitive certainty, singular and collective, given by Husserl and Scheler and applied by José Ortega y Gasset to the understanding of social power and social objects. Where Wittgenstein says that there are propositions which *stand fast* for us, the phenomenologists like to talk of states of affairs *on* which *we count* and of non-theoretical acceptance or recognition.[97] Thus Stein points out that the "recognition" (*Anerkennung*) of a legal enactment "does not mean any theoretical agreement".[98] And Ortega writes:

> It is very difficult for a belief, in the precise sense I give to the word, to exist in the form of an individual belief or as the belief of a particular group. Belief … is normally a collective fact … [O]ne believes in common with others. Belief acts … in the form of what 'binds collectively'.[99]

Rules, norms, and customs usage enjoy collective primitive certainty and so constitute social power, he thinks.[100] And when the 'collective belief' that a form of political organisation is legitimate "cracks, then legitimacy weakens or disintegrates".[101] Just as a piece of paper is a twenty dollar bill thanks to a declaration, so too a state only continues to exist if it is taken to be legitimate. How should "taken to be" be understood ? Searle says that the power of governments and states "is a system of status functions and thus rests on collective recognition or acceptance".[102] Collective recognition or acceptance, like collective belief, may be either critical and theoretical or primitive and naive, say the phenomenologists. In the case of the legitimacy of a state it is, they (along with many conservative and liberal conservative philosophers) think, the latter that does most of the work. Searle seems to agree:

> Nowadays I think that many of us think that only a rational justification of a political system is rationally acceptable. But I am struck by the fact that the better a political system functions (*marche*) the less any question of legitimation or justification is posed, and the more the existence and structure of the system are *taken for granted (pour argent comptant) as an integral part of the Background.*[103]

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[97] Cf. Mulligan 2006.

[98] Stein 1970, 310, cf. 314–5, 326, 340, 362.

[99] Ortega 1985a, 151.

[100] Ortega 1985b, 105 ff.

[101] Ortega 1989, 147. Cf. Ortega 1996.

[102] Searle 2010, 163, 161 fn. 12.

[103] Searle 2004, 105, emphases mine – KM Cf. Searle 2003.

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Chapter 3
Legal Reality and its A Priori Foundations – a Question of Acting or Interpreting? Felix Kaufmann, Fritz Schreier and Their Critique of Adolf Reinach

Sophie Loidolt

Abstract What kind of reality is legal reality, how is it created, and what are its a priori foundations? These are the central questions asked by the early phenomenologists who took interest in social ontology and law. While Reinach represents the well-known "realist" approach to phenomenology of law, Felix Kaufmann and Fritz Schreier belonged to the "positivist" "Vienna School of Jurisprudence," combining Hans Kelsen's *Pure Theory of Law* with Edmund Husserl's phenomenology—and thereby challenging Reinach's views on how legal reality and the legal a priori were to be conceived. This paper addresses the controversy between these positivist and realist approaches to phenomenology of law, with the goal of introducing the lesser known theories of Kaufmann and Schreier. The special focus on their critique of Reinach's outline should give us an overview of their positions vis-à-vis the basic and a priori elements of which legal reality consists and the role that phenomenology plays in analyzing them. There is one general tendency to be noted: While the phenomenological legal positivists see the root of legal reality in an act of *interpretation* according to a "normative scheme of interpretation," Reinach locates the roots of legal reality in *social interaction* and argues for the existence of entities independent of any interpretation.

By looking at the differentiated answers that were proposed in these debates, we can gain valuable insights also for a contemporary phenomenological approach to social ontology, especially with respect to the constituents and prerequisites of legal reality.

Keywords Phenomenology • Phenomenlogy of law • Legal theory • Adolf Reinach • Pure theory of law

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What kind of reality is legal reality, how is it created, and what are its a priori foundations? These are the central questions asked by the early phenomenologists who took interest in social ontology and law. By looking at the differentiated answers that were proposed in their debates, we can gain valuable insights also for a contemporary phenomenological approach to social ontology, especially with respect to the constituents and prerequisites of legal reality. The debate that I am going to address in this paper belongs to a controversy encompassing different approaches to phenomenology of law that incorporate either positivist or realist elements. The first, founding, and still most famous contribution to phenomenological theories of law is Adolf Reinach's book *The A Priori Foundations of Civil Law* from 1913, which set standards for how to think about social acts and the claims and obligations that follow from them. Wilhelm Schapp and Edith Stein both continued Reinach's unfinished[1] work. They supported his main thesis that the social act of promising created certain "legal entities" (*rechtliche Gebilde*) of claim and obligation which existed independently of their conscious apprehension and which constituted the basic formations of law. A less known group of theorists of law who also called themselves "phenomenologists," belonged to the "Vienna School of Jurisprudence" *(Wiener rechtstheoretische Schule)*: Felix Kaufmann, Fritz Schreier and, to a certain extent, Alfred Schutz. They combined Edmund Husserl's phenomenology with Hans Kelsen's *Pure Theory of Law* in order to address the questions raised above— and they challenged Reinach's views on how legal reality and the legal a priori were to be conceived.

The goal of this paper is an examination and evaluation of Kaufmann's and Schreier's theoretical approach with a special focus on their critique of Reinach's outline. This should give us an overview of their positions vis-à-vis the basic and a priori elements of which legal reality consists and the role that phenomenology plays in analyzing them. There is one general tendency to be noted: While the phenomenological legal positivists see the root of legal reality in an act of *interpretation* according to a "normative scheme of interpretation" *(normatives Deutungsschema)*, Reinach locates the roots of legal reality in *social interaction* and argues for the existence of entities independent of any interpretation.

In the following, I will (1) first sketch out some of the main claims of Reinach's legal theory of special importance to the controversy that I want to describe and develop further. (2) In the second, larger part, I will present and discuss the very different picture the legal positivists had of legal reality, how they would make use of phenomenological tools in order to analyze it, as well as their main points of critique against Reinach. (3) The third part assesses the two different positions with respect to the questions of the legal a priori and the constitution of legal reality by taking into account the different methodological prerequisites in Neo-Kantianism

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[1] Reinach certainly finished his monograph on the "A priori foundations of Civil Law," yet further elaborations on public law or the relation between morality and law (cf. the fragment "Grundbegriffe der Ethik" in Reinach 1989) could have been expected, if Reinach had not died an untimely death. Stein and Schapp both understood their treatises on the state and the contract as continuations of Reinach's work (cf. Loidolt 2010, 111; 123).

and phenomenology. The aim of this reflection is to point to the interrelations between the paradigms of "interaction" and "interpretation" with respect to the constitution of social reality. This can give credit to both positions: The legal positivists can focus on the essence of the *legal* exclusively as an "objective scheme of interpretation." Reinach, in turn, can elucidate the ontological foundations that are created in a social world of interaction and that allow for a legal/normative interpretation in the first place.

3.1   Reinach's A Priori Foundations of Civil Law

Let me pick out three central theses from Reinach's legal theory that are of special relevance to the positivists' critique[2]:

(i)   The social act of promising creates the legal entities (*Rechtsgebilde*) of claim and obligation, which are the ontological source for the normativity we associate with these terms. Legal entities thus constitute an ontological a priori for law which can be spelled out in propositions. Since these propositions address essential features of and relations between legal entities, they are called eidetic propositions.

(ii)   Reinach's a priori theory of law is an alternative to both legal positivism and natural law (or law of reason): On the one hand, legal entities/structures or "formations" (*Rechtsgebilde*) exist independently of positive law. On the other hand, they are "simple laws of being" (*schlichte Seinsgesetze*) (Reinach 1983, 135; Reinach 1989, 273) and do not operate on the normative level of "just law."

(iii)   Positive law is the product of a social act as well, namely that of enactment (*Bestimmung*).

Putting Point (i) in a nutshell, Reinach's central argument is that *promising* belongs to a special group of acts which create social realities that are as real as houses or trees (cf. Reinach 1983, 4). These acts are called *"social acts"* and they differ from other things we can do, like thinking or working, in that they presuppose another person. In order to be a "successful" social act, the other person has to hear it (which implies that she can take notice of it at all). Reinach calls this condition the "need of being heard" (*Vernehmungsbedürftigkeit*). In the successful accomplishment of a social act, something like a pure Aristotelian actuality occurs: the reality of social contact takes place, e.g. in a plea, a command, a promise. It is important to see that this is a special kind of engagement in the world: In contrast to feeling pain in my back, or watching the tree in front of my window, or being busy hammering my bookshelf together, these acts not only present me with another mind, but practically involve me with others in the sense that we can act together in the world. This

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[2] For detailed accounts on Reinach's theory of law consider Crosby (1983), Mulligan (ed.) (1987), Burkhardt (1986), DuBois (1995), Loidolt (2010, 77–128).

not only means that we can build bookshelves together (i.e. create a physical thing) or that we can even write books together (create a physical thing which contains and instantiates ideal meaning), but also that *by our interaction*, we can create claims and obligations, bonds that bind our actions and that hold directly between us without being mediated by (or being able to be reduced to) a physical entity.[3]

The point is to take notice that we *can* actually oblige ourselves and that this obligation is not a mere feeling or convention, but a reality to which we can refer independently from our psychological or mental states. The power to do this (to oblige ourselves) is given to us by the *social act of promising*, which is central for Reinach's whole outline. His claim is that if a person gives another person a promise (e.g. to go for a walk with her the next day) and the other person notices and understands this promise *(des Versprechens innewerden)* (Reinach 1989, 169), then claim and obligation arise as two entities that are "out there" in the world like trees or houses. ("If a command is given or a request is made, something is thereby changed in the world." [Reinach 1983, 22]) Since claims or obligations are not perceivable realities like trees or houses, they must certainly differ in ontological status. Reinach compares them to mathematical entities, or rather, states of affairs: The state of affairs that $5 \times 3 = 15$ is also not dependent on my mental states or my mathematical capacities. Rather, it is a *correlate*—and not a psychological content—of my mathematical insight *into* this state of affairs, which very well exists without my personal insight. The crucial difference to mathematical states of affairs is, however, that *we* bring the mentioned social entities like claims or obligations *into the world* (by making promises) and, consequently, that they also have an existence in time which can end again, e.g. when a claim is fulfilled. By "bringing into the world"—to emphasize the point again—Reinach does not mean that we collectively delude ourselves into believing in something not there and that we put each other under emotional pressure to keep up this illusion, but rather he means that we actually create something real. Reinach thus ascribes a proprietary ontological status to the created entities: "they seem to be temporal objects of a special kind of which no one has yet taken notice" (Reinach 1983, 9).

What is also implied in Reinach's argument is that claim and obligation do not sometimes arise and sometimes not, but rather that it is an eidetic law that claim and obligation are created if the above conditions are met. This proposition is thus as valid as a mathematical proposition or the proposition that color never goes without

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[3] De Vecchi (cf. De Vecchi 2014) has developed an elaborate taxonomy of what she calls "heterotropic intentionality," which, in contrast to "solitary intentionality," involves at least two individuals. As sub-categories of heterotropic intentionality she distinguishes among collective, intersubjective and social intentionality: Collective intentionality is a mono-directed intentionality towards a shared object, intersubjective intentionality is a mono-directed intentionality towards experiences of other subjects, and social intentionality is a double-directed intentionality towards both other subjects and a common targeted object (De Vecchi 2014, 121f.). By the expression that "we can act together in the world" I address collective and social intentionality together, since I take them to often interrelate; by the expression "by our interaction we can create claims and obligations" I mean social intentionality exclusively which will also be the topic of the following considerations.

surface/extension (a "material a priori"). It is an *eidetic* proposition that Reinach also calls a synthetic judgment a priori in the Kantian sense: If a promise is given, claim and obligation arise.[4]

Now, this eidetic law of social interaction and social reality is fundamental for the possibility of legal reality. Positive law not only grows from this character of social reality (this is the genetic part of the argument), it necessarily has to refer to these basic legal entities as its ontological foundation and meaning-condition,[5] even if it can partly deviate from the basic eidetic laws (this is the transcendental part of the argument, which is the more fundamental portion): "The positive law *finds* the legal concepts which enter it; *in absolutely no way does it produce them*"[6] (Reinach 1983, 4; Reinach's emphases). This is how Reinach can speak of "a priori foundations:" They are "a priori" insofar they are necessary laws of social reality and social interaction and they are "a priori foundational" insofar we always implicitly refer to the meaning-structures that they create in our social world when we decide on a certain legal order.

As to Point (ii), how does this theory of law differ from the classical options of jurisprudence? These two classical options consist in the choice between natural and positive law: The former involves the claim that there is something like a divine law or a nature's law that is an eternal, just order that we should install as human positive law; the latter argues that the only real law that exists is positive law and that everything else is just morality. Reinach distances himself from both claims and thereby opens up a new, third way to think about law beyond the old dichotomy of superhuman, cosmically just law and human positive law. It is quite clear that "a priori foundations" are not positive, contingent, empirical laws. But could they be natural laws? Reinach denies this and argues with the difference between "is" and "ought:" A priori foundations are "simple laws of being" that do not formulate what is right to do and what we ought to do ("You ought to keep a promise"). The eidetic propositions simply claim that it *is* a fact/state of affairs that if I promise something (successfully), then I have an obligation. Instead of *pre*scribing something, they simply *de*scribe the ontology and logic of claims and obligations. "We do not speak of a higher law, but of simple laws of being"[7] (Reinach 1983, 135). It is a different question to how from this ontology, norms can arise; furthermore, it is also a

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[4] From this insight, other eidetic propositions follow (e.g. "a claim to have something done dissolves as soon as the thing is done" [Reinach 1983, 9]) which can be unfolded as a "deontic logic" (for an example of a full-fledged deontic logic cf. Gardies 1972).

[5] In the following, I will repeatedly speak of "meaning-conditions" or "meaning-foundations" *(Sinnbedingungen).* By this I intend to designate conditions which emerge with a certain type of basic experiences—in the given case experiences with social acts—by which certain formations of meaning are constituted. These formations of meaning are conditional insofar as they have to be already in play (and thus, at least taken "at face value" for once) to understand, judge or doubt basic normative relations like that of an obligation arising with a promise.

[6] *"Das positive Recht findet die rechtlichen Begriffe, die in es eingehen*, vor; es erzeugt sie mitnichten." (Reinach 1989, 143; Reinach's emphasis)

[7] *"Wir reden nicht von einem höheren Rechte, sondern von schlichten Seinsgesetzen."* (Reinach 1989, 273)

different question from how, according to Reinach, there are ideal norms of the ought which belong to the moral realm. Both of these issues do not have to be addressed in order to be able to discover an ontology that delivers the meaning-foundations of the legal. For natural law, by contrast, being substantial resides in being normative. Natural law prescribes how we should live and what we ought to do, because it is taken to be the real order of things. Reinach's approach, by contrast, describes what *follows* from our actions (social acts) in the sense that these actions have a certain logic like mathematical steps of calculation. This is what he calls *"das Apriori des sozialen Verkehrs"* (Reinach 1989, 146)—"the apriori of social intercourse" (Reinach 1983, 6).[8]

As to Point (iii) the question is: what is the status of positive law for Reinach? Again, he rejects classical theories of jurisprudence: Reinach neither accepts the very common view that positive law essentially consists of norms, nor does he agree with the positivists that legal propositions are hypothetical judgments (this question will be examined in the following subsection). The notion of norms, according to Reinach, is much too wide, since norms can have very different features: moral norms, for example, are not posited like positive legal norms, but are valid in themselves. Therefore, Reinach characterizes positive law not as a norm, but as special social act: the act of *enactment* (*Bestimmung*). Legal enactments are social acts that "posit their content in such a way that it ought to be"[9] (cf. Reinach 1983, 116). This is not to be confused with a command, which implies a *direct addressee* within its *content*, i.e. it intends somebody special and does not generally, anonymously prescribe something. This difference is also well articulated by the difference in language: a command usually uses the active form, while *Bestimmungen* are often issued in the passive. Certainly, a *Bestimmung* also implies addressees who take notice/hear it (otherwise it would not be a social act), but its content is impersonal ("Persons at 18 can drive a car"). This characterization of positive law allows for a precise description of how *positive law* itself can create a social reality, namely *by positing the content of legal enactments in such a way that it ought to be* (*seinsollend*). This is to be differentiated from the a priori foundations of law themselves that arise from social acts other than legal enactments. Enactments qua enactments can posit any content as valid, which is how it can come to deviate from the ontological laws pertaining to certain social acts themselves. This, however, does in no way affect the validity of the latter (cf. Reinach 1989, 252). Positive law qua legal enactments (which are social acts) and the a priori foundations of law can therefore refer to two very different matters. Still, positive law cannot produce its legal concepts, but, due to their origin, finds them in social acts.

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[8] It must be noted here that Reinach's comprehensive system of a priori foundations of law also contains elements that are not rooted in the a priori of social intercourse alone. These other basic phenomenological elements are: property, the person, and eventually, the "fundamental legal capacity or power of the person" which "forms the ultimate foundation for the possibility of legal-social relationships" (Reinach 1983, 81). Cf. Reinach 1983, §§5–6. For a critical evaluation of this shift from a priori foundations in social acts/interaction to other elements cf. Loidolt 2010, 94–104.

[9] "*Rechtliche Bestimmungen setzen als solche ihren Inhalt als seinsollend.*" (Reinach 1989, 252)

3.2   The Phenomenological Legal Positivists and Their Critique of Reinach

Felix Kaufmann and Fritz Schreier are in search of a legal a priori in the same manner as Reinach, and like him they use phenomenological methods such as "eidetic intuition"[10] and analyses of intentional acts to achieve their goal. Yet, their opinion of what law is about and of how it can be theoretically conceived differs substantially from Reinach's view. Although Kaufmann and Schreier do not seem to be opposed to the project as such, they do not see social ontology as a possible basis for determining the essence and a priori of *law*. This roots in their conviction that legal science is missing its very point when it refers back to something other than law itself (i.e. social relations). Law, as they see it, is given in the *phenomenon of positive legal orders*. Legal science should thus conceive of the *structure* of such orders and *determine it in its formal elements and logical grammar*.

Kaufmann and Schreier were deeply impressed by Husserl's *Logical Investigations* and also developed much of their methodology from this founding work of phenomenology. At the same time, however, they belonged to the "Vienna School of Jurisprudence" *(Wiener rechtstheoretische Schule)*, which was established by Hans Kelsen and which was deeply influenced by his "Pure Theory of Law" *(Reine Rechtslehre)*. This unusual combination created a new branch of phenomenology of law[11] that in many ways departs from Reinach's framework. Let me recall some of the main points of Kelsen's theory of law that were relevant for Kaufmann and Schreier before I turn to their own elaborations and critiques of Reinach: According to Kelsen, law consists of legal norms which prescribe a certain behavior. What makes them *legal* norms is how they are generated. In contrast to moral norms, the normative content of these norms is reinforced by a legal coercive consequence, which is carried out by the state which is itself defined as a system of norms. Law is thus a body or system of coercive norms, which is generated according to a highest norm, the constitution. It regulates human behavior within a society by making this behavior the content of its norms and by attributing a coercive act in the form of a legal consequence (*Rechtsfolge*) to its norms in the case of noncompliance (cf. Kelsen 1967, 30–54). (In contrast to Reinach's critique that the notion of norms in Kelsen's theory is much too wide, we have quite a specific theory here as to what "legal" norms specifically are about.)

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[10] In *Ideas I* (Husserl 1976, §7) Husserl explains "eidetic intuition" by referring to the everyday practice of the geometrician (and everyone who engages with geometry) who never *empirically sees* "the triangle" and its geometric relations, but who intuits the eidetic structure that underlies this specific drawing (or phantasy) of a triangle. Likewise, the phenomenologist does not focus on the one promise that might be empirically given as a matter of fact, but on the essential structures that make it a promise. This neither means that this insight is infallible, nor that intersubjectivity doesn't play a decisive role in validating it. It only claims that intuition of or insight into eidetic structures is needed as much in philosophy as it is needed, e.g. in geometry.

[11] For an overview of the positions in phenomenology of law, cf. Loidolt 2010.

Now, what Kelsen is interested in is a "legal science" *(Rechtswissenschaft)*, which captures only the pure elements of which law consists and does not mix it with other areas like politics or moral orders, which might have influence on the *content* of legal norms but not on their very *specific legal structure*. In contrast to a less theoretically oriented legal positivism that deduces the legal "ought" from the powerful "is" of a social authority (a naturalistic fallacy in Kelsen's view), Kelsen strictly separates the regions of "is" and "ought" and asks for the condition of the possibility of how legal orders can be conceived of *as* legal orders. This move not only reveals his Neo-Kantian influence; it also shows that he focuses on the epistemic question and not the ontological. Kelsen's answer is that the basic prerequisite for all knowledge about a legal order is *taking something* as a legal norm[12]: The transcendental condition for conceiving a system of norms as valid is thus a certain *interpretation* of the world as is which institutes a world as ought. This leads to Kelsen's (in)famous hypothetical supposition of a "basic norm" *(Grundnorm)* which is "fictive and empty" and functions as a pure, formal categorial "ought" which puts everything in the state of an "as if" of normative validity (cf. Kelsen 1967, 193–205).[13] The basic norm is nothing but a pure and empty form of "ought" which is hypothetically understood and applied. Kelsen thus uses the formal figure of the basic norm like a Kantian category to perceive through the lens of an "ought" and to unify a given set of legal propositions under one transcendental condition for taking them as binding.

Felix Kaufmann distances himself from this rather artificial transcendental substructure by following Husserl's thesis that norms presuppose valuing (cf. Kaufmann 1924, 82).[14] He takes Kelsen's dualism of "is" and "ought" to result in an insufficient formulation of the act of normalizing *(normieren)*, as it ignores valuing and rules of valuing. What Kaufmann retains from Kelsen, however, is the notion *of conceiving of the legal norm as a "scheme of interpretation."* Along these lines, Kaufmann takes laws to be *rational constructions* (Kohlberg 1997, 42): their ideal-typical schemes of interpretation are rational constructions for meaningfully understanding actions. Hence, it is the "normative scheme of interpretation," a term created by Kelsen and reminiscent of Weber, that generates legal reality. Kelsen explicitly speaks of a "thinking process" (Kelsen 1967, 4):

> For if you analyze any body of facts interpreted as 'legal' […] such as a parliamentary decision, an administrative act, a judgment, a contract, or a crime, two elements are distinguishable: one, an act or series of acts—a happening occurring at a certain time and in a certain place, perceived by our senses: an external manifestation of human conduct; two, the legal

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[12] "What is to be valid as norm is whatever the framers of the first constitution have expressed as their will—this is the basic presupposition of all cognition of the legal system resting on this constitution." (Kelsen 1934/2002, 57)

[13] The basic norm is a transcendental-logical presupposition formulated in order to escape an infinite regress with respect to the ground of validity of a given legal order. It is not posited and does not have any content.

[14] However, this does not entail that Kaufmann accepts Husserl's value-theory as a whole. For example, Kaufmann rejects the possibility of value-evidence (cf. the contribution of Sonja Rinofner, Chap. 14 in this volume).

meaning of this act, that is, the meaning conferred upon the act by the law. For example: People assemble in a large room, make speeches, some raise their hands, other do not —this is the external happening. Its meaning is that a statue is being passed, that law is created. […] To give other illustrations: A man in a robe and speaking from a dais says some words to a man standing before him; legally this external happening means: a judicial decision was passed. A merchant writes a letter of a certain content to another merchant, who, in turn answers with a letter; this means they have concluded a legally binding contract. Somebody causes the death of somebody else; legally, this means murder. (Kelsen 1967, 2)

Legal science not only *applies* a scheme of normative interpretation to the world—this is what we all do when we think (or even "perceive") in legal terms—but it also describes the normative content of a legal norm and its consequences. This is the task of the *"legal proposition"*/"rule of law"[15] (*Rechtssatz*), which descriptively articulates the normative content of a respective legal system in the form of hypothetical judgments ("If …, then …"). The legal scientist thus applies the "objective scheme of interpretation" of a certain legal system to states of affairs in reality, without taking any position on the content of the norm. The resulting "If …, then …" clauses are "objective," i.e. legally binding in contrast to any other possible "subjective" interpretations of the same reality. For example: I would (subjectively) not conclude that driving a car as a woman would result in a certain penalty (which it "objectively," according to the legal system in a given country, does). The task of the legal scientist is to formulate every norm in a legal system in the form of hypothetical clauses. Thereby she descriptively articulates the implications and consequences that follow from the given norms in legal propositions. Another, more abstract task of the legal scientist is to reflect on the *structure* of such propositions.

Now, what mainly interests the phenomenologists à la Kaufmann is the *formal or eidetic structure of legal propositions*: the essence of *the* legal proposition. In it, they try to find the *legal a priori*. Why is this so? Because the formalized legal proposition contains the essential and basic elements of which all legal norms might possibly consist. In determining these elements and their basic relational structure (in a nutshell: imputation instead of causality), the legal sphere can be precisely located in relation to other spheres and legal science can find its place within a system of sciences.

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[15] Max Knight's standard translation for "*Rechtssatz*" in Kelsen is "rule of law." I intentionally opt for the different and more literal translation of "legal proposition," since otherwise the theoretical aim and background of the phenomenological positivists gets obscured. To speak of a "proposition" fits their (and also Kelsen's) purposes better, because they are looking for a descriptive statement to articulate the normative content of the legal norm.

3.2.1 Felix Kaufmann's Analysis of the Legal Proposition and his Critique of Reinach

In his *"Habilitationsschrift"* on jurisprudence, *Logik und Rechtswissenschaft: Grundriß eines Systems der Reinen Rechtslehre* (1922), Kaufmann first presents an elaborate epistemological part and then locates the notions of legal science (*Rechtswissenschaft*) within this system: *Rechtswissenschaft* "is [an] eidetic science of law, like pure natural science is [an] eidetic science of nature"[16] (Kaufmann 1922, 43). Kaufmann starts his "eidetic science of law" by deploying an analysis of the basic form of the legal proposition.[17] This allows him to reject the majority of other theories of law prominent in his time: theories of power (*Rechtsmachttheorie*), theories of purpose (*Zwecktheorien des Rechts*), theories of the imperative (*Imperativtheorien des Rechts*), theories of recognition *(Anerkennungstheorien des Rechts)*. In search of the basic—i. e. most formal—structure of the legal proposition, he engages in a phenomenological analysis based on the methods used in Husserl's *Logical Investigations.* His first step is to investigate the legal propositions' "genus proximum," which is the norm. By pointing to von Hildebrand (1916/1930), Kaufmann locates the origin of the norm in the notion of the "ought" (*das Sollen*). This notion of the "ought" arises as the "objectification of an act of *Stellungnahme*" (instead of *Kenntnisnahme*) [18] in the following way (cf. Kaufmann 1922, 73): Acts of *"Stellungnahme"* (position-taking acts) are acts that express a statement towards the world, e.g. presuming, wishing, loving (in contrast to perceiving, which is just "taking notice" of the world, *"Kenntnisnahme"* (cognizing acts)). These statements contain the phenomenological possibility to be normalized, which means to restate them as norms. This generates the "ought" ("One ought to presume that/ love /wish …"). Thereby, an expression is created that anonymously prescribes and therefore *objectifies* what is the *right* way to react to the world. This is why Kaufmann calls the

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[16] In the following, all translations of Kaufmann's and Schreier's citations are my translations. I will always add the German original: "*Rechtswissenschaft ist Wesenslehre vom Recht, wie die reine Naturwissenschaft Wesenslehre von der Natur ist.*" (Kaufmann 1922, 43)

[17] "*Wir werden demgemäß in den folgenden Abschnitten die Grundform des Rechtssatzes sowohl in bezug auf seine Elementarbegriffe, als auch auf deren spezifische Verknüpfungsform betrachten, den materialen Gehalt und die logisch-grammatische Form des Rechtssatzes bestimmen.*" (Kaufmann 1922, 49)

[18] For a closer phenomenological explanation of this distinction, Kaufmann points to von Hildebrand's *Die Idee der sittlichen Handlung* (1916/1930), where a precise phenomenological analysis of position-taking acts *("stellungnehmende Akte"*) like conjecturing, willing, fearing, loving *(vermuten, wollen, fürchten, lieben)* is given: "*Blicken wir etwa auf die Freude über etwas, auf die Begeisterung, auf die Sehnsucht, auf die Liebe zu etwas, so weisen alle dieser Erlebnisse einen gemeinsamen Charakter auf. Sie stellen trotz aller qualitativen Verschiedenheit Stellungnahmen meines Ich der Gegenstandswelt gegenüber dar.* […] *Als charakteristischer Gegensatz zu diesen Erlebnistypen müssen wir z.B. das Wahrnehmen einer Farbe nennen, ein Erlebnis, in dem unser Ich gleichsam leer ist und nur ein Inhalt auf der Gegenstandsseite gefunden werden kann.* […] *Wir wollen diesen Typus als Kenntnisnahme der Stellungnahme gegenüberstellen.*" (Hildebrand 1930, 134, cf. also Salice's contribution, Chaps. 1 and 11 in this volume)

"ought" a result of an "objectification of an act of *Stellungnahme.*" It is important to notice that, according to Kaufmann's analysis, this objectification is not an "objectification of the act of will in its entirety but only of the partial act of *Stellungnahme* (*"nur des stellungnehmenden Teilakts"*)" (cf. Kaufmann 1922, 73). This means that Kaufmann wants to separate the semantic origin of the "ought" from a willing subject and deduce it exclusively from the semantic content of the act of *Stellungnahme* (position-taking). The consequences for legal theory elucidate why this seemingly meticulous operation is important for Kaufmann: It implies that law cannot be deduced from a willing and commanding institution/entity anymore, as the theory of command of law (*Befehlstheorie des Rechts*) argues. Hence, this allows Kaufmann to also distinguish his approach from the theory of command. Finally, Kaufmann arrives at a similar anonymity of the "ought" as we find it in Reinach's analysis of the enactment *(Bestimmung)*, which anonymously prescribes something and does not intend a *direct, specific addressee* within its content.

On the grounds of his phenomenological analysis, Kaufmann thus rejects the common doctrines of conceiving the "ought" as the announcement of a will and the ought-statement (*Sollsatz*) as an imperative. Contrary to these theories, he conceives of the ought-statement as the expression of a *general claim to validity* ("This is how one ought to act in/react to the world"). Therefore, he comes to the uncommon conclusion that the ought-statement is to be taken as a *proposition* or *declarative statement* (*Aussagesatz*). This is an exceptional thesis, not only in Kaufmann's time but still today. On this basis, Kaufmann also rejects the common theory of recognition (*Anerkennungstheorie des Rechts*), which focuses on the addressee of the norm and deduces the obliging force of law from her recognition. Last but not least, Kaufmann also dismisses purpose theory (*Zwecktheorie des Rechts*) by Jhering, which takes it that law primarily pursues purposes. Kaufmann's objection to this theory is the following: "The meaning of the norm for the legal scientist is its *content*, not its direction towards an individual or meta-individual, transcendent purpose." (Kaufmann 1922, 80) Kaufmann thus exclusively singles out the *content*, i.e. the *ideal meaning* of the norm (which is to say the legal proposition that formulates the norm as a proposition/hypothetical judgment) *as relevant for the legal scientist*. Everything else is transcendent to the legal material and thus irrelevant or misleading concerning the essence of law.

In this context, Kaufmann also shortly refers to Reinach, whose work he recognizes as "the first attempt towards a phenomenology of law," and which must be regarded as "failed," even though "the new form to posit the problem and its method of investigation are very instructive"[19] (Kaufmann 1922, 81). Interestingly and mistakenly, Kaufmann only addresses Reinach's analysis of the command (in the context of the rejected theory of the imperative) and not his analysis of enactment *(Bestimmung)*, which for Reinach is the genuine social act that characterizes posi-

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[19] "*Dieses Werk stellt den ersten Versuch einer Rechtsphänomenologie dar. Es muß im großen und ganzen als mißlungen bezeichnet werden. Dessenungeachtet ist schon die neue Art der Problemstellung und der Untersuchungsmethode für den Rechtsphilosophen überaus lehrreich.*" (Kaufmann 1922, 81, footnote 2).

tive law. But the way in which Kaufmann criticizes Reinach's outline also allows for the conclusion that he rejects the conception of "social acts" as being crucial for (positive) law in general. What he attacks is Reinach's argument that the "need of being heard" (*Vernehmungsbedürftigkeit*) is so essential for the social act such that commands unheeded become "like thrown spears which fall to the ground without hitting their target" (Reinach 1983, 19; cf. Kaufmann 1922, 82):

> These remarks mix up two entirely different features. That an imperative essentially addresses another subject [person], and that it gains its full meaning only with the determination of this subject, is implied in its occasionality. The empty form of the *"Thou"* only gains its fulfillment in the performance of the act, in the intentional directedness at a counterpart. Strictly to be separated from this is the intention *(Absicht)* which the commanding person associates with the command and which consists in motivating the addressee of the command to fulfill the requirement issued in the command. This intention/purpose certainly fails if the command is not heard, but a command which 'fails its assignment,' nonetheless still is a command. It is not essential to it to accomplish a purpose but merely *to have a purpose*.[20] (Kaufmann 1922, 82)

Kaufmann suggests that Reinach probably had different—and in his view, incorrect—reasons to decide on this theoretical move: Since Reinach generally holds that a real obligation arises in the addressee of a command (which Kaufmann would only ascribe in the case of a legal relation), he probably stopped short from ascribing obligations to someone who does not even know about the command. Yet, according to Kaufmann, this is to deny the command its command-character (*Befehlscharakter*) for the wrong reason: simply because it was not heard. Kaufmann thus probably agrees with Reinach that the *Bestimmung* posits its content as *seinsollend* in an impersonal[21] way. But he rejects—and this is crucial—*that the*

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[20] "*In diesen Ausführungen liegt eine Vermengung zweier grundverschiedener Momente. Daß sich der Imperativ seinem Wesen nach an ein fremdes Subjekt wendet, und daß er seinen vollen Sinn erst mit der Bestimmung dieses Subjekts findet, liegt in seiner Okkasionalität eingeschlossen. Die leere Form des Du gewinnt erst im Aktvollzug, in der intentionalen Richtung auf ein 'Gegenüber' ihre Ausfüllung. Streng zu trennen ist hievon die Absicht, welche der Befehlende mit dem Befehl verbindet und welche darin besteht, den Befehlsadressaten zur Erfüllung der im Befehl liegenden Forderung zu veranlassen. Diese Absicht scheitert freilich, wenn der Befehl nicht vernommen wird, aber ein Befehl, der seine 'Aufgabe verfehlt', ist gleichwohl ein Befehl. Es ist ihm nicht wesentlich, sein Ziel zu erreichen, sondern bloß ein Ziel zu haben.*" (Kaufmann 1922, 82)

[21] In which way, however, the enactment in Reinach is really a social act, in the sense that it is in need of being heard *(vernehmungsbedürftig)* remains unclear: Reinach rather suggests that there is another act which precedes the enactment and which guarantees its effective validity (cf. Reinach 1989, 247): the social and *fremdpersonal* or "externally personal" act of a "deferring" *(sich beugen)* or a "submitting" *(sich unterwerfen)* (cf. Reinach 1983, 111) to the enactment of a third person. But since for Reinach this does not belong anymore to his a priori foundational doctrine, he remains quite unclear about how the power of the enactment is created exactly. This is problematic insofar as the main point of the debate with the phenomenological positivists precisely lies in the question of how the legal obligation is created—by a social act (which the enactment seems to be only in a derivative sense in comparison to the promise) or by the conceptual connection of a "legal 'ought'." Given our social reality, moreover, we know very well that no one has to issue an act of yielding, submission, or recognition for the positive law of the country she enters to be valid (and moreover that most jurisdictions cover themselves with doctrines of implied consent, which at root is implied recognition).

"transcendence" of the social act founds the legal sphere. For Kaufmann, the legal sphere is *only founded within the immanence and in the interpretation of the legal proposition.*

His ultimate formulation of the formal structure of the legal proposition is: "Subject A ought to (*soll*) display a certain behavior B1, if she does not, another behavior B2 shall be applied."[22] (Kaufmann 1922, 91) From this, the "legal elementary notions" (*juristische "Elementarbegriffe"* [Kaufmann 1922, 57]) can be extracted: *the ought, the person, the fact*, from which all composite legal notions can be deduced through logical operations. It should be mentioned that Kaufmann is keenly aware that his notion of the person involves "one of the basic questions of phenomenology" that he has not even touched upon (cf. Kaufmann 1924, 80).[23] In his book from 1924 *Die Kriterien des Rechts* (which is his dissertation in philosophy) he explicitly distances himself from Schreier who takes the notion of the subject only in a logical sense. In contrast, Kaufmann invokes Scheler's definition of the person as the "immediately coexperienced *unity* of *experiencing*" (Scheler 1973, 371) ("*die unmittelbare miterlebte Einheit des Erlebens*" [Scheler 2000, 382]). However, what remains characteristic of Kaufmann's approach is that he aims at an apriorisation of legal proposition and that he considers this alone the a priori of law and the necessary theoretical basis for every science of positive law.

3.2.2 Fritz Schreier's Conception of the Legal Act and his Critique of Reinach

In *Grundbegriffe und Grundformen des Rechts. Entwurf einer phänomenologisch begründeten formalen Rechts- und Staatslehre* (1924), Fritz Schreier pursues a project similar to Kaufmann's, in which he also searches for the basic form of the legal proposition.[24] Like Kaufmann, he invokes the analogy between geometry's relation to all spatial figures and (eidetic) legal science's relation to all possible laws: Like geometrical figures can be constructed (according to Kant) in pure intuition and constitute the a priori forms of all empirical spatial figures, legal science determines the a priori forms of all empirically possibly laws. On the methodological level, Schreier also follows his colleague by combining elements of Neo-Kantianism with

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[22] *"Ein Subjekt A soll ein Verhalten V1 an den Tag legen, tut es dies nicht, so soll ihm gegenüber ein Verhalten V2 platzgreifen."* (Kaufmann 1922, 91)

[23] Kaufmann refers to the extensive discussions on the notion of the person specifically in Scheler's work *Formalism in Ethics and Non-Formal Ethics of Values* (Scheler 2000/1973), where Scheler defines the person as "immediately coexperienced *unity* of *experiencing*" (Scheler 1973, 371).

[24] Schreier's formulation reads: *"Wenn der Tatbestand vorliegt, soll die Person bei Sanktion die Leistung erbringen"* (Schreier 1924, 70), from which he deduces the four basic legal notions "substantial fact" *(Tatbestand)*, "person" *(Person)*, "performance" *(Leistung)*, and "sanction" *(Sanktion)*. The differences to Kaufmann's formulation are immediately noticeable. I will, however, not further pursue the discussion of this issue here, since it is not relevant for Kaufmann's and Schreier's critique of Reinach.

Husserl's eidetic method. Schreier, however, takes a slightly different way in arguing phenomenologically: instead of mapping out a general inventory of fundamental notions of a theory of science, Schreier works with the "a priori of correlation" *(Korrelationsapriori)*:[25] By analyzing the *act* in which law is given, Schreier wants to determine its *object*. He calls this act a "legal act" *(Rechtsakt)*. Due to its equivocality with legal/legislative acts, where law is created or implemented, this can be a rather confusing and even misleading terminology. Hence, it is important to pay attention to Schreier's specified definition of the *Rechtsakt:* "In the legal act we conceive law; through this act, law is given to us; we are intentionally directed at law."[26] (Schreier 1924, 13) What Schreier thus has in mind with the legal act is an act of *comprehension* or *cognition* (by the legal scientist), which conceives the legal norm *as* legal norm. That this act of cognition or comprehension is viewed to be *the* original act in which law is constituted (and for Schreier, this is explicitly a question of constitution) certainly has its own peculiar consequences. I will not go into the details of Schreier's phenomenological act-analyses here. Departing from his framework, it is clear that the act which *conceives* of law can neither be an imperative, nor a position-taking act or stance *(stellungnehmender Akt)*—nor, of course, a social act; the legal act is thus a judgment in the sense of *Kenntnisnahme* (cognition or cognizing). Legal acts are directed at legal norms; they intend legal norms as their object. In the legal act, legal norms are cognized by being re-formulated in the form of legal propositions. These legal propositions articulate the *meanings* of the respective norms. For example: the norm, which is the "object" (*Gegenstand*) intended by the legal act, reads: "Theft is punished with prison." The proposition which articulates this norm and which is therefore taken to be the norm's "meaning" (*Bedeutung*) reads: "If a person steals, she will be punished with imprisonment." Schreier concludes: "Legal acts are acts of judgment, law is something judged, the content of a judgment. These are in fact judgments of strict and exact lawfulness. Legal entities are hence recognized as irreal entities which are not part of the realm of nature."[27] (Schreier 1924, 44) A legal entity qua content of a judgment (the legal proposition) does therefore not empirically exist; it is an *ideal/irreal entity* which has to be constituted in an act of judging: the legal act.

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[25] Husserl regarded the "a priori of correlation" *(Korrelationsapriori)* to be one of his most powerful discoveries (cf. Husserl 1970, 166 and §46). It shows that intentional correlation is a correlation of eidetic necessity: each object qua object-type is correlated to its mode of consciousness *(Bewusstseinsweise)* qua type of consciousness. For example: a tone is given in a different invariant essential mode of consciousness than a spatio-temporal object or a mathematical insight—were a tone given in the form of a mathematical insight, it simply would not be a tone anymore. This makes conceivable a completely new sense of "a priori" which is not formal but gained by an intuition into correlative structures of givenness of object-types in experience-types.

[26] *"[I]m Rechtsakt erfassen wir Recht, in ihm wird es uns gegeben; wir sind intentional darauf gerichtet."* (Schreier 1924, 13)

[27] *"Rechtsakte sind Urteilsakte, Recht ist Geurteiltes, Urteilinhalt, und zwar Urteile strenger, exakter Gesetzlichkeit. Die rechtlichen Gegenstände wurden somit als irreale Gegenstände, als nicht dem Reiche der Natur angehörig erkannt."* (Schreier 1924, 44)

In the course of his analysis, Schreier also discusses Reinach and does this more intensely than Kaufmann. I will list four arguments Schreier makes against Reinach's schema (by referring largely to original quotes, since Schreier's writings are less well known) and then proceed to an evaluation of these different positions on legal reality and the legal a priori. Schreier's objections to Reinach are as follows:

(i) Social acts and legal acts (in Schreier's sense) are to be differentiated. In social acts, law is not constituted; they are not intentionally directed at law but at another subject (as Reinach himself insists). Therefore, Reinach's conception—although interesting—already goes awry at the point of departure and Reinach's results are worthless for legal theory.

> Also in Reinach's work [like in Schreier's own work, S.L.], there are analyses of acts to be found; however, he never speaks of a legal act. Rather, he proceeds from the investigation of the promise and of the claim that arises from it and subsumes the promise under a special group of acts: the social acts. Promise and claim for him are specifically legal entities of which a priori propositions obtain, which belong to the realm of an a priori doctrine of law. Yet, social acts and legal acts are something thoroughly different. This is so, because in social acts, law cannot be constituted. Social acts are not directed intentionally at law, as Reinach himself says. They are directed at something else, be it another subject, to who one is directed in the social act, be it the behavior of this subject etc.
>   Hence, we regard Reinach's point of departure as already failed; claim and promise do not only appear in the realm of law, but also in morality, convention, in psychology and sociology. All claims and consequences Reinach infers from this point of departure are therefore pointless for us, may they be as interesting as ever in a different context.[28] (Schreier 1924, 13)

Schreier adds that Reinach's descriptions of the social world are doubtlessly of their own worth, but that he confounded this investigation of "legal pregivenness" *(rechtliche Vorgegebenheiten)* with an investigation into law itself:

> Reinach's intentions obviously pointed to another direction than ours; he wanted to show which social phenomena law encounters when issuing its regulations; [namely,] what pre-exists is humans with their practical *Umwelt*, in manifold manners of behavior with respect to one another and with respect to goods. The description of this social world is certainly an

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[28] *"Auch in Reinachs Werk finden sich Aktanalysen; von einem Rechtsakt ist bei ihm jedoch nie die Rede. Er geht vielmehr von der Untersuchung des Versprechens und des daraus entstehenden Anspruches aus und reiht das Versprechen unter eine Aktgruppe: die sozialen Akte ein. Versprechen und Anspruch sind für ihn spezifisch rechtliche Gebilde, von denen apriorische Sätze gelten, die in den Bereich der apriorischen Rechtslehre fallen. Soziale Akte aber und Rechtsakte sind etwas durchaus Verschiedenes. Denn in sozialen Akten kann sich Recht nicht konstituieren. Die sozialen Akte sind nicht auf Recht intentional gerichtet, wie Reinach selbst meint. Sie richten sich auf etwas anderes, sei es nun ein zweites Subjekt, an das man sich im sozialen Akte wendet, oder das Verhalten jenes Subjektes usw."—"So halten wir Reinachs Ausgangspunkt bereits für verfehlt; denn Anspruch und Versprechen erscheinen nicht nur in der Sphäre des Rechtes, sondern auch in Sitte, Konvention, in Psychologie und Soziologie. Alle an diesen Ausgangspunkt anschließenden Behauptungen und Folgerungen Reinachs werden demnach, so interessant sie in anderer Beziehung sind, für uns gegenstandslos."* (Schreier 1924, 13)

important task, but Reinach mixed up the investigation of these legal pregivens/pregiven-ness with the investigation of law itself.[29] (Schreier 1924, 14)

Hence, Schreier recognizes and even acknowledges that there is something like "legal pre-existence," which is not irrelevant for reflections on positive law. But he makes clear that law itself is an autonomous field with its own relations and that therefore the legal a priori is not to be found in socio-ontological relations.

(ii) The second point of critique is directly linked to the first argument: If Reinach explicitly insists that his "legal a priori" is "independent" (Reinach 1983, 6) of positive law, what are these foundations actually foundations of?

> Hence, positive law and its a priori foundations have nothing to do with each other. The 'foundations' have no relation at all to that which they found. Here we have to allow our-selves the question in which way these 'foundations' are supposed to be foundations at all.[30] (Schreier 1924, 88)

Schreier notes that Reinach himself must have felt uneasy with this outcome, which is why Reinach eventually does point to a dimension of possible relevance of his a priori law for positive law: For example, in making recourse to a priori law when filling lacunae in positive law; or, as an explanation why promises in favor of a third party, which Reinach holds to be a priori impossible (cf. Schreier 1924, 88), have not gained acceptance for quite some time.

> With respect to these views we repeat that we do not want to investigate notions and propo-sitions which are in an unclear relation to positive law. What we want is to depict that which essentially lies within the legal proposition.[31] (Schreier 1924, 88)

This quote points to the fact that Schreier does have a very explicit and contrary picture of how "a priori foundations" should relate to empirical possibilities: The Kantian or Neo-Kantian idea of his project is to start out from the given realities and find their transcendental forms. Combined with Husserl's eidetic method of "variation"[32] this leads to forms of *possible law* that can be "realized" as individuated

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[29] *"Reinachs Intention ging wohl auch nach anderer Richtung als die unsere; ihm handelte es sich darum, zu zeigen, auf welche sozialen Erscheinungen das Recht bei seinen Regelungen stößt; vorgegeben sind hier Menschen mit praktischer Umwelt, in mannigfachem Verkehr miteinander und verschiedenartigen Verhaltungsweisen gegenüber den Gütern. Die Schilderung dieser sozi-alen Welt ist gewiß eine wichtige Aufgabe, aber Reinach vermengte die Untersuchung dieser recht-lichen Vorgegebenheiten mit der Untersuchung des Rechtes selbst."* (Schreier 1924, 14)

[30] *"Also positives Recht und seine apriorischen Grundlagen haben überhaupt nichts miteinander zu tun. Die 'Grundlagen' haben somit gar keine Beziehung zu dem, was sie grundlegen. Da müssen wir uns doch die Frage erlauben, inwiefern diese 'Grundlagen' Grundlagen sind."* (Schreier 1924, 88)

[31] *"Solchen Auffassungen gegenüber wiederholen wir, daß es sich uns nicht um Begriffe und Sätze handelt, die in einem unklaren Verhältnis zum positiven Recht stehen, sondern wir wollen das, was wesensnotwendig im Rechtssatz liegt, darstellen."* (Schreier 1924, 88)

[32] Eidetic variation is a form of imaginative variation in which one attempts to determine the neces-sary essences that characterize the given type of phenomenon. This is done by imaginatively changing different elements of an imagined or given phenomenon, while observing whether or not the changes turn the phenomenon into something else. Thereby, one is able to learn which charac-

concrete laws, and are thus "real law." To wit, "[i]f the empty forms of the pure theory of law are filled by concrete normative regulations *(Tatbestände)*,[33] then we obtain real law, if not, then unreal law"[34] (Schreier 1924, 86).[35]

(iii) Schreier does not criticize Reinach for his eidetic method and for analyzing an act in order to arrive at a proposition of a material a priori. Schreier claims he wants to do the same, only with the appropriate act: the *legal* act and not the act of promising. What he actually does, however, is ascertain a synthetic *formal* a priori instead of a *material* a priori: While the former is a judgment that links two different concepts into a formal category (e.g. cause and effect), the latter is an eidetic relation that lies in a material content (e.g. color is essentially given together with surface/extension). Even though Schreier must certainly be well aware of the difference between formal and material aspects of the a priori, he considers the legal relation to be a *synthesis* (a synthesis through the concept of imputation, in contrast to a synthesis through the concept of causality), and rejects Reinach's thesis that the obligation arises as a *"product"* of the social act of promising:

> Yet, Reinach tells us nothing about how the legal obligation *(Bindung)* can lie in this act and its object. The object, the intentional target of the act, is not the legal relation, from which the obligation results by means of an analytic judgment. Rather, the object of the act is the special behavior of the person who gives the promise; such an act can arguably be the functional bearer of a relative notion, but never can the obligation be constituted in it.
>
> According to Reinach, the obligation is an effect of the promise. […] But how is it possible that in an appearance lies its effect? All effect is generated according to a law which, as something new with respect to the cause and the effect, unites the two. This law, in the

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teristics are necessary for the thing in question to be what it is. If a characteristic is changed, and the object remains itself, the characteristic is not necessary to the essence of the object. If by changing a characteristic the whole phenomenon changes into something else, it is an essential characteristic.

[33] In legal German, and specifically in criminal law, the terms *"Tatbestand"* and *"Sachverhalt"* are differentiated: Whereas *Sachverhalt* is a concrete event, *Tatbestand* is the abstract normative/legal formulation of a category of event which implies a certain legal consequence. The legal question is if the *Sachverhalt*, correctly described, can be subsumed under the *Tatbestand.* For example: The *Tatbestand* "theft" is followed by a certain legal consequence. The *Sachverhalt* whether Bob took Bill's bicycle with the intention to keep it (or not) must be investigated in order to find out whether Bob fulfilled the *Tatbestand* and is thus to be punished for theft. If used in the context of criminal law, *Tatbestand* can be translated by the English term "elements of crime." In German, however, it has a much wider meaning that goes beyond criminal law. By using the term *"Tatbestand"* Schreier thus indicates that the empty forms of law have to be filled with concrete regulations (not by concrete deeds).

[34] "*Werden die Leerformen der reinen Rechtslehre durch Tatbestände erfüllt, so erhalten wir wirkliches, andernfalls unwirkliches Recht.*" (Schreier 1924, 86)

[35] This points to an important contribution by Schreier to the legal-theoretical problem of the relation between *lex lata* and *lex ferenda*. By viewing this problem in the light of the notions of possibility (the form of every possible law) and reality, Schreier's approach could be developed as a *doctrine of (every) possible law* (*Lehre vom möglichen Recht*), which would precede all factual legal norms (cf. Kubeš 1988 and Weinberger 1988).

case of promising, the obligation, is not contained in the appearance which is subjected to it. It amounts to a connection, a synthesis.[36] (Schreier 1924, 58)

Schreier thus proposes a very Kantian interpretation of legal obligation as the categorial law of synthesis, which has no object-character itself, but rather is purely transcendental (i.e. making objects possible). This theoretical position is also indicated by his remark that "the notion of constitution corresponds to the notion of the Kantian synthesis" (Schreier 1924, 7, footnote 4).[37] Thus from Schreier's point of view, speaking of "products" or even "entities" of a certain kind must represent nothing but hypostatization:

> The claim (*Anspruch*) is neither a 'product' nor a 'consequence,' it does not amount to being an effect, but it is that which lies in-between the facts and the legal consequence, it is the relation. I cannot capture the claim 'autonomously in its existence,' just like I cannot capture the force, the law of nature (*Naturgesetz*) as an entity in itself. To believe in the perceptibility, the 'reality' of forces, is a long-known hypostatization.[38] (Schreier 1924, 59)

Kaufmann's critique is less explicit than Schreier's, but he points in a similar direction when he argues that it is misleading to claim that the social act of command "generates" the obligation: "But the opinion that the command 'generates'/'creates' an obligation (*Verpflichtung*), that it 'arises' with the declaration of the commanding person, is a misunderstanding."[39] (Kaufmann 1922, 82) Also for Kaufmann, this relation lies within the legal form itself (or, rather, in the ideal meaning of the legal ought) and nowhere else—thus certainly not in any social act.

(iv) Consequently, Kaufmann and Schreier must both reject that there should be anything like "legal entities:"

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[36] "*Wie jedoch in diesem Akt und seinem Gegenstand die Bindung liegen kann, darüber finden wir bei Reinach nichts. Der Gegenstand, das intentionale Ziel des Aktes, ist ja nicht die Rechtsrelation, aus der sich die Bindung durch analytisches Urteil ergibt, sondern ein eigenes Verhalten des Versprechenden; ein solcher Akt kann wohl in der Trägerfunktion eines relativen Begriffs stehen, niemals aber kann sich in ihm die Bindung konstituieren.*"—"*Die Bindung ist nach Reinachs Auffassung eine Wirkung des Versprechens. […] Aber wie ist es möglich, daß in der Erscheinung selbst die Folge liegt? Alle Folge entsteht nach einem Gesetz, das als etwas Neues gegenüber dem Grunde und der Folge diese beiden vereinigt. Dieses Gesetz, beim Versprechen die Bindung, kann nicht in der Erscheinung, die ihm unterstellt ist, enthalten sein. Es bedeutet eine Verbindung, eine Synthesis.*" (Schreier 1924, 58)

[37] "*Der Begriff der Konstitution entspricht dem Begriffe der Kantschen Synthesis. Leider ist uns aber in dieser Arbeit versagt, die Beziehungen und die große Verwandtschaft zwischen den Problemstellungen und Problemlösungen Kants und Husserls sowie die Forschritte und Klärungen Husserls gegenüber Kant zu berücksichtigen.*" (Schreier 1924, 7, footnote 4)

[38] "*Der Anspruch ist kein 'Produkt' und keine 'Folge', er entspricht nicht der Wirkung, sondern dem zwischen dem Tatbestande und der Rechtsfolge Liegendem, der Relation, und ebensowenig wie ich den Anspruch 'selbständig in seiner Existenz zu fassen vermag,' vermag ich die Kraft, das Naturgesetz selbständig zu erfassen. Der Glaube an die sinnliche Wahrnehmbarkeit, die 'Realität' von Kräften, ist eine altbekannte Hypostasierung.*" (Schreier 1924, 59)

[39] "*Aber die Auffassung, daß der Befehl eine Verpflichtung 'erzeuge,' daß sie mit der Erklärung des Befehlenden 'entstehe,' ist durchaus mißverständlich.*" (Kaufmann 1922, 82)

We cannot discover such entities. Reinach argues that single claims resp. obligations *(Verbindlichkeiten)* expire after a certain time. But again we face the same situation here as with respect to physical or psychic entities. The notion of obligation is timeless like any other notion; the single obligation, however, has its place in time; it sets in at the moment of the occurrence of the substantial fact *(erbrachter Tatbestand)*, just like the force starts to 'have an effect' at the moment of the occurrence of a cause. Each single case of the effect of a force is a 'temporal' object exactly in the same sense as a claim. Both are real, respectively unreal, in exactly the same sense.[40] (Schreier 1924, 59)

In addition to the above-mentioned charge of an ontological hypostatization, Schreier now accuses Reinach of confounding "matter of fact" and "essence" ("*Tatsache*" and "*Wesen*") by claiming that "legal entities" have a being in time. Schreier argues that the notion of obligation is as timeless as the notion of causality. Only in the empirical case where an obligation is generated can it be said that it has a being in time, just like an empirical force has a being in time, and not the law of causality itself. To translate this argument from a Kantian idiom into more phenomenological language: ideal meaning is to be differentiated from its empirical individuation. Schreier's critique is certainly not quite right, since Reinach aptly differentiates between the essence of a claim and its individuation; however, Reinach considers the essence not to be an ideal meaning of a word, but the material species of an interaction, the act of promising.

Finally, there is one point where Schreier agrees with Reinach: "With full justification, Reinach has separated the law-making acts as 'enactments' from those acts by which we insightfully grasp the a priori foundations of law."[41] (Schreier 1924, 81) Pure theory of law deals with acts that conceive law, not with acts that create law—this is Schreier's view and it certainly does not converge with Reinach. However, Schreier suggests that this could open up another important field for a "phenomenology of lawmaking" (*Phänomenologie der Rechtserzeugung*), which could then also address possible reasons and purposes for issuing laws. Pure theory of law, however, limits itself exclusively to the "imputation of legal effects to legal presuppositions" (*"Zuordnung von Rechtsfolgen zu Rechtsvoraussetzungen"*).

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[40] "*Wir können solche Gegenstände nicht entdecken. Reinach meint, daß die einzelnen Ansprüche, beziehungsweise Verbindlichkeiten nach gewisser Zeit erlöschen. Auch hier jedoch haben wir dieselbe Sachlage vor uns wie bei den physischen und psychischen Gegenständen. Der Begriff Verbindlichkeit ist zeitlos wie jeder andere Begriff; die einzelne Verbindlichkeit dagegen erhält ihre Stelle in der Zeit, im Augenblicke des erbrachten Tatbestandes, ganz so wie auch im Zeitpunkt des Eintrittes der Ursache die Kraft zu 'wirken' beginnt. Jeder einzelne Fall des Wirkens einer Kraft ist also im ganz gleichen Sinne ein 'zeitlicher' Gegenstand wie der Anspruch. Beide sind im gleichen Sinne real, beziehungsweise irreal.*" (Schreier 1924, 59)

[41] "*[M]it vollem Recht hat Reinach die rechtschaffenden Akte als 'Bestimmungen' von den Akten getrennt, in denen wir einsichtig die apriorischen Grundlagen des Rechts erfassen.*" (Schreier 1924, 81)

3.3 Legal Reality and Its A Priori Foundations – a Question of Acting or Interpreting?

We could see that the approach of the phenomenological positivists involves several Kantian and Neo-Kantian elements that are in conflict with Reinach's realist outline. Reinach can certainly be called the "purer" phenomenologist; the legal positivists, in turn, are closer to the proper structure of positive law. Having pointed out the general characteristics of this debate, I will now turn to the question of social ontology with respect to the constitution of legal reality and the legal a priori. Given the arguments raised against Reinach from the positivists' point of view, the following questions need to be asked: What is legal reality about? What role does the common world and social reality play for it? What picture of the world does it involve? Of what kind is Reinach's a priori? Let me first focus on the question of difference in the "legal a priori" and then proceed to the issue of "legal reality" and its constitution or creation through interaction.

3.3.1 Two Different Notions of the Legal A Priori

Both approaches want to provide us with a legal a priori—and although they are both obtained by the method of eidetic intuition, they are quite different senses of the a priori: The phenomenological positivists on the one hand are in search of eidetic forms of legal propositions and the synthetic a priori that allows for an empirical conjunction of the "legal 'ought'." In contrast to the realm of nature, this is not a conjunction of causality but of imputation (*Zurechnung*) (Compare: "At 0 °C water freezes" [causality]—"At 0 °C winter tires are to be used" [imputation]). Reinach's a priori, on the other hand, consists of legal entities generated by our actions. Their content and internal relations are not contingent but necessary like mathematical relations. While Kaufmann and Schreier eidetically reflect on the *conditions of the formal structures of legal norms*, Reinach reflects on *eidetic consequences of interaction*. What seems crucial to me in Reinach's a priori with respect to positive law is that it provides the conditions of the possibility of the components of meaning that make up the whole realm of the legal: "The positive law *finds* the legal concepts which enter it; *in absolutely no way does it produce them*" (Reinach 1983, 4). This means that *without our actions, without the social acts that generate things like claims and obligations and allow for a deontic logic, positive law would not have the grounds to build on*. That positive law can deviate from the a priori forms does not refute the claim that the latter are the condition for the possibility of any deviation. In contrast to Kaufmann and Schreier (who aim at the ideal content of certain *notions* by which we conceive legal relations and legal reality), Reinach thus locates the legal a priori in *entities* generated by interaction. He claims that we capture legal relations and legal reality by conceiving their essential structure ("that a thing is so is grounded here in the essence of the thing which

is so"[42] [Reinach 1983, 4]).[43] Yet, the phenomenological positivists are right on the point that claims and obligations are not exclusively legal concepts: Their deontic logic is not only foundational for the realm of law, but also relevant for morality (cf. Burkhardt 1987, 155). In this sense, their a priori is more specific than Reinach's.

Nevertheless, it is possible to try to reconcile the two approaches: It seems that the social act of enactment *(Bestimmung)* by which Reinach characterizes positive law is not altogether inappropriate for a positivist theory as well, on the condition that it does not describe the "immanence" of the legal proposition, but the act which issues the legal norm. One could thus, in the sense that Schreier proposed it, use Reinach's approach for a "phenomenology of lawmaking" or a phenomenology of the enactment and positing of positive law. Reinach himself differentiates between "the experience of enacting, the act of enacting, the proposition expressing the enactment, the content of the enactment and the effect of the enactment" (Reinach 1983, 106) *("Bestimmungsakt, Bestimmungsinhalt, Bestimmungssatz und Bestimmungswirkung"* [Reinach 1989, 243]). These differentiations can again point to a definite area of the positivists' enterprise: Kaufmann's and Schreier's "a priori doctrine of the legal proposition" (*apriorische Rechtssatzlehre*) could be taken as an explanation of the a priori elements of the *Bestimmungssatz*, an exclusive analysis of the proposition of the enactment. Along these lines, the two phenomenological undertakings could be separated but at the same time linked: While Reinach's theory would provide the material meaning-conditions, i.e. the dimension of social interaction necessary for legal reality, Kaufmann's and Schreier's theories would, in a more specific area, provide the formal conditions that are necessary for a specifically legal structure. Positive law would thus be rooted in the a priori conditions of being able to issue enactments (Reinach's domain), and the norms it could possibly formulate would consist in certain a priori forms (Kaufmann's and Schreier's domain). If we consider, additionally, that Kaufmann's and Schreier's basic legal notions (*the ought, the person, the fact*) are not at all as formal as Kantian categories but—as Kaufmann himself concedes—might themselves imply a whole phenomenology, another link is possible: The notion of the "person" is, interestingly, also at the base of Reinach's conception. This could be a thread connecting the "legal immanence" of the legal proposition to the "transcendence" of social reality. And it could constitute a common phenomenological horizon.

The "hard problem," however, in combining these two frameworks will be the problem of how the "is" and "ought" relate and how the validity of the enactment is generated (cf. footnote 22): that is, with the successful performance (*Vollzug*) of the social act or by its content of a legal ought. While Reinach is convinced that the "is" furnishes that from which the "ought" arises, a neutral structure which simply creates the entity of "obligation" (being a normative entity with normative content)—

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[42] "[…] *das So-Sein gründet hier im Wesen des So-Seienden*" (Reinach 1989, 144).

[43] Since Kaufmann and Schreier consider themselves to be *phenomenological* positivists, they take the ideal content of their legal notions certainly not to be only formal structures of subjectivity (like in classical Kantianism), but intentional correlates which are to be differentiated from the acts that intend them.

Kaufmann and Schreier regard legal obligations as arising only through the special form of the legal ought and the legal synthesis of imputation. Instead of existing objectively, the "ought" thus arises in an objective scheme of interpretation that consists of a priori forms. This takes us to our last reflection on "legal reality."

3.3.2 Legal Reality (i.e. The Reality of Positive Law)

What is the reality of legal obligations? Or, to put it differently: When conceiving of the legal, do we conceive a deontic reality that was created by social acts? Or do we create legal reality by an interpretation of certain facts, which imposes a certain imputed coercion?

I believe that the answer should be two-sided: There are certainly cases in positive law where we need an interpretation or even an expert who does the interpretation for us, in order to find out how the life-world situation we are in is to be spelled out in legal terms. And to a large extent this is exactly our social reality when directly confronted with legal issues. The obligation or the "ought" obliges us because it is a legal "ought": it gives its content the status of legal validity. (If we want to make sure that this is the case, we can ask if the respective norm was generated according to the norms of lawmaking belonging to the body of norms of which the respective state consists). Reinach could agree with this view, given that he takes positive law as *Bestimmung.* The content of these enactments can indeed be very "counter-intuitive," as he himself suggests. However, he would claim that, ontologically, that which has been issued by the enactment has become *real.* His phrase to indicate the reality of the product of the social act is: "Something changes in the world" (Reinach 1989, 247)—in the case of positive law something changes by virtue of the enactment: "What is posited by the enactment is not merely something which ought to be and is waiting to be realized, rather it becomes real *at the moment of the positing* and *through* the positing: property and claim exist *in virtue of* the enactment"[44] (Reinach 1983, 110). The example that Reinach gives is that of an arbitrator C who makes a decision and enacts: A has a claim against B to be paid a certain sum. But B is the owner of a certain thing. This decision has an immediate legal effect, what it posits is "real." Reinach clearly concedes that it is not so because of the social acts which the two (A and B) performed, but exclusively because of the power of the enactment of C (which points to another social act). The enactment makes that which it enacts "real," it confers existence to it.

But what does it mean—to use another example not from jurisdiction but from legislation—that "Persons are allowed to drive a car at 18" now "exists"? Is it not more adequate to describe the respective legal norm by means of a legal proposition which articulates a consequence, in order to express its ontological status? And is

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[44] "*Das durch die Bestimmung Gesetzte ist kein bloßes der Realisierung harrendes Seinsollendes, sondern es wird* in dem Augenblicke *der Setzung* durch *die Setzung wirklich: Eigentum und Anspruch existieren* kraft *der Bestimmung.*" (Reinach 1989, 247)

not the "reality" of the legal sphere something we conceive in terms of certain relations and consequences and not by conceiving an existing entity, pointing to the real existence of what ought to or is allowed to be done? I think the legal positivists do have a certain point with respect to the hypothetical and ideal character of positive law, whose rules address human behavior and are not "entities" or "structures" purely in themselves—and whose norms *add* to our reality and *do not make up an integral part of it*. In this sense, legal reality seems to be an interpretation *made real* by the social reality of impending coercive consequences rather than a socio-ontological fact *per se*.

Yet, in contrast to this interpretative "reality" of positive law, there are also basic elements of meaning which are "there" because of our actions, i.e.: They are not added on top of a full-fledged reality by means of a quasi-scientific interpretation, but they are *fundamental parts through which our reality is constituted prior to a normative interpretation.* A certain strand in the pure theory of law, especially in Kelsen's writings, suggests a very crude dichotomy between the *physical world* and *its normative interpretation*, which would leave us with a very artificial physical world, which would not at all correspond to our lived reality: Remember the longer quote that I cited above where Kelsen suggests that only by a "legal interpretation" we conceive the fact that "somebody causes the death of somebody else" legally as "murder" (Kelsen 1967, 2). This seems to suggest a strange "basic" perception that is free of interpretation. Moreover, it seems quite hard to determine when we see "pure facts" and when or where the interpretation starts (consider that Kelsen in the respective quote also speaks of "naturally" seeing "a man in a robe speaking from a dais" etc.—why can he "naturally" see robes and daises but not a judge?)

Kaufmann's and Schreier's books on law do not forward an explicit position on this issue, except for Kaufmann's comments on the reality of the person, which suggest a proprietary ontology or, at least, phenomenology. What might be even more surprising is that even Alfred Schutz, the author of *Der sinnhafte Aufbau der sozialen Welt* (1932), defends Kelsen's framework as "one of the most advanced theoretical sciences of the social world" (Schutz 1932, 283). Why does not even *he* protest against such a naturalistic simplification of life-world perception and blindness to socio-ontological facts? The reason is that all three authors take Kelsen's theory as that which it intends to be: a *science of positive law*. As such it belongs, in Schutz' terminology, to the social sciences. A social science produces "objective complexes of meaning of subjective complexes of meaning" (*objektive Sinnzusammenhänge von subjektiven Sinnzusammenhängen*) (Schutz 1932/1960, 275). This means it produces "ideal types" which introduce an anonymizing and abstracting factor into the life-world web of intersubjective meanings. For example: In economy, rational-choice theory describes abstract ideal types of action where agents remain "anonymous" (Schutz 1932/1960, 154). It deals with the "objective" meaning of actions independently of what the agent "subjectively" thinks. A "subjective complex" of meaning could thus be identified with a first person perspective, while an "objective complex of meaning" represents a third person perspective. Another example for an ideal type that produces "objective complexes of meaning" is law, or rather, the social science of positive law. Now we are in the *normative, prescriptive* field in

contrast to economy. Here, the third person perspective is constituted by the basic norm, i.e. in concrete cases: the established law ("One ought to": also here the agent is anonymized). The legal perspective thus arises as a normative interpretation which is not to be found in the things themselves but applied to them by the help of the basic hypothesis of a basic norm. For Schutz, the scheme of normative interpretation is an ideal-typical construction by which subjective meaning complexes can be subsumed and made relevant for objective meaning complexes. For example: If I think I write a valid testament (subjective meaning complex), it doesn't yet have to be a valid testament (objective meaning complex), such that my subjective meaning is not objectively relevant: the testament could be legally invalid. For Schutz, who explicitly elaborated on how intersubjective, first personal meaning is involved in the constitution of a social world, it does not amount to a contradiction that the *Ideenkleid* ("garb of ideas" (Husserl 1970, 51)) of legal science can be placed on top of this life-world. To the contrary; he simply regards it as a different approach that establishes a third person perspective (in the case of law: a normative one) with a rigorous and abstract method—for the sake of arriving at an "objective scheme of interpretation." Whereas, I think, phenomenology must reject a picture which only allows for physical realities and not any other real correlates of intentional acts, it can very well allow for this view of abstract social sciences of the life-world, working with abstract schemes and ideal types—as long as this is not taken to be a depiction or even an explanation of the life-world. An economic analysis is thus certainly entitled to use the abstractions of rational choice theory, as the legal scientist is entitled to use the abstract norm to deduce the legal consequences of actions. But these are schemes which are not to be confused with first personal intersubjective relations and the complexes of meaning which result from them.

Thus, if we concede that there are fundamental parts by which our reality is constituted (and our legal reality is founded on) and that these are not reducible to just physical reality, the question remains: What are these parts made of? Or, rather: What is their mode of existence? Schutz would probably have formulated Reinach's project as a web of constituted meaning-foundations in the life-world. This is also the direction I have taken in my interpretation. Reinach however, and this should be emphasized, indeed speaks of ideal and temporal objects and their essential features. Their reality is subject-dependent only in the sense that subjects have to act in order for claims and obligations to emerge. But as soon as they exist, Reinach is as radical as to claim that they are there, totally independent of anyone realizing them or not ("this being is independent of its being grasped by men" [Reinach 1983, 4]). Even if all men had died, unfulfilled claims would still exist. And even if no social act had ever been realized, no promise had ever been made and we lived in such a world (which is thinkable), we could still intuit these essential relations (Reinach 1983, 130).

I believe that at this point Reinach himself transgresses the life-world meaning-foundations that are conditional for his investigations. Just as he argues that legal positivism has to make use of notions and meanings that are "already there," I would like to argue that Reinach ignores the factual a priori of conscious agents in the plural, agents who possess language and who are integrated in a life-world. I

think that this is what makes promises possible, how they actualize their reality and where a deontic logic makes sense in the first place. To conceive of this sphere as totally independent of any beings who speak and can enter into intersubjective relations seems a meaningless enterprise—and it is Reinach himself who, for obvious reasons, posits the "person" and her *rechtliches Grundkönnen* at the very basis of his a priori foundations of law. A person, however, is neither a synthetic judgment a priori, nor does she originate in the sphere of essences or ideal relations. To elaborate on the person as an agent of social acts, as well as on the necessarily implied plural of agents, to make sense of social acts at all, is crucial for the elaboration of a more life-world-attuned theory that can avoid the tendency of eidetic abstractions. I would thus rather claim that promises and their deontic logic possess *intersubjective reality*. I fully agree with Reinach that "something happens in the world" if a promise is made or an enactment is issued, something, which is transcendent with regard to our psychic or mental acts—but it is something which happens *in our* world. Thus, I would rather describe it as embedded in the structure of the social world and its possible movements than as totally independent of it (like mathematical propositions). Promises and their obligatory force do not totally transcend their conditions of existing plural agents, like, for example, produced things do (the bookshelf I have hammered together). Rather, they create a dimension between us, which is not to be reduced to an ideal entity, but still is in relation to the different intentions intending a common world.

Finally, what is legal reality about? I would like to give the legal positivists credit for focusing on the legal structure only and also for focusing on it in such a technical way. I believe that this captures the phenomenon of positive law quite appropriately, not only in the official and technical way that lawyers deal with it, but also in the alienating way in which we can have experiences of and with it. These estranging experiences (paradigmatically captured in the novels of Kafka) seem essentially to belong to modern legal reality, which is, very often, not so concerned about the life-world and the earthbound, but leads its very own existence. Yet, this thesis of "positive legal reality through interpretation" should not lead us into a picture of the world where there are only facts stated by natural science (which are "real") and, on the other hand, only quasi-fictional normative interpretations. First of all, this is not the world we live in at all, but an abstraction—even if it is a very powerful one which has definitely shaped the way we perceive the (social) world. Another crucial point is that there is a reason why we are *capable of normative interpretations* in the first place: the reason is not primarily to be found in our "transcendental apparatus" which is able to make abstract normative connections. Rather, it lies in our experience of normative obligations, which implies a givenness of *something as normative*. This would be a strong argument against the legal positivists; however, Reinach does not really target this experience. In contrast to Reinach, I would thus put a strong emphasis on such foundational experiences and the givenness of the normative rather than stressing the intuiting of essential features of a deontic logic. It is through interaction of conscious subjects in a shared world, which is irreducible to physical entities, that meaning-structures such as claims and

obligations (and a whole deontic logic involved) can arise. The life-world reality of law is therefore essentially created and maintained as real by *acting* human beings.

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Chapter 4
Czesław Znamierowski's Social Ontology and Its Phenomenological Roots

Giuseppe Lorini and Wojciech Żełaniec

Abstract The Polish philosopher Czesław Znamierowski (1888–1967) was perhaps not a *pur sang* phenomenologist; however, he was significantly inspired and influenced by Reinach's *A priori foundations of the civil law.* In 1921, a few years before Gerda Walther, Edith Stein and Dietrich von Hildebrand, he started publishing articles and books on what he called "social ontology." The social ontology which emerges from these writings, and which we sketch out in our essay, is remarkably similar to, and yet no less strikingly different from, the social ontologies of these phenomenological classics, the latter no doubt due to Znamierowski's at times not quite accurate criticism of Reinach, but even more due to Znamierowski's own acumen and unconfessedly phenomenological insightfulness. We explain his conceptual apparatus, his "social acts" and "social facts", his "social bearing" and "social function", and the rest of it; we also amply illustrate this with examples provided by Znamierowski himself and by ourselves. We try to show that Znamierowski in virtue of his method, the substance of his thought, and also his style, and not just in virtue of the influences he had absorbed, was a *de facto* phenomenologist, even though he did not call himself such. Last but not least, we attempt to demonstrate that Znamierowski's social ontology is by and large correct and can be put to fruitful use even today, rather than be of merely historical interest.

Keywords Social fact • Social bearing • Social function • Social ontology • Reinach

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4.1   The Person

Even though many of us associate social ontology (and the term "social ontology") with such contemporary analytical thinkers as Margaret Gilbert, Raimo Tuomela and John Searle, the history of the concept and the term predates both. It goes back at least[1] to 1921, when a young Polish philosopher, Czesław Znamierowski,[2] published, in a Polish philosophical journal, a paper entitled "On the social object and fact," in which he postulated, with an emphatic reference to Reinach, a new science, called "social ontology," and charged with the task of "establishing fundamental truths concerning all social objects" (Znamierowski 1921, 2).

The Polish social and legal philosopher Czesław (Gabriel Stanisław) Znamierowski[3] was born in 1888 in Warsaw, in a part of Poland which at that time belonged, as a result of the late eighteenth century Polish partitions, to the Russian Empire. Znamierowski received his secondary education in Warsaw and Jelatma (Russia), then studied in Leipzig, St. Petersburg, Berlin, Munich and Basle, where he finally got his Dr. Phil. in 1912, with a 90-page dissertation on the truth conception in Pragmatism (see Znamierowski 1912). According to his Vita (Znamierowski 1912, 91), he attended during that time classes of Wilhelm Wundt, Johannes Volkelt, Karl Gotthart Lamprecht, Paul Barth, Otto Wiener, Arthur Wehnelt, Carl Stumpf, Hans Cornelius, Georg von Hertling, Richard Heinze, Raúl Richter, Carl Friedrich Heman, Karl Joël (his doctoral supervisor), and others. The very list of these names, some still somewhat known, some, like Znamierowski's, all but forgotten, exudes the fertile, buzzing, blooming and highly inspiring atmosphere of the German scientific life of the turn of the nineteenth into the twentieth century, with its characteristic mixture of Neo-Kantianism, post-Brentanian proto-phenomenology, Empirio-Criticism and physical sciences at their headiest. Here and there, too, there are in his work cursory acknowledgments to Georg Simmel and a few others— Znamierowski was rather uneasy admitting that he might have been influenced to a considerable degree by anybody. Such was the young Znamierowski's world and climate. But he was influenced not only by German thinkers: the "*Benutzte Literatur*" (reference) list to his dissertation strikes by featuring, *qua* primary literature, almost exclusively Anglo-Saxons, chiefly James, Dewey and Schiller (F. C. S., the British pragmatist, not the German poet), then Sidgwick, H. W. B. Joseph, and a few others, not the least Josiah Royce, the American British idealist (Znamierowski 1912, 3). Obviously, Znamierowski must early on have acquired Anglophile leanings, which he then preserved throughout his career. These leanings are perceptible not just in his references but first of all in his thinking and writing style. It was, perhaps not quite by chance, in a written polemic with Royce that Znamierowski

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[1] On why "at least" see Salice (2013).

[2] Approximate pronunciation: CHESSwahff znahmyairOFFsky. IPA transcription (broad): [ˈt͡ʂɛswaf znamʲɛˈrɔfskʲi].

[3] Contributions on Znamierowski in English are very scarce. See e.g. Gidyński (1968); Czepita (1999); Lorini and Żełaniec (2013); Lorini and Żełaniec (forthcoming). In Poland, there is e.g. the biography by Marek Smolak in Smolak (2007).

(1915) coined—for the first time in any tongue ever (to our knowledge, G. L. and W. Ż.)—the phrase "the metaphysics of the society in the generic sense."[4]

Finally: Although there is no hard evidence (known and accessible to us, G. L. and W. Ż.) that Znamierowski ever personally met Husserl or any of his pupils, there is unmistakable, though seldom explicitly acknowledged, influence of the phenomenological school on him, especially of Adolf Reinach. As a matter of fact, Reinach appears to be the thinker whom Znamierowski took most seriously and from whom he had learnt most. Regardless, however, of what his debt to Reinach might have been, he need not and cannot be reduced to any vortex of influences. He never belonged to any school or "circle" (such as the Lvov-Warsaw school, with which he is sometimes erroneously associated as a member[5]), and though he had notorious pupils, such as Zygmunt Ziembiński, a prominent Polish legal scholar and philosopher,[6] he cannot be considered the founder of a school of his own. He wrote, alas, exclusively in Polish, in a rich, hypotactic but yet very lucid style, too characteristic to be widely imitated or adequately rendered in a translation.

In 1924 Znamierowski was appointed professor of jurisprudence at the recently founded Adam Mickiewicz University in Poznań, Poland, where he kept the chair until 1965, with the short interlude of the German occupation of Poland, 1939–1945, when all but the most elementary education for Poles was banned by the occupation authorities. He died in 1967 in Poznań.

4.2 Society in the Generic Sense

Znamierowski is primarily interested in the very essence of *społeczność*. The Polish word "*społeczność*" (spaw-WETCH-nawshch; IPA transcription (broad): [spɔˈwɛt͡ʂnɔʨt͡ɕ])) employed by Znamierowski is abstract and learnèd, *papieren*, as the Germans say; it does not accurately correspond to "society" (in Polish "*społeczeństwo*"), which has political and/or ethnic overtones. In Znamierowski it means, by contrast, any social system, structure or organism whatever, ranging from, for instance, a one-off couple of chess-players to supranational units such as the "society" of the African Union. We shall be translating it, most often, as "society in the generic sense." Already this "essentialist" interest—which may have been an unacknowledged debt not just to Aristotle but to Husserl's "eidetics" (see Loidoldt's contribution to this volume)—sets Znamierowski starkly apart from the post-linguistic turn approaches, be his Anglophile leanings ever so strong. As a matter of fact, Znamierowski at the beginning of "O przedmiocie i fakcie społecznym"

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[4] Much earlier, Alexander Skórski (1893), another Polish philosopher (suspected of having had some influence on Twardowski), wrote in some detail of social philosophy ("*filozofia społeczna*") under this very name (we owe this reference to Prof. Venanzio Raspa of Urbino).

[5] Some maintain, however, that Znamierowski influenced—rather than be influenced by—the ethical views of that school by his stern objectivism and anti-emotivism, cf. Woleński (1989, 16).

[6] See e.g. Ziembiński (1976).

(Znamierowski 1921) says that the obscurity of basic concepts of the various social sciences (including jurisprudence) vitiates their progress, and he lavishes praise on those who, like (to his mind) Othmar Spann, Vilfredo Pareto, Georg Simmel, or, as he puts it, "the most programme-heeding and consistent Adolf Reinach"—attempted to develop a fundamental science, "social ontology,"[7] which should assume the task of getting those basic concepts clear (Znamierowski 1921, 2). Znamierowski at first says it is a merely lexicographic question what this new science should be called. But yet, he goes on to say in the same paragraph: "It is better to call [this science] social ontology, because it establishes general truths holding for all society in the generic sense (*społeczność*), both actually existing and merely possible and because, as an a priori science, it is all right for it to indicate with its very name its philosophical character". This is the first occurrence of "social ontology" in any language known to us.[8]

This could give the impression that Searle (2010, 5f) was right claiming that before him social philosophy as a doctrine of social being had not existed as distinct from a mere methodology of social sciences.[9] This impression is reinforced when Znamierowski, in a vaguely empirio-criticist spirit, (says he) rejects the Reinachian (Husserlian) method of intuitive apprehension of essences and embraces that of "useful thought-constructions," instead. However, Znamierowski (1921, 3) hastens to add, these constructions could nowise be entirely arbitrary: they are based on a priori relations obtaining between the corresponding objects. Thereby he reveals himself as an "anonymous phenomenologist," to borrow a phrase from Karl Rahner, even if *malgré lui*.

Further on, however, he seems to forget his previous programmatic allegiance to "conventional thought constructions" and the like, and, after a scathing criticism of every phenomenalism, be it *à la* Mach or Karl Pearson,[10] he makes an Aristotelian fresh start by observing that all foundational social science (his "social ontology") would have to call a "society in the generic sense" (*społeczność*) only a group of individuals such as are endowed with a mind, and not any arbitrary "social phenomenon," as sophisticatedly conceived as ever (Znamierowski 1921, 8). And certainly, he carefully explains, not just any such group you please! Here Znamierowski leaves the safe ground of common-sense and common linguistic usage to engage upon an

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[7] In German, the term "*Sozialontologie*" first appeared in print in Theunissen (1965), with attribution to Husserl, but it was the later, transcendental Husserl whom we have no evidence Znamierowski had ever taken notice of. The term "social ontology" appears also in English in Gittler (1950) and in Italian in Recaséns Siches (1966, 230).

[8] At least in print. For, as we learn from Salice (2013, 219), Husserl used the expression "*soziale Ontologie*" in his manuscripts of 1910 (published in 1973 in *Husserliana* XIII), as a ἅπάξ λεγόμενον, and yet with a clear idea of what his "social ontology" should be: an eidetic and at the same time "material ontology investigating the species of social objects and [their] essential properties" (Salice 2013, 222).

[9] On this aspect of things see Lorini and Żełaniec (2013).

[10] In his *Grammar of science* of 1892, actually only the concept of a "routine of impressions" is being criticized as incompatible with a radical actualism, which Znamierowski imputes to Pearson. Cf. Znamierowski (1921, 5).

"epagogic"[11]—or should we rather say eidetic?—search of the specific difference of the social as such. Let it be stressed that throughout his work Znamierowski very copiously employs all kinds of examples—they are, frequently, more than mere illustrations; they come quite close to eidetic variation, though Znamierowski never calls them so.

A society in the generic sense (*społeczność*) is essentially—he says—(i) a group of two or more persons such that (ii) at least one of them (A) knows about the existence of the other(s), and that *qua* persons (the knowledge need *not* be reciprocal; Znamierowski gives us thereby a handle on the interesting phenomenon of what could be called "unilateral societies"[12]), (iii) it is objectively possible for A to consciously and intentionally act on this other or these others[13] and, finally, (iv) A knows about this possibility (Znamierowski 1921, 10). Znamierowski (1921, 19) is aware that condition (iv) is implied in the former condition, since one cannot really be in the position to consciously and intentionally act (as distinct from: instinctively behave) in a determinate way without knowing that one is; no infinite regress is involved here as the knowing of the knowing is non-objectifying, but merely concomitant—like a lamp that illuminates the objects around itself, but also itself, not in virtue of being one more object to be illuminated, but just in virtue of being a lamp, an illuminator of others.[14]

This is meant to apply to any society in the generic sense ("*społeczność*") whatsoever, be it a national, ethnic or religious community, or a local canary breeders association, or a "society" of one solitary mountaineer buried under a snow avalanche and a rescuer scrambling to help her (Znamierowski 1921, 9). The avalanche example is used by Znamierowski as one of a non-society, to wit, with the proviso that the would-be rescuer cannot help the climber and he knows he can't.

In addition, Znamierowski (1921, 9) effectively requires that the other person's or persons' being precisely *persons* should be an essential part of A's (possible or actual) motivation for the action on those persons he correctly thinks ("knows") it is possible. Actually, Znamierowski stresses the *feelings*, especially those of sympathy, that should play a crucial role here. A crowd is not a society in the generic sense, as everyone in it knows that everyone else is a person yet this knowledge plays no role in motivating the only action one feels like doing in a crowd *qua* crowd, viz. pushing these people aside and out of one's way. As a member of a crowd one sees and treats one's crowd-mates as inert bodies, not as persons. In German and Russian

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[11] See Groarke (2009, 26).

[12] See http://www.uncontactedtribes.org.

[13] Znamierowski very explicitly adopts an "objectivist" (*not* in the sense of Ayn Rand) concept of possibility, i.e., while aware of its indeterminist and perhaps even antiscientific implications, he locates it on the part of the object. "Possible" is a property of reality itself, not of our notions of it, he tells us (Znamierowski 1921, 16). It is close to the Aristotelian δύναμις (*Metaphysics* IX).

[14] This metaphor appears in Buddhism (Shantaraksita, शान्तरक्षित), cf. Williams (2013, 20), but also in some Christian philosophers, e.g. William of Auvergne, cf. Moody (1975, 68). But metaphors apart, it is more than likely that Znamierowski received his idea of a merely concomitant (rather than a second-order one) self-perception from Brentano, where it plays quite a pivotal role ("*innere Wahrnehmung," "begleitendes Bewußtsein")* cf. e.g. Brentano (1995, *passim*).

concentration camps, for instance, one saw (in the sense relevant here: perceiving others with a view to receiving motives for imminent or postponed action) other human beings sometimes as something to eat, sometimes as sexual objects and sometimes, perhaps most often, as something to abhor, detest, get nauseated at the very sight of, or to be afraid of (depending on one's position in the camp) and as something to take one's anger, fury, and disgust with the human race out on.

Znamierowski is not extremely prolix on his concept of *person*. It does not seem to have many Boethian, let alone Christological, overtones with him.[15] Nor is it to him a mere Lockean continuity,[16] much less a Humean thing that is not.[17] It is, however, rather basic. Adverse to all phenomenalism, Znamierowski (1921, 10ff) conceptualizes a person as an enduring dispositional centre of a mental subject which is the core of the subject's awareness of its ego, no matter what transient sensations, if any, it happens to be going through at any given moment. What matters to Znamierowski is that members of a society in the generic sense act on one another—not necessarily everyone on everyone else (cf. the unilateral action on the avalanche victim by her rescuer)—intentionally as on persons and because of their being persons, or at least have a realistic chance of so acting and are aware of it. In this sense, it can fairly be said that Znamierowski reintroduces, without mentioning it with a word, the Hegelian category of universal "recognition" (*Anerkennung*)[18]—yet not as a goal to be reached after a long and tortuous evolution, but as a condition *sine qua non* to be met at the very outset of the constitution of a society in the generic sense.

This opens up a *gesellschaftskritisch* perspective, because it is not clear that in most contemporary presumable societies a recognition like that is guaranteed. Do those who know of the existence of most of us—national rulers, CEOs of international corporations etc.—let themselves be motivated in their actions directed to us by a perspective in which we appear as persons, in an ever so meagre and non-Boethian sense, rather than as mere consumers, ones to be ruled, fed, assisted and … exploited? This is very questionable.

Znamierowski's concept of *social action (acting)*—involved in condition (iii) above—is low-profile and sober, and yet subtle. Social action in Znamierowski's sense is a causal process starting in the mind of someone (A) who knows of the existence of another person; this process is motivated in part at least by A's knowledge of the other person, and after ever so many intermediate stages it affects that other person sometimes in her personhood (students being taught, say), sometimes in her sheer physical being (and thereby in her personhood too, e.g. the foolhardy climber under the avalanche). An action like that is social or society-making (in the sense of condition (iii) above) inasmuch as it produces the intended (by A) effect, not any other. Teaching is social action inasmuch as the students have learned something, the rescuing action is social, too, inasmuch and only inasmuch the victim has been rescued; it does not detract from the social character of either action, but nei-

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[15] On the latter see Żełaniec (2003).

[16] *Essay*, II.XXVII.

[17] See *Treatise*, I.6.vi. See e.g. Traiger (1985).

[18] Recognition (as, roughly, moral subjects), cf. Williams (1997). Znamierowski mentions recognition (*uznanie)*, though in a somewhat different context, in Znamierowski (1924, 32–36).

ther does it contribute to it, if the students have developed an ardent hate for their teacher (as a side-effect), or if the victim has subsequently fallen in love with her rescuer.

It would, perhaps, be pedantic to ask what happens if a given social or potentially social action incidentally fails to achieve its intended result, which is quite common with such one-off societies as the trapped climber and her rescuer. Imagine the rescuer, despite all skill and courage, fails to find the climber before she dies or saves herself: Does then the two-person society not at all come into being, nipped in the bud as it were, or does it enjoy a merely potential being? Now, independently of what the answer should be for this example, this type of question is very relevant in the context of Znamierowski's theory, as it leads over to the issue of society's *environment* (*środowisko*) (Znamierowski 1921, 12).[19] This element in Znamierowski's theory may well be borrowed from Reinach without due acknowledgement, because on social acts Reinach wrote these striking lines: "The function of the social acts where they make themselves known could not fulfil itself among us men if the acts were not in some way externally expressed. The social acts, like any acts of other persons, can only be grasped through some physical medium; they need an external side if they are to be heard [or, more generally, perceived, G. L. and W. Ż.]. Experiences which need not turn without, can unfold without being in any way externally expressed. But the social acts have an inner and an outer side, as it were a soul and a body" (Reinach 1983, 20). The "body" is a change of, or within, the environment.

Znamierowski's environment is, however, far more widely applicable than as a "medium" of a social act. Changes in the environment are, too, more than necessary conditions of social acts (which they are in Reinach); they are in addition (parts of) sufficient conditions of social acts' spanning different times and spaces, for instance a letter sent to a friend (Znamierowski 1921, 14f). The concept of environment is quite pivotal in his theory.[20] More than most contemporary students of social ontology, except perhaps the late Niklas Luhmann, Znamierowski is clearly aware of the role of the extra-, infra- and non-social environment in what happens and is the case in the social world. His social world is unlike any toy-world, or gamesmanship where a move merely (overtly) intended—or seemingly intended[21]—is by itself a move actually accomplished, and he is not just aware that the way 'twixt the cup and the lip is long and adventurous but he is positively interested therein and makes a great deal of it. In this context the concept of a "product" (*wytwór*),[22] of any—not just social—action, comes up. It is similar to Twardowski's "products" (see Twardowski 1999), but also to Nicolai Hartmann's "objectified mind" (*objektivierter Geist*). We shall return to it later on.[23]

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[19] He is then more explicit on environment and *otoczenie* (surroundings) of social action in Znamierowski (1924, 61 and 63).

[20] On external manifestations of social acts see Loddo (2011).

[21] Cf. article 4, on "[t]he act of moving the pieces," of the FIDE rules of chess.

[22] Znamierowski (1921, 15).

[23] By way of an example: A non-living object, say a parcel (land lot), is no part of a society, but it can well be a socially relevant part of a society's environment. The property or easement rights on this parcel are *social relations* amongst members of the relevant society, supported, as it were, by

4.3   Social Objects

Having dealt as above with the issue of the essence of society in the generic sense (*społeczność*), Znamierowski notes that there are hardly any *pure* societies in the generic sense, ones having just the eidetic properties and no other socially relevant ones. On the contrary, he goes on, most societies in the generic sense comprehend not just persons and possibilities of (personhood-respecting, conscious and intentional) action amongst them, but other objects which are possible only within a society in the generic sense but which, on the other hand, support the society in the generic sense in question and bestow upon it the ontological character of an enduring, quasi-substantial, non-transient and non-phenomenist being. Such objects— legal norms, rules of decorum, social institutions and others—Znamierowski (1921, 20) calls "social objects *per se*."[24] A possibly somewhat random assortment of examples provided by Znamierowski (1921, 20–22) himself include the Polish constitution, Znamierowski's property right to a specific book from his library, a non-written customary norm.

Now what are these objects, ontologically?—he asks. "Their ontological status has not yet been clarified," Znamierowski (1921, 20–21) explains, while making clear his preferences. Reinach, whom he credits with first having seen the issue, held that they were beings *sui generis*, neither physical, nor mental, [nor ideal], but this, without being clearly wrong, is too controversial an assumption.[25] Alternatively, and extensionally equivalently, one can say that social objects *per se* are systems (*układ*, plural: *układy*)[26] of physical and mental objects (Znamierowski 1921, 20ff).[27] For instance, the March Constitution of the Second Polish Republic (of the 17th of March 1921) is the system consisting of the original copy of the same and its authorized reprints, but also of the mental acts of Poland's citizens in which they become aware of the Constitution's contents and perhaps let themselves be motivated by this content to constitutional (legal) or anti-constitutional actions and omissions—*as well as* of lasting mental dispositions to such acts. These copies as well as reprints and the corresponding mental acts and dispositions are "*wytwory*" or "products" in Znamierowski's sense. There is a interesting "dialectic" between that which Znamierowski calls "products" and Reinach's "legal entities" (*rechtliches Gebilde*) (Reinach 1983, 4ff and 9), "*wytwór*" and "*Gebilde*" being somewhat analogous words in Polish resp. German: the latter are in part founded on the former, except that Znamierowski remains neutral as to the existence of the latter and prefers to identify them with "*układy*" (systems) of the former plus other things. Finally

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that parcel: had it not existed, they would not have existed, either (Znamierowski 1921, 7 and 15), and yet, the parcel does its supporting job from outside of the society in question.

[24] On Znamierowski's social objects see Lorini (2000, 126–139).

[25] Znamierowski does not reject this assumption out of hand; on the contrary, he calls such a rejection "simplificationist." However, he did not choose to get too deeply involved in debates in general ontology.

[26] On such systems in Znamierowski see Lorini and Żełaniec (forthcoming).

[27] Compare this with the Lockean "mixed modes," cf. Lorini (2010).

[t]hose who believe in ideal objects, will perhaps consider the ideal meaning of the said statute […] an essential part of the system, welding its remaining parts into one whole. (Znamierowski 1921, 21).

In the same vein, the ownership rights to a book are neither the book itself nor any thought of the owner or anybody else's concerning the book. They are something different from such physical objects and mental phenomena: they are a system encompassing both (Znamierowski 1921, 21).This system is a *sui generis* object, sufficiently so to be considered a being in its own right, not just a passing phenomenon, and of an enduring and lasting, thingly, rather than fleeting and in-need-of-ever-recurring-reactualisations, character—despite the fact that in some social objects, such as a customary norm, there is no physical component at all (Znamierowski 1921, 22). Without saying this explicitly, Znamierowski seems to be suggesting that the diverse elements of a system like that are not all and at the same time indispensable, that they can up to a degree if need be substitute for one another, guaranteeing thus the continuous existence of the social object in question.

4.4   Social (F)acts

So much for *static* social objects; and on to the dynamic ones, which are social facts. Znamierowski seems to be only interested in such facts as are, too, intentional social *acts*. He criticizes Reinach's conception thereof—while crediting the German philosopher for groundbreaking work on the topic—as unduly narrow and overly psychologistic (Znamierowski 1921, 22ff). It is plainly wrong, he points out against Reinach, to think that all social acts must be *fremdpersonal* (other-directed[28]) and in-need-of-being-heard (*vernehmungsbedürftig*); a theft, for instance, is neither, indeed, it is in-need-of-*not*-being-heard or anyhow perceived.

An act, to be social in Znamierowski's sense, must (i) be intentionally directed to (that is, intend) a modification of the *social structure* (a primitive concept which can be seen, according to Znamierowski's view, as a near-equivalent of "the totality of social relations"), but not necessarily by means of directly affecting other persons' minds. This intention encompasses (ii) the awareness of other persons (for instance, of the owner of whatever is to be stolen), but it need not aim at them, or, as in case of murder, it can well aim at (go after) them as physical and biological objects, rather than at their personhood. Finally (iii), social acts involve a change (which may be of very short duration, such as producing acoustic waves during a speech-act) in (a fragment of) the

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[28] Reinach (1983, 19). Znamierowski is here being less than quite just to Reinach, as the latter explicitly admits that such social acts as the waiving of a claim, for instance, lack the moment of other-directedness (Reinach 1983, 32). This is certainly disputable, Reinach is saying in the same breath: "This waiving [of a claim resulting from a promise] is a social act whose addressee is the promisor" and the argument he adduces (for the non-other-directedness of claim-waiving) is controvertible. Yet the very fact that Reinach held it conceivable that there should be non-other-directed social acts proves Znamierowski wrong on the point in question. Thanks go to Alessandro Salice for calling our attention to this detail.

environment (see Sect. 4.2, towards the end) of the society in the generic sense in question (Znamierowski 1921, 23). Without this change in the external environment the act would be a mere subjective experience (*Erlebnis* in German), which is what Znamierowski rightly or wrongly (probably wrongly) accuses Reinach of reducing all social acts to (Znamierowski 1921, 24). The change must be of the right sort; if a son harbours the intention of killing his father and the latter finds this out and dies from disappointment and sorrow,[29] the killing has not come about as a social act, it has remained as a merely subjective, though possibly frequently recurring, experience of the ungrateful son (Znamierowski 1921, 24). He also uses the examples of the institutions of correal and solidary obligation to discredit Reinach's alleged one-*Erlebnis*-one-act theory. Dubious—yet stimulating. Strictly speaking, Znamierowski thinks Reinach mistakenly reduces all social acts to acts of communicating such solitary experiences to others.

4.5 The Social Significance of Objects and (F)acts

As we have observed (Sects. 4.3 and 4.4), social objects and (f)acts are—for Znamierowski—mostly systems (*układy*) of physical and/or mental (and/or ideal, if you believe in such) objects, processes and events. This entails that objects taken singly, while they are not social *per se*, have multifarious social significance, as they are parts of the said systems, or else affect such parts. Znamierowski distinguishes two sorts of social significance.

When a non-social item influences the persons who are the subject of social actions (*qua* such) or the changes in the environment they bring about in the course of their actions, it is said to have *social bearing* (*doniosłość społeczna*) (Znamierowski 1921, 27). Contrarily to what might be expected, Znamierowski denies that every product (*wytwór)* of a human mind has social bearing: an improvised piece of music, forgotten by the composer before written down and published, has no social bearing, nor does a text written in an indecipherable writing system.[30] Climate, or land relief, has social bearing, and so does art and other intellectual products (*wytwory*) if made accessible to the public,[31] and obviously, too, technological inventions, none of which are social *per se*.

When, by contrast, a non-social item is a necessary and permanent condition (or means) of a social relation or a type of social action, or a symbol of such, it is then

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[29] Cf. a similar case in Reinach (2009, 32), obscured in the somewhat excessively free, "libertarian," translation by Berit Brogaard. In the German original (Reinach 1905, 18ff) *A.* prayed (used to say prayers) for *B.*'s death (a case of "*Totbeten*").

[30] One wonders how Znamierowski would have reacted to the Voynich manuscript, which seems to have had some bearing, keeping scholars busy for over four centuries.

[31] See the very explicit phenomenological descriptions in Znamierowski (1924, 46–49), on laying down laws by posting physical products (*stanowienie przez wytwory*), such as raising a wall, or tracing out a physical path. Cf. Searle (2010, 94ff) and Lorini (2011, 1969–1976).

said to have a *social function* (Znamierowski 1921, 228). To judge from his examples, Znamierowski thinks of such conditions and means as are conceptually built into the definitions of the relevant actions and relations. "Social bearing" is, by contrast, a factual (case-to-case) a posteriori dependence of the social on the non-social or not-necessarily-social. All objects, be they physical or mental, that are someone's property are, while non-social by themselves, endowed with the social function of supporting diverse property and ownership relations. Symbols such as a judge's robe, or wig, or gavel, or a state-border sign post have, too, a social function.[32] A theft, as distinct from a *bona fide* appropriation of a presumed *res nullius*, satisfies condition (ii) of a social act (see Sect. 4.4) in that it encompasses implicitly the awareness of the owner, even though it is *it* (the thing to be stolen) rather than *him/her* (the owner) that is the direct object of the action's explicit intention—this is because the intended object of theft happens to have a social function that involves a person called its "owner." And should you ever have the lucid idea of setting on fire a forest during war, please bear in mind that you will be prosecuted by the relevant state not for wilful destruction of its property (let's suppose the forest was owned by that state), which would have merely involved the forest's *social function*, but for tampering with things of high strategic significance (*social bearing*) (Znamierowski 1921, 28).

Another difference between social bearing on one hand and social function on the other is that the former comes in grades whereas the latter does not: an *x* may have a social function or have none, whereas a navigable river has obviously more social bearing than a wild mountain torrent (Znamierowski 1921, 29). But Znamierowski explains that non-social objects may accumulate functions so that they seem to have "more" social function. An old parchment manuscript may be, at the same time, the original of the Constitution, and the property of a National Archives Museum (Washington D.C.), or a scholar may be both a chair-holder and a dean, enjoying two different functions at once. The more functions an object has, the higher is its social bearing.

Every object endowed with a social character *per se*, Znamierowski explains further on, has a social function and thereby, too, social bearing; however, many objects (events, processes…) have just the latter, but not the former two, for example pathogenic bacteria rife in an area can be socially consequential (have social bearing) to the utmost degree, and yet they have neither a social function (unless, goodness forbid, turned into a bacteriological weapon) nor a social character *per se* (Znamierowski 1921, 29).

4.6   The Use of These Typologies

Now, what is really the use of these typologies and classifications, as an impatient reader may ask. Znamierowski (1921, 30–34) asks this question too, and his answer is that they help in properly delimiting the area of the social. Is religion, for instance,

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[32] In seeing this, Znamierowski has arguably anticipated Searle's language-free Status Function Declarations, see Searle (2010, 94ff).

a social phenomenon *per se*, as "many learnèd men" (Émile Durkheim?) hold? No—private religious acts are possible,[33] which need have social significance in neither sense. Is production (in the economic sense)? No—as Robinson Crusoe's example has clearly shown. It is true, he goes on, that the *division du travail social* is a social phenomenon *per se*, but any *travail* within it can, given sufficiently developed technology, be accomplished individually. All products of such labour will presumably have social significance, but that is another story. Industrial production (as carried out by a single worker) is a means of earning a living, and earning a living certainly is, as an exchange of goods between the worker and his employer, a process that is social *per se;* however, the former (industrial production) is not (Znamierowski 1921, 31ff). On the other hand, within the sphere of economy there obviously are quite many (types of) objects and facts that are manifestly social *per se*, such as market, to start with, exchange, money, donation and so on (Znamierowski (1921, 32). This makes the traditional question whether economy (religion, art, science …) is social or not appear ill-posed (Znamierowski 1921, 32). Various elements thereof are social, others are not, these latter may or may not have social significance in either sense. Observing these differences helps to avoid many methodological errors, but first of all blocks the way towards a German style[34] *totale Vergesellschaftung*, *à la* Tönnies, Weber and Simmel, in whose smothery, oppressive atmosphere there is almost nothing private and individual left.

As distinct from contemporary students of societies of all kinds, Znamierowski appears little interested in questions concerning the linguistic and the intentional. Questions of collective intentionality do but little matter to him. A candidate for suicide, to take another Durkheimian example, may be using collectively shaped[35] expressions and intentions while muttering to himself "Now I'm g'na put an end to this wretched life of mine," but Znamierowski will hardly admit that the ensuing act would be social (*per se*, though it obviously will have, in most cases, social significance). Neither is "collective" a near-synonym of "social" in Znamierowski: collective action is not *per se* social—it would have to involve acting on other persons *qua* persons, a condition which is satisfied neither by a police squad charging at a group of protesters nor by a gang of neuromarketers trying to influence directly the brains of the members of their respective dispersed target groups.

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[33] This—to qualify Znamierowski a bit—need not be unrestrictedly true of all religions. The Rev. Rabbi Stas Voytsekhovitch of the Jewish Community of Warsaw seems to be holding the view (oral communication) that that is not true of Judaism (where, he maintains, no non-social religious acts are possible).

[34] Or, for that matter, Peter Winch style.

[35] This is by itself not a mark of social character for Znamierowski, see Znamierowski (1921, 27): raising a dam in the bed of a deep bay by collectively pitching stones into the same area is not a social act and neither does it possess any social significance by itself. (The dam may, over time, acquire some social significance, without the action of raising it retroactively becoming social, let alone social *per se*).

4.7   Znamierowski's Topicality

Is anything like the above still topical? As we have said, Znamierowski does not dwell much on intentionality, speech-acts and the like, unless, perhaps, to downplay the importance thereof; it would, thus, be rather difficult to see him as a participant in contemporary discussions like many others, making standard points and raising standard objections. His is not a theory of pronouncedly *communicative* action, in the style of Habermas (1984–1987). Unlike H. L. A. Hart, and not being an Austinian, Znamierowski does not, by contrast, downplay the significance of physical coercion and *force majeure* (exerted by the environment and surroundings) for in his opinion not exclusively speech-actly social action (see e.g. Znamierowski 1924, 36–46).

He is, by contrast, much more interested in (external[36]) action, which he conceives of as social only under the condition that the agent recognizes the personhood of the acted-on. Such action is the basic "social fact," to use an expression made famous by Margaret Gilbert (1989), around which everything else is built. And that is not an arbitrary decision as good as any other, because Znamierowski constantly stresses the diverse metatheoretical and methodological consequences of seeing the social as built precisely on *that.* A "society" of ants or robots would, to his mind, be a *toto genere* different thing, not a true society in the generic sense (*społeczność*), as would that of totally socialized (*vergesellschaftet*) personal beings, reduced, like Calvino's knight Agilulfo, to their social functions[37] and enjoying no modicum of private, individual ontological status. Was Znamierowski wrong in thinking so? And if yes, are we in a position to prove him wrong? Besides, even admitted that social facts, in the above sense, are the warp the fabric of social life is woven on, what, exactly, is the weft thereof? All the diverse kinds of threads mentioned previously: social acts and objects, social relations and non-social things having social significance in the sense of either social bearing or social function? Surely; but how, exactly, are they woven together? There is still much work to be done, part of which would be elaborating on some of Znamierowski's points, and another part, perhaps, setting him aright on others.[38]

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[36] Here again an analogy with Reinach. Would telepathy count as social action in Znamierowski's eyes? Though as befits a phenomenologist (even an anonymous one) he uses many examples, it is next to never *that kind* of examples, so we do not know.

[37] Calvino (1959). Cf. Żełaniec (2013, 59).

[38] We have done part of that work (on theticity and rule-created reality in Znamierowski, among other things) in Lorini and Żełaniec (2013) and in Lorini and Żełaniec (forthcoming), although there is still a great deal to be done.

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Chapter 5
Early Heidegger on Social Reality

Jo-Jo Koo

Abstract This book chapter shows how the early Heidegger's philosophy around the period of *Being and Time* can address some central questions of contemporary social ontology. After sketching "non-summative constructionism", which is arguably the generic framework that underlies all forms of contemporary analytic social ontology, I lay out early Heidegger's conception of human social reality in terms of an extended argument. The Heidegger that shows up in light of this treatment is an acute phenomenologist of human social existence who emphasizes our engagement in norm-governed practices as the basis of social reality. I then defuse a common and understandable set of objections against invoking the early Heidegger as someone who can make any positive contribution to our understanding of social reality. Lastly, I explore the extent to which the early Heidegger's philosophy provides insights regarding phenomena of collective intentionality by showing how the intelligibility of such phenomena traces back to individual agents' common understanding of possible ways of understanding things and acting with one another. With the early Heidegger, I argue that this common understanding is the fundamental source and basis of collective intentionality, not the non-summativist constructionism on which contemporary analytic social ontology has sought to focus with much effort. The lesson about social ontology that we should learn from the early Heidegger is that there is a tight connection between the social constitution of the human individual and his or her capacity to perform actions or activities that instantiate collective intentionality.

Keywords Heidegger • Social reality • Social ontology • Collective intentionality • Social constitution of the human individual

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5.1 Introduction: Three Dimensions of Social Ontology

One of the perennial questions of social philosophy concerns how we should understand the fundamental relationship between the human individual and the social environment in which he or she is embedded and participates. As a specific branch of social philosophy, social ontology investigates the nature, character, and structure of this relationship in all its multifaceted varieties and complications. Thanks especially to the ongoing work of Philip Pettit (1996: Part II and Postscript; 2002, 2014; Pettit and Schweikard 2006: 36), we can discern *three dimensions* of social ontology along which we can consider the relationship of the individual agent and the social entities, forces, structures, systems, or (last but not least) the manner in which this agent is thought to be socially constituted or 'socially constructed'.

The first dimension or axis of social ontology is 'vertical' insofar as it examines the extent to which macro-level social forces, structures, or systems, etc., can coercively constrain and thereby quasi-deterministically restrict the autonomy (agency) of an individual, a group or population of individuals, or such individual(s) under the aspect of how they embody or fall under the ascriptions of occupying certain social identities or social positions (Pettit 1996: Ch. 3). It is important to note that the type of coercive constraint or limitation in question is not in the first instance political, but turns rather on whether and how social forces, structures, or systems, etc., can supposedly undermine (in Pettit's terminology, 'override' or 'outflank') the intentional attitudes or agency of individuals as constitutive aspects of their individual autonomy. In terms of Pettit's conceptual apparatus, this is the primary issue between individualism and collectivism, in his particular senses of these labels.

The second dimension or axis of social ontology is 'horizontal' insofar as it examines whether and how individual agents are necessarily socially constituted (or 'socially constructed'), in the sense that some basic capacity or set of capacities that they exercise as intentional autonomous agents requires that they intrinsically coexist and engage with other people (Pettit 1996: Ch. 4, 2002). It is important to note that the sense of coexistence and engagement with others in question is not in the first instance factual, but turns rather on how the basic capacity or set of capacities under consideration depends non-causally or intrinsically on their relations and engagements with other people. In terms of Pettit's conceptual apparatus, this is the primary issue between atomism and holism, in his particular senses of these labels.[1]

Pettit has also recently noted a third distinctive dimension along which we can understand and investigate the relationship between individual agents and the larger social or collective entities of which they are parts or members (Pettit 2003, 2014; Pettit and Schweikard 2006). This dimension concerns the way in which it is

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[1] One of the major innovations of Pettit's social ontology is his discernment of the crucial distinction between the issue that animates the disagreement between individualism and collectivism, and that about which atomism and holism are in opposition. He notes rightly that social theory and social ontology will continue to encounter intellectual impasses if they fail to distinguish the 'vertical' and 'horizontal' issues in social ontology. For an instructive discussion of these matters, see Pettit 1996: 111–16.

legitimate (justified) to claim that there exist group or collective agents, beliefs, attitudes, intentions, actions, etc., in ways that are irreducible to the aggregations of the agency, beliefs, attitudes, intentions, actions, etc., of the singular individuals that compose these larger social or collective entities as their parts or members (cf. Schmitt 2003; Schmid 2009). We can describe this dimension as the primary issue about which 'singularism' (Gilbert 1989: 12[2]) and 'corporatism' (i.e., the view that corporate persons or corporate agency are ontologically irreducible or at least explanatorily indispensable) are in dispute. It is clear that the emergence of analytic social ontology since the late 1980s – in particular, the literature concerning collective intentionality phenomena and how to analyze them satisfactorily – has tended overwhelmingly to focus on the philosophical issues and problems within this third dimension of social ontology.[3]

I have briefly canvassed these three dimensions of social ontology in order to situate and set the stage for the main task of this book chapter: namely, to consider how Martin Heidegger's early philosophy (from his so-called 'phenomenological decade' in the 1920s) can possibly contribute to our understanding of social reality as a specific branch of social ontology, broadly construed. At the most general level of this paper, I will argue that early Heidegger's conception of human social existence and reality delivers philosophical insights that pertain not just to the above mentioned second and third dimensions of social ontology, but also show how there is a tight connection between these two dimensions. Now, the suggestion that Heidegger of all people can make a contribution to social ontology, especially analytic social ontology, might strike most readers who tend to move within conventional philosophical circles as very unlikely if not downright perverse.[4] This is by no means an unreasonable assumption. For it is not obvious at first glance how early Heidegger's philosophy can make any positive contribution to our understanding of social reality, even when one is generally sympathetic to the motivations and way of thinking of 'continental' philosophy, much less from the perspective of analytic philosophy. Nevertheless, the chief aim of this paper is to show how we can interpret and appropriate his early philosophy in order to better understand some key aspects of the basic character and structure of social reality. In an effort to bring early Heidegger's

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[2] According to Gilbert, who may be the first in analytic social ontology to coin this term, '*singularism* is the thesis that [collectivity] concepts are explicable solely in terms of the conceptual scheme of singular agency' (*ibid.*, emphasis in the original).

[3] The main philosophers who inaugurated, and whose ongoing work continue to sustain, the burgeoning interest in analytic social ontology are Gilbert (1989, 1996, 2000, 2003), Searle (1990, 1995), Tuomela ([with Miller] 1988; 1995, 2002, 2003, 2007), Pettit (1996, 2002, 2003, 2014), and Bratman (1999: Part II). I note here in this footnote only their most influential earlier contributions to this particular literature.

[4] For a rare and notable exception, see the work of Schmid (2005: Ch. iv, 2009: Ch. 9). To some extent, this paper engages in an indirect dialogue with Schmid's interpretation and appropriation of the early Heidegger's philosophy for purposes of social ontology. Despite our apparent disagreements about a number of interpretive and philosophical issues, I am grateful to Schmid for stimulating discussions about them, as well as for pointing out to me in particular the significance of Heidegger's 1928/29 lecture course, *Einleitung in die Philosophie* (Heidegger 1996), as an important resource for understanding Heidegger on social ontology.

conception of the social and analytic social ontology into dialogue, I will juxtapose his existential-phenomenological approach to the social with the set of guiding assumptions that influential analytic social ontologists such as Gilbert, Searle, and Tuomela (among others) typically take for granted. I will suggest at the end of the paper that these analytic social ontologists are not so much wrong, as far as they go, though I do think that some of their main arguments are unsound even on their own terms.[5] Rather, analytic social ontology is flawed in my view because its proponents are under the illusion that they are giving us an adequate conceptual apparatus for understanding and explaining the fundamental nature of social reality, rather than, to be sure, just one important dimension of it as this is circumscribed by singularism and corporatism. What is at stake is this: Whereas analytic social ontologists are primarily concerned with the *process* or *mechanism* by means of which interacting individuals can *construct* social or collective entities (collective beliefs, intentions, actions, agents, institutions, etc.), early Heidegger's crucial move emphasizes the conditions under which all entities, including social and collective ones, can *make sense at all*. When properly understood, this move has significant consequences by shifting the basic orientation according to which we should carry out investigations of social reality: Instead of beginning by specifying the conditions of adequacy for the *construction* of social or collective entities, early Heidegger emphasizes that we should first consider the necessary conditions of the *intelligibility* (*Verständlichkeit*) of such entities at all, if we are to succeed eventually in grasping the fundamental aspects and structures of social reality.[6]

This book chapter is organized as follows. In Sect. 5.2, I first highlight three basic assumptions that analytic social ontologists like Gilbert, Searle, and Tuomela take for granted. I then briefly elaborate Tuomela's account of social practices and its consequences for understanding social norms and social institutions. In Sect. 5.3, I lay out my interpretation of early Heidegger's conception of being-with (*Mitsein*) and the 'anyone' (*das Man*) in *Sein und Zeit*[7] (*Being and Time*), with the aim of showing why he is justified to hold that human existence is constitutively being-with-others in a common world. This interpretation shows where early Heidegger stands with regard to the second 'horizontal' dimension of social ontology. Not

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[5] I argue for this elsewhere in 'Problems of Circularity in Theories of Collective Intentionality' (Koo 2011b).

[6] I will explain the sense in which analytic social ontologists provide constructionist accounts of social or collective entities in the next section.

[7] All page references in this book chapter will henceforth be to this work as '*SZ* (Heidegger 1993)'. The English translation by Macquarrie and Robinson of this text (Heidegger 1962) provides the German pagination on its margins. Note, however, that all translations of *Sein und Zeit* into English in this book chapter will be my own, not those of Macquarrie and Robinson. In this paper Heidegger's concept of *das Man* will be rendered in English as the 'anyone', which works fairly well as a translation but fails unfortunately to capture the undertone of *prescription* expressed by many (though not all) uses of '*man*' in German (e.g., 'Das macht man nicht in der Öffentlichkeit' ['One doesn't (shouldn't) do that in public']). But 'anyone' is slightly preferable for linguistically disambiguating reasons since there will be places in the book chapter where I use 'one' in its ordinary sense in English, not in the distinctive, loaded sense that Heidegger expresses in his uses of '*das Man*' in *Sein und Zeit*. I also prefer not to capitalize 'anyone' in order to avoid any suggestion that it is some sort of reified, self-contained entity that exists over and above or apart from individual human beings.

surprisingly, the result is that he strongly rejects atomism and endorses a distinctive version of holism. Section 5.4 is a brief excursus that addresses or at least defuses a familiar set of criticisms against the evaluatively neutral interpretation that I give to early Heidegger's conception of the 'anyone'. This must be done in order to fend off understandable objections against such an interpretation, which, if left unaddressed, would obstruct the further consideration of what social-ontological consequences can follow from this interpretation. Finally in Sect. 5.5, I consider how this position can intervene in and make a contribution to the debate between singularism and corporatism in the third dimension of social ontology. Although it seems clear enough that he would reject orthodox singularism and thus become a potential ally of most analytic social ontologists in this particular respect, it is more interesting and instructive to understand how he can accomplish this in a considerably different way than how analytic social ontologists typically argue against singularism and thereby make room for corporatism. I conclude with a few brief remarks about some further consequences of this application of early Heidegger's insights regarding human social existence for the scope of contemporary social ontology.

5.2 Non-summative Constructionism About the Nature of Social Reality

Despite their various specific disagreements, analytic social ontologists such as Gilbert, Searle, Tuomela (and others) are united to the extent that they hold what can be characterized as *non-summative constructionism* regarding the nature and basic features of social reality. That is, they typically argue that: (1) there is a large set of social phenomena (including collective and institutional ones) that cannot be reductively explained in terms of the mere summations (aggregations) of the beliefs, attitudes, and actions of single individuals; (2) the irreducible presence and efficacy of collective intentionality is what constitutes such phenomena as social or collective in the non-summative sense; and (3), at least in the case of Gilbert and Tuomela (but not Searle), we can account for the nature of collective intentionality in terms of some independent conceptual apparatus that shows how collective intentionality is actualized by being constructed (built up) and then non-summatively sustained through interacting individuals, without either reduction to methodological individualism or commitment to metaphysically dubious notions like group minds. Let us call (1) the *non-summativism* thesis, (2) the *irreducibility of collective intentionality* thesis, and (3) the *constructionism* thesis. (I should note in passing here that one fairly substantive difference between Gilbert and Tuomela, on the one hand, and Searle, on the other, concerns *what* gets constructed and non-summatively sustained: Gilbert and Tuomela hold that this is collective intentionality as such, whereas Searle treats the notion of collective intentionality as explanatorily primitive and uses it instead, plus other elements like the collective assignment of status functions, constitutive rules, and the Background, to construct institutional reality.)

Tuomela's version of non-summative constructionism is probably the most detailed and sophisticated account of certain basic features of social reality on offer. I want to consider how he analyzes three such features according to his theory (as elaborated in his 2002, but cf. also 2007): namely, social practices, social norms, and social institutions. His analysis of social practices takes pride of place because it is the crucial *conditio sine qua non* for his subsequent analyses of social norms and social institutions. He defines what he calls 'proper' or 'core' social practices as repeated collective social actions performed for a shared social reason.[8] There are four components in this definition of social practices: (i) most evidently, they are actions that must be repeatedly performed; (ii) they are collective actions in the sense that they are performed by multiple individuals; (iii) they are social actions in the sense that their performances take into account what other individuals think and do; and finally (iv) they are actions performed for a shared social reason in the sense that this reason displays possession of shared we-attitudes by these individuals.[9] Individual agents possess we-attitudes in and as a group just in case they share intentions, goals, beliefs, etc., in the sense that each individual who shares them not only holds an attitude A, but believes that others in the group also holds attitude A, and believes that others in the group know that each individual in this group holds the attitude A, and so on. In short, shared we-attitudes consist in particular individuals holding an attitude, believing that others hold this attitude, and lastly believing that there is mutual belief among these relevant others concerning this attitude.[10] For Tuomela, collective intentionality consists in *collective intentions plus mutual beliefs*. What is noteworthy for our purposes is that it is the creation and maintenance of shared we-attitudes that initially *generates* collective intentionality. Collective intentionality, or shared we-attitudes, result thus from individuals' interactions that are analyzable in terms of a certain sort of *constructive procedure* on the part of the individuals in question. To summarize, social practices on Tuomela's view consist in the performance of collective social actions plus the possession of shared we-attitudes.

Now, what is the difference between an aggregation of individual intentions and actions and those jointly performed actions that display collective or, more precisely, shared intentionality on Tuomela's view? It consists in the satisfaction of two further conditions: the so-called Collectivity Condition and that of collective commitment. It is best to illustrate these by means of a concrete example. What separates a group of disparate individuals dancing on a dance floor from a dance troop

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[8] Tuomela 2002: Ch. 4.

[9] Interestingly, Tuomela notes that we-attitudes can be shared in turn in the I-mode or the we-mode (*ibid.*: Ch. 2).

[10] In other words, shared we-attitudes satisfy the condition of 'common knowledge'. The concept of common knowledge is a technical term and refers to the epistemic situation of individuals in relation to each other's intentional attitudes. Its generic definition is as follows: For any two agents A and B, there exists common knowledge that p among A and B if and only if A knows that p, B knows that p, A knows that B knows that p, B knows that A knows that p, and so on. It is easy enough to see how this definition can be iteratively applied to more than two individuals; see Gilbert 1996: 36n4.

performing, *ex hypothesi*, the very same dance movements (cf. a random dance mob vs. a 'flash mob')? Obviously, it is that the intentions and performances of the members of the dance troop are coordinated *from a group's perspective*, i.e., from the perspective of a corporate agent (thereby satisfying the Collectivity Condition); moreover, each member in this group has *some specific role or function to play over time* in the coordinated execution of some array of activities (thereby displaying their collective commitment to performing this array of activities over time from the corporate agent's perspective).

So much for a quick sketch of Tuomela's conception of social practices. Given his tendency to theorize in 'building-block' terms (at least until recently[11]), it is not so difficult at this point to envisage what his conception of social norms and social institutions look like. In his vocabulary, 'proper' social norms, as opposed to authority-based social norms, are defined as mutual normative behavior expectations that apply either in a society-wide or group-specific manner.[12] Tuomela notes plausibly that many of these are just learned in the course of our upbringing and become habitual; he also rightly notes that they are often not codified or even verbalized.[13] Regarding the creation and maintenance of social institutions, these have several basic forms and are constructed on the basis of combining social practices, social norms (in Tuomela's sense), and the collective acceptance and maintenance by multiple individuals of the combination of these practices and norms ('*collective acceptance basically is coming to hold and holding a relevant we-attitude*'[14]). To summarize, what constitutes a social institution, in the sense of what set of elements is required in order to construct and maintain it, is the continual performance of norm-governed social practices that satisfies the Collectivity Condition with collective commitment.

5.3 Early Heidegger on the Social Constitution of the Human Individual

Although I have only scratched the surface of Tuomela's intricate account of social reality, I hope to have conveyed the *constructionist* spirit of some of its key elements and how they are meant to work together. Before elaborating Heidegger's

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[11] It seems that Tuomela's view has become more anti-reductionist with age. One of his earliest papers on the nature of collective intentionality (Tuomela and Miller 1988) is clearly reductive in spirit; and he does not hesitate to use 'building block' talk by asserting in 2002 that, 'We-attitudes of these kinds [i.e., we-intentions and we-beliefs] are the underlying building blocks of social practices, and they are also causally relevant to the initiation and maintenance of both social practices and social institutions.' (2002: 3) By 2007, however, he writes that 'the elements in my analysis [of collective intentionality] are not independently existing "building blocks" of joint intentions but are only analytically isolated parts that presuppose the whole of which they are parts' (2007: 97).

[12] Tuomela 2002: 165.

[13] *Ibid.*

[14] *Ibid.*: 127, emphasis in the original.

conception of the social, one can already raise two reservations about Tuomela's account. (1) As Tuomela himself concedes in places in his more recent writings, his account of collective intentionality and social practices are given from the *theorist's* perspective, with her particular explanatory assumptions and interests.[15] But then it seems that Tuomela's account of social or collective phenomena is of rather limited interest, for it is conceived and articulated, and judged to be satisfactory, solely from the perspective of the theorist given her assumptions and explanatory interests. As such, then, it does not aim to focus on aspects that actually motivate and guide how human beings think about and realize their sociality from within the purview of their own self-understanding. One wonders, therefore, whether this account is (as the later Wittgenstein puts it) like a revving engine that is idling.[16] (2) More importantly, although a constructive approach like Tuomela's shows nicely how mid-level macro entities and their properties can be built up from micro ones, it tacitly assumes that we already in some tacit sense understand how these elements *hang together as a package*. To put this in more Heideggerian terms (which I will explicate below), his account is intelligible and explanatory precisely because it takes for granted a *prior background familiarity* with other basic aspects or structures of human sociality. That is, his analysis of social practices already helps itself to our *prior disclosure (vorgängige Erschlossenheit) and hence understanding of the contexts* in which the various aspects or components that he analyzes fit together as a coherent whole.

This is the juncture at which early Heidegger's conception of being-in-the-world in general, and of *being-with* (*Mitsein*) and the *anyone* (*das Man*) as enabling constraints of the human being's distinctive way of existing in particular, can effect the basic shift in orientation from specifying the conditions of adequacy of the *construction* of social or collective entities to revealing the necessary conditions of the *intelligibility* of social and collective entities in general. Consequently, those who appropriate early Heidegger's thinking here should show how the conditions of the intelligibility of social and collective entities are *prior* in the order of understanding to their conditions of construction. This shift in orientation turns on supporting the extended argument that I see early Heidegger as making in *Sein und Zeit*, which aims to show how human beings always already (i.e., constitutively, intrinsically) coexist with others in a common world. Although some interpretation of *Sein und Zeit* will be unavoidable in what follows in this section, I do so with the sole aim of working out the argument for the social constitution of the individual that I discern as present in that text.

To begin with, Heidegger leaves no doubt in his view that the fundamental way in which the human being (Dasein) exists – i.e., understands things and acts in the world – always already presupposes or involves *being-with-others in a common world* in a distinctive sense:

> The phenomenological assertion that Dasein is essentially being-with [*Mitsein*] has an existential-ontological import. It does not aim to establish ontically that I am not factically

[15] Cf. the quotation cited above from Tuomela's more recent work (2007: 97) that disavows the need for reduction in adequately explaining collective intentionality phenomena.

[16] Cf. Wittgenstein 2009: §132.

alone in a present-at-hand [*vorhanden*] way, or even that others with my mode of being occur. … *Being-with determines Dasein existentially even when another [Dasein] is not factically present-at-hand and perceived*. Even the aloneness of Dasein is being-with in the world. … Thus, being-with and the facticity of being-with-others [*Miteinanderseins*] is not grounded in a co-occurrence of several 'subjects'…. *Being-with is a characteristic of one's own Dasein in each case* [*Mitsein ist eine Bestimmtheit des je eigenen Daseins*]. (*SZ* 120f., emphases added)

This rather dense passage makes the following strong and initially counterintuitive assertion: The most basic way in which any human individual is social (i.e., coexists with others) does not depend on the factual presence of, much less interactions with, other people in that individual's activities. Rather, the fundamentally social dimension of human existence is *constitutive* of (i.e., has an 'existential-ontological' status or import concerning) his or her very capacity to be an individual at all, regardless of whether others are present with whom an individual can possibly interact or go on to construct social or collective entities. This assertion pertains thus to the *social constitution* of the individual as such, not just to the different ways in which she can coexist factually with other people. It pertains, therefore, to the above mentioned second dimension in social ontology; furthermore, it endorses holism (in Pettit's sense) by insisting that our intrinsic (i.e., non-factual) coexistence with and relatedness to others is a necessary condition of being an individual agent at all ('Being-with is a characteristic of one's own Dasein in each case' [*SZ* 121]). How can this strong claim be made intelligible and justified?

As I interpret it, the argument for it can be summarized in the following steps:

1. Being a human individual presupposes understanding the world always *in terms of some referential nexus of significance* (*Verweisungszusammenhang der Bedeutsamkeit*).
2. Understanding the world as such a context is required for understanding how people (including we ourselves) *make sense in terms of what people do*.
3. Making sense of what people do requires understanding ('disclosing') the *situational possibilities* that are intelligible to them in their engagements with entities and with one another.
4. The *intelligibility* of situational possibilities, and hence the intelligibility of people and the entities that people understand, is *normatively constrained*.
5. The normative intelligibility of situational possibilities is *socially constituted* because this intelligibility *conditions the understanding and activities of a multitude of people* (including our own) as individual and collective agents.
6. An individual cannot help but draw on this intelligibility in understanding ('disclosing') the *typical* range and types of actions that he or she can perform in a situation. More strongly put, neither an individual's activities, nor his or her interpersonal interactions, can spontaneously generate this intelligibility, for such activities and interactions *presuppose* the prior understanding of this intelligibility in order for such activities and interactions to make sense and hence be possible at all.

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7. Therefore, an individual is socially constituted because the *normative intelligibility of situational possibilities* that enables the exercise of his or her capacity to be an individual at all is *itself socially constituted*.

The conjunction of 1, 2, and 3 shows that it is a fundamental mistake to understand human sociality apart from the distinctive way in which the human individual exists in the world in general, for such an understanding always presupposes our prior familiarity with the world as its starting point. The conjunction of 4, 5, and 6 argues that the human individual can only be a self or agent by drawing necessarily on the sort of shared public understanding of the practices, norms, and roles that enables her to be a self or agent at all.[17] When these two intermediate conclusions are combined into a single line of argument, its overall conclusion is that the human individual is necessarily socially constituted *by sharing a common world with others, in the sense of sharing a public understanding of the norms, practices, and roles that others also understand in their lived experience and activities*. This distinctive way of coexisting with others is a necessary enabling condition of any human individual's ability to be a self and agent at all. And these commitments show how early Heidegger is a thoroughgoing *holist* as far as the second 'horizontal' dimension in social ontology is concerned.

For want of space, I must quickly explicate (1)–(3) and then focus our attention on (4), (5), and (6). To begin with, it is undeniable that the world that we engage in our lived experience – the world in its *worldliness* (*Weltlichkeit* [*SZ* 65ff.]) – is fundamentally a *space of intelligibility* in which entities and, more generally, the phenomena through which entities show themselves, make sense. This space has the following basic constituents and structure: (1) a set of entities that show up as 'ready-to-hand' (*zuhandene*) equipment, each of which is used for performing some specific task; (2) more encompassing short-term and medium-term goals which are accomplished by the execution of these tasks; and (3) the self-interpretations for the sake of which (*Worum-willen* [*SZ* 84, 86, 123]) individual human beings make sense of who they are and thereupon seek to actualize themselves in some contexts by

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[17] Although Heidegger does not speak explicitly of *roles* in *Sein und Zeit*, it is fairly clear that he thinks other people typically show up and make sense in terms of what they do ('[*die Anderen*] sind *das, was sie betreiben* [*SZ* 126]), insofar as they occupy and enact public roles of which others can also make sense in accordance with the normalized intelligibility that the 'anyone' supplies and maintains (*SZ* 127). For example, others show up at work (*SZ* 120) as craftsmen, the producers or deliverers of products or services, bookshop keepers, sailors (*SZ* 117f.), commuters of public transportation, or newspaper readers (*SZ* 126). In the 1925 lecture course that is published as *History of the Concept of Time*, which served as the penultimate draft of *Sein und Zeit*, Heidegger writes: '*One* [*Man*] is what *one* [*man*] does. The everyday interpretation of Dasein takes its horizon of interpretation and naming from what is of concern in each particular instance. *One* [*Man*] is a shoemaker, tailor, teacher, banker.' (Heidegger 1992: 244, emphases in the German original). These are just a few examples of the average everyday way in which Dasein unthematically falls into or else assigns itself an unexceptional range of 'for-the-sake-of-whichs' (*Worum-willen* [*SZ* 84]). It ought to be generally speaking uncontroversial to understand and accept, as a simple matter of observation and brief reflection on how we encounter others in everyday life, that they and we ourselves primarily and mostly (*zunächst und zumeist*) show up and make sense in terms of the roles or positions that they and we each occupy and enact. I will elaborate this more below.

engaging in certain activities that accomplish certain short-term and medium-term goals within those contexts. What is significant is not so much that we exhibit a primarily practical orientation toward the world, which is obviously true, but that this orientation presupposes that the world is *already minimally understood as a whole* in terms of these three structural components. Thus, in order to know, e.g., what a store, a product, a customer or store employee, buying and selling practices, and so on are, we must be already familiar with how each of these items relate to one another and play the particular roles that they do within some practically significant complex. When we understand the world as exhibiting this practical intelligibility, this shows that the world that concerns us in lived experience makes sense as a *referential nexus of significance* (*Verweisungszusammenhang der Bedeutsamkeit* [*SZ* §18]), i.e., an interrelated complex of equipment, tasks, short- and longer-term goals and ends, all of which in turn relate to and thereby make sense for the sake of enacting some ongoing self-interpretations on our part. Not only this: This understanding of the world also enables us at the same time to have a working sense of how *other people* make sense in terms of how they fit and act within a referential nexus of significance, i.e., how they *show up* as what they *do* (*SZ* 126; cf. Heidegger 1992: 240, 244).

> In being-with as the existential for-the-sake-of-others [*dem existenzialen Worumwillen Anderer*], others are already disclosed in their Dasein. This disclosedness of others, which is constituted in advance [*vorgängig*] with being-with, accordingly also co-constitutes significance, i.e., worldliness, as that which is put into place [*festgemacht*] by the existential for-the-sake-of-which. The worldliness of the world that is so constituted, in which Dasein essentially in each case already is, lets thus ready-to-hand entities show up in an intra-worldly way such that the co-Dasein of others shows up together with ready-to-hand entities as circumspectively concerned [entities]. [*Daher lässt die so konstituierte Weltlichkeit der Welt, in der das Dasein wesenhaft je schon ist, das umweltlich Zuhandene so begegnen, dass in eins mit ihm als umsichtig Besorgtem das Mitdasein Anderer begegnet*]. (*SZ* 123)

Lastly, it should be obvious that the basic character or way of being of entities that make sense in terms of their belongingness to some referential nexus of significance is, in the first instance, their *practical holism*.

Next, in understanding the world in its worldliness, what an individual understands – i.e., *projectively discloses* (*entwerfend erschliesst*) – in a particular situation is the *range of possible actions* that make sense to her to conceive and carry out, given her involvement in a particular referential nexus of significance (world). An individual's familiarity with this range conditions the intelligibility of what she understands and does in a particular situation. The projective disclosure of this range need not be something of which individuals are consciously aware. To use the example of shopping again, my self-interpretation as a shopper in a store projects the typical range of possible actions available for me to conceive and perform in that setting (e.g., browse or buy things, get information from or make requests of a salesperson, get a refund for a prior purchase of something, etc.). My familiarity with some typical range of possible actions constitutes, therefore, my *situational leeway or room for maneuver* (*Spielraum* [*SZ* 145]), i.e., the concrete field of possible experiences

and actions that make sense to me on that occasion.[18] My understanding of some situational room for maneuver is what enables me to find my activities in some context intelligible by precisely opening up the relevant range of possible actions that I can conceive and perform therein; this grasp of a situational room for maneuver also constrains such actions by closing off other ones as not sensible on that occasion (e.g., actually living in the store as my home, etc.). In short, the projective disclosure of some determinate situational room for maneuver for an individual is prior, not temporally speaking but in the order of understanding, to her actual performance of a particular action. It is the necessary condition of the intelligibility of this performance.

So much for my quick explication of claims (1)–(3). Now, a pressing question can arise at this juncture. Suppose it is true that being an individual agent requires an understanding of the world as a practical holistic context; that is, suppose that this understanding necessarily involves the projective disclosure of situational possibilities (situational rooms for maneuver) that enables an individual agent to make sense of her world in lived experience, including herself and other people in her world. It remains as yet unclear, however, why these points amount to the *social constitution* of the individual, rather than just the distinctive way in which a human individual engages with the world.

In response, it should be noted that my discussion of the projective-disclosive character of understanding above has focused solely for analytical purposes on what must be involved in the *activity* of understanding the world, i.e., *how* we engage with the world, without paying sufficient attention to *what* it is we engage with in this understanding. But what an individual understands in her engagement with the world cannot be ignored in the final analysis. On my interpretation, one of the main, but also often overlooked, aims of Heidegger's discussion of the significance of the *anyone*[19] (*das Man* [*SZ* §27]) addresses this important issue.

What is the *anyone*? To begin with, it specifies *who* we are primarily and mostly (*zunächst und zumeist*) in our everyday existence.[20] Who we are usually makes sense, as starting-points, in terms of the roles and self-interpretations, both mundane and significant, for the sake of which we are what we do over time (e.g., commuter,

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[18] Dreyfus 1991: 189–91. Understanding 'projects the being of Dasein on the basis of its for-the-sake-of-which [i.e., its self-interpretations] just as primordially as on the basis of significance *qua* the worldliness of its current world. … Projection is the existential ontological makeup of the room for maneuver [*Spielraum*] of [Dasein's] factical ability-to-be.' (*SZ* 145)

[19] In what follows, whenever I italicize 'anyone', I am using it in Heidegger's loaded use of this word that also expresses prescriptive undertones. When I do not italicize it, I am using it as this is standardly done in English. My interpretation of Heidegger's conception of *das Man* has learned much from and builds upon (among others) the interpretations of Dreyfus 1991: Ch. 8 and 13; Boedeker 2001; Schatzki 1992, 2005; Carman 2003: Ch. 3.

[20] 'The expression "everydayness" means … a definite *how* of existence that predominates Dasein…. We have often used in the present analysis the expression "initially and mostly" ["*zunächst und zumeist*"]. "Initially" means: the way in which Dasein is "manifest" [i.e., shows up as making sense] in the with-one-another of publicness … "Mostly" means: the way in which Dasein, not always but "as a rule", shows him- or herself for anyone [*Jedermann*].' (*SZ* 370)

customer, consumer, practitioner of a certain occupation, co-worker, partner, spouse, lover, parent, friend, etc.). But the *anyone* does not ultimately refer to any particular individual, group, or population of individuals, or even the sum of all individuals in a community or society (*SZ* 128f.). Indeed, the *anyone* does not refer to any entity (*Seiendes*) at all, but more generally highlights the mostly inconspicuous but pervasive *normative (in the first instance normalized) intelligibility of the world as a whole* that permeates the background against which human individuals initially and mostly understand anything and act. The claim is that the basic way in which we exist in the world is necessarily intelligible in terms of our grasp of and tacit conformity to the sociocultural norms that the *anyone* supplies. Despite the disparaging rhetoric that Heidegger uses to describe the superficial but insidious 'dictatorship' of the *anyone* over our everyday lives (*SZ* 126–8), it is a serious mistake to understand the *anyone* merely as his label for the factual tendency of human beings to desire and strive for social conformism. Rather, the *anyone*, or more precisely an individual's being in the mode of the *anyone* as his or her predominant way of existing in the world, is an enabling aspect of human existence in general, not something that is optional for any human being.[21] We do well, therefore, to distinguish carefully between the factual tendency of human beings (for better or worse) to pursue social conform*ism* and their constitutive conform*ity* to the *anyone* as one of the conditions of the possibility of their very way of being in the world.[22]

What does an individual's understanding of the normative intelligibility that informs her familiarity with the world have to do with her ability to share a common world with others, and thereby how she is fundamentally socially constituted? This turns on the *public (öffentliche)* character of norms in two senses. First and more familiarly, it is always a *multitude* of people who find norms intelligible; the contents of such norms are impersonal in the sense that they are not initially and mostly the unique inventions or exclusive possessions of particular individuals. Rather, they can be understood by *anyone* who is familiar with them on the basis of his or her sociocultural heritage (*SZ* 126f.). Second and more importantly, the public character of the *anyone* expresses the *normativity* – in the first instance, the *normalization* – that is

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[21] '*The* anyone *is an existential and belongs as originary phenomenon to the positive makeup of Dasein…. Self-ownership* [*Das* eigentliche Selbstsein] *does not rest on an exceptional condition of the subject that is detached from the* anyone, *but is an existentiell modification of the* anyone *as one of its essential existentials.*' (*SZ* 129f., emphases in the German original) The 'its' at the end of the last sentence refers to human existence in general (Dasein or being-in-the-world), not to the *anyone*. As Heidegger also writes in his discussion of the existential of 'falling' (*Verfallen*): 'What matters in falling concerns nothing else than the ability-to-be-in-the-world [*In-der-Welt-sein-können*], even when in the mode of undistinguishedness/unownedness [*Indifferenz/ Uneigentlichkeit*]. Dasein *can* only fall, *because* what is at issue for it is its understanding-affective [*verstehend-befindliche*] being-in-the-world. Conversely, *owned* [*eigentliche*] existence is not anything that hovers above falling everydayness, but existentially only a modified seizure [*Ergreifen*] of the latter. … Falling reveals an *essential* ontological structure of Dasein itself …' (*SZ* 179, all emphases in the original; cf. *SZ* 383) I will explain the subtle distinction between 'undistinguishedness' (*Indifferenz*) and 'unownedness' (*Uneigentlichkeit*), both at the levels of textual interpretation and philosophical significance, in the next section.

[22] Dreyfus 1991: Ch. 8 and 13.

involved in our dealings with entities in the world, including ourselves and other people.[23] Heidegger chooses the term '*das Man*' to capture the *impersonal and normative (normalized)* aspects of our everyday existence in general. It should be clear how roles and self-interpretations are normalized. The adoption by or ascription to an individual of a role or self-interpretation straightforwardly implies that he or she is supposed to act in certain normal or acceptable ways tied to that role or self-interpretation. Not just this: it also normalizes (or standardizes) the entire referential nexus of significance that makes intelligible the role or self-interpretation in question. To generalize, we take for granted without self-consciousness in our lived experience, as our 'default' way of dealing with entities in the world, that there are *normal* ways for entities, including people, to be what and how they are. The normativity in play is mostly inconspicuous unless there is some type of breakdown or violation of the way things or people are supposed to be (i.e., behave or act). It is thus important to understand that the normativity that entities exhibit is not primarily instrumental, prudential, or morally prescriptive, but figures as a constitutive aspect of their very *intelligibility*. What is crucial to understand is that any individual must already draw on the normative intelligibility of the world if she is to make sense of things by projectively disclosing some typical situational room for maneuver, regardless of whether an individual in fact conforms to some norm or not on some particular occasion.

When human individuals take over roles and self-interpretations in this manner, they interpret themselves and act on the basis of the public norms that are supplied by the *anyone*. When they do so, they understand themselves as *anyone*-selves (*Man-selbst*), i.e., as what *anyone is supposed to do* on given occasions, once they adopt or simply fall into the occupation of roles and self-interpretations (for-the-sake-of-whichs) that are public in the sense explicated above (*SZ* 129f.). In everyday life, we primarily and mostly exist as *anyone*-selves. Understanding oneself and acting primarily and mostly in accordance with the normative intelligibility that the *anyone* supplies is what ensures that individuals by and large share a *common world* (*Mitwelt* [*SZ* 117–23; cf. 176, 179]): a *common starting-point or frame of reference* – a *common way of knowing one's way around in the world* – in relation to which both agreements and disagreements can determinately emerge.[24] As Heidegger writes in a passage tracing back to a now published lecture course that served for him effectively as a draft of the first part of *Sein und Zeit*:

> The *anyone* as that which forms the everyday being-with-one-another … constitutes what we call *the public* in the strict sense of the word. It implies that the world is always already primarily given as the common world. It is not the case that on the one hand there are first individual subjects which at any given time have their own world; and that the task would then arise of putting together, by virtue of some sort of an arrangement, the various particular worlds of the individuals and of agreeing how one would have a common world. This is how philosophers imagine these things when they ask about the constitution of the intersub-

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[23] I note in passing here that normativity and normalization are related but distinct phenomena. I examine their relationship at length in Koo 2011a: Ch. 5.

[24] Cf. Wittgenstein 2009: §§241–2.

jective world. We say instead that the first thing that is given is the common world – the *anyone* – the world in which Dasein is absorbed....[25]

Lest there is any misunderstanding, the necessity of our constitutive conformity to the norms supplied by the *anyone* does not at all imply that individuals can never act in ways that violate such norms. But in order for this non-conformity itself to be significant, it must occur against the background of some ongoing understanding of what the normal or acceptable way of understanding things and acting are in given situations, even if individuals reject this understanding in the end. Indeed, conformity to the normative intelligibility of the *anyone* does not preclude, but actually makes possible and significant, the standing potential for resistance to and rejection of the normalization of phenomena that is maintained by our immersion in the *anyone*.

We are now finally in the position to understand the social constitution of the human individual. Because such an individual understands the everyday world in lived experience as an *anyone*-self, she cannot help but initially and mostly projectively disclose situational possibilities of experience and action that are public, as this occurs by and large in accordance with the normative (normalized) intelligibility that the *anyone* supplies. Her predominant existence in the mode of the *anyone*, which both enables but also constrains her ability to be a situated concrete agent at all, is the fundamental way in which the human individual is socially constituted, i.e., being-with-others in a common world. For such an individual cannot help but draw on the normative intelligibility informing the general significance of the world that the *anyone* provides in virtue of her familiarity with and general conformity to the public norms that the *anyone* makes available. No single individual can spontaneously generate and fully control the normative intelligibility that the *anyone* supplies, for this intelligibility already constrains the activities of a multitude of individuals by opening up and delimiting the possible roles or self-interpretations that these individuals can take up, an intelligibility that in turn structures how they deal with one another and non-human entities from occasion to occasion.[26] It is this line of argument that actually *justifies* his claim that Dasein is always already being-with-others:

> On the basis of this *communal* [my rendering of Heidegger's German neologism '*mithaften*' – JJK] being-in-the-world, the world is in each case always already one that I share with others [*die ich mit Anderen teile*]. The world of Dasein is [the] *common world* [*Mitwelt*]. Being-in is *being-with* others [Mitsein *mit Anderen*]. The intraworldly being-in-itself of others is *co-Dasein* [Mitdasein]. (*Ibid.*, all emphases in the German original) (*SZ* 118).[27]

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[25] Heidegger 1992: 246, emphasis in the original. It is noteworthy that Heidegger's elaboration of the phenomenon of *publicness* (*Öffentlichkeit*) in this lecture course, as well as in a later one (Heidegger 1996), both of which serve, as it were, as the historical 'bookends' of *Sein und Zeit*, are significantly more positive, evaluatively speaking, than his elaboration of the same in *Sein und Zeit*.

[26] It is in this precise sense that 'the *anyone*-self, for the sake for which Dasein is in everyday life, articulates the referential nexus of significance' (*SZ* 129).

[27] On my reading and reconstruction of his argument, he can only adequately support this strong claim by the end of his discussion in *SZ* §27 about the ambivalent significance of our everyday existence in the mode of the *anyone* in our lives.

In more familiar terms, coexistence in a common world is just what is involved for individuals to be socialized into norms, practices, and traditions and then going on to live primarily and mostly by them. This socialization does not simply condition and affect how we interact with other people, but always presupposes an individual's socialization into a *world* that is *common*. The normative intelligibility that the *anyone* articulates, then, serves as the reservoir of possibilities that gives typical content to the self-interpretations that make sense to any human individual in her dealings with the world on some particular occasion. Although her activity of projectively disclosing situational possibilities is numerically distinct from those of others, the content (i.e., the range of possibilities and types of actions) that they each project contains wide-ranging commonalities insofar they understand themselves in the mode of the *anyone*. In summary, different individuals share a common world by initially and mostly projectively disclosing situational possibilities that are common among them because such possibilities are normalized by their existence as *anyone*-selves. It is in this sense that we should understand how the human individual is fundamentally (constitutively) being-with-others in a common world.[28]

5.4   Criticisms and Replies

It is important at this juncture to directly address an interpretive dispute, in a brief excursus with much at stake, about how we should understand and evaluate early Heidegger's conception of the *anyone*. This is an issue that has been hanging over the evaluatively neutral interpretation of the significance of the *anyone* in the previous section, especially for those who emphasize Heidegger's *existentialist* strain above all others in *Sein und Zeit*. This strain is undeniable and comes extensively to the foreground in the first half of Division Two of this text. It is important to address it directly in order to make room for what I discern as early Heidegger's position

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[28] I have chosen in this paper, for both practical and philosophical reasons, to omit any discussion of the connection between Heidegger's conception of human social existence and historicality (*Geschichtlichkeit*) in Ch. 5 of Division Two of *Sein und Zeit*. The practical reason is simply that doing so would have added to the already considerable length of this paper. The more important philosophical reason is my sense that Heidegger's very brief discussion of that connection especially in §74 is rather underdeveloped or else needs to be carefully interpreted in light of his conception of ownedness ('authenticity') as forerunning resoluteness, owned ('authentic') temporality, and owned ('authentic') historicality. We should thus be wary of thinking that we can easily understand what he means by 'destiny' (*Geschick*), which according to him is 'the happening of the community, of the people' (*das Geschehen der Gemeinschaft, des Volkes*) (*SZ* 384), or more generally any hint (for that is all there is) about what the nature of 'authentic community' can be (*SZ* 384f.). For instructive remarks about this issue, see especially Schatzki 1992: 90 and 2005: 242–44; and Richardson 2012: 191–97. Despite Heidegger's use of notorious and politically loaded language in §74, much more would need to be said in my view if the account on offer there is meant to be informative for social ontology. I leave it to the informed reader to determine whether my omission here is a mistake.

regarding the third dimension of social ontology, for the persuasiveness of this position is closely connected with my construal of him as a holist regarding the second dimension of social ontology.

There exists a familiar and understandable set of objections against early Heidegger's conception of human social existence in *Sein und Zeit*.[29] In summary form, these are that this conception of human social existence, despite Heidegger's assertions to the contrary (*SZ* 118, 121, 125), seriously distorts the nature of this existence by still ultimately construing other people as ready-to-hand things, not *sui generis* beings with a special ontological and ethical standing who (should) encounter us in their genuine distinctiveness. This is alleged to be so because the Heideggerian conception of being-with renders other people significant only by way of their involvement in the projective understanding of a single individual. This supposedly monadic or monological conception of the individual is flawed because it fails to recognize and appreciate how genuine dialogue and engagement with other people can be the source of mutuality and solidarity, let alone of the ethical dimension of human coexistence. According to this reading of *Sein und Zeit*, early Heidegger's conception of human social existence, because of its *existentialism*, is blind to how other people can make a positive impact on the significance of an individual's existence. For it conceives human social existence as mostly shallow because it is oriented toward the attempt to conform to social pressures that cater to the banal whims and tastes of the masses. On this reading, in the face of this negative indictment of the value of human social existence, the Heideggerian view cannot help but be drawn to a Kierkegaardian conception of radical freedom as the attempt on the individual's part to detach herself as much as possible from her social environment in order to actualize her possibility of becoming an 'authentic' (*eigentliches*) individual.[30] As Thomas Rentsch puts it succinctly, 'The moment [i.e., dimension] of the interexistential constitution of a human world is not structurally examined in Heidegger's description of the form of all human practice in terms of the existential [framework] of care.'[31]

Let us begin by making explicit some common ground that a defender of Heidegger's conception of the social shares with critics who raise this set of objections. First, despite his repeated denials in the text (*SZ* 42f., 167, 175f.), it is certainly true that the *rhetoric* of Heidegger's discussion of the social cannot help but evince a disdain for human social existence, at least with regard to its impact on an individual's possibility of realizing his or her genuine individuality ('authenticity' [*Eigentlichkeit*]). Given that we exist predominantly in the mode of the *anyone*, his

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[29] See, e.g., Löwith 2013; Sartre 1956: 333–37, 534–56; Buber 2002: 193–215; Theunissen 1984: Part II, Ch. 5; Levinas 1969: esp. 22–52, 82–90 and 1996; Adorno 1973; Habermas 1987: 149–52 and 1992: 191; Rentsch 1999: §§11-2 and 2000; Olafson 1987: 70–4.

[30] Many critics of Heidegger also locate this negative view of the social as the root cause of Heidegger's official support of Nazism in the early to mid-1930s and, even worse, his reprehensible failure to take moral responsibility for this support after World War II; see Habermas 1992. This is a charged and complicated issue that I cannot go into here.

[31] Rentsch 2000: 37, my translation.

emphasis on our tendency to concern ourselves with how we measure up in comparison with others (the pressure and concern for social conformism, averageness, and 'leveling down', etc.) drips with contempt for the shallowness of ordinary human social existence (*SZ* §27). Furthermore, there can also be no doubt that he seriously underdevelops the positive aspects of this existence. In particular, he does not discuss ways of being-with-others, e.g., ways of coexisting with and caring for others (*Fürsorge*: e.g., the care of dependents like children, love, friendship, being an engaged citizen of a community, etc.), that need not be perniciously subject to the social pressures exerted by others. And even when he does explicitly discuss specific ways of caring for others, he does so in terms of two extreme ways that only matter from an existentialist perspective (*SZ* 122).[32] Lastly, given Heidegger's aim of articulating his 'fundamental ontology' (his analysis of human existence as being-in-the-world), he completely ignores the multifaceted ways in which macro-level social structures affect, for better or worse, the life conditions of the human individual, often in ways that systematically obstruct genuine human liberation and autonomy.[33]

These charges, if true, would be pretty damning. But even when one acknowledges that they are legitimate, it does not simply follow that early Heidegger's conception of the social in *Sein und Zeit* must be committed to a negative and distorted understanding of human social existence as such. Indeed, I think this conception is quite compatible with the criticisms mentioned above. On the interpretation presented below, this conception not only does not rule out any positive understanding of human social existence, but actually makes room for the latter, even if Heidegger himself chose not to examine this topic in his own philosophical project.

At the interpretive level, my strongest disagreement with critics who make the above-mentioned set of objections is that they too readily accept the common but simplistic reading of the early Heidegger as an *existentialist*, roughly in the vein of the early Sartre in *Being and Nothingness*.[34] While there is no doubt that one of the central themes of *Being and Time* concerns what it is involved in achieving self-ownership (*eigentliches Selbstsein*),[35] it is reductive to assume that this is *the* overarching theme in terms of which all other themes in *Being and Time* must be understood. But this is exactly what the critics in question assume without hesitation. On their reading, our absorption in the *anyone* cannot help but entail that human social existence is a mostly banal and negative state of affairs. By taking Heidegger's disparaging rhetoric about the impact of that mode of existence on the individual *at face value*, this existentialist reading of the text thereby closes off any

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[32] From this perspective, one can care for an individual by either 'leaping in' for her and thereby obscuring her possibility of coming to 'own' herself (the *einspringend-beherrschende Fürsorge*), or by 'leaping ahead of' that individual and thereby putting her in the position to achieve possible self-ownership (the *vorspringend-befreiende Fürsorge*).

[33] According to Habermas 1992, this is the major critique of Heidegger that critical theorists like Lukacs, Adorno, Marcuse, and Habermas himself make of Heidegger.

[34] Here I have benefited from Carman's lucid and instructive discussion of this issue; see Carman 2003: Ch. 6.

[35] This is often misleadingly translated into English (and French) as 'authenticity'. Boedeker gives a convincing argument for why 'self-ownership' is the better translation; see his 2001: 96n35.

positive contribution that our social existence could make to our personal and collective flourishing.

Admittedly, the fact that this is a common reading of *Sein und Zeit* is to a large extent Heidegger's own fault. The problem is that he often writes as if an individual can only relate to the sociality of her existence in terms of a mutually exclusive difference, namely, that between 'unownedness' (*Uneigentlichkeit*) and 'ownedness' (*Eigentlichkeit*). Here are two prominent examples:

> The self of everyday Dasein is the *anyone-self* [*Man-selbst*], which we distinguish from the *owned self*, i.e., from the self that takes hold of itself as its own [*eigens ergriffenen*]. As the *anyone*-self, Dasein is in each case *dispersed* into the *anyone* and must then [*erst*] find itself. (*SZ* 129)

Later on in *Sein und Zeit* he characterizes the everyday self in terms of the idea of the necessity but also the negative impact of its 'falling' (*Verfallen*) into the world:

> [The term 'falling'], which does not express any negative evaluation, signifies that Dasein is initially and mostly *in the midst* [*bei*] of the world that concerns it. This 'absorption in …' [*Aufgehen bei* …] has mostly the character of being lost in the publicness of the *anyone*. Dasein, as an ability-to-be-a-self [*Selbstseinkönnen*] that can own itself, has initially always already fallen away from itself and fallen into the world. This fallenness into the world signifies our absorption in being-with-one-another, insofar as this is guided by anonymous talk [*Gerede*], curiosity, and ambiguity. (*SZ* 175)

The rhetoric in these passages expresses a stark distinction that clearly valorizes one of its poles (ownedness) to the detriment of the other (unownedness). Without entering into great details, the suggestion is that being an unowned, fallen self is not just something bad, but fails to live up to what any self can be, namely, an entity for whom, in its very being, its own being is a standing issue; in so doing, it does not 'own' its particular way of existing by taking responsibility for it (*Jemeinigkeit*). The existentialist reading understandably feeds off the Kierkegaardian pathos of these remarks and cannot help but deem any entanglements with others (*das Man*) as impediments to one's possibility of achieving genuine individual freedom.

But this reading unjustifiably ignores Heidegger's assertions at important junctures in *Sein und Zeit* that there are actually *three* basic modes of human existence, not just two. In addition to ownedness and unownedness, there is also the 'modally undistinguished' or *evaluatively neutral* way in which an individual exists. Heidegger characterizes this mode of existence as the *undistinguishedness* (*Indifferenz*) of everyday life:

> Dasein should be Interpreted at the outset of the analysis precisely not in [terms of] the difference of a determinate way of existing, but uncovered in its undistinguished 'primarily and mostly' [*in seinem indifferenten Zunächst und Zumeist*]. This undistinguishedness of everydayness [*Indifferenz der Alltäglichkeit*] of Dasein is *not nothing*, but a positive phenomenal character of this entity. All existing [of Dasein], as how it is, emerges from this mode of being and returns back to it [*Aus dieser Seinsart heraus und in sie zurück ist alles Existierens, wie es ist*]. We call this everyday undistinguishedness of Dasein '*averageness*' [*diese alltägliche Indifferenz des Daseins* Durchschnittlichkeit]. (*SZ* 43, emphases in the German original; cf. 12)

'*Indifferenz*' (along with its cognates) is more perspicuously translated in my view as 'undistinguishedness', rather than 'indifference' or 'undifferentiatedness' and their

cognates (which is how Macquarrie and Robinson render it in English in their translation). The reason for this translation preference is that everyday average Dasein is certainly not undifferentiated (i.e., undetermined) in terms of its factical involvement in the world, paradigmatically through its ongoing occupation of a set of specific sociocultural roles and the typical concerns and activities that pertain to these roles. The averageness of Dasein's everyday life, then, is quite differentiated in all sorts of ways; it is just that such differentiation does not mark out any particular Dasein as *distinguished* from others. As Heidegger writes, other people 'are rather those from whom one [*man*] mostly does *not* distinguish [*unterscheidet*] oneself, among whom one also is' (*SZ* 118, emphasis in the original German). Moreover, in this undistinguished mode of human existence, neither is everyday average Dasein indifferent to, in the ordinary sense of not caring about, the entities (e.g., the events, other people, or aspects of the world) that encounter and matter to it in the course of its lived experience. As Heidegger writes, notoriously, 'In this inconspicuous and amorphous way, the *anyone* exerts its actual dictatorship. We take pleasure in and enjoy what *anyone* enjoys; we read, see, and make judgments about literature and art as *anyone* sees and judges; we also pull back, however, from the "great masses" as *anyone* pulls back; we find "outrageous" what *anyone* finds outrageous.' (*SZ* 126f.) Consequently, everyday average Dasein is not indifferent to the way the world is and how this matters to it, but is affected by the world, again, in ways that does not distinguish it from how others are affected by the world, too. Consider, e.g., the emotions that one feels when the sports teams that one supports win or lose, or how we feel, individually and collectively, in the aftermath of the occurrences of extraordinary events in the world such as natural disasters, terrorist attacks, wars, the death of one's loved ones, or even the significance of one's impending death in its ordinary sense (cf. *SZ* §§51-2). Everyday average Dasein is not indifferent to these events, at least not normally, but neither do the individual or collective emotions that it feels in response to these events distinguish it from how others who are similarly affected feel in such circumstances: 'The domination of the public way of interpreting the world [*öffentliche Ausgelegtheit*] has even determined the possibilities of attunement [*Gestimmtseins*], i.e., the basic ways in which Dasein lets the world matter to it. The *anyone* prescribes our affectivity [*Befindlichkeit*]; it determines what and how *anyone* "sees".' (*SZ* 169f.)

In light of this explication of undistinguishedness, Heidegger importantly clarifies its place and status at the beginning of Division Two of *Sein und Zeit*:

> We have determined the idea of existence as understanding ability-to-be [*verstehendes Seinskönnen*], for which its own being is an issue. … But this ability-to-be, as something that is in each case *mine*, is free for ownedness, unownedness, or their modal undistinguishedness [*Eigentlichkeit oder Uneigentlichkeit oder die modale Indifferenz ihrer*]. Thus far, the Interpretation [of Dasein's way of existing in Division One of *Sein und Zeit*] has restricted itself, through its account of average everydayness, to the analysis of the undistinguished or unowned way of existing [*indifferenten bzw. uneigentlichen Existierens*]. (*SZ* 232)[36]

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[36] Heidegger notes in passing that his phenomenological analysis of being-in-the-world in Division One examines Dasein's understanding of the world insofar as this understanding is unowned (*uneigentlich*) and, indeed (*zwar*), genuine (*echt*) (*SZ* 146, 148; cf. already 12). This remark should receive more attention than it has gotten in most interpretations of *Sein und Zeit* because it reveals how we need to have a more nuanced understanding of ownedness and unownedness. (Dreyfus's reading is one of the few exceptions here [1991: 192–4].) It is further textual evidence that we

Why does this matter? The reason is that drawing the distinction between undistinguishedness and unownedness makes clear that human social existence not only need not be something deserving condemnation on existentialist grounds, but can be a dimension of human existence of which one can elaborate positive or at least evaluatively neutral forms.[37] More specifically, a tenable distinction between undistinguishedness and unownedness can be established as follows. An *undistinguished* individual, in virtue of his familiarity with and absorption in the normativity of the *anyone*, projects the public normalized roles and self-interpretations (for-the-sake-of-whichs) that make his existence and activities significant. As just suggested, this mode of selfhood is neutral with regard to the assessment of the value of these identities, for it concerns the basic way in which we are human at all (as Dasein). By contrast, an *unowned* individual is presumably not only absorbed in the world, but exists furthermore in such a way that the entire content of his self-interpretation is *exhausted* by the possibilities and requirements that flow from the adoption of these identities. In other words, the apparent problem with being an unowned rather than just an undistinguished self is that the former lives in a *wholly socially informed and prescribed* way that obscures his possibility of achieving genuine autonomy.[38] Unfortunately, Heidegger does not carefully differentiate undistinguishedness from unownedness in *Sein und Zeit*, or rather, he uses 'unownedness' and its cognates in a *persistently ambiguous* way so that it sometimes describes the undistinguishedness of average everyday human life, while at other times it clearly *devalorizes and disparages* this mode of existence by emphasizing how living an unowned life lifts the true burden of existing from the individual (*SZ* §§27, 38).

By taking seriously, however, the distinction between undistinguishedness and unownedness (even if Heidegger himself fails to do so consistently), we can mitigate the objection that Heidegger possesses an irretrievably negative conception of human social existence. Although it is certainly true that he himself does not elaborate what evaluatively neutral forms of being-with-others can look like, this choice does not rule out any positive account of human social existence within the framework of *Sein und Zeit*.[39] Furthermore, if Heidegger were so contemptuous of human social existence, why does he nevertheless insist (in his terminology) that the *anyone* is an 'existential' (*SZ* 44), i.e., a *necessary enabling* condition of Dasein's basic way of existing that 'articulates the referential nexus of significance' (*SZ* 129); and that self-ownership cannot consist in an individual's radical detachment from the *anyone*, but only in an 'existentiell' modification of it (*SZ* 130, 179, 383; cf. 144–6)? In short, although

should keep separate for analytical purposes Dasein's *undistinguished* understanding of the world from its *unowned* understanding of it.

[37] In fact, he notes (unfortunately only) in passing that besides the two extreme forms of caring for others that concern him, there exist many other mixed forms of sociality that go beyond the scope of his investigation (*SZ* 122).

[38] Consider, e.g., the self-understanding of the café waiter that Sartre describes in *Being and Nothingness* or the 'selfless' housewife that Betty Friedan describes in *The Feminine Mystique*.

[39] Rentsch's work (1999) is interesting by working out what these positive forms of being-with-others are (among other consequences) from within a broadly Heideggerian framework. It is an exemplary case of how to 'think with Heidegger against Heidegger'.

one can rightly criticize Heidegger for the *incompleteness* of his account of the positive significance of human social existence, it is mistaken as a simple matter of textual interpretation to conclude that his conception of the social *categorically precludes* this significance. Consequently, critics who raise the set of objections that we have been concerned with here are wrong in drawing this implication.[40]

5.5 Early Heidegger's Insights for Contemporary Social Ontology

Early Heidegger's conception of human social existence and reality certainly makes room, then, for an evaluative neutral (in his vocabulary, 'undistinguished') and thereby potentially positive account of human sociality and social reality. In light of Heidegger's distinctive conception of the social constitution of the human individual, he is clearly a thoroughgoing *holist* with regard to the second 'horizontal' dimension of social ontology. Be that as it may, are there any significant implications between his holism in this dimension and his possible position in the third dimension of social ontology?

As a matter of sheer logical compatibility, it seems that endorsing holism in the second dimension does not commit one, strictly speaking, to either singularism or corporatism in the third dimension.[41] In fact, if one takes into account Heidegger's existentialist strain in the first half of Division Two of *Sein und Zeit*, one can make the argument that the most important 'practical' goal of his conception of Dasein's possibility of realizing its 'ability-to-be-a-whole', and thereby of achieving 'self-ownership', is precisely to show his readers what 'existentiell' stance they must adopt in order to become truly unique and thereby *singular* individuals. According to the early Heidegger, it is the adoption of this stance (of 'forerunning resoluteness' [*vorlaufende Entschlossenheit* [*SZ* §§62, 64]) that enables someone to *truly* individualize – more precisely, *singularize* – him- or herself as a unique individual.[42] To be sure, this is a highly unusual, existentialist conception of singularism, but it is nevertheless a legitimate (though peculiar) form of it, provided that one understands how this process of individualization *qua* singularization is supposed to happen. On the other hand, it is also not too difficult to conceive how this unusual form of singularism is compatible with a certain sort of corporatism (e.g., attempting to be a unique singular individual (say) by becoming the Rector of a University or the

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[40] Limitation of space here prevents me from saying more about the philosophical consequences of this important issue; see Koo 2011a: 40–8.

[41] It is crucial to keep in mind how these positions are exactly defined by Pettit; see my brief explication of them above at the beginning of Sect. 5.1.

[42] 'Dasein *owns itself* in the originary individualization of the resoluteness that is reticent and expects/demands anxiety for itself. [*Das Dasein* ist eigentlich selbst *in der ursprünglichen Vereinzelung der verschwiegenen, sich Angst zumutenden Entschlossenheit*.]' (*SZ* 322, emphasis in the original German)

leader of an intellectual movement).[43] The neutrality of holism vis-à-vis singularism or corporatism can be seen in the work of some (but not all) analytic social ontologists. For they typically do not challenge the paradigm of singular agency as such, but aim rather to show how it fails to satisfactorily explain collective intentionality phenomena. Thus, while holists like Pettit (1996: Ch. 4; 2002) and to a lesser extent Tuomela (cf. his invocation of the importance of *ethos* for collective intentionality [2007: 16; cf. 5, 35–42]) acknowledge the social constitution of the individual agent and also defend the legitimacy of corporatism regarding collective intentionality phenomena, neither of them challenge the correctness of singularism as such for explaining phenomena that fall within its purview.

That said, it is as a matter of fact more likely that a social ontologist who endorses holism will be more sympathetic to corporatism (or anti-singularism) about collective intentionality phenomena (Pettit 2014; Tuomela 2003). This is also true of the view of the early Heidegger, insofar as one can situate his position in the third dimension of social ontology. Not just this: In light of his conception of the social constitution of the human being, there is a tight connection between his version of holism and (rudimentary) corporatism in his social ontology. Making sense of this tight connection depends on making sense of the following claims: (1) Being-with-others amidst entities in the world is sharing in the unconcealment (originary truth) of entities ('*Miteinandersein bei … ist ein Sichteilen in die Unverborgenheit (Wahrheit) des Vorhandenen.*').[44] More specifically, sharing in the unconcealment of entities amounts to sharing an understanding of what we can *possibly* do with them, i.e., sharing an understanding of the *possible* ways for entities to be (in short, sharing possibilities); the shared understanding of commonalities among possibilities is what we fundamentally share *in common* (*das Gemeinsame*) between us.[45] (2) The sharing in the unconcealment of entities is sharing something essentially *public*; this sort of sharing can never belong to any particular individual as a private possession.[46] What do these claims mean and how are they justified?

To begin with, what does it mean to share in the unconcealment (originary truth) of entities? In light our explication in Sect. 5.3 above of Heidegger's conception of the world in its worldliness, i.e., of the world as a referential nexus of significance (*Verweisungszusammenhang der Bedeutsamkeit*), it is actually relatively easy to

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[43] In Heidegger's own life, these idiosyncratic commitments had ethically and politically disturbing consequences, to say the least.

[44] Heidegger 1996: 106; cf. 101–10. All translations of this text into English are mine. In this text Heidegger, unlike in *SZ*, does not carefully distinguish between present-at-hand (*vorhandene*) and ready-to-hand (*zuhandene*) entities. In 1996 he tends to talk much more about our sharing in the unconcealment (truth) of the present-at-hand. But I think that since all his examples in this stretch of the text are of equipment (e.g., a piece of chalk, a sponge, a blackboard, chairs and tables, the lectern, the lecture hall, etc.), he has in view, generally speaking, our sharing in the unconcealment of *entities* (*Seiendes*) in general and of the ready-to-hand in particular (see 1996: 74–7). In any case, as far as I can tell, nothing philosophical turns on this loose use of his terminology in this stretch of the text.

[45] *Ibid.*: 101f., 104, 108.

[46] *Ibid.*: 129f., 133.

make sense, first, of the idea of the unconcealment of entities. Basically, entities are unconcealed in this sense when we understand their place, role, or function within some referential nexus of significance (i.e., some factical world in its worldliness). To use Heidegger's examples in his lecture course, we make sense of equipment like pieces of chalk, sponges, blackboards, lecterns, lecture halls, chairs and tables in the lecture hall, lecturing and listening activities, higher education goals and practices, lecturers, students, and building maintenance staff, etc., by understanding how each of them makes sense by referring to and hanging together with other items within a complex whole. It is the understanding of this complex whole that enables us to understand each entity that is caught up and makes sense within it, including other people who occupy certain roles within it. In this sense the understanding of the whole is prior to that of its constituent parts. In Heidegger's vocabulary (*SZ* 220), to understand some complex whole (i.e., some current factical world) is to 'disclose' (*erschliessen*) that on the basis of which the entities embedded and making sense within this complex whole (this factical world) in turn make sense specifically (i.e., that on the basis of which they are 'discovered' [*entdeckt*]). Consequently, to understand the 'unconcealment' of entities is to understand how particular entities fit into and thereby make sense as what and how they are on the basis of the complex wholes pertaining to them. Regimenting the terminology, it is always a complex whole or, more broadly, some current factical world that is 'disclosed' or 'unconcealed', whereas it is always specific entities that are 'discovered'.[47]

Now, two or more people coexist with one another when they *share* in the unconcealment or disclosedness of entities in the manner just explained. This is the fundamental way in which they share a *common space of intelligibility*, i.e., a common world in its worldliness, a common referential nexus of significance: When 'a Dasein steps next to another Dasein, the former steps into the space of significance [*Raum der Offenbarkeit*] of the other; more precisely, their being amidst [entities] moves in the same environing field of significance [*bewegt sich in demselben Umkreis der Offenbarkeit*]'.[48] In short, what they have in common (*gemeinsam*) at this basic level is a common way of making sense of entities, including other people.

> Being-with-others manifests itself in the behavior of a plurality of people toward the same [*zum Selbigen*]. The sense of sameness here for a plurality of people is commonality [*Gemeinsamkeit*], having something in common, sharing in unconcealment. Being-with-others amidst entities is sharing in the unconcealment (truth) of relevant entities [*Miteindersein bei Seiendem ist Sichteilen in die Unverborgenheit (Wahrheit) des betreffenden Seienden*].[49]

More specifically, what they share as a common space of intelligibility in this sense is a shared understanding of what they can *possibly* do, or how they can *possibly* relate or interact, with them. What they share, then, is a common understand-

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[47] *Ibid.*: 130–35.

[48] *Ibid.*: 134; cf. 137.

[49] *Ibid.*: 106.

ing of *possibilities*, the possible ways in which entities can be (e.g., show up, make sense, behave, act, happen, relate to other entities, etc.).

> That we share in the use of the chalk is only possible when this chalk is available [*zur Verfügung steht*] to us all, i.e., is lying there, as something left to us, ready for its possible and legitimate use. To make use of it encompasses the fact that it is significant [*offenbar*] to us for this purpose, that we with one another are already occupied with it, that it is something common in and for our being amidst … [*Sein bei …*], even when our way of being occupied with it is not explicit. In order for us … to be able to share in the use of the chalk, it must in advance already be, in a more originary [*ursprünglicheren*] sense, something common; we must in advance already share in this common thing so that it is available to us, regardless of whether we make use of it or not.[50]

The more originary sense of sharing something in common is precisely sharing the unconcealment (hence *originary* truth) of entities, the space of intelligibility or the world in its worldliness of the entities that belong to it.

Finally, Heidegger claims that the unconcealment of entities can never be the private possession of an individual, but must be something *public* (*öffentlich*): 'Unconcealment never belongs to an individual as such. It is available as something common, so to speak, to everyone [*jedermann*]; it must therefore be essentially accessible to each Dasein.'[51] Unlike the claims above, however, Heidegger makes this assertion without argument in this stretch of the text. In light of the interpretation of the significance of the *anyone* given above in Sect. 5.3, which argues that his claim that Dasein always already lives in a common world and must exist essentially as being-with is only justified by recourse to the ambivalent but crucial functions of the *anyone*, it is telling, I think, that the absence of the *anyone* in *Einleitung in die Philosophie* accompanies a lack of argumentative or even phenomenological support for the claim that the unconcealment of entities must always be public. But if the interpretation above of Heidegger's conception of human social existence and reality in *Sein und Zeit* is convincing, Heidegger is not entitled to assert in *Einleitung in die Philosophie* that the unconcealment in question must be public. In this respect the account he provides of being-with and the *anyone* in *Sein und Zeit* is in my view more adequate and hence more convincing.

How does his account of being-with-others in *Einleitung in die Philosophie* express his possible position regarding the third dimension of social ontology? It does so by making explicit how shared or collective intentionality (anti-singularism or corporatism) not just has to be closely connected with the sharing of a common world (a common referential nexus of significance), but, indeed, how the former must rest on the latter.[52] That is, he suggests in effect that if we want to adequately investigate group or collective intentionality phenomena, we need first to understand how such phenomena *make sense at all* as *possible* ways for entities, includ-

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[50] *Ibid.*: 101.

[51] *Ibid.*: 130; cf. 129, 133.

[52] The example he uses of two individuals engaged in shared cooperative activity of doing various things at their shared cottage that nevertheless aim at accomplishing the same goal is suggestive (*ibid.*: 92), if the thought expressed there is explicitly connected with the issues treated in this section.

ing individual agents, to be, before we go on to examine how they can interact in ways that *non-summatively construct* group or collective phenomena: 'Human community and society in its different variations, levels, and degrees of genuineness and lack of genuineness, persistence and brevity, is possible only because each Dasein as such is fundamentally … a being-with, i.e., [being-]with-others.'[53] In other words, his suggestion, to the extent that he has one that applies to what is at issue between singularism and corporatism, concerns the proper order of understanding and explanation between the items in question. As Hans Bernhard Schmid puts it well:

> Joint action implies a form of disclosedness of the surrounding world …. [It] is about *our shared* possibilities, and these are not merely a sum or aggregate of the individual possibilities of the participating individuals. There is no way of accounting for shared possibilities in terms of individual possibilities. The reason is not that individuals do not have individual possibilities when acting jointly, but that, in most cases, the individual possibilities they have are *based on* the shared possibility [*sic*], and not the other way around. To quote [*sic*] a trivial example, it's only within the shared practice of an election that individuals can cast their votes. The possibilities that shape our shared being are the base and frame of many of the possibilities we have as individuals. As observed by Heidegger, possibility is what Dasein basically *is* [i.e., what it projects and lives out], the very being of Dasein is not only *my own being*, but *our common being*. Dasein is not – or not *exclusively* – the being of an individual, as the individualistic setting of *Being and Time* makes us believe.[54]

Heidegger's claim in this context is that understanding how social or collective entities and their characteristics are in general intelligible, and hence possible, is explanatorily and phenomenologically prior to investigating how these entities and their characteristics can count as being independent of their constituents by way of their non-summative construction. This thought is what distinguishes Heidegger's (admittedly rudimentary) version of corporatism from those articulated and defended by most analytic social ontologists. Although the ultimate anti-singularist position that is chosen and defended may be more or less the same, how he and they go about getting there is quite different in the regard just mentioned.

Now, what further consequences does showing that human individuals are always already being-with-others in a common world have for social ontology? If we mean 'social ontology' in its *broadest* sense as the study of all aspects, structures, or processes concerning the way of being of social or collective entities, early Heidegger's approach is in my view crucial to and fruitful for understanding and explaining how these entities are real (exist). Such a broad understanding of social ontology includes theories of intersubjectivity, dialogical encounters, recognition, and alterity; philosophical reflections on the social reality of race, gender, class, and other social/collective notions; the philosophy of the social sciences (e.g., the relation between agency and structure, social causation); and philosophically minded sociology and social theory. Why so many different areas or disciplines? Because it strikes me that early Heidegger's approach shows well how the social can be in (i.e., subtly condition and affect) the individual, for better or worse, as well as how the

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[53] *Ibid.*: 141; cf. Heidegger 1992: 241.

[54] Schmid 2009: 171, all emphases in the original. Except for the description of *Being and Time* as being individualistic, I agree wholeheartedly with this important point.

individual is in (i.e., enacts or performs) the social in the sense that it can engage with and alter the social. The key insight is to shift from thinking in an overly narrow ontological or mereological approach to social ontology – e.g., inquire about the set of necessary and sufficient conditions that something has to satisfy if it is to count as a social or collective entity, or else ask what its identity (persistence) conditions are, etc. – to an approach that emphasizes practices, norms, and roles in a holistic and dynamic way as the basic site of the social, where social or collective entities are intelligible, come into being, and persist in the complicated and ambiguous ways that they do. In fact, there are other kinds of social ontology on offer in contemporary philosophy that take their inspiration partially from the philosophy of the early Heidegger (e.g., site social ontology, practice theory, etc.).[55] Such social ontologies are united precisely in arguing that a proper understanding and explanation of social reality should *begin* by first examining the *context* or *site* in which social or collective entities are intelligible and persist, i.e., more specifically, the nexus of practices, norms, roles, material arrangements, etc., that compose and constitute the meaningfulness of the contexts in question, rather than begin their investigations with the sort of questions that analytic social ontology tend to have in view.

Now, it seems to me that Tuomela's approach does quite a good job if one confines oneself to doing social ontology in a classically analytic fashion (not that there is anything wrong with that, as far as it goes). But this approach at best only investigates and defends anti-singularism in a rather limited and arguably one-sided way by effectively holding that non-summative constructionism is the *paradigm* of investigating the social ontology of social or collective entities. But this may not be the most penetrating and fruitful approach in social ontology. More importantly, with the notable exception of Pettit's and to a lesser extent Tuomela's work, it is quite puzzling why most approaches in analytic social ontology almost totally ignore the social constitution of the human individual as such, and yet think it unproblematic to help themselves to the resources that this very constitution makes available as unexplained explainers in their accounts of social or collective notions. In this regard analytic social ontology still remains deeply *atomistic* in the sense that it takes for granted that individual agents are the given 'atoms' of social entities,[56] even when it aims to defend corporatism. This assumption succumbs, so to speak, to the Myth of the Socially Given, even if it can at its best countenance and defend, *contra* methodological individualism, the irreducibility of social and collective entities (beliefs, attitudes, intentions, actions, etc.). If analytic social ontology aims not to isolate itself as a self-contained program of philosophical research that works on a self-chosen island, it is imperative that it reflects on whether it has the conceptual tools at its disposal to account for the social constitution of the human individual as such, that is, the way in which the human individual always already coexists with others in a common world.[57]

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[55] Schatzki 1996, 2002, 2003; Rouse 2007.

[56] Consider the title of Gilbert 2003.

[57] I thank Thomas Szanto, Alessandro Salice, and Hans Bernhard Schmid, the organizers of the workshop on 'Social Reality: The Phenomenological Approach' (at the University of Vienna,

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Chapter 6
Karl Löwith's Understanding of Sociality

Gerhard Thonhauser

Abstract This paper discusses Karl Löwith's as yet little known contribution to an understanding of human sociality and social reality. It focusses on his accounts of "social roles" and "correflexivity" in human interaction, and the intelligibility of social artifacts through their connectedness with everyday practices. According to Löwith, the intelligibility of social behavior depends to a large extent on us ascribing roles to others. This is combined with the notion of correflexivity: Human social action is not simply directed towards others, but is already co-determined by the anticipation of their response; we relate to others in such a way that the anticipation of their potential relation to us, including an anticipation of their anticipation of our action, co-determines our initial relation to them. For Löwith, the understanding of others as having social roles and the correflexivity of social interaction are the basic infrastructure of human sociality. They form the background that makes others and their actions intelligible, thereby presenting them as potential partners for joint intention or action. In addition, the paper discusses Löwith's criticism of universal ontology. He opposes any essentialist project, may it be metaphysical or naturalistic, in favor of a hermeneutic phenomenological method; such an approach fosters awareness of its own preunderstandings, opening them to critical examination and political contestation.

Keywords Löwith • Collective intentionality • Social reality • Social roles • Correflexivity

6.1   Introduction

Karl Löwith offers an intriguing, though little known, account of human sociality. He discusses several notions, albeit often poorly developed and unsystematic, significant to an understanding of social reality. These are namely his accounts of

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"social roles" and "correflexivity" in human interaction and the intelligibility of social artifacts through human practices. In particular, these notions might help with casting light on the background of collective intentionality and action. In addition, Löwith's concentration on I-Thou relations evokes reflections on the foundation of sociality. Finally, Löwith's hermeneutical method, foreign to the contemporary debate in analytic social ontology, might reveal new perspectives on the status of ontological investigations.

Löwith's main contribution to the analysis of sociality is his habilitation thesis, *The Individual in the Role of the Fellow Human Being* (*Das Individuum in der Rolle des Mitmenschen*) (Löwith 1981a, 9–197),[1] submitted at the University of Marburg (1927) under the supervision of Martin Heidegger. It contains an examination of the basic structures of human social reality through a critical discussion of Heidegger's approach. Admittedly, this book is somewhat hard to comprehend. For one, it is written within a Heideggerian conceptual framework. Further, while Löwith does not simply follow Heidegger's usage of terms, he deliberately deviates from it, yet without providing explicit explanations for these changes.[2] Against this background it does not seem surprising that, in contrast to Löwith's major works on the history of nineteenth century philosophy (Löwith 1964) and the philosophy of history (Löwith 1949), his contribution to the understanding of social reality has hardly been noticed.[3]

Another likely reason for the limited reception of *The Individual in the Role of the Fellow Human Being* is its thematic defiance of traditional categories or disciplines. Indeed, the main topic of the book is not clear at all. As suggested by the original title of the habilitation, Löwith aims at a "Phenomenological Foundation of Ethical Problems" (*Phänomenologische Grundlegung der ethischen Probleme*). Heidegger suggested the title change: "Contributions to an Anthropological Foundation of Ethical Problems" (*Beiträge zur anthropologischen Grundlegung der ethischen Probleme*) (cf. Löwith 1981b, 473). This suggestion was mainly pragmatic, as Heidegger thought the new title would increase Löwith's chances of receiving a teaching assignment in social philosophy at the University of Marburg (cf. Löwith 1981a, 469 f.). Yet it also corresponded to Heidegger's understanding of Löwith's contribution as merely anthropological in contrast to the ontological aspirations of his own project. Löwith finally published the text in 1928 with the main title *The Individual in the Role of the Fellow Human Being* and the subtitle Heidegger had suggested.[4]

Thus it seems that Löwith's work should be conceived within the context of ethics. The main topic of the book, however, is not ethics – at least not in the traditional

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[1] As there are no English translations available, all translations of Löwith's texts, including the translation of the book's title, are mine.

[2] For a general discussion of Löwith's relation to Heidegger (cf. Mehring 2003; Riedel 2007).

[3] Löwith's *From Hegel to Nietzsche. The Revolution in Nineteenth-Century Thought* and *Meaning in History: The Theological Implications of the Philosophy of History* gained a broad international reception. *The Individual in the Role of the Fellow Human Being*, on the other hand, is still only available in German, and even within the German context it has not attracted much attention.

[4] In 1962 a reprint appeared in which the title Heidegger demanded was no longer included.

sense. Löwith rather aims at a clarification of the foundations of human sociality. The concrete goal is to develop a notion of the person or the individual understood in the role of the fellow human being (*Mitmensch*), that is, as located within the structure of being-with-one-another (*Miteinandersein*). Löwith formulates his main concern as follows: "To show if and to what extent the fellow human being constitutes the life of the so-called *individual* – whether in a beneficial way, practically and theoretically – is the intention of the phenomenological structural analysis of being-with-one-another." (Löwith 1981a, 16) In other words, Löwith wants to highlight and investigate how being an individual always already presupposes a relation to fellow human beings and social structures. He understands a focus on the social embeddedness of individuals as an alternative to the traditional focus on the "autonomy of the individual" (*Selbständigkeit des Individuums*) (Löwith 1981a, 17). In order to initiate this shift, he chooses as his point of departure a structural analysis of being-with-one-another.[5]

Löwith offers rich material for understanding the basic structures of human interaction and the social artifacts these interactions are related to and bring about. Thus, rather than being concerned with ethics, he in fact deals with topics similar to what is discussed in contemporary literature under the labels of collective intentionality and social ontology. The main difference is that the terminology and methodology Löwith uses are quite different from mainstream analytic social ontology.

Against this background, the main aim of this paper is to show that *The Individual in the Role of the Fellow Human Being* contains insights into social reality and the nature of social artifacts that deserve attention and further discussion within contemporary debate. To enable such discussion, Löwith's account must first be contextualized within the contemporary framework. Yet, the task of this paper does not consist merely in reformulating Löwith's conception from the perspective of contemporary debate. Such an approach would ignore one important aspect: Löwith is not simply a historical forerunner, but a critic of analytic social ontology as well. Thus, in addition to a reconstruction of his contributions, Löwith's potential critique of analytic social ontology is also presented.

Löwith's critique of Heidegger plays a crucial role for the development of his theory. This is evidenced both in one of the central aims of his habilitation thesis, namely to formulate an alternative to his teacher's account,[6] and also in the extent that he nevertheless remains within a Heideggerian framework. For this reason, his theory cannot be reconstructed without reference to Heidegger. This paper therefore begins with a discussion of Löwith's understanding of Heidegger's account of sociality and the objections he formulates against his teacher. In the course of this discussion,

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[5] Reading Löwith's self-characterization, the purpose of the work might most easily be contextualized within the historical movement of philosophical anthropology, a movement that was popular in the 1920s in Germany with major representatives such as Max Scheler and Helmuth Plessner. Seen in this intellectual context, it is not surprising that the most noteworthy reception of *The Individual in the Role of the Fellow Human Being* occurred within social philosophy, most notably by Michael Theunissen (cf. Theunissen 1965, 419–439).

[6] One could even argue that Löwith's habilitation thesis is first and foremost written as a critique of Heidegger (Donaggio 2000, 44).

Löwith's notion of social roles and his investigation into the I-Thou relation is elaborated (2). The next part presents Löwith's critique of Heidegger's universal ontology and his alternative approach to the study of human reality (3). As the next step, Löwith's methodology is reformulated as a critical perspective on contemporary research in analytic social ontology (4). In the fifth part, the three major themes of Löwith's understanding of human social reality are highlighted: the intelligibility of social artifacts through social practices; the *correflexivity* of human interaction; and the role of affective attitudes for human sociality (5). In the conclusion, the contribution of Löwith's account to our contemporary understanding of human reality are summarized and discussed, along with the obstacles hindering the application of his thought.

6.2 Löwith's Critique of Heidegger's Understanding of Sociality

In this part, I first describe Löwith's understanding of Heidegger's Anyone (*Man*). Against this background, I then summarize Löwith's critique of Heidegger in the form of three main objections.

In order to understand Löwith's approach to the analysis of social reality, knowledge of Heidegger's account is quite useful. In this context, one may note how Löwith's understanding of Heidegger's account differs significantly from the popular contemporary interpretation. The current Anglo-American debate for the most part follows the line of reception mainly established by Dreyfus and Haugeland (cf. Dreyfus 1991; Haugeland 1982). In this line of reception, Heidegger's notions of being-with (*Mitsein*) and especially of the Anyone are seen as constitutive for the basic structures of intelligibility (*Verständlichkeit*) of social entities (and maybe even entities in general). Löwith, in contrast, features a reading of the Anyone that highlights its status as inauthentic (*uneigentlich*). In Dreyfus' reading, the intelligibility of entities is constituted by basic forms of normativity (non-thematic and non-reflective norms, conventions and habits that form the background for our actions). This normativity is seen as governed by the Anyone, thus highlighting its constitutive function.[7] According to Löwith's reading, on the other hand, the Anyone cannot simply be seen as a positive phenomenon of human sociality. From his point of view, Heidegger's analysis makes it all too clear that the latter thinks there is something fundamentally wrong with our life when lived in the mode of the Anyone. The Anyone is not simply the condition of the intelligibility of – potentially all – entities; it also contains a fundamental misunderstanding of these entities, and more importantly, of one's own role in relation to them. When we experience the intelligibility

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[7] Heidegger explicitly makes this claim about the constitutive function of the Anyone: "The one (*Man*) *is an existential and belongs as a primordial phenomenon to the positive constitution of Da-sein.*" (Heidegger 1996, 121) But following Löwith, this statement needs to be contrasted with his generally pejorative description of the phenomena in question.

of entities in our environment as provided by the Anyone, this is achieved at the cost of misunderstanding ourselves as the very beings to whom these entities are intelligible. Entities are not intelligible in themselves, Löwith emphasizes in his understanding of Heidegger, but always intelligible *to me*, to a *Dasein*, and it is this mineness (*Jemeinigkeit*) that gets lost when understanding oneself in line with the Anyone.

Admittedly, Löwith does not actively argue for a certain line of reception of Heidegger's Anyone. As a contemporary of Heidegger and one of his first students, his reading came much earlier than the Anglo-American discussions. It would be an intriguing topic for further research to combine Löwith's account with an alternative reading of Heidegger – a reading that potentially evades Löwith's critique. It seems promising that such an approach can help in developing a more thorough phenomenological understanding of human social reality. In this paper, however, I will not undertake this task. Instead, I will accept Löwith's implicit reading of Heidegger as my point of departure. This allows me to develop his critique without constantly double-checking whether it is justified or not. I see this as the appropriate approach for making Löwith's account accessible in the first place, which is the primary objective of this paper.

Löwith understands Heidegger along the lines of cultural critique, which targets the tendency to conformism in human social interaction. Within this framework, it is clear that conformism is criticized for its negative consequences for the individual's self-understanding. Following this line of thought, it is also clear that the only real alternative to this absorption in the Anyone is a withdrawal from the public domains of inauthenticity (*Uneigentlichkeit*) into the authentic (*eigentlich*) sphere of the single individual (*der Einzelne*). This is precisely Löwith's reading of Heidegger's notion of authenticity (*Eigentlichkeit*): Authenticity is seen as a withdrawal from the inauthentic domains of human interaction into the authentic domain of solitary comportment, a step that can only be achieved by the single individual on her own by means of a resolute shift in her individual attitudes.

It is against this sharp distinction of authentic and inauthentic human comportment that Löwith directs his critique, which can be summarized in three objections (cf. Fazio 2010, 179 f.)[8]: Firstly, he rejects a strict distinction between inauthentic and authentic *Dasein*, and suggests an alternative interpretation of *Dasein*'s everydayness

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[8] In order to reconstruct Löwith's understanding of social reality, I will mainly focus on the second chapter of *The Individual in the Role of the Fellow Human Being*, the "structural analysis of being-with-one-another." This chapter is divided into two parts: The first part deals with "the relation of with-world (*Mitwelt*) to 'world' and 'environing-world' (*Umwelt*)" (Löwith 1981, 29–62). The second part treats "the immanent structures of the with-world" (Löwith 1981, 62–142). The second part is again divided into two sections, an analysis of "being-with-one-another as such" (*Das Miteinandersein als solches*) and an examination of the special topic of "being-with-one-another as speaking-with-one-another" (*Miteinandersein als Miteinandersprechen*). Especially for the first and third objection, other chapters are also important. The first chapter presents some main ideas of Feuerbach's *Principles of the Philosophy of the Future*, which Löwith sees as an antithesis to the traditional philosophy of the subject. The third chapter provides an analysis of the I-Thou relation, which Löwith develops mostly independently from Philosophy of Dialogue (Ferdinand Ebner and Martin Buber); this is important for Löwith's third objection. The last chapter discusses the

(*Alltäglichkeit*) that makes such a distinction far less plausible.[9] Secondly, he wants to show that a notion of authenticity (*Eigentlichkeit*) based on mineness (*Jemeinigkeit*) and achieved in solitude (*Vereinzelung*) is implausible. Thirdly, Löwith claims that Heidegger neglects the most basic mode of sociality, namely the I-Thou relation.

The main line of Löwith's critique consists in his rejection of the sharp distinction he takes Heidegger to make between inauthentic life and authentic selfhood. Löwith reinterprets everyday social reality, making it less plausible to deem it inauthentic and thereby also less obvious to understand authentic existence as independent of everyday social interaction. He claims that the phenomenon Heidegger identifies as the Anyone might be important in some aspects of everyday life, but does not exhaust everyday social interaction, nor even cover the most important domains of human sociality. As discussed below, instead of the Anyone, Löwith prefers to speak of the Others (*die Anderen*) (cf. Löwith 1981a, 64 f.). In my view, this shift is based on his focus on human interaction in contrast to Heidegger's focus on social normativity.

Heidegger's analysis of the Anyone describes a society dominated by the socially defined normativity of the Anyone: "We enjoy ourselves and have fun the way *one* enjoys oneself. We read, see, and judge literature and art the way *one* sees and judges. But we also withdraw from the 'great mass' the way *one* withdraws, we find 'shocking' what *one* finds shocking." (Heidegger 1996, 119) Heidegger describes the norms and habits of the Anyone as anonymously circulated; and it is precisely this anonymity that constitutes the "true dictatorship" (Heidegger 1996, 119) of the Anyone. From Löwith's perspective, it is noteworthy that Heidegger's description of society focuses on aggregated structures of normativity and all but neglects concrete interactions among fellow human beings. Based on this observation, Löwith charges Heidegger's analysis for being one-sided: If the task of the first division of *Being and Time* is to describe everydayness as it is first and foremost (*zunächst und zumeist*), Heidegger seems to misinterpret the phenomenon in question. He misses out on the fact that a large portion of our everyday life is formed by direct interaction with fellow human beings.

Löwith offers an alternative analysis of everydayness in which he focuses on the domain of human interaction. How do I encounter the Others in everyday interactions? Löwith names three features that characterize the Others. Firstly, I experience them as *my own kind* (*meinesgleichen*). In this respect, they are not others in a strict sense. Löwith understands the *with* in with-world (*Mitwelt*) along these lines: It means the "fellow human being in the significance of my own kind" (*Mitmenschen in der Bedeutung von Meinesgleichen*) (Löwith 1981a, 65). This remains in line with Heidegger's understanding of the Anyone, as Heidegger also emphasizes that

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self in its singularity (*Einzigkeit*) with regard to Kierkegaard and Stirner, which is crucial for his first objection.

[9] This is the most interesting feature of Löwith's critique. His positive account is similar to the aforementioned interpretation of the Anyone as constitutive for the intelligibility of entities. But it allows for a different emphasis, as Löwith does not focus on norms and habits but on the structures of human interactions in order to develop his understanding of human social reality.

the Anyone does not mean others in contrast to me, but also implies me as a part of the Anyone. I am just as much the Anyone as are others. Löwith agrees that I do not explicitly distinguish the Others from myself. However, the second feature of his notion of the Others purports that I do distinguish the Others among themselves. Being distinguished from each other is an equally important feature of the Others, as them being of my own kind. Against the anonymity of the Anyone, Löwith claims: "Each one of the Others is thus *as distinguished from* each other." (*Ein jeder der andern ist also* anders *als jeder andere*) (Löwith 1981a, 66) Finally, this allows Löwith to highlight that I always encounter others in a certain context and as having a particular significance. More concretely, I experience others in an as-determinacy (*als-Bestimmtheit*): "as men, women, children, old people, young people, well-dressed people, conspicuous appearance, as cabbies, policemen, officers." (Löwith 1981a, 65 f.) Löwith claims that I normally encounter others in specific social roles, as persons, not in the anonymity of the Anyone. In contrast to Heidegger, Löwith focuses on togetherness within a social environment. I experience the Others *as distinguished from* each other, as having significance within the context of social interrelatedness. The roles of the Others are determined by their relations with each other.[10]

Löwith's considerations permit an analysis of the social preconditions for interaction, whereas Heidegger's notion of the Anyone seems rather to hinder such investigations. This might also be intriguing for the current debate, as contemporary accounts, at least for the most part, leave the preconditions for collective intentionality in the dark. In his seminal paper for the debate on collective intentionality, Searle states: "Collective intentionality presupposes a Background sense of the other as candidate for cooperative agency; that is, it presupposes a sense of others as more than mere conscious agents, indeed as actual or potential members of a cooperative activity." (Searle 2002, 104) This leads to the question: How do we come to experience others as potential collaborators in cooperative activity? A theory of

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[10] At this point, Löwith offers an additional critique of the Anyone. Heidegger explains that the Anyone "*disburdens* Dasein in its everydayness" (Heidegger 1996, 120). It takes responsibility away from each *Dasein*, because *Dasein* can hand off its responsibility to the Anyone. Löwith shows that this is phenomenologically wrong. His notion of the encounter of the Others as occupying social roles forms the basis for his objection. That one is defined by a social role, which determines one's significance within a social context, does not mean that one is disburdened from responsibility. In contrast, Löwith claims that social roles constitute responsibility in two ways: First, it is often precisely on the basis of being a bearer of a social role that responsibility is attributed to an individual. Someone has certain responsibilities precisely because she is a police officer or a judge. But this is not the important aspect, as this does not contradict Heidegger's understanding of the Anyone. Heidegger would simply claim this is not the ontologically relevant form of responsibility that interests him. So, more importantly, a social role, even though it also constitutes one's replaceability (others can be and are policemen and judges as well), opens up the possibility to relate to one's role in one way or another. Occupying a social role puts the individual into a relation with others, in which the individual's autonomy appears. This autonomy lies in the experiences of oneself as being able to relate oneself to one's role in different ways (cf. Fazio 2010, 179). Heidegger's notion of the Anyone overlooks the autonomy and responsibility that accompanies the possibility of comportment with relation to one's social role.

social roles might be helpful in solving this puzzle. Perhaps the experience of others as bearing a social role is one of the cues that present them to us as potential partners for joint intention or action.

Löwith's second objection is directed at a notion of authenticity based on a solitary achievement of one single individual. In the last chapter of the book Löwith shows the self-contradictory nature of all attempts to understanding authentic individualization by ways of solitude and singularity (cf. Fazio 2010, 180). Löwith argues for the counter-claim, namely that solitude rather provides evidence for the primacy of sociality. His argument is that the position of the single individual, who solely wants to be herself, can only be understood in opposition to being together with others: It does not make sense to think of an individual who wants to establish herself in solitude without thereby also setting herself in opposition to others and refusing togetherness with them. In other words, becoming a single individual, reaching solitude, can only be achieved through a social process. Solitude is thus determined by what it intends to oppose, togetherness with others. Solitude is not a feature of the singularity of the individual, but a social phenomenon. Löwith's alternative account is that the autonomy (*Selbständigkeit*) of the individual must be understood on the basis of her relation to others, with togetherness as a more primordial phenomenon than solitude (cf. Löwith 1981a, 188 f.).

Löwith's third objection is that Heidegger ignores a more primordial mode of sociality, namely the I-Thou relation. At this point, we can highlight an interesting ambivalence in Löwith's account. For the most part, Löwith agrees with Heidegger that we encounter fellow human beings first and foremost within a world and as with-world (cf. Löwith 1981a, 29). Indeed, I have shown that Löwith's main objection is that Heidegger does not do justice to this fact in his analysis, because the focus on social normativity does not adequately capture the importance of human interaction in everyday life. The next step in Löwith's account, however, is to state that I encounter an other not only as "alius," but also as "alter." That is, the other is not only part of the Others, but also a You for an I. Löwith believes the experience of the other as You establishes an exclusive form of relationship: "We are not authentically with-one-another, and still less is 'one' with-one-another, but exclusively 'the two of us,' 'you and I' can be with-one-another." (Löwith 1981a, 71) In addition, he states that this intimate being-with-one-another in the I-Thou relation is more primordial than being with the world and being together with others in public. Therefore, Löwith considers it justified to charge Heidegger with overlooking or ignoring this basic form of sociality.

Löwith defines the I-Thou relation as a quite specific form of relationship. This relationship differs significantly from the forms of interaction usually taken up by the literature on collective intentionality. An authentic I-Thou relation is one without an end (*zwecklos*) and is in that way an end in itself (*Selbstzweck*). As soon as a relation has an external aim, it is no longer a true I-Thou relation, in Löwith's sense of the term. Authentic I-Thou relations have no common goal, and neither do they have the potential for goal-oriented joint action. The only end of the being together of an I and a You is togetherness itself. "What binds I and you together and what they are together for, is not a joint taking care (*gemeinsames Besorgen*), rather it is

themselves. […] Their being-with-one-another is – on the face of it – 'end-less' (*zweck-los*), because it already is itself an end (*schon selbst Zweck*), 'an end in itself' (*Selbstzweck*)." (Löwith 1981a, 73).

The purpose of Löwith's third objection, it seems, is to counter the presumed monological constitution of the self in Heidegger's ontology with a focus on the role of the dialogical relation. Yet, under closer examination, the question may arise whether these approaches are not merely two sides of the same coin. For does the dialogical situation really challenge the monological self? It appears more plausible that the focus on the social embeddedness of the self among others is the striking challenge to any account of sociality that takes the monological I or the dialogical You as its point of departure.

More importantly, it is not at all clear how this emphasis on the primordiality of the I-Thou-relation agrees with the rest of Löwith's analysis. What is the connection between the significance of the Others as having a role in our social being-with-one-another and the exclusiveness of the I-Thou relation? On the one hand, Löwith wants to present the I-Thou relation as the nucleus of my with-world and thereby as the most fundamental mode of my being-in-the-world (*In-der-Welt-sein*). Following this line of thought, Löwith seems to support the claim that the totality of human social reality should be understood on the basis of the basic I-Thou relation. On the other hand, Löwith's examples show that I understand You and myself on the basis of our relation. Yet, our relation is already mediated through social roles. In a relation of marriage, for example, the married couple understands each other on the basis of this specific relation; in a teacher-pupil relationship the teacher is understood as teacher and the pupil as pupil, etc. The understanding of each other comes from the relation, but the relation is already social in nature and thereby presupposes the Others.

Hence, we are confronted with the same problem again: What is more primordial, the interaction of the I-Thou relation or the sociality of the others? Indeed, this question is similar to one that is widely discussed in contemporary debate: Can all forms of sociality be reduced to interpersonal relations of individuals (insofar as they are the most primordial) or do we need to presuppose some sort of communality (even if only in an anonymous form) in order to explain collective intentionality and action?

Löwith does not offer a solution, he does not even pick a side, but his indecision regarding this question and the ambiguity of his analysis might be instructive for the debate. Löwith wants to have it both ways: He defines the I-Thou relation as the nucleus of sociality, but he interprets this nucleus as already socially determined.[11]

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[11] Later writings indicate that Löwith in fact changed his mind concerning this issue, arguing for the primacy of the social embeddedness of human interaction. In the preface to the reprint of the book in 1962, he remarks: "If I were to think about the topic anew, it would not happen anymore in the solitude of the formal structure of the relation of 'I' and 'You', but in the wider context of the encompassing question of the relation of human being and world, within which with-world (*Mitwelt*) and environing-world (*Umwelt*) are only relative worlds." (Löwith 1981a, 14) In his inaugural speech in front of the Heidelberg Academy for Sciences and Humanities Löwith puts his early approach even more into perspective: "The personal with-world of I and You, in which every-

This leads to a series of subsequent questions. For one thing, even though social roles have a constitutive function in human interaction, they also need to be thought of as constituted by human interaction. This leads to the question of how the mutual process of constitution between human interaction and social roles needs to be understood. For another thing, Löwith's definition of the I-Thou relation as externally endless and an end in itself makes it questionable how such a relation could be considered the nucleus of sociality. It does not seem like a mode of collective intentionality out of which further domains of social reality could be built, as it is precisely defined by excluding these further domains from its own realm. Thus, we are confronted with the question of how precisely an I-Thou relation should be structured that could form the basis for other forms of sociality.

6.3   Löwith's Critique of Heidegger's Universal Ontology

In this part I present Löwith's objection to Heidegger's method in *Being and Time* and the alternative methodology he suggests. In the following part I discuss the possible reformulation of this objection as a critique of and alternative to analytic social ontology.

In *The Individual in the Role of the Fellow Human Being* Löwith says very little about his method of investigation, but that should not hide the fact that the question of method is one of the most important aspects of his work. In the preface to the first edition he states a connection to Heidegger and the debt he owes his teacher with regard to the phenomenological method of his investigation: "The research method of the following contribution is phenomenological, in the way that it has become accessible and binding for the author through his teacher M. Heidegger." (Löwith 1981a, 11) For Löwith, it is beyond controversy that phenomenology is the appropriate method for philosophical research, and for this reason he is convinced that the short reference to Heidegger is enough to state this obvious point of departure. Nevertheless, he follows up with a very important restriction in his discipleship to Heideggerian phenomenology: "The investigation, however, proceeds strictly phenomenologically only insofar as phenomenology initially means a general 'concept of method' (*allgemeinen 'Methodenbegriff'*), but not in the more narrow sense of 'universal phenomenological ontology'." (Löwith 1981a, 11) In contrast to

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one – as son of his parents, as husband of his wife, as friend of his friends, as pupil of his teachers, as teacher of his pupils – is determined relationally by the other, this with-world that also constitutes us as 'in-dividuals', appeared to me back then as being our essential world (*maßgebende Welt*), because it concerns us immediately and everyday. The release of K. Marx' early writings (1927) prompted me to expand this all to human horizon of world and to include the objective power of the historically grown structure of society (*geschichtlich gewordene Gesellschaftsstruktur*) into the perimeter of one's own existence. It prompted me to realize with Marx that the seemingly independent, solitary 'individual' is a member of 'bourgeois' society (*Mitglied der bürgerlichen Gesellschaft*), a 'bourgeois', in distinction from itself as a citizen (*Staatsbürger*)." (Löwith 1981b, 252 f.).

Heidegger's universal ontological phenomenology, Löwith calls his own project an "anthropological phenomenology" (Löwith 1981a, 11).

Hidden in this cautious remark lies the core of Löwith's critique of his teacher.[12] Löwith rejects the ontological project of *Being and Time* in favor of a hermeneutical project as it was presented in Heidegger's earlier lectures. Löwith was a student of Heidegger during the period when the latter was Husserl's assistant in 1919–1923). Even though Löwith follows Heidegger to Marburg to proceed with his habilitation there, he does not, as we will see, follow his teacher in the development from a "hermeneutic of facticity" to a "universal phenomenological ontology." Instead, he uses insights from the early lectures and turns them against Heidegger and the modified project of *Being and Time*. Thereby he reveals an intriguing perspective on Heidegger's main work, which is not present in contemporary literature. Instead of reading the early Heidegger as presenting one unified theory, culminating in *Being and Time*, Löwith sees *Being and Time* as a betrayal of the general tendency of Heidegger's earlier thought, precisely the tendency that made Heideggerian phenomenology so attractive to him in the first place.[13]

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[12] Whereas this line of critique is only implicitly present in Löwith's habilitation, he formulates it more thoroughly in two articles, which were published in 1930 (see Löwith 1930a, b). There he explicitly develops the objection of an anthropological phenomenology against universal ontology.

[13] Löwith explicitly refers to the teaching of the early Heidegger to justify his assessment of universal ontology. He sees this critical perspective on the presumed universality of ontological structures as the central advancement from Husserl's "descriptive phenomenology" to Heidegger's "ontological phenomenology" (cf. Löwith 1930b, 366). Löwith clarifies this step in a longer passage. It is based on the "insight that 1. every 'straightforward' ('*schlichte*') *description* of what is straightforwardly seen is already guided by an 'understanding' that guides the description forward (*vorwärtsführenden 'Verstehen'*), – that 2. this understanding has the character of a 'projection' ('*Entwurf*') and therefore moves along *leading pre-judgments (leitenden Vorurteilen)*, namely with regard to what should be understood at all, and how and upon which (*woraufhin*) it should be understood, – that 3. precisely therefore everything depends upon assuring oneself of these in a literal sense 'pro-ductive' prejudgments in order to bring them into account in the decisive approach of the interpretation, and that 4. this transparency of its conditions (*Durchsichtigkeit ihrer Bedingtheit*), which is especially required for the 'objectivity' of an interpretation, is not enough; that it, on the basis of such a transparency of the essential prejudgments of an interpretation (*maßgebendenen Vorurteile einer Auslegung*), rather aims at explicitly putting those fundamentally leading prejudgments *themselves* into question, to question them as a whole and in particular regarding their 'truth' and evidence, in order to enable a specific unprejudiced (*vorurteilslose*), 'objective' and 'natural' interpretation – wherefore sure enough no illusionary *disregarding* of human subjectivity is required, but rather the positive *formation* of a subjectivity which interprets free and unbiased from traditional prejudgments." (Löwith 1930b, 366 f.) Löwith's charge against Heidegger is again that in his project of an existential ontology he has forgotten the most basic and promising insights of the hermeneutical project, which he himself developed in his early lectures. Löwith continuous to explain that "the leading prejudgment of every interpretation of *human* existence is an exemplary *ideal of existence*, which is never an 'arbitrary' one, but always originates from the real facticity of human life experience (*realen Faktizität menschlicher Lebenserfahrung*). […] And thus the first and last critical question is necessarily the one that addresses the *truth and evidence of the essential ideal of existence for the interpretation of human life* (*Wahrheit und Evidenz des maßgebenden Existenzideals der Auslegung menschlichen Lebens*)." (Löwith 1930b, 367).

For his project, which is an interpretation of human existence, Heidegger uses the label "hermeneutic of facticity" (*Hermeneutik der Faktizität*) around 1923. His basic assumption there is that human existence has a unique mode of accessibility; we only have access to our existence through being it ourselves: "The phenomenon of existence discloses itself only in a radically historical and essentially anxiously concerned manner of enacting our experience and striving after such enactment." (Heidegger 1998, 28) Thus, the "hermeneutic of facticity" is based on the self-interpretation (*Selbstauslegung*) of human existence. But equiprimordial with the tendency to understand and explicate itself, human existence also has a tendency to misunderstand itself, which Heidegger calls "fallenness" (*Verfallen*). Indeed, Heidegger claims that everyday existence is dominated by the tendency of self-misunderstanding. This has serious methodological consequences: Even though existence is only accessible in its self-experience, we cannot simply proceed by explicating Dasein's understanding of itself, because this self-understanding is likely a misunderstanding of its basic structures. As a consequence, Heidegger sees destruction (*Destruktion*) as a necessary feature of every interpretation of human existence. Destruction should make the preconceptions (*Vorgriffe*) of Dasein's self-interpretation transparent with the aim of revealing the misunderstandings inherent in our ontological understanding.

Löwith follows the outlined method in Heidegger's early lectures, and turns it against his teacher's later work. In particular, Löwith applies destruction to the universalizations that are conducted in *Being and Time*. According to Löwith, Heidegger forgets to apply his own insight into the necessity of preunderstandings (*Vorverständnisse*) and prejudgments (*Vorurteile*) – a hermeneutical clarification of Heidegger's notion of preconception – to every process of understanding. Therefore, the presumed universality of the ontological structures that *Being and Time* analyzes begs criticism: The existentials (*Existenzialien*) of *Dasein* must be taken as the universalizations of specific preunderstandings. In this sense, the ontological analysis of *Being and Time* is dangerous, as it elevates certain prejudgments that Heidegger holds to the status of universal structures, thereby taking them out of the game of competing interpretations of human life (cf. Donaggio 2000, 45; Kołtan 2012, 75). To counter Heidegger's move, Löwith advances the destruction of the existentials as universalizations of specific ideals of existence. He wants to show "that the ontological extent and formality of the analytic of Dasein is only a formalized extension of a *very specific and presuppositional* ontic-ontological understanding of Dasein" (Löwith 1930b, 365 f.). The phenomena that Heidegger elevates to a universal structure of *Dasein* form only one interpretation of human life among many. They are expressions of a specific ideal of existence: "Such an ideal of existence is essential (*maßgebend*) for every single 'determination' (*Bestimmung*) of Dasein, in the perspective on what at all constitutes the 'determination' of the human being." (Löwith 1930a, 51).

In contrast, Löwith's anthropological phenomenology aims at making the pre-structure of any ontological investigation explicit: "Also all *ontological*-existential (*ontologisch-existenzial*) possibilities (which in turn do not exhaust the possibilities of ontology) only project – as Heidegger says himself – ontic-existentiell (*ontisch-existenzielle*) possibilities towards their ontological possibility." (Löwith 1930b, 380).

6.4   Löwith's Possible Critique of Social Ontology

Löwith's critique can be brought forward not only against Heidegger's *Being and Time*, but also against any ontological project. It can thus be assumed that Löwith would also direct the same objection against contemporary attempts in analytic social ontology. In what follows, I attempt to specify how this critique should be understood by clarifying the meaning of the term ontology, which is the target of Löwith's attack.

When Löwith argues against a universal ontology, he has in mind primarily ontological projects that aim at establishing a priori structures. It is the supposed aprioricity of such ontologies that he exposes as the result of unjustified universalizations of structures that are not universal after all. He is thereby also a sharp critic of any project that aims at determining entities in their essences (*Wesen*). For Löwith, such an essentialist project is only possible at the cost of a fundamental naivety with regard to the status of one's analysis and the guiding role of one's preunderstandings for one's ontological investigation.

The core of Löwith's alternative model is to admit one's preunderstandings within the framework of one's research (even in a theoretical investigation that explores the basic structures of reality) and to critically question one's results with regard to these preunderstandings (cf. Löwith 1930b, 396 f.). This can be translated into an argument for investigations of social reality that combine empirical and conceptual elements. Above all, such investigations must critically examine the empirical preunderstandings that guide their conceptualizations and question them regarding their validity.

Löwith's endorsement of a connection of conceptual reflections with empirical findings, together with the labeling of his project as anthropological phenomenology, might support the assumption that he fosters a version of naturalism. However, this is not the case. Löwith does not aim at a naturalistic explanation but at a hermeneutical interpretation. In this sense, he takes the guiding preunderstandings of everyday existence seriously. In fact, he sees them as the only possible basis for philosophical analyses. Quite similarly to the early Heidegger and Gadamer, he states that we should not aim at breaking out of the hermeneutical circle of preunderstanding and destruction, for example, by targeting an essentialist determination a priori or a causal explanation in naturalistic terms. Instead, we should strive to get into the circle in the right way. From this point of view, only a hermeneutical self-examination allows for a critical confrontation with our leading preunderstandings. And such self-examination, in turn, is the only way to avoid the naivety that otherwise infests our ontological research.

Löwith's non-aprioristic, non-naturalistic, anthropological phenomenology presents an alternative methodology to the established field of social ontology. It thereby offers a critical perspective on contemporary analytical social ontology as a whole. My suggestion is that one should not take his objection too lightly. Löwith is keen to point out that this is not only a matter of theoretical debate. For, he emphasizes that every ontological account also has severe political consequences. If we ignore

the preunderstandings guiding our research into social ontology, we absolutize our anthropological prejudices and thereby immunize our own beliefs about human social reality against critical assessment and political debate. If we accept that every interpretation of human reality is located within the power game of political controversy, then labeling one's account "ontology," whether essentialist or naturalistic in nature, must be seen as an attempt to except one's own point of view from the political game of permanent contestation, thereby playing this game with unfair means.

6.5 The Status of Social Artifacts, the Correflexivity of Interpersonal Relations and the Role of Emotional Bonds

In this part, I systematically outline three main themes in Löwith's interpretation of social reality: the intelligibility of social artifacts, the *correflexivity* of human interaction, and the role of emotional bonds for human sociality.

The first theme reexamines the foundational character of everyday human practices, as was presented in the second chapter as crucial to the critique Löwith gives of Heidegger's account of sociality. In this chapter, I no longer focus on Löwith's critique of Heidegger, but rather on his understanding of social artifacts and how their meaning is constituted in everyday practices. Löwith follows Heidegger in his interest in the basic conditions of the intelligibility of social artifacts, such as equipment (*Zeug*). He extends Heidegger's approach to this question through his understanding of the basic structures of intelligibility as conditioned by human social practices. In Löwith's terminology, he is interested in the with-worldly (*mitweltlich*) characterization of the environing-world (*Umwelt*) (cf. Löwith 1981a, 30).

Heidegger develops his notion of the intelligibility of social artifacts based on an analysis of tool-use, exemplified by the craftsperson in the workshop. In taking care (*Besorgen*) of tools or equipment (*Zeug*) the craftsperson relies on familiarity with a totality of relevance (*Bewandtnisganzheit*). Equipment always appears within a context of reference (*Verweisungszusammenhang*), among a totality of equipment (*Zeugganzheit*): "There 'is' no such thing as *a* tool. There always belongs to the being of a tool a totality of tool in which this useful thing can be what it is." (Heidegger 1996, 64) Taking care of tools is only possible against the background of a totality of relevance, which is constitutive for the intelligibility of each piece of equipment. The totality of relevance (*Bewandtnisganzheit*) is arranged around a unique source of significance: the for-the-sake-of-which (*Umwillen*) of *Dasein*. Heidegger showed that the relevance of a piece of equipment, its *what-for*, can ultimately be traced back to the for-the-sake-of-which of *Dasein* (cf. Heidegger 1996, 78 f.). To use Löwith's example: The purpose of a table follows from the human practices associated with it. Because of its significance for human practices, a table can, for example, be placed wrongly; without reference to a for-the-sake-of-which a table could never be in the wrong place, it would simple be where it is without any

significance in relation to its location. A table is misplaced only if it stands in conflict with the purpose given to it by its users. The significance of equipment refers to human practices which in turn manifest themselves in the equipment they are taking care of (cf. Löwith 1981a, 45).

Up to this point, Löwith repeats Heidegger's analysis of taking care of equipment. As a further step, he signals an additional layer of significance, another dimension of sociality that human beings find manifested in equipment. When discussing the with-worldly characterization of the environing-world, Löwith highlights that the significance of the artifacts in our environment cannot be reduced to instrumental relevance only. Löwith points to an additional dimension that might be called *historical significance*. For example, we encounter equipment as bought in, purchased by, inherited from, etc. The personal histories we associate with equipment add an additional layer of significance beyond their instrumental relevance. A table gains historical significance through the people that have sat at it. It adds nothing to the instrumental relevance of the table that, for instance, a famous person used to sit at it, but it changes the significance we associate with it, which in turn changes the social practices that revolve around that table (cf. Löwith 1981a, 45 f.).

This leads to another aspect of the historical significance of the environing-world: In equipment, the mode of being of human beings expresses itself, not only in general, but rather in very specific and differentiated ways. This seems to be the domain where culture comes into the picture. For example, the interior of an apartment does not only manifest the formalized and general for-the-sake-of-which of *Dasein*; it also displays the respective way of being of the specific human being who made herself at home in it (cf. Löwith 1981a, 46 f.). "What the 'interior' indicates for the view of the human being is nothing else but the human being, not as something that necessarily belongs to it, but as the one to whom the interior belongs." (Löwith 1981a, 48) Löwith makes clear that this is not only true for individuals, but also for collectives. The shared social practices of human beings give significance to their environing-world and this significance in turn can be seen when studying this world. Again, this is especially obvious in the way human beings manifest themselves in the space in which they live: "The dwellers (*Inwohner*) determine the character of a dwelling house (*Wohnhaus*) as a house which is there for dwelling or residing (*Wohnen oder Hausen*). There is only housing space (*Wohnräume*) insofar as there are dwelling (*wohnhafte*) human beings. The residents (*Bewohner*) of a town characterize as inhabitants (Einwohner) their 'town', determine the townscape and town life (*Stadtbild und Stadtleben*)." (Löwith 1981a, 29 f.).

Interestingly, this point is again taken from Heidegger's earlier lectures. In the 1923 summer term lecture course, Heidegger uses the same examples (tables, living rooms, etc.) to make the exact same point (that is, that the historical significance we attach to things, in addition to their instrumental relevance, is an important aspect of social practices) (Heidegger 1999, 69 f.). Therefore, even though Löwith clearly emphasizes this aspect more than Heidegger – at least in *Being and Time* – it is questionable whether there is actually any real difference between their accounts. Whatever the answer to this question may be, they certainly provide an intriguing perspective on the constitution of the intelligibility of entities through social practices. On that

note, Löwith could be an interesting, though as yet unexplored, resource for scholars who want to push this point in Heidegger, as his analysis provides further support and additional details for a more profound description of the social practices conditioning the intelligibility of entities.

Nonetheless, Löwith believes he is actually criticizing Heidegger at this point. He understands himself as arguing against Heidegger when advancing the priority of the with-world over the environing-world: "Anthropologically more primordial than every taking care of things at hand (*Besorgen von Zuhandenem*) is the care for others (*Sorgen für Andere*), since taking care originates from the care for oneself and others (*Besorgen entspringt der Sorge für sich selbst und andere*)." (Löwith 1981a, 72) Theunissen interprets this as the most substantial objection Löwith directs against Heidegger (cf. Theunissen 1965, 414–418). Though this reading is in line with Löwith's self-understanding, I do not think Löwith and Theunissen have a strong case here. Theunissen himself remarks that the difference between Heidegger and Löwith's views regarding this question might not be so significant after all. In my opinion, there is no substantial difference at all, but only a different emphasis in their respective descriptions. More importantly, within a Heideggerian framework, it seems pointless to argue whether the with-world or the environing-world should be considered as more primordial. Heidegger's point is precisely that *Dasein's* activity is always directed towards the world in all three dimensions, as with-world, environing-world, and self-world. Accordingly, Heidegger explicitly states that both taking care (*Besorgen*) and solicitude (*Fürsorge*), i.e., relations to things and relations to others, are equiprimordial modes of care (*Sorge*) (cf. Heidegger 1996, 116). Thus, rather than playing the chicken-and-egg game concerning what came first, we should combine Heidegger and Löwith's accounts to gain a better understanding of the interplay of social practices and the intelligibility of entities.

The second theme is related to the embeddedness of human action in a social environment, especially concerning how social roles inform the intelligibility of this environment. In this context, Löwith develops the notion of the correflexivity (*Korreflexivität*) of human interaction. This aspect is unique to his account. Like his theory of social roles, it cannot be traced back to Heidegger, and thus forms a genuine contribution distinguishing him from his teacher. The phenomenon Löwith has in mind here is quite complex, so it might be useful to give an example first. For instance, we can think about a discussion between two philosophers who are, at least to some extent, familiar with each other's work. In such a case, Löwith points out, the two opponents tend, not merely to present their own arguments in their own terms, but rather to anticipate the other's responses, thus formulating their arguments so as to reply in advance to potential objections.

Löwith sees this correflexivity as a basic feature of human interaction. When interacting with others, human action is not only directed towards the other. Rather, the comportment of the one is already co-determined by the anticipation of the response of the other. "In all cases, in which the one believes to already know the other, he relates to him spontaneously in advance in reflection on his expected response." (Löwith 1981a, 95) In relating myself to the other I am aware that the other also relates herself to me, and this awareness modifies my initial relation to the

other prior to her actually relating to me. In my attempt to get ahead of her I relate to her in such a way that the anticipation of her potential relation to me co-determines my initial relation to her. This is not only true for me, but for every participant in human social interaction. Thereby the structure gets more complex. I am not only anticipating the other's response to my action, but I am also anticipating her anticipation of my action. Likewise, the other is not only anticipating my action, but also my anticipation of her anticipation of my action. We could take this to even higher levels of reflection, but let us stop here. The point is clear: Social interaction is co-determined by everyone's anticipation of each other's anticipation and so forth. This is what Löwith calls correflexivity (cf. Löwith 1981a, 94 f.).

Unfortunately, Löwith does not discuss correflexivity in much detail. According to my understanding, an attempt to develop his notion further seems to lead to at least two conceptual difficulties: First, no reason is given for why correflexivity might stop at a certain level of reflection; for instance, the third level (in my explanation above: "I anticipate that you anticipate that I will act in a certain way" and "You anticipate that I anticipate that you will act in a certain way") does not have to be the last. If the reflective process can be continued on higher levels ad infinitum, the problem of infinite regress emerges. Second, the question arises how agents can entertain these highly complex (and potentially infinite) processes within their finite mental capacities, and how these processes can serve as orientation for action in everyday comportment.

At this point, an analogy can be drawn between these difficulties and the conceptual problems which are discussed in the literature on common knowledge of belief (cf. e.g. Lewis 1969, 52–57). I do not find indication in Löwith's work, however, that he is aware of these conceptual difficulties. Hence, it seems that the discussions of common knowledge can help to clarify the notion of correflexivity, rather than the other way round.

Löwith's "solution" is simply to emphasize that correflexivity is something people are usually not aware of, at least not under normal circumstances. It is something that spontaneously takes place in our everyday comportment towards others.[14] But how should we think of the actual workings of correflexivity in everyday contexts? Once again, Löwith sees social roles as playing an important part. My anticipation of the other's action is to a large extent determined by the role I ascribe to her. I anticipate this person as acting in a certain way because I see that she is a police officer, a taxi driver, my friend, or my mother. If I did not have an understanding of the other as having a role, it would be very difficult for me to make sense of her behavior. We need social roles in order to comprehend the actions of others. In everyday life, I understand others primarily in relation to their roles and the modes

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[14] In this regard, the term "reflexivity" might be misleading, as correflexivity is in fact not a reflexive process, but part of the underlying structures that shape the sociality of human interactions. To make sense of the term "reflection" we might think of it in the literal sense: The other's potential actions and anticipations of my actions are reflected in my actions and anticipations and vice versa, and we are thereby, in our relation to each other, reflecting each other's actions and anticipations back and forth between us.

of comportment I can anticipate regarding these roles. The intelligibility of social behavior depends to a large extent on the ascription of roles.

In brief, the understanding of others as having social roles and the correflexivity of our social interaction are, according to Löwith, the basic infrastructure of human sociality. They form the background that makes the actions of others intelligible to us. And by means of making their actions intelligible, these others present themselves to us as potential partners for joint intention or action. Thus, social roles and correflexivity might be promising candidates for characterizing the background sense of others as potential collaborators, which is just what the literature on collective intentionality, following Searle (cf. Searle 2002, 104), is looking for.

The third theme can only be mentioned briefly, as Löwith does not say much about it himself. In his analysis of speaking-with-one-another (*Miteinandersprechen*), Löwith hints towards the thesis that communication on the level of emotions is more primordial than speaking with each other and acting together. Löwith builds on Heidegger again, this time on his notion of attunement (*Befindlichkeit*). Heidegger points out that our being-in-the-world is not only a question of cognitive and conative forms of intentionality, but also a matter of our affective states. In fact, he claims that *Dasein's* being-in-the-world in all its dimensions is always colored by moods (*Stimmungen*). In other words, every mode of intentionality has an affective component that co-shapes it (cf. Heidegger 1996, 136–131). In addition to this general account of attunement, Löwith may be referencing a particular sentence in *Being and Time*, where Heidegger speaks of attunement-with (*Mitbefindlichkeit*). In this unique passage, Heidegger seems to indicate that attunement can be shared and that this shared attunement, together with shared understanding (*understanding with* or *Mitverstehen*), form the basis of our being-with-one-another (cf. Heidegger 1996, 152).

Löwith reformulates this passage and highlights the importance of attunement-with in comparison to understanding-with: "This vitally conditioned attunement (*vital bedingte Befindlichkeit*) is not only a mode of being that is *equi*primordial with 'understanding', but rather the most primordial mode of being, and in addition, it forms the foundation for all specifically understandable contexts of expression of human life (*alle spezifisch verständlichen Ausdruckszusammenhänge des menschlichen Lebens*)." (Löwith 1981a, 140) To provide phenomenological evidence for this point, Löwith seems to refer to Scheler's analysis of sympathy (cf. Scheler 1973). He states:

> Nothing speaks more distinct in the relation of the one to the other than antipathy and sympathy. The *one* has *Sym*-pathy and *anti*-pathy for or against the *other*, that is to say they are determined as modes of being-with-or-to-one-another (*Mit- bzw. Zueinandersein*); in such a way the 'suffering' (*Leid*) of the one is first of all disclosed for the other through compassion (*Mit-leid*), even if the one and the other are one and the same person and one accordingly has compassion with oneself in the same way as with another. Sympathy and antipathy thus determine the *relation* of human beings, they do so in a foundational manner, by attuning it in advance and all the time on a specific 'tone' (*auf einen bestimmten 'Ton' stimmen*). And according to how we are 'attuned' to one another, we are 'in or out of harmony' with one another (*je nachdem, wie man aufeinander 'gestimmt' ist, ist man aufeinander 'zu sprechen'*). This antipathetical or sympathetical attunement (*Gestimmtsein*)

causes the unanimity (*Einstimmigkeit*) or dissonance (*Unstimmigkeit*) of human relations, it brings about that they 'tune up' or do not tune up ('*stimmen*' *oder nicht stimmen*). (Löwith 1981a, 140 f.)

Unfortunately, Löwith does not say more about the idea of *attunement-with* as a basic feature of human sociality. Nevertheless, the idea of shared attunement is an important topic for further exploration. In recent years, Heidegger's notion of attunement has served as inspiration for the discovery of "existential feelings": Existential feelings are "ways of finding oneself in the world", ways of relating to the world as a whole. They form the background for our specific intentional states and shape our concrete experiences (cf. Ratcliffe 2005, 2008). This is an important step towards a more comprehensive understanding of our affective intentional life. However, at least for the original understanding of existential feelings, as developed by Matthew Ratcliffe, *shared* or *collective* feelings do not play a role.

The initial debate on collective intentionality has primarily focused on shared intentions (and beliefs). The question of whether feelings and/or emotions can also be collective or shared has only recently been raised (cf. Schmid 2009, 59–83).[15] The role of collective affective intentionality appears to be a promising field for future research. Within this emerging discussion, Löwith's remark might serve as an additional source of inspiration. The idea of *attunement-with* points towards an investigation of whether and how existential feelings can be shared. It triggers questions like: Does it make sense to speak of collective ways of finding ourselves in the world? Is there such a thing as a collective affective background that shapes our intentional states?

6.6 Conclusion

As stated in the introduction, Löwith's research into human social reality has hardly been noticed. It seems to me that two additional reasons for this situation should be considered here. First, Löwith's relation to Heidegger plays an important role: Because it is so important for the early Löwith to criticize his teacher, his account of sociality remains for the most part within the framework established by Heidegger. In many respects, this hinders an independent reception of his contribution. Löwith sometimes gets caught up in interpretive rivalries with Heidegger instead of proceeding systematically with his own approach. Heidegger also noticed this in his review for the habilitation committee: "Even the relation to phenomenological research is nowhere discipular (*schülerhaft*) and external (*äußerlich*); it is occasionally even exaggeratedly independent, so much that the critique of the investigations of Scheler and myself does not advance everywhere to the positive." (Löwith 1981b, 473) The second reason for the lack of reception might be Löwith's reluctance to systematize.

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[15] Regarding the question of how feelings can be shared, another early phenomenologist might provide decisive insights: the already mentioned Max Scheler (cf. Schloßberger 2005; Vendrell Ferran 2008).

This makes it hard to follow his scattered descriptions and to comprehend them in their proper relevance. Heidegger notices this in his review as well: "The main emphasis of the work lies less in the systematic structure than in the powerful execution of concrete individual studies and the historical interpretations." (Löwith 1981b, 472) However, as I have shown, it is important to note that this lack of systematic structure is based on an important methodological claim. Löwith is critical of research into ontology that believes it can analyze universal structures without reference to the preunderstanding and prejudgment that guide it. As an alternative, he argues for a hermeneutic phenomenological method that is aware of its own preunderstandings and opens them to critical examination and political contestation.

Finally, I would like to summarize the positive elements of Löwith's account of human social reality. These are worth further exploration in the context of contemporary debate. To begin with, Löwith contributes to an understanding of the intelligibility of social artifacts through their connectedness with basic social practices. This reveals a basic level of sociality often overlooked both in traditional metaphysical accounts and in contemporary analytical approaches to social reality. This aspect is mostly based on the seminal work of Heidegger. In addition, *The Individual in the Role of the Fellow Human Being* contains two genuine contributions that cannot be traced back to Heidegger: first, the understanding of human social reality through a notion of social roles; second, the understanding of human interaction as determined by correflexivity. Taking these two structures together, Löwith offers an intriguing analysis of the social conditions of human interaction. This might help cast light on the background of collective intentionality and action. Finally, Löwith's brief hint at the constitutive role of attunement-with for human sociality might additionally motivate an exploration of the role of feelings and emotions in collective intentionality, specifically pertaining to the possibility of collective affective backgrounds.[16]

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Part II
Doing Things Together

Chapter 7
Husserl on Collective Intentionality

Thomas Szanto

Abstract Unlike Husserl's theory of empathy and intersubjectivity, his theory of collective intentionality has hardly been studied. In this paper, I shall address this neglected but important aspect of his phenomenology. I will argue that Husserl's contribution, on closer scrutiny, not only stands on an equal footing with contemporary analytic accounts but, indeed, helps to alleviate some of their shortcomings. In particular, I will elaborate on the differences in the social integration of individuals and collectives in terms of intersubjective, social, communal and collective intentionality, respectively. On this background, I will concentrate on Husserl's alternative construal and demonstrate how it entails a robust anti-individualism regarding both the form and the subject of we-intentions. I will suggest that, contrary to appearances, Husserl does not fall prey to committing a content/vehicle type of fallacy, by inferring from the jointness of the contents of collective intentionality that there is one joint vehicle or, worse, some collectively conscious bearer of such. Rather, the Husserlian alternative yields a robust formal-*cum*-subject anti-individualism and undercuts the need for deciding between tying in collectivity with either the subject, the mode, or the content of collective intentionality. Ultimately, I wish to show that Husserlian phenomenology allows for a multi-layered and distinctively intentionalist description of communalization, a program often pointed to but, in fact, little expounded upon in contemporary social ontology.

Keywords Collective intentionality • Edmund Husserl • Phenomenology • Intersubjectivity • Social ontology

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7.1   Introduction

Literature on Husserl's theory of empathy and intersubjectivity abounds, especially with regard to how such notions relate to his 'transcendental solipsism.' What is little known, however, is that Husserl, in his later work, offers a highly original theory of collective intentionality, an issue that is at the forefront of contemporary analytic philosophy of action. In this paper, I shall address this hitherto neglected aspect of Husserlian phenomenology and argue that Husserl's contribution, on closer scrutiny, not only stands on an equal footing with contemporary accounts but, indeed, also helps to alleviate some of their shortcomings.

To be sure, Husserl's intriguing "social ontology" (Hua XIII, 102) has not gone wholly unnoticed.[1] Yet, those few examples of existing literature typically have a different focus than my own, concentrating, instead, on specific constitutional issues or ontological (sub-)domains of social reality, intricate issues that I shall not pursue in great detail here.[2] Additionally, with even fewer notable exceptions,[3] there is hardly any work that systematically examines Husserl's possible contribution to the current debate on collective intentionality. Moreover, both Husserl's preeminent early phenomenological successors and contemporary scholars either do not seriously consider his theory of 'higher order persons' and 'common minds' (*Gemeingeist*) and their cognate conceptions altogether, or else the verdict is outright dismissive.[4] Eventually, some contemporary critics regard them simply as relics from a past that notoriously led many of Husserl's contemporaries to give way to the collectivistic aberrations of the social and political thought in the first quarter of the twentieth century. Conversely, and somewhat ironically, critics have recently claimed that Husserl's common mind, far from being truly anti-individualist, is rather "brainwashed" by Cartesian individualism (Schmid 2000, 2005).

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[1] Evidence suggests that it was, indeed, Husserl who first coined the very term 'social ontology' (*soziale Ontologie*)—a now well-established research field within current analytic philosophy—in a text from 1910, cf. Salice 2013. I appreciate help from Thomas Vongehr at the Husserl Archives, KU Leuven, for having verified this in the original typescript.

[2] See the respective work on Husserl's account of 'higher order persons' and 'communal minds' (Toulemont 1962; Allen 1978), on specific socio-ontological sub-domains and their foundational structure, such as Husserl's distinction between various types of social collectives (Toulemont 1962, and Perreau 2013), or specific types of 'socialities of subordination' and of 'equitability' and Husserl's theory of the state (Schuhmann 1988), positive and/or critical comparisons between Husserl's and Searle's social ontology (Thomasson 1997; Johansson 2003). Theunissen's (1965/1977) and Strasser's (1975) contributions, though they first used the term 'social ontology' (*Sozialontologie*) in the (German) literature after Husserl, do not deal with Husserl's social ontology proper but, rather, with his account of intersubjectivity and intersubjective monadology; for an early critical and, indeed, not very optimistic, account of Husserl's possible contribution to the philosophy of the social sciences more generally, see Neisser 1959 and Henriques 2015; cf. also Uygur 1959; Schmid 2000 and Mulligan 2001, and most recently Miettinen 2014.

[3] See Mathiesen 2005; Caminada 2011 and forthcoming; Salice 2013, and most detailed Chelstrom 2013.

[4] See esp. the critiques of higher order collectivities in Schutz 1957, 114f., or Kaufmann 1930 and 1944, 163f.

In marked contrast to such critical approaches, I wish to show that Husserl in fact offers a rich phenomenological social ontology of various types of collectives. Moreover, I shall argue that Husserl provides all conceptual prerequisites for a genuinely novel phenomenological account of collective intentionality. Notice that the emphasis here is on *pre*requisites: though I contend that we find all of the building blocks, however scattered, in the work of Husserl, in this paper, I endorse a systematic and reconstructive approach rather than a purely exegetical one.

To make my case, my argument proceeds as follows: I start by mapping the terrain with an outline of the multi-layered structure of the constitutional process, which Husserl labels the 'socialization' or 'communalization' (*Vergemeinschaftung*) of individuals. In particular, I shall consider the differences in the intentional integration of individuals and collectives in terms of intersubjective, social, communal and collective intentionality, respectively (Sect. 7.2). Against a brief survey of the most influential current accounts of collective intentionality (Sect. 7.3), I then concentrate on Husserl's alternative construal and demonstrate how it entails a robust anti-individualism regarding both the form and the subject of we-intentions (Sect. 7.4). Finally, I address two central objections and vindicate the Husserlian account; here I argue that, contrary to appearances, Husserl does not fall prey to committing a content/vehicle type of fallacy by inferring from the jointness of the contents, or the we-modal feature of collective intentionality, that there is *one* joint vehicle (one intention) or, worse, some collectively conscious, 'bearer-entity' of such (Sect. 7.5). I conclude by recapitulating the core merits of the Husserlian account of collective intentionality over its dominant, contemporary models.

7.2 Intersubjective, Social, Communal, and Collective Intentionality: An Outline of Husserl's Intentional Sociology

Husserl's account of collectives and social entities enters the stage at a relatively late phase of the foundational process of social reality and, here, in turn, does so as one of the so-called "regional ontologies" (Hua III/1, 19f.).[5] This regional ontology, "the systematic ontology of social entities and facts" (*systematische Ontologie sozialer Gegebenheiten*), or "social ontology" for short, can be seen as the phenomenological equivalent of sociology, and it is in this sense that Husserl employs the concepts "descriptive sociology" (Hua XIII, 102f.) or "intentional sociology" (Hua XXXIX, 389). The "social atoms" (Gilbert 2003) of Husserl's intentional sociology are individuals and their intentional interrelations, i.e., the directedness of

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[5] Presumably, even though this is not fully clear in Husserl, the region to which social reality belongs to, as a material 'sub-region', is the region of cultural, or spiritual (*geistig*), intentional achievements, cf., e.g., Hua IV, 347, 379.

intentional acts upon one-another.[6] It is crucial to bear in mind, however, that the 'socialization' of individuals, on the one hand, and the constitution of social communities, on the other, for Husserl, are correlative, or interdependent constitutional processes. It is not as if there were pre-social atoms engaging in social acts and, eventually, constituting social communities. Rather, the socialization of individuals—their being constituted as full-fledged social beings who entertain complex social relations—on the one hand, and their communalization—their constituting social groups and communities—are, as it were, just two constitutional sides of one and the same intersubjective process.[7] Hence, the phenomenological basis of collectivity and community is already at play at the level of those intersubjective processes that imbue the most basic sensory—that is to say, affective, or emotional—life of individuals, including their drives, or sensory perceptions (Hua VI, 166; XIV, 196ff.; cf. Strasser 1975). This is essentially what Husserl means when he claims that an ego "is what it is" only as somebody who bears an Other and, indeed, all others, in her very being and that it is "nonsense" that any subject, even any "absolute being," could exist as a *solus ipse* (Hua XV, 336, 371).

What, then, are social entities and, in particular, collectives, and how are they constituted? Most generally viewed, social entities, for Husserl, are "objectivities of higher-order" (*Objektitäten höherer Stufe*; Hua XIII, 101, Fn.; cf. ibid., 99, Fn. 3). Notice that by using the *singulare tantum* concept 'objectivity' in the plural, Husserl marks the non-ordinary status of such 'entities': they are neither mere intentional objects nor simply subjects, that is, not subjects at the same, constitutionally-foundational level as *individual* subjects. This, as shall become clear in the following (Sects. 7.4 and 7.5), is not to say that, for Husserl, collectives were *merely* objectivities. Rather, in specific cases, collectives can well be proper 'subjectivities', even if Husserl uses the concept 'subjectivity,' when attributed to specific sorts of groupings of subjects, in the distinctive sense of being of a higher order.[8] Consider also that being a higher order entity, be it an objectivity or subjectivity, is far from being exclusively reserved to social entities. Husserl equally characterizes the "concrete objective" (individual) "human person" as a "unity of higher order" (Hua XIV, 425). Furthermore, from the very start of introducing this concept, Husserl makes it very clear that social objectivities are not mere arbitrary "collections" or aggregates of individuals but "social unities" in their own right (Hua IV, 196; VIII, 198; XIII, 99–104; XXVII, 22, 27).

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[6] See Hua XIII, 103: "In the social sphere, the basic units of calculation (*Grundeinheiten der Rechnung*) are individual human beings and their act-relations upon one-another (*Aktbeziehungen aufeinander*)," a dictum that, on the face of it, resonates with Schutz's (1932) and Weber's (1922) methodological solipsism.

[7] Similarly, at a higher level of socialization, Husserl points to the "parallel constitution" of communal (higher order) subjects and their communal engagements and accomplishments (Hua XIV, 193).

[8] *Pace* Chelstrom 2013, who claims (without, however, consulting either Hua XIII; XIV; XV or other later texts of Husserl) that Husserl "in no way extends a sense of subjectivity to intersubjective groupings of subjects (…) and does not speak of them as subjectivities whatsoever" (Chelstrom 2013, 52), a claim that, as a number of quotes below will show, is, at least from the point of view of the textual evidences, plainly wrong; cf. Szanto 2014b.

Higher order social objectivities are constituted by four interrelated and gradually evolving constitutional processes that jointly make up what Husserl calls the "intentional implication" (*intentionale Implikation*) of one ego in another, or, significantly, the "intentional intertwinement of communalization" (*Ineinander der Vergemeinschaftung*) (Hua VI, 258f.).[9] Accordingly, and quite unlike the often all-too homogenous account of collective intentionality (henceforth: CI) in contemporary social ontology, in Husserl, we may devise four distinct social types of intentionality: call them *intersubjective*, *social* or *socio-communicative*, *communal* and *collective* intentionality respectively.[10] To be sure, Husserl has no clear taxonomy, let alone any precise criteria of individuation of these four types; I suggest, however, that there is enough textual and, above all, systematic evidence in his work that Husserl does, in fact, properly distinguish between them. The differences between these social forms of intentionality are due to differences regarding the underlying constitutional processes of socialization/communalization, the robustness of intentional integration and the subject, and the content and the object of the respective intentional engagements. More precisely, the constitutional moments of the complex foundational process of socialization and communalization of individuals are as follows: (1) (individual and collective) empathy; (2) the constitution of a "transcendental We" and the correlative social lifeworld and objectivity (3) explicit socio-communicative acts and joint attention; (4); and, finally, (5) various forms of CI proper. In order to get a firm grip on Husserl's account of CI, it is the fine-grained structure of this multi-dimensional constitutional process of communalization to which we must now turn our attention.

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[9] See also Hua VI, 252, 259, 417; XV, 371, 377, and Hua Mat VIII, 20, 278. Husserl uses a series of other concepts to refer to this intentional implication, such as "interweaving of intentionality" (*ineinandergeflochten*; Hua VIII, 128), or the "intertwinement of constitution" (*Ineinander der Konstitution*), "the amazing fashion [in which one's] intentionality reaches into that of the other and vice versa" (Hua VI, 257f.). Note that the individuals who intentionally integrate thusly remain, in fact (*reell*), 'separated'. This is the gist of Husserl's demarcation of "intentional intertwinement" (*intentionales Ineinander*) and "real separateness" (*reelles Auseinander*) (Hua XV, 371, 377). Consider, however, that there is a level of analysis and a respective transcendental level of constitution wherein intentional interpenetration precedes their separateness such that Husserl, indeed, speaks of the intentional intertwinement as a "metaphysical arch-fact" (*metaphysische Urtatsache*; Hua XV, 366). Here is a revealing passage from the *Crisis*: "(…) within the vitally flowing intentionality (*lebendig strömende Intentionalität*) in which the life of an ego-subject consists, every other ego is already intentionally implied from the very start by way of empathy and the empathy-horizon (*Einfühlungshorizont*). Within the universal epoché (…), it becomes evident that there is no separation of mutual externality at all for souls in their own essential nature. What is a mutual separateness (*Außeinander*) for the natural-mundane attitude of world-life prior to the epoché, because of the localization of souls in living bodies, is transformed in the epoché into a pure, intentional interweaving (*wechselseitiges intentionales Ineinander*)." (Hua VI, 259); see also the quote from Hua XV, 335 below (Sect. 7.5).

[10] Here, I am indebted to De Vecchi 2011 and 2014, who similarly distinguishes "intersubjective," "social," and "collective intentionality," as well as further types, some of which are also to be found in Husserl's phenomenology of sociality, including, e.g., affective (as distinct from cognitive or practical), intersubjective and collective intentionality (cf., e.g., Hua XIV, 196ff. and Husserl 1923); see also Schmid 2009.

1. On the most basic level of the constitution of persons *qua* atoms of social life, we have empathy (*Einfühlung*). Empathy, for Husserl, roughly, is an irreducible intentional experience of another subject (*Fremderfahrung*), one that consists in encountering another animate body, its recognition as another 'lived body' (*Leib*), and, eventually, its recognition as another subject or ego (*alter ego*) with its own conscious intentional life. This process of recognition takes its cue from the bodily manifestations and verbal expression (gestures, mimics, explicit communication, etc.) of the Other and, essentially, happens by means of the so-called "analogical appresentation," analogous to the "re-presentation" (*Vergegenwärtigung*) of one's own past experiences, and "associative coupling" or "pairing" (*Paarung*) of the respective experiences (Hua I, 138ff.). What is crucial to note for present purposes is that empathy typically amounts to dyadic, I-Thou relations (*Ich-Du-Beziehungen*). Accordingly, intersubjective, empathy-based intentionality entails Other-directed intentional acts, whose subject is an individual and whose object, the target of empathy, includes one or more other subjects and their respective intentional properties.[11]

2. The second central moment in the constitution of communal life is the constitution of the universally shared lifeworld and its subjective correlate, the "transcendental We" (Hua I, 137). I propose to subsume this highly complex constitutional process under the heading of '*communal* intentionality'.[12] What happens here, roughly, is, above and beyond empathy's I-Thou-synthesis/pairing and social act's I-Thou-relations (see below), a specific "We-synthesis" (*Wir-Synthesis*), thereby constituting a "general We" (*allgemeines Wir*). The objective intentional correlate of this We is "the intersubjectively identical lifeworld-for-all" (Hua VI, 175f., cf. 163ff.). The important point here is that there is an "interpersonal intentionality" that, by way of a "synthesis of individuals," not only establishes a "social *plural*" (*soziales Plural*), but, at the same time, a founded and yet "intrinsic *unity*" (*innere gestiftete Einheit*) (Hua VIII, 198). This internally-synthesized social plural, being a transcendental (inter-)subjectivity, has (just as their members have) the individual egos, a proper "*intersubjective* sphere of ownness" (Hua I, 137). Moreover, this transcendental We has its own constitutive function, specifically, the constitution of an objective world, and, ultimately, of objectivity. As such, i.e. as 'constitutive intersubjectivity' (Zahavi 2001, 115), it is a kind of transcendental primitive in the ontology of social reality. Now, the subjects of such communal intentionality are still individuals. However, as members of the transcendental. We, as

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[11] This is not to say that empathy for Husserl (or for Stein 1917) must necessarily target single individuals only, or that there cannot indeed be such a thing as collective empathy, whose target is not an individual but a collective of individuals or a community. Notice that, in such social or collective forms of empathy, however, the empathizer aims at understanding, not so much the alleged experiences of collectives or communities, as in the individual case, but, rather, the collective's "social functions," values, etc. (cf. Hua IV, 200; VIII, 137; XIII, 99). For more on the possibility of such collective forms of empathy, esp. in Stein, cf. Szanto 2005.

[12] Cf. Hua XIV, 74, 94, 99, 173, 196ff.; XV, 331ff.; XXXIX, 260ff., 385ff., 491; Mat VIII, 178ff., 369ff., 430ff.

inhabitants of the social lifeworld, their intentional experiences are such that they are impregnated, as it were, by a 'we-mode'. At bottom, this means the sharing of a first-person plural perspective on the common lifeworld, and it is precisely in this sense that Husserl speaks of a "*nos cogitamus*" (Hua VIII, 316).[13] Husserl spells out this transcendental commonality of experiencing in terms of the 'typicality' and 'habituality' of apperceiving the common life-world. The commonality includes both types of intentional content, as well as types of experiential modes, or the form of experiences. For example, all of us have certain X-type-perceptions and share certain beliefs based on such X-type-perception (cf. Chelstrom 2013, 171).

3a. Next, we have explicit and reciprocal socio-communicative acts (*kommunika-tive soziale Akte; Akte der sozialen Wechselbeziehung*; Hua I, 159; IV, 194; XIII, 98ff.; XIV, 166ff.), which Husserl also labels "social I-Thou-acts and We-acts" (*soziale Ich-Du-Akte und Wir-Akte*; VIII, 137; cf. XV, 19). Here, one is explicitly addressing others via notifications, acknowledgments (*Kenntnisnahme*), reports (*Mitteilung*), etc., and takes specific normative stances towards them. Paradigmatic examples of such "social acts" are prom-ises, encouragements, requests, orders, indications, suggestions, or agreements. Similarly with empathy, the subjects of social acts are individuals, and they also have an Other-directed character in that they are directly addressed to one or more other subjects, or even a collection of individuals (e.g., I may order a group to do something). Not only are they similar in this respect, but social acts also have their phenomenological basis in empathy. However, it is important not to confuse the two social stances (cf. Hua XIII, 98ff.). One significant dif-ference between social acts and empathy concerns reciprocity. Empathy, though it can well be reciprocal and even assume collective forms, is not necessarily reciprocal. This is quite unlike socio-communicative acts, which Husserl fre-quently characterizes as reciprocal or mutual social relations (*soziale Akte der Wechselbeziehung*). Touching on this, it is noteworthy that Husserl occasionally distinguishes "reciprocal" from "unilateral" or "one-sided" empathy (*wech-selseitige* and *einseitige Einfühlung*; Hua XIV, 133, 135, cf. also ibid., 198f. and XIII, 98). Furthermore, social acts are founded upon distinctively communica-tive acts; as such, they build the foundational basis of agreements, collective acceptances, and, eventually, collective intentionality proper, though, again, they must be distinguished from the latter. Importantly—and, here, we have another difference from empathy—part and parcel of what makes such com-municative acts distinctly *social* acts is that they have a specific normative con-tent. In order for a social act to be successful, a subject's intentional act ought

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[13] Carr puts this point succinctly: "The establishment of the *we* in common perception is the sim-plest form of what Husserl calls the *Vergemeinschaftung der Monaden*: when two subjects con-front one another and stand in relation to the same objects they form, to that extent, a rudimentary *community* that can itself be considered as performing an act (*cogitamus*) through 'its' diverse (and in this case simultaneous) presentations." (Carr 1973, 30) See also Carr 1986 and, critical of Carr's ingenious *cogitamus*-conception, Chelstrom 2013, chap. 3, as well as Zahavi (2014); cf. also Schmid 2009, 34, and the useful discussion in Miettinen 2014.

to be acknowledged by another subject and, possibly, the latter ought to be assisted in the fulfilment of the former (cf. Hua XIII, 98; XIV, 166f.).

3b. Interestingly, in this connection, Husserl refers to something akin to what is currently a much-discussed phenomenon: joint attention (cf. Eilan et al. 2005). Thus, somebody may 'guide' the attention of another by signalling, pointing, or, guiding in an even more implicit way, e.g., by throwing a piece of wood in her direction. The other might then apperceive my action as expressing my intention to communicate something. Here, a shared background of understanding each other's communicative intention constitutes the attentional link (cf. Hua XIV, 167f.).

Consider that the foundational relations holding between these levels of sociality notwithstanding, there are various interrelations and interpenetrations between them. For instance, though empathy builds the basis of all other constitutional layers of social reality, empathy can be rightly said to be, in turn, an instance of the typicality of shared experiencing or, more generally, the common lifeworld (cf. Chelstrom 2013, 172). Similarly, social acts are performed against the background and are instances of the shared lifeworld, but also co-constitute what Husserl calls the universal "communicative plurality/community" of subjects (*kommunizierende Vielheit/ Gemeinschaft*; Hua XIV, 74, 173, 197ff.). In this respect, the relations between (1), (2) and (3) as well as, incidentally, (4), should be construed not so much in the order of some foundational hierarchy but, rather, as interdependent moments of a complex constitutional process.

What Husserl has established up to this point is that the essentially social lifeworld comprises not only socialized individuals and intersubjective I-Thou relations, but, also, social pluralities. Moreover, the lifeworld, for Husserl, is but the shared horizon of the universal community of subjects. Schematically, the three processes of socialization and communalization discussed so far can be epitomized thusly: no individual person without another individual and, eventually, without a community of persons; no objectivity of experiences without the transcendental We; and no proper social relations without explicit socio-communicative acts.

4. Having said this, it is crucial to distinguish from empathy, from the domain of the transcendental We, as well as from social acts, the more specific socio-ontological domain that comprises those higher order communities that have a proper 'intentional life', or even a 'mind of their own' (Pettit 2003a, b; List/Pettit 2011). Only here do we reach the level of CI. CI presupposes, but significantly differs from, intersubjective, social, and communal intentionality, to wit, regarding its subject, object and content.

On the face of it, the general structure of integration here is rather similar to social acts, in that the intention of one or more individuals functions as a motivational property, or a motif (*Motiv*) for another individual's intentions (Hua XIII, 104, XIV, 169). However, in contrast to typically asymmetrical social acts, CI is based on mutual interest. Thus, the 'interlocking' of the motivational properties of one's intention into another's is occasioned both because of, and with a view to, a

collective goal (the intentional object), eventually resulting in a collaborative endeavour to bring about that goal. Moreover, above and beyond the mere socio-communicative processes involved in social acts, we chiefly have practical-intentional, volitional and agential components involved here. Consider further that the constitutional relation is, just as in the case of social acts, not a one-way dependence but, rather, a correlation. Accordingly, the intentional properties of "practical communities of will" and, even more so, of higher order persons, may have reciprocal, or feedback, effects on the individuals constituting such. This typically happens through their "sedimentation" in the experiences and attitudes of the individuals involved via habits, tradition, or culture (e.g., Hua XIV, 222–232).[14]

To get a more precise idea of Husserl's view on the structure of CI proper, it is worthwhile to quote a longer passage, in which, as I contend, he anticipates *in nuce* much of contemporary analytic accounts.

> A community of will, consent (*Einverständnis*) may then also be mutual, resulting in a mutual agreement (*wechselseitige Vereinbarung*). I satisfy your desire if you satisfy mine (…). Furthermore: We both want something to happen, we 'jointly' ('*gemeinsam*') take a decision, I do my respective part, you do yours. Etc. S_1 and S_2 want G, but not each of them separately, for their own sake, but S_1 wants G as something that is equally wanted by S_2, the will of S_2 is part of what is willed by S_1 (*der Wille des S_2 gehört mit zum Gewollten des S_1*) and conversely. The fact that S_1 realizes D_1 and S_2 D_2 is, in turn, comprised in the volitions of both, comprised as 'means' (in a broader sense), or, as part of what belongs to the realization (*als zur Realisierung gehörig*), and, originally, to the intention (*Absicht*). (Hua XIV, 170)[15]

To those familiar with the analytic literature on CI, this and other similar passages (cf. Sect. 7.4) will certainly read somewhat untidily. So, what, exactly, is Husserl telling us here?

To be sure, given the central conceptual distinctions underlying analytic accounts of CI,[16] specifically, as to where one ought to 'tie in' the collectivity – (a) in the *content* or *object*, (b) the *mode*, or (c) the *subject* of collective intentions – one has a hard time with assessing Husserl. However, this is not so much due to a failure of having understood clearly the points at issue but, rather, to his very conception of collectivity and collective intentionality. Indeed, as I shall argue below (Sect. 7.4), collectivity, for Husserl, is holistically built into the intentional content, object, and the mode, as well as the *ab ovo* communalized subjects, or the higher order collective subject of

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[14] Husserl even suggests that contracts and (explicit) agreements may have such sedimentation of "habitualized validity" (*habituelle Geltung*), which normatively binds the respective parties in meeting and fulfilling the commitment, cf. Hua Mat VIII, 334. For Husserl, the clearest and strongest form of a 'habitualized identification' of the affective/sensate and volitional subjectivity (*habituelle Identifikation der Gemüts- und Willenssubjektivität*), without explicit agreement or any kind of "concessions" are "spiritual love" and "love communities" (*geistige Liebe, Liebesgemeinschaft*) (Husserl 1923, 209). On the concept of "habitual volitional directedness" (*habituelle Willensrichtungen*), see Hua XXXIX, 389, on 'sedimentation', esp. Hua XLII, 39ff., 62ff.; cf. also Moran 2011.

[15] Similar descriptions can be found at a number of places in Husserl's research manuscripts; for other telling passages, see, e.g., Hua XXXIX, 389 or Husserl 1923, 209.

[16] For excellent overview articles, see Tollefsen 2004; Roth 2011 and Schweikard/Schmid 2013.

CI.[17] Hence, as we shall see, Husserl not only circumvents any charge of atomism or solipsism, but, moreover, he eventually avoids the pitfalls of circularity in explaining the jointness of collective intentions with reference to already-collective intentional engagements, a charge that has typically been directed against 'collective acceptance' or 'joint commitment' accounts of CI (cf. Tollefsen 2002; 2004; Schmid 2005, 2009). Before lending support to this interpretation, however, we have to get an initial understanding of the most compelling alternatives currently at our disposal.

7.3   Current Accounts of Collective Intentionality

In contemporary analytic theory of action, there is a widespread consensus that there are intrinsically collective intentions, such that they are irreducible to a mere summation or aggregation of individual intentions with the same intentional content or object. Within this non-summative camp, one finds roughly four different models of explanation of CI:

The first aims at explaining the sharedness of intentions in collective intentionality in terms of collective intentional contents. According to this model, joint agency is constituted by "appropriately interlocking" or "meshing" individual intentions with an aim toward a shared goal and common knowledge thereof. A key proponent of this view is Michael Bratman (1992, 1993, 1997). Bratman holds that two subjects A and B jointly intend to *J*, iff (i) A and B *respectively* have an intention that *we J*, (ii) A and B intend to *J* "in accordance with" and "because of" (i), A and B coordinate and "mesh" their "interdependent," "mutually responsive" and "mutually supportive" but individual "subplans" concerning their *J*-ing appropriately and in order to bring about a shared goal (in short, each does her part in *J*-ing), and, (iii) A and B have common knowledge of (i) and (ii). This is a so-called distributive or individualistic account of shared intention. For, although the intentions bear reference to joint action and shared goals in the propositional content of the intentions ('I intend that *we J*'), the intentions remain distributed across the respective agents. Although there is an irreducibly collective content in each and every individual's intention, there is, as Bratman explicitly points out (1993, 123), no sharedness, or no shared intention, let alone some "fused" agent or volition, apart from the fact that individuals' intentions are appropriately interrelated (via (i)–(iii)).

The second, equally distributive (and equally non-summative) CI-model is owed to a series of arguments advanced most prominently by Searle (1990, 1995, 2010) and Tuomela (2007). Although their accounts differ in detail,[18] they both share the

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[17] For a similar line of interpretation, see Caminada 2011, 68f.

[18] For some of their disagreements, see, e.g., Searle 1990 vs. Tuomela/Miller 1988 and Tuomela 1995; cf. also Tuomela 2013, 83ff.; however, Tuomela has suggested that Searle's view is well amenable to his own 'we-mode' account (Tuomela 2007, 100). Importantly, Tuomela (2007, 2013), unlike Searle, explicitly allows for groups as such to have we-intentions (as well as group beliefs, values, etc.), i.e., full-fledged *group* intentionality.

assumption that collectivity must be (irreducibly) built into the very (we-)*mode* (Tuomela 2007), or, as Searle puts it, into the "sense of *collectivity*," the "sense of doing, (wanting, believing, etc.) something together" (Searle 1995, 24f.). According to this account, the very mode of my *J*-ing is constitutively affected by the fact that my *J*-ing is part of *our J*-ing. This shift from the content to the mode of CI is best brought out by contrasting Bratman's collective intentions, which supervene on the interlocking of intentions of the form '*I* intend that *we J*' and 'You intend that *we J*', etc., with Searle's 'we-intentions' or Tuomela's 'we-mode' intentions, where collectivity is constituted by intentions of the form '(I) *we*-intend that we *J*' and '(You) *we*-intend that we *J*', and where such intentions, respectively, cause each of us to perform actions with view to a shared goal.[19] As Searle points out, a chief reason for this shift from the content to the mode is that it accounts for the fact that, in cooperative activities, typically, one's intentions have a different content than those of another agent, and, yet, they can well be said to partake in the same intentional activity. For example, I intend to play the piano, and you intend to play the violin; at the same time, precisely by each of us intending our *own* (different) actions, *we* may intend to play a duet together (Searle 2010, 44f.). All we need here is a mutual understanding that we are partaking precisely in a joint activity, whereby each of us is committed to doing her part in bringing about the shared goal. Similarly, Tuomela holds that joint intentions constitutively entail that each participant "we-intends to bring about" or "sees to it" that an action or state is brought about jointly with other agents (Tuomela 2005, 330).

In contrast, according to Gilbert's non-summative *and* non-distributive "plural subject" account, two or more individuals share an intention to *J* if and only if they are "jointly committed" to intend *as a single body* to *J* (Gilbert 1989, 2003, 2006, 2009). As the label already indicates, this account lays stress on the *subject* of CI. More precisely, according to Gilbert's view, joint commitments constitute a plural subject, who is the proper subject, if not the 'bearer' (the "single body") of the collective intention. Crucial for Gilbert's proposal is the technical concept of joint commitments, which is the glue of CI, binding individual subjects to form a plural subject. In terms of a telling metaphor, what individuals do when they jointly commit themselves is "pooling their wills" (Gilbert 1989, 196f.). Importantly, not only do joint commitments contrast with "personal commitments" (possibly to a shared goal), but, moreover, they are also neither a "conjunction" nor a "concatenation" thereof. Instead, they are "in an important sense simple or singular" (Gilbert 2006, 8). Joint commitments imply that the parties see to it "as far as possible to emulate, by virtue of the actions of each, a single body that intends to do the thing in question" (Gilbert 2009, 180). Precisely by doing so, the parties are *jointly* committed to the intentional action such that, unlike in the case of personal commitments, none of the parties can suspend the obligation thus created separately, not even the aggregate of the respective subjects, each taken separately.

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[19] For an illuminating critical elaboration of the contrast between Bratman and Searle, see Schmid 2005, 230ff.

Lastly, in opposition to all three previous accounts and primarily directed against Searle's methodological solipsistic and internalist framework (cf. Meijers 2003; Schmid 2003), there are those 'relational' accounts of CI that stress the importance of normative (Meijers 2003) or non-normative, conative and affective (Schmid 2005, 2009) social interrelations between individuals. Relationists aim to counter the imminent charge of circularity, addressed to those who explain CI by some mechanism (essentially collective acceptances à la Tuomela, or joint commitments à la Gilbert) that presupposes individuals as already partaking in some *joint* activity. Consequently, some have argued that, if CI presupposes collective acceptance or joint commitments, then these, in turn, cannot be explained by reference to isolated, solipsistic individuals but, rather, must make reference to certain (normative) *relations* (of obligations, rights to corrections, etc.) that hold between them. CI, according to this view, are not states of individuals *tout court*, but "states of *related* individuals" (Meijers 2003, 181). As Schmid puts it in a yet more radically relational vein: "Collective intentions are not intentions of the kind anybody *has* – not single individuals, and not some super-agent. For collective intentionality is not subjective. It is relational. Collective intentionality is an intentionality which people *share*" (Schmid 2009, 44). In other words, there is no collective intentionality without individuals who we-intend (*pace* Bratman), but we-intentions are only what they are when individuals relate to another accordingly (*pace* Searle); indeed, they are nothing but relatedness (cf. Schmid 2005, 239f.).

7.4   Husserl's Alternative Account

Where does Husserl stand in this quadripartite conceptual landscape? As previously stated, I contend that Husserl's account of collective—let alone intersubjective, social or communal—intentionality cannot be easily harmonized with any of these aforementioned accounts; if anything, it is, *pace* Schmid (2005), closest to the radical relationalists. Moreover, the commonality involved in practical and theoretical CI, for Husserl, is irreducible to the conjunction of (propositional) content, (we-) mode, and (plural) subject, nor is it constituted by either of them separately. Rather, it is a constitutional result of the above outlined, multi-layered process of communalization, beginning with empathy, advancing to the sharing of a we-perspective and the corresponding constitution of a common lifeworld, and concluding with higher order persons. It is in this sense that subjects of CI, phenomenologically viewed, are *ab ovo* communalized, that they are subjects who always already stand in social relations to one another. Note, again, that this interpretation of Husserl's CI-model, for what it's worth, owes its credence, not to the textual evidence of Husserl's work on the issue of CI alone, but, rather, to his systematic account of the foundational structure and the gradually evolving layers of social reality as a whole.

Given the presentation of the four main types of theories of CI above (Sect. 7.3), however, it should be clear that Husserl's own account resonates with a number of insights among each of them. For example, Husserl seems to agree with Bratman in that part of the (propositional) *content* of the parties' intentions or volitions is the shared intention, or the jointly intended, volitional goal and, also, that the parties rely on the intentional subplans of each other (Hua XXXIX, 387) to "motivate" one another's intentions (Hua XIV, 171) and, eventually, play their own respective parts in bringing about the shared goal. Compare, again, the quote above from Husserl: "*I do my respective part, you do yours* (…) *that* S_1 realizes D_1 and S_2 D_2 is (…) *comprised in the volitions of both, comprised as 'means'* (…)", to what Bratman says about "shared cooperative activity" (SCA): "(…) for our *J*-ing to be SCA I must intend that we *J* in part because of your intention that we *J* and its subplans", wherein this requires, among other criteria (such as commitment to mutual support), that "each agent treat[s] the relevant informations of the other as *ends-providing* for herself" (Bratman 1992, 100, 102). Moreover, according to what is an admittedly charitable reading, even on the terminological level, there is much concordance when Husserl speaks of the "interweaving" or "meshing" of interests and volitions (*Willens-/Interessensverflechtung*; Hua XIV, 170; XXXIX, 386) or of "intentional intertwinement," and Bratman, too, of the "meshing" or "interlocking" of intentions. But, surely, and here ends the comparison with Bratman, if such interlocking is successful, then, for Husserl, the result is a genuine we-intention (à la Searle), where the jointness is built into the very *mode*[20] of individuals' intentions. Furthermore, if the integration is more robust than a mere ad-hoc-collaboration (of the SCA-sort), then we have higher-order collectives, which have, rather than only Bratman's shared intentional *contents* and goals, full-fledged we-mode *group* intentions (à la Tuomela).

There are also a number of places where Husserl closely approximates Gilbert's plural subject account and seems, generally, to come closer to a joint commitment and/or a collective acceptance view. Consequently, in a successful meshing of intentions, Husserl stresses the prevalence of a proper plural subject of volition, the so-called "community of will," and its (normative) role in enabling, or enacting, collective agreements over 'personal' intentions and goals. Above and beyond the aforementioned ones, here is another telling passage in support of this view:

> Associations (*Vereine*), communities of will (*Willensgemeinschaften*). The goal of the association, being the goal aimed at by all, 'communally' intended ('*gemeinschaftlich' erstrebt*). Agreement. Each assuming 'her part' in realizing it. An agreement upon a goal to be achieved jointly, however, is not an association. (…) An association becomes a sort of subject of volition (*eine Art Willenssubjekt*), and the member of the association is commis-

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[20] Here, it should be noted that the concept of '(we-)mode' in the present context is used in a broader sense than Husserl does so when he speaks of modes of conscious experiences (*Bewusstseinsmodus*; cf. Hua X, 79, 367f.; Hua XXIII, 407; Hua Mat VIII, 270), essentially referring to the so-called 'qualitative' intentional and/or doxastic modes such as belief, doubt, memory, re-presentation, and/or imagination.

sioned (*beauftragt*), or acts without a commission by herself, but not as a private person, but as a member in the spirit (*im Sinne*) of the association. The appropriately directed will is will as a member. The original will is streaming into the center, as 'will of the association' (*'Vereinswille'*): on becoming a member of the association, and also afterwards, it is at the same time an individual volition (*Individualwille*), yet emerging from that center, and that means, not merely a private volition but a member-volition (*Mitgliedswille*). (Hua XIII, 108)

Notice, however, the following crucial difference from Gilbert or any collective commitment or agreement view, a difference that also allows Husserl to parry objections of circularity of the sort mentioned above[21]: Thus, quite unlike current proposals, at a number of places, Husserl submits that collective acceptance, agreement, or commitment typically is a *result* and not, in any substantial sense, a *constituent* of collective or group-intentionality (cf. Caminada 2011, 68). We find the most explicit formulations of this view in those two longer quotes cited above (Hua XIV, 170, XIII, 108), where Husserl says that a community of will may "*result* in mutual agreement," or that such an agreement does not, *eo ipso*, amount to an association. Accordingly, Husserl declares that "not all communal achievements (*Gemeinschaftsleistungen*) emerge from agreements" (Hua Mat VIII, 334; cf. also XXXIX, 385ff.). Moreover, mutual or collective agreements, for Husserl, even if in place, are not necessarily made explicit. Indeed, typically, agreements are made against a more general yet not any less fundamental background of commonality. Thus, Husserl localizes agreements (*Vereinbarungen*) within the "unitary field of dissent and possibilities of consent (*Vermöglichkeiten der Einwilligung*)," or "a horizon of unanimity" (*Horizont der Einstimmigkeit*) (Hua XXXIX, 396; cf. also 385ff.).

Finally, as to the relational accounts, in an important sense, Husserl concurs with such accounts. For Husserl, too, holds that some background of commonality or sharedness must be always already presupposed in order for individuals to engage in CI in the first place, and that this is constituted, not by pre-social individuals, but, rather, by intrinsically social relations among such individuals.

Given this reassessment of Husserl against the contemporary proposals, I propose the following systematic reading of his view on CI:

Two or more subjects $S_1, S_2 \dots S_n$ jointly intend to *J* if

(1) the 'intentional lives' of $S_1, S_2 \dots S_n$ are communalized via mechanisms of intentional implication (i.e., essentially via empathy, shared typicalities and habitualities of experiencing, or the commonality of a lifeworld and, possibly, via socio-communicative acts);

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[21] For another line of phenomenological criticism of Gilbert's plural subject account, according to which individuals may – phenomenally – well have shared experiences without, in fact, there being a plural subject or a (reciprocal) joint commitment satisfying the respective individual's experiences, see Chelstrom 2013, 147–155. Though I find Chelstrom's criticism convincing (see also Szanto 2014b) here, I am not, however, dealing with the subjective phenomenology of shared *experiences*. Cf., critically of Gilbert from a phenomenological point of view also Schmid 2005 and 2009.

(2) (some of) S_1's, S_2's … S_n's intentional properties (perceptions, cognitions, affections, volitions, etc.) motivate each other's own;

(3) S_1's, S_2's … S_n's individual intentions to J are intentional part and parcel of each others intentions, such that it is an intrinsic part of the intentional content of S_1's intention that there is a goal shared by S_2, (SG), and that S_1 is intending SG *as* it is intended by S_2 (and the same goes for S_n);

(4) possibly, there is an explicit collective agreement or a joint commitment regarding SG, and/or to (5), and/or a joint decision to J;

(5) S_1, S_2 … S_n assume each its own part in bringing about SG.

Consider that, in the central clause (3), 'part and parcel' not only refers to the sharedness of intentional contents and modes, but also means, as Husserl indicates in the quoted passage, in a still stronger sense and in terms of something close to 'conditions of fulfilment', that S_2's intention "belongs [as 'means' (in a broader sense)] to the very realization" (Hua XIV, 170) of S_1's intention.

The upshot, then, is this: Collectivity, or jointness in collective intentions, for Husserl, is constituted by the appropriate intentional integration of the intentional, goal-directed, normative, volitional and practical properties of the mental life of *always and already socialized and communalized* individuals. The integration, in turn, is brought about, not so much through mere collective agreement (as for Tuomela), nor by the mere interlocking of individual subplans in attaining a shared goal (as for Bratman), but, rather, by the very intention through which one subject functionally enters, or is realized in, the intentional content of another subject as joint 'means' to attain a shared goal. The shared goal, the object correlate of the respective intentions, is, thus, 'represented', as one might phrase it in Searlean terms, as the same intentional content in both intentions. Hence, the result is a genuinely we-mode volitional act.

Now, if this integration is robust enough, then what is thus constituted is a so-called practical community of will, or a fully-fledged higher order person (HOP). Moreover, if this is the case, then HOPs—above and beyond the *collective* intentionality of jointly engaged individuals—have a we-mode *group* intention to G. Consequently, in such cases (and only in such cases, mind you), the communalization does not stop at (5), but, instead, assumes more robust forms. What we have, then, is this:

(6) Founded on (1)–(5), and quite possibly on customarily distributed shared intentional functions (via habits, traditions, culture, etc.), shared values, etc., and a more or less explicit integration of intentions, volitions, values and interests of S_1, S_2 … S_n (essentially as in (4)), there is a diachronically-robust sphere of commonality and shared 'intentional action patterns' vis-à-vis SG.

(7) Founded on (6), and on the 'integrate'[22] of the intentions of the members S_1 and S_2 … S_n, there is a HOP, who is the proper subject of collective intentionality.

(8) HOP intends to G.

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[22] The concept of a 'social integrate' is owed to Pettit 2003a, b; for more on this, see below.

Now, provided this view, we arrive at Husserl's robust *anti-individualism*, a thesis that pertains less to the intentional nature of individuals or the ontological nature of social entities and more to the formal structure and the subject of collective intentionality. More specifically, consider two related but distinct variants of anti-individualism, both of which, I contend, Husserl, in fact, endorses:

Formal Anti-Individualism: There are intentional states and (practical) intentions that have a first-person plural form or mode (i.e., we-intentions, or we-mode intentions).

Subjective Anti-Individualism: We-(mode-)intentions possibly, to wit, under suitable (socio-practical) integration of their respective subjects, have a supra-individual (higher order) subject of intention.[23]

Thus, in the first type of anti-individualism, the issue is whether the form or mode of collective intentions (we-mode or we-intentions) is reducible to a set or aggregation of reciprocal 'I-intentions.' The second concerns the question of whether the class of possible 'bearer-subjects' of intentions is restricted to individuals or, rather, may range over collectives. While most current authors would advocate the weaker, formal anti-individualism (Searle, Tuomela, and, obviously, Gilbert, although with the notable exception of Bratman, against whom it is mainly directed), the latter, stronger, subject anti-individualism seems deeply problematic to most participants of the CI-debate, with the few prominent exceptions of Gilbert and Pettit, and his co-authors.[24] Obviously, even the firmly anti-individualist relationalists (Schmid and Meijer) explicitly reject subject anti-individualism.

Here, then, we see how markedly Husserl's alternative theory of CI contrasts with most of the current proposals. Yet, is formal-*cum*-subject anti-individualism not precisely too strong of an alternative?

7.5 Two Objections: Content/Vehicle-Fallacy and Collective Consciousness

At this point, some may wonder whether Husserl is not at risk of committing a sort of vehicle/content-type fallacy. In the present context, the fallacy would be to infer from the jointness of the content or mode of CI the existence of *one*—potentially

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[23] This important distinction is introduced in Schmid 2005, 189, 226ff. and 2009, 34–44, 116; cf., critical of a *subjective* anti-individualistic interpretation of Husserl, Chelstrom 2013, 78, 110ff.

[24] Notice that both Gilbert and Pettit (and co-authors) employ a different terminological framework. Accordingly, for Gilbert, the endorsement of both formal and subjective individualism would amount to what she labels "singularism" and which, to be sure, she rejects (cf. Gilbert 1989, esp. 12f.); Pettit and co., in turn, would label the position at issue not anti-individualism (see Pettit's construal of the claim that our individual intentional psychologies are, in some way or another, compromised by social regularities, whereas this, in my terminology, amounts to collectivism), but, rather, similar to Gilbert, "anti-singularism" (cf. esp. Pettit 1993 and Pettit/Schweikard 2006).

supra-individual and/or emergent—vehicle or bearer of those we-intentions (e.g., a HOP or similar). This objection may also be voiced in terms of a fallacy of composition, or a homuncular fallacy (cf. Chelstrom 2013, 30, 58). In a similar yet more serious line of objection, Schmid has argued that Husserl would simply take over his egological categories and project them onto higher order entities. By evoking some higher order collectivities, mapped onto the structure of their lower order constituents (transcendental egos), Husserl would, somewhat ironically, be at fault on ground of *both* methodological individualism/solipsism *and* of a dubious sort of collectivism (Schmid 2000, 17–27).[25] Furthermore, a second, related concern might be that Husserl, at a number of places (see below), suggests that HOPs have a subjectivity of their own, and, what is more, that he attributes *conscious* and even *self-conscious* properties to them. The common charge in both objections is that, by postulating a collective subjectivity with a consciousness of its own, one would reify intersubjective relations. Another way to square these two objections is nicely put by Pettit's criticism of the Hegelian notion of *Volksgeist*, or a Durkheimian collective consciousness. According to Pettit, "there is a notorious ambiguity in any such notion, for it may refer to a people's thinking or mind as well as to a people's thought: to a collective state or medium of consciousness as well as to a collective content" (Pettit 1993, 168).

However seriously we must take this double objection, (and all the more so, since I believe that no account of group personhood or group mindedness can sensibly accommodate any sort of properly speaking 'collective (self-)consciousness' (cf. Szanto 2014a)), I contend that these objections are ultimately misguided. In particular, Husserl's *multi-layered* 'social integrate' (Pettit 2003a, b) account of HOPs should be construed as a 'non-entity', or even as a 'no-ownership view' of group persons, which allows him to undermine the force of theses objections.

As to the first, 'projectionist' objection, consider the following two requirements, which any adequate theory of plural or collective subjects (CS) must at least fulfill, be they spelled out as group agents, group persons or group minds, all concepts that Husserl himself employs:

1. *Plurality Requirement:* CSs, *qua collective* subjects, must be construed so as to account for the fact that they 'comprise' a *collective* or a *plurality* of individuals (which also allows for a certain 'intentional variation' in their mental life).[26]
2. *Integrity Requirement:* CSs, *qua* collective *subjects*, must be construed so as to account for the fact that they are not just a simple collection, aggregate or plurality of individuals, but have a certain integrity as a subjectivity with its own intentional point of view.

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[25] Note that collectivism, here, is not tantamount to some version of *intentional* or *normative* collectivism (cf. Pettit 1993 and Szanto 2016), but to the more specific claim of collectivizing *subjects* of CI.

[26] Different formulations of this requirement can be found in Gilbert 1989; Mathiesen 2005 and Chelstrom 2013.

How can Husserl's theory of HOP accommodate both requirements? To start with, it is crucial to note that the process of intentional communalization outlined above constitutes distinct types of subjects of collective intentions. Though Husserl, admittedly, fails to provide a systematic taxonomy of the variety of subjects of CI, one can devise the following four main types of social subjectivities: (a) "communicative, integrated personal pluralities" (*kommunikative, verbundene Personenvielheit*), (b) "practical communities of will" (*praktische Willensgemeinschaft*), (c) "supra-personal subjectivities" (*überpersonale Subjektivitäten*), and (d) full-blown "higher order persons" (*Personen höherer Ordnung*), or the infamous 'communal minds' (*Gemeingeist*) (Hua XIV, 169, 197, 200f.).[27] Whether we have instances of one or another type of collective depends, essentially, on how 'deep' the process of communalization into the intentional life of the respective individuals (as to their affective, cognitive, normative, etc. properties) reaches and how robust the intentional integration is. For example, a HOP (d) can only be instantiated in "distinct cases" of communal volition and action (Hua XIV, 205, 219f.) and not on the purely experiential or communicative domain, however much they may be integrated.

Now, this multi-layered account of the subject(s) of CI is a further, majorly important advantage of Husserl's account over standard current models,[28] for it captures, above and beyond the distinction between intersubjective, social, communal and collective intentionality, the most salient phenomenological differences between various types of communalization within the domain of CI. This multi-layered feature is also encapsulated in the very concept of 'higher order.' Without there being a sort of teleological hierarchy of collective agents, Husserl's theory of foundation equips us with all necessary resources for the analysis of the gradual evolvement of ever more complex and, at the same time, ever more integrated social entities.[29]

Thus, there is a crucial distinction between various types of intentional integration of *subjects* of CI according to the levels of social communalization (*Stufen der sozialen Vereinigung*). In fact, theses levels of integration, in terms of their intentional subject-'poles,' roughly correspond to the distinction between intersubjective, social and collective intentionality. We can discern three such types of social

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[27] As to Husserl's cautioning against collectivistic misuses of these concepts, it is interesting to note that, while he continued to use the term higher order persons after Hitler's takeover in 1933, he explicitly rejected the term *Gemeingeist* and those with similar connotations as "mysticism" and "mythology"; see Caminada 2011, 60 and Husserl's manuscript K III 1, p. 9 (quoted in Toulemont 1962, 177). At any rate, the more fine-grained semantics of Husserl's use of the concept of supra-individual social entities, as well as the examples that Husserl gives in support of them, is vertiginously complex. He uses whole series of interrelated conceptions, acknowledging at one point that he would "name everything mixed together" (Hua XIV, 220); see, critically, Schmid 2001, 17ff.; see, relatedly, also Szanto 2016.

[28] Cf., however, a similar but slightly different distinction recently put forth by Helm (2008), namely, between "plural intentional systems," i.e., merely instrumental, goal-directed collectives, and "plural robust agents," i.e., the "subjects of import," the latter entailing a "shared evaluative perspective," and also shared emotions.

[29] For a concise discussion of the sense of 'higher' in the concept of higher order persons, see Allen 1978, 75.

subject-poles: (i) essentially empathy-based intersubjectivity with "non-integrated individual subject-poles" (*vereinzelte/isolierte Pole von Individuen*), (ii) multipolar (communicative) communities, which may constitute more or less robust, proper "systems of poles" (*Polsysteme*) and, finally, the domain of communities, such as "love" or "ethical communities,"[30] with habitualized and robustly synthesized subject-poles (*Polsynthese*) (Husserl 1923, esp. 218ff.; cf. also Hua XIV, 173ff.).[31]

Secondly, one should not lose sight of the fact that the relation between individuals and higher order persons is a foundational one, and that it is not a relation between individuals but, rather, between complexities or collections of individuals. Individuals and HOPs do not relate to one another as individuals relate to other individuals. Accordingly, it is a set, or better, a multiplicity of persons (*Personenvielfalt*) that is the foundational "substratum" of higher order persons (Hua XIV, 200f.; cf. Hart 1992, 256f.). Thus, even though there is a robust unity to such multiplicities, such that HOPs can be said to synthesize their individual members, the relation between them is not a simple mereological containment, for the individuals remain distinct, or separate, in two ways: first, they are individually distinct from one another and never simply 'fuse' intentionally into one another when they partake in the same (supra-individual) mental life[32]; secondly, the personhood of individuals remain individuated by themselves, i.e., they continue to be, even if "unified" (*geeinigt*), "individual persons" (Hua XIV, 202). And, precisely in that sense, individuals always remain distinct and independent from any supra-individual subjectivity. As Husserl succinctly puts it: "[Communal subjectivity] is a many-headed unified subjectivity" (Hua XIV, 220; cf. also 218).

Moreover, intentional implication and integration, for Husserl, never amount to something like intentional, let alone 'real' (*reell*), fusion. Quite the contrary, in an anti-collectivist vein Husserl, emphasizes the fact that intentional integration is not only strictly compatible with plurality and separateness of the mental and personal life of the respective individuals, but, moreover, that this very separateness is itself the transcendental condition of possibility of any social integration (cf. also Zahavi 2001, 75ff.):

> In a certain sense, the individuality of souls (*Seelen*) means an unbridgeable separation –
> thus a being-different-than-the-other (*Anders-Sein*) and a being-external-to-one-another
> (*Auseinander-Sein*) (in a logical not a spatial sense), which can never develop into a con-

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[30] To some readers, Husserl's phenomenology of sociality may sound all too harmonious, as if the "commerce" of individuals (Hua XIV, 124) would not allow for dissent or worse. None of the above, however, precludes such. Quite the contrary, Husserl notes that dispute, hatred, fights, etc., essentially belong to and take place within the very process of communalization, cf. Hua Mat VIII, 334; XXXIX, 396; Husserl 1923, 209.

[31] See also the congenial discussion of the Husserlian distinction between "simple intersubjectivity" (*simple intersubjectivité*), "pole-systems" (*système de pôles*) and "pole-synthesis" (*synthèse de pôles*) in Toulemont 1962, 311f.

[32] Cf. also the famous passage in the *Crisis* (and this passage, ironically, has been often criticized as evidencing transcendental solipsism), wherein Husserl unmistakably states that "the primal I (*Ur-Ich*) (…) can never lose its uniqueness and personal indeclinability" (*Undeklinierbarkeit*) (Hua VI, 188).

tinuous connection, into a connection that would be a continuous flowing-into-one-another (*Ineinanderfließen*) (…). On the other hand, this separation does not preclude that the monads 'coincide' (*sich 'decken'*), in other words, it does not prevent them from being able to be in community with one another, and indeed, this separation is the condition of possibility of such [coincidence and community]. (Hua XV, 335)

Yet, however distinct and however multiple, the concept of socio-practical integration must be taken literally. As already noted, Husserl is very explicit that higher order collectives are not simple aggregates, but "social unities" in the full sense. More specifically, HOPs "constitute not merely *collections* of social subjectivities, but coalesce into (*schließen sich zusammen zu*) a social subjectivity, inwardly organized to a greater or lesser degree, which has its common opposition pole (*gemeinsames Gegenüber*) in a surrounding world, or an external world, i.e. a world which is *for* her" (Hua IV, 196). If this is the case, then the multipolar, "many-headed," or "headless," social subjectivities integrate so as to become a unitary, yet higher order agent.[33]

Consider, however, that Husserl nowhere treats social integrates as some kind of substantial super-entities. Rather, they are functional and intentional poles of actions, thoughts, intentions, or values. In this respect, even if we have an instance of a we-mode synthesis of poles with a respective "synthesized personality" (Husserl 1923, 220), there is not an extra 'owner' of such poles (be it a supra-individual one) above and beyond the very social integrate of individuals. "Common minds" are, as Husserl points out, "not something besides [the minds of a plurality of bodies, standing in physical relationships, something required for intercommerce], but an encompassing 'sense' (*'Sinn'*) or 'mind', [an] objectivity of a higher level" (Hua IV, 243). Again, this encompassing, or shared sense is not constituted by an extra-entity, over and above the individuals engaged, but precisely by the integration of each and every individual's first-person point of view into a first-person plural point of view.

Indeed, we find further ammunition for this interpretation in Husserl when he observes that HOPs are different, not only from mere intersubjective engagements in social acts, but also from multipolar communities, where individual members are each separately focused on a shared goal. In contrast, HOPs have their own pole of intentionality, analogous to the ego-centred individuals, and, thus, are so-called "centred communities":

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[33] See Hua XXVII, 22: "Community is a personal, many-headed, as it were, and yet integrated (*verbundene*) subjectivity. Their individual subjects are 'members' (*'Glieder'*), functionally interwoven (*funktionell miteinander verflochten*) through various mentally unifying 'social acts' (I-Thou-acts, orders, agreements, activities of love, etc.), which link person to person. Occasionally, a community functions as a many-headed and yet in a higher sense 'headless': to wit, without being centered upon a unity of a subject of volition and acting analogously to an individual subject. However, it may also assume this higher form of life and become a 'personality of higher order' and as such perform communal achievements, which are not mere aggregate formations (*Zusammenbildungen*) of individual-personal achievements, but in the full sense personal achievements of the community as such, realized in its striving and willing."

> The I-centeredness (*Ich-Zentrierung*) that is proper to each individual subject, can have, but has not necessarily a real analogue in the communalized intersubjectivity. One may speak of a social personality only if we can speak of a sort of I-centeredness vis-à-vis the individual subjects and of a persisting habituality (*verharrende Habitualität*) of the centred community (*zentrierte Gemeinschaft*). (Hua XIV, 405)

This very view, I contend, is an *avant la lettre*-formulation of an ingenious proposal in contemporary social ontology, namely, Carol Rovane's account of group persons and Philip Pettit's account of groups with minds of their own. The basic idea here is that group persons and agents are epistemologically distinct from their members, upon whom they, nonetheless, ontologically supervene insofar as they have their own 'rationally unified point of view' (Rovane 1998; Pettit 2003a, b), their own 'intentional profile' (Pettit/Schweikard 2006) or 'vision' (List/Pettit 2011, 34). Importantly, this point of view may be epistemologically orthogonal and is, in any case, irreducible to each and every first-person point of view of the respective group members (cf. more detailed Szanto 2014a).

Now, what about a proper *phenomenological* point of view? Do groups have such, or are groups, instead, individuated exclusively by their rational, practical and intentional point of view? In other words, what about the conscious experiences of such centred communities? The question is all the more pertinent, given transcendental phenomenology's systematic claim about the constitutive correlation between intentionality and consciousness. For, if every intentional state is *eo ipso* a conscious mental state (cf. Szanto 2012), as this correlation indeed entails, one might wonder whether this equally holds for the intentional states of HOPs. So, given Husserl's general theory of the intentionality of consciousness, it seems as if Husserl's theory of CI would inevitably lead to, the arguably untenable (cf. Szanto 2014a), claim that there were something like a 'collective consciousness'.

Yet, although Husserl, indeed, speaks of an "all-encompassing communal consciousness" (*übergreifenden Gemeinschaftsbewusstsein*) (Hua VI, 166) or "a unity of a supra-personal consciousness" (Hua XIV, 199), a "unity of a communal consciousness" (Hua XXVII, 21), and even goes so far as to attribute a "capacity of self-reflection," and a "self-consciousness in the proper sense" (Hua XXVII, 49) or a "'self-consciousness' of higher order" (Hua XIV, 220), surprisingly, he remains rather vague on how to flesh out the conscious and phenomenal properties of social entities. However, I contend that Husserl's scattered remarks allow for distilling his general view on the topic and, in particular, for defending it against the charge of any dubious construal of collective consciousness.

The decisive step down this road is to properly distinguish four different senses in which Husserl speaks of social and collective (self-)conscious properties[34]:

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[34] The most sophisticated and critical phenomenological account of the concept of collective consciousness, as distinct from a "supra-individual stream of experiences" (*überindividueller Erlebnisstrom*) is provided by Stein 1920, a study that was familiar to Husserl; on Stein, see Mulligan's contribution in this volume, Caminada 2010 and Szanto 2015. The only contemporary author, to my knowledge, who argues *for* the possibility of collective consciousness (and, incidentally, *against* the conception of group minds), from, indeed, a phenomenological perspective, is Mathiesen 2005; however, what she has in mind is that "individual members" of a given collective,

1. First, we have a sort of 'empathic consciousness,' wherein individuals can be said to directly *experience* the consciousness of others. This sort of 'consciousness' may be controversial on other, independent epistemological grounds, yet amounts to no more and no less than what, today, one would call social cognition or knowledge of other minds and is, thus, not a true problem of any sort of collectivizing consciousness.

2. Relatedly, we have what Husserl sometimes describes as an "all-encompassing communal consciousness" (*übergreifendes Gemeinschaftsbewußtsein*; Hua VI, 166). This is founded on empathic consciousness and corresponds to the above-mentioned we-synthesis, whereby, via various intentional implications, each individual is experiencing the other, not simpliciter, but as experiencing the *same* world, i.e. the (objective) "world for us all" (Hua VI, 257ff.). Here, we have what Husserl also refers to as the "unification" (*Vereinigung*) or "coincidence" (*Deckung*) "of one consciousness with another". Though, significantly, "they necessarily remain separated" as "individual consciousnesses" on a higher, properly personal, level, as such, they can be said to converge into a "unity of supra-personal consciousness" (*Einheit des überpersonalen Bewusstsein*) (Hua XIV, 199; cf. VI, 166f.). From the context of the respective passages, then, it is rather clear that what is meant by these forms of consciousness is but a transcendental correlate of the intersubjective horizon of possible experiences of a universally shared lifeworld. True, Husserl sometimes, misleadingly enough, characterizes this coalescence as an integration into "a united stream of consciousness" (*geeinigt zu einem Bewusstseinsstrom*) (Hua XIV, 202f.). However, this should not lead one astray, for this "interrelation of consciousnesses" (*Bewusstseinszusammenhang*) (ibid., 200ff., 218) simply means that there is an intentional arguably of (shared) sense, just as there is on the level of individual consciousness (cf. ibid., 279).

3. Next, there is a relatively innocuous sense of 'social consciousness,' which designates not a phenomenological consciousness proper, but, rather, a form of 'social identity,' a 'sense of membership' or 'belonging,' together with the correlative 'sense of duty' with respect to traditions, values, etc.[35] Husserl's use of such terms as "family" or "clan consciousness" (*Familienbewusstsein, Stammesbewusstsein*) (Hua XIII, 109) evokes this denotation, too. Incidentally, this roughly approximates the sense in which Durkheim first introduces the term 'collective consciousness', as the totality of common beliefs, values, etc. of the average members of a given community (Durkheim 1893/1922, 35ff.).

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which complies with the plurality requirement above, "are aware of the contents" of their we-intentions (Mathiesen 2005, 248). Thus, Mathiesen's "awareness condition," to be sure, is something to which Husserl, in fact, subscribes (cf., e.g., Hua XIV, 220f.), but which seems not to amount to any robust conception of collective consciousness proper; for a convincing critique of Mathiesen, see Chelstrom 2013, Chaps. 1–2, which represent the most thorough discussion of collective consciousness to date. See also Hart 1992, 269 for a congenial discussion of the self-consciousness of HOP.

[35] Notice, however, that Husserl sometimes speaks of "social consciousness" (*soziales Bewusstsein*), *not* in this Durkheimian, but, rather, in the sense of what I list in (4), cf., e.g., Hua XIV, 206.

4. Finally, and certainly most controversially, Husserl occasionally, and sometimes, indeed, in the very same passages concerning the other senses, most especially the second as enumerated above, invokes the notion of a *sui generis* higher-order (self-)consciousness (Hua XIV, 220; XXVII, 49). However, this ought not to delude us, for Husserl hastens to add to the same passages that all conscious acts of the community are founded upon and performed, *qua* acts of consciousness, by the acts of the respective individual members (Hua XXVII, 49). Moreover, from the context of these two passages, it is quite clear that what happens when HOPs are said to have self-consciousness is not simply that either some or all members become conscious of themselves being members of the given HOP, including any subsequent awareness of the normative and ethical obligations that this membership entails. In other words, acts of (self-)reflection of individual members may be communalized in the sense of individuals' self-reflective acts having a communal content, or being performed in the we-mode (by individuals, to be sure). For example, somebody may perform self-reflection as a group member, i.e. in the we-mode, by asking herself, "Are *we* right in believing this?" This, however, is nothing more than a sort of communal manifestation of individual subjects' self-reflective contents, namely, by virtue of those individuals performing full-fledged we-mode acts of self-consciousness (cf. Allen 1978). Concerning any alleged self-consciousness of HOPs 'themselves,' the passages under consideration evoke nothing other than a kind of ethical or normative 'stocktaking,' 'self-assessment' or 'self-determination' of its own rational point of view (*Selbstwertung*, *Selbstgestaltung*; Hua XXVII, 49). It is not, in any particularly compelling sense, some "pre-reflective plural self-awareness" (Schmid 2014; cf. Szanto 2014a).

To sum up, in none of these four senses of 'collective (self-)consciousness' do we have an instance of phenomenological (properly speaking) consciousness or self-awareness. Notwithstanding either some misleading formulations or the fact that Husserl fails to systematically disambiguate the intentional, normative, rational and (quasi-)personal features of the mental life of communities and the respective concepts of higher order group persons, group minds, and collective and social consciousness, one does not detect, in Husserl, any genuinely problematic form of hypostasizing a collective bearer of consciousness or a giving way to the tendency of reifying conscious properties on the collective level.

7.6 Conclusion

If my systematic reading is fair, I hope to have established that Husserl has, above and beyond his theory of empathy, intersubjectivity and his social ontology, an *avant la lettre* theory of collective intentionality. However unsystematic and admittedly half-baked at some junctures, Husserl's account of CI foreshadowes all the relevant issues that, decades later, would be discussed in extenso in the analytic

debates. Now, this fact alone, however unfamiliar it may be to most, does not make much of a difference, to be sure. What, then, do we gain from the specific Husserlian account? I wish to have shown that Husserl's account of CI has a number of advantages over current proposals, pointing to a more adequate understanding of the constitution and the structure of social reality.

Let us take stock of what I take to be the five key merits of the Husserlian account: (1) First, Husserl is, contrary to some critical commentators and in contrast to virtually all the current work in social ontology, adamant that social reality, at no level, is composed of pre-social atoms but, rather, of *ab ovo* socialized individuals. (2) Secondly, this very starting point allows Husserl to devise a more complex and adequate theory of the constitutional and foundational layers of the process of socialization and communalization of individuals than what obtains in mainstream analytic social ontology. Verily, such a theory accounts for the fact that the socialization of individuals—i.e., their entering and entertaining *intersubjective* and *social* relations—and their communalization—i.e., their entering and entertaining *collectives* of various levels of integration—are but two aspects of the complex process of the constitution of an essentially common lifeworld. Moreover, Husserlian phenomenology allows for a fully-fledged 'intentionalist' description of communalization, a program often pointed to (e.g. by Gilbert 1989) but little expounded upon in contemporary social ontology. Thus, Husserl offers a more fine-grained description of the constitution of sociality, both on the (inter-)subjective, as well as the collective level. Furthermore, such a description is not carried out from an external point of view (*pace* Mathiesen 2005, 242) in terms of some observable socio-ontological functions, structures or systems but, instead, from the first-person singular and plural perspective of the respective individuals and groups. (3) Accordingly, just as it does so in differentiating between intersubjective, social, communal, and collective intentionality, Husserlian phenomenology emphasizes, as a crucial addendum to contemporary models, the heterogeneous nature and multi-layered structure of social relations and collectives. (4) Regarding the nature and structure of collective intentionality proper, Husserl suggests, even if only *in nuce*, a highly original alternative to contemporary, predominate accounts of the same. This alternative yields a robust formal-*cum*-subject anti-individualism. It undercuts the need for deciding between tying in collectivity with either the subject, the mode, or the content of collective intentionality. Moreover, it renders dissuasive the circularity objection regarding the question of a foundational priority of collectivity over individual (we-)intentions. (5) Lastly, concerning the subject(s) of CI, a significant benefit of the Husserlian account is to offer, once again, a multi-layered account, thereby putting the subject of CI in its respective place, depending, essentially, on how deep the process of communalization into the intentional life of the respective individuals reaches (their affective, cognitive, normative, etc. properties). Of course, this, in turn, rests on those mechanisms through which such integration and communalization are achieved, as well as on how robust the social integration is. Finally, this multi-dimensional model of the respective subjects of CI helps Husserl to vindicate intentional anti-collectivism and, also, to block the alluring but erroneous tendency to reify subjectivity on the group level.

Overall, then, Husserl's theory of collective intentionality suggests a number of original solutions to the most salient problems and shortcomings of current accounts, and is, ultimately, better geared to handle the notorious complexities of social reality.

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Chapter 8
The Varieties of Togetherness: Scheler on Collective Affective Intentionality

Matthias Schloßberger

Abstract In this paper I reconstruct the basic structures of Max Scheler's social philosophy, focusing on the question which different forms of human togetherness (feeling or acting together, etc.) are possible. My specific aim is to connect the theory of the different forms of human interaction which Scheler developed in *The Nature of Sympathy* (infection/unification, sensing, and fellow feeling) with, on the one hand, his theory of the various categories of feeling and, on the other hand, his theory of social forms (mass, community, society, collective person) in *Formalism in Ethics and Non-Formal Ethics of Values*. I show that Scheler recognizes two different forms of collective intentionality: a primitive form of feeling-the-same that is brought about by "infection" or "unification", and a form that is characterized by a genuinely experienced community: a "feeling-with-one-another" (*Miteinanderfühlen*).

8.1 Introduction

Social ontology deals with facts of the world that are created by humans. One problem, perhaps *the* central problem of social ontology, consists in explaining how social facts are generated. A strong individualist and a collectivist position are notoriously at odds with each other in regard to this issue. The individualist postulates that social facts emerge as the sum of individual convictions. Conversely, the collectivist places emphasis on common acting, thinking, judging, feeling, desire, etc. The latter position is distinguished by the fact that social facts can *only* be understood through these collective activities. Collective action is here believed to possess

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its own ontological status, since it is both different from and greater than the sum of individual actions. If we want to argue in favor of collectivism, then we have to answer the question: how can the real sharing of feelings or beliefs be explained? In what follows, I will show that Max Scheler's theory of sympathy answers this question in a most convincing manner, thus demonstrating collectivism to be a more plausible position than individualism.

Any discussion of the alternatives to the individualist and the collectivist position should aim to uncover certain anthropological background assumptions. These assumptions are related to our understanding of how social facts arise, and how they are made possible. The collectivist will point out the numerous phenomena that are difficult to explain from the perspective of the individualist. For example, the excitement of a group of people is different from the excitement of a number of individuals who are all excited about the same thing. If the collectivist wishes to do more than simply acknowledge the existence of this phenomenon, then he must show how this and related phenomena are, as a possibility or as a necessity, implied in human nature. In addition, he has to demonstrate why the atomistic anthropology of the individualist, who wants to interpret all forms of common action and feeling as only the sum of individual actions and feelings, is false. It is thus clear what the problem is: if those who claim that all mental processes are necessarily individual and that every shared conviction or feeling would be based solely on the conviction or feeling of the individual, then it becomes hard to do justice to the collectivist intuition according to which sharing a conviction or feeling is more than having the same conviction or feeling, in other words, that it is a truly *collective* conviction or feeling.

The following questions need to be answered: What are the conditions of the possibility of shared feeling? What are the conditions of collective acting? What are the conditions of collective (affective) intentionality? These problems have been addressed under various monikers by different philosophical disciplines, such as social philosophy, the theory of intersubjectivity, and social ontology. The diversity of approaches points to the fact that these questions depend on fundamental anthropological assumptions, and this means that they should be addressed on that fundamental level of philosophical anthropology.

Turning to the philosophical discipline of social philosophy should prove a most comprehensive task since, as its name already makes clear, it attempts to address the interrelations of *all* social phenomena (something which other disciplines do not do). Social philosophy questions the possible forms of human interaction; it examines the meaning of this togetherness to human beings. The answer to the questions mentioned above may have consequences for the role of social philosophy itself. If humans are beings whose nature develops individually and independently of others and for whom the encounter with the other is secondary, then social philosophy has a merely subordinate role. However, if the answer to our questions purports that living together with others is constitutive for human beings, and that human nature is only capable of developing through togetherness, then every discussion about how acting, thinking, feeling, etc. occurs, is only possible on the basis of a *social* philosophical anthropology.

Social philosophy encompasses a wide field of phenomena, problems, and questions, which are often curiously addressed independently from one another. They are rarely considered together and even more rarely integrated into a comprehensive theory. I will begin with an outline of the various phenomena involved in social philosophy. This will lead to the following fundamental questions: How is the encounter with others possible? What kind of experience is the experience of the other? The latter is for many the most fundamental question, since only if we understand the structure of this experience can we ask the question of how we understand others. Only after clarifying the so-called "constitutional question" can we address questions regarding the diverse ways of understanding and interaction. Only then can we begin to ask: What do we do when we understand the sensory perceptions of others, or when we understand their feelings and emotions? What do we do when we understand their situation, or when we collectively act, feel, wish, etc.?

However, perhaps starting with the question regarding the experience of the other is inherently problematic. Is not some kind of being-together already realized when we have the experience of another person standing before me, a person who feels, has intentions, and communicates? Are there forms of togetherness that, in both a psychological and a logical sense, precede the experience of the other? And if there are, does it not follow that they determine the specifically human forms of human interaction and togetherness? Has not, for example, the distinction between a reflexive and a pre-reflexive "we-identity" been pointed out over and over (e.g. Schmid 2005)? And is it not clear that the elucidation of the nature and structure of a pre-reflexive "we-identity" needs to start, *not* in the sphere of individual beings who self-consciously guide their lives, but rather in the sphere which is more fundamental and in this sense *precedes* these beings?

There are only few social-philosophical models which do not draw upon a developed form of intersubjectivity. These models start from the experience or encounter with the other as other, rather than from an understanding of the relatively primitive forms of human togetherness in their reciprocal dependence. As noted, I will here present and defend Max Scheler's theory of sympathy, which is both a social philosophy and a philosophical anthropology. One of the advantages of this philosophy is that it extensively examines all basic forms of human social existence and relates them to one another. Scheler's philosophy is part of the realistic strand of phenomenology which is distinguished from Husserlian transcendental phenomenology. Although this kind of realistic phenomenology has been well received in recent years (Vendrell Ferran 2008), only few have taken on the hermeneutic endeavor to understand its core insights and its merits. Instead, realistic phenomenology is often used "only" as a source of inspiration. This is not a negative thing. However, with regard to Scheler, many of his ideas are ripped out of context and their actual radicalness goes unappreciated. Particularly the entanglement of descriptive and normative perspectives, which weaves together social philosophy and social-ontological questions, is hardly recognized, despite the fact that Scheler attempted to develop a theory of all possible social units (*Sozialverbände*), which merges normative and descriptive, and epistemic and practical perspectives: "One must fully develop a theory of all possible essential social units, a theory which is to be applied to the

understanding of factual social units (marriage, family, people, nation, etc.). This is the basic problem of philosophical sociology and the presupposition of any kind of social ethics." (Scheler 1973, p. 525; translation modified.)

In order to understand what Scheler means by a theory of all possible social units, it is necessary to first present his theory of the various forms of sociality which are constituted by correlating forms of sympathy. Scheler's main thesis is that all forms of human interaction and human togetherness are in fact forms of sympathy. In other words, they are founded on various forms of feeling. (There are borderline forms of human interaction in which feeling does not play a role, but these forms are nonetheless based on forms of sympathy.) In order to uncover the significance of Scheler's social philosophy, it is worthwhile to compare it with Edmund Husserl's theory of intersubjectivity, and to explore where they agree and where they differ.[1]

The phenomenological theory of intersubjectivity is, after all, generally identified with Husserl's theory of intersubjectivity as it was presented in his renowned *Cartesian Meditations*. This theory has been targeted by three objections which are always presented as one single coherent criticism, but which, with respect to Scheler, need to be judged separately. It then turns out that these objections to social phenomenology, which are typically directed towards phenomenology as a whole, are not applicable to Scheler's theory, although this theory is phenomenological through and through. The first objection purports that Husserl's theory ultimately fails because it is based on a transcendental reduction. Since Scheler's phenomenology is not based on such a reduction, this objection simply does not apply to his theory. According to the second objection, the basic phenomenological principle of intentionality is constructed in such a way that the confrontation with the other cannot be explained without undermining the "otherness" of the other. Although this objection seems to make sense because Scheler, like Husserl, puts intentionality at the heart of his conception of consciousness, it is in the end not tenable: Scheler rejects the so-called "theory of empathy" (*Theorie der Einfühlung*) and "argument by analogy" (*Analogieschlusstheorie*) precisely on the grounds that they fail to do justice to the other's existence (reality) and his alterity. I will again touch on this issue below. The third criticism states that Husserl's theory fails because it rests on an assumption of an ego (a cogito) which, in its external perception, first encounters physical bodies before it can arrive at the other's mind. This last objection, in my view, reaches the crux of the problem of social phenomenology.[2]

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[1] This is especially necessary since recent positive references to Scheler (Zahavi 2009 and Gallagher 2008) have neglected the differences between Scheler and Husserl. This can create the impression that there exists a more or less unified phenomenological theory of intersubjectivity or of sociality. Whether this impression is true or false should be a matter of discussion.

[2] Consequently, I do not believe that there is *one* phenomenological theory of intersubjectivity; Scheler and Husserl utilize two very different, even contradictory, models (whereby it should be noted that Husserl reacted to Scheler, not the other way around). Those who do not agree should ask themselves why Husserl polemicizes so strongly against Scheler in his lectures *Cartesian Meditations*, as well as in his lecture *Phänomenologie und Anthropologie*, both held in 1931. Cf. Husserl 1960, p. 173. For an extensive analysis of this topic, see Schloßberger 2005.

Scheler's theory is the more radical of the two, since it essentially attempts to overthrow Cartesian premises and to uncover a totally different ontology. His theory is perhaps the only theory of intersubjectivity in which *all* levels (that is, all the various phenomena) of human togetherness, and not merely individual problems, are addressed. Other authors and other traditions place individual questions in the foreground without linking them to a comprehensive, overarching theory of intersubjectivity, which also serves as a theory of subjectivity. This is obviously the case in the analytic tradition which, under the denominator of "the problem of other minds", usually examines the justification of our belief that others think and feel just as we do. However, to have a mind, certainly in the sense of a *human* mind, presupposes that one is alive. But the question of why we distinguish between living and non-living in the first place, in other words, the question, what an "I" does when it experiences x as living, is not addressed; the distinction is rather taken for granted. Before we can reasonably ask why or how we can justify a belief, we first have to clarify how this experience of the other as a living being is possible. And then the question of how an experience of the other is possible must be woven into a comprehensive philosophy of the various forms of human togetherness.

My introduction of Scheler's social philosophy deviates from the line of argumentation that Scheler presents in his own work. I present the problems within a framework which hopefully makes it easier to understand them. The title *The Nature (and Forms) of Sympathy* (*Wesen und Formen der Sympathie*) is not self-explanatory, particularly since Scheler himself hardly uses the term "sympathy" in his book. Perhaps a better title would have been "The Nature (and Forms) of Intersubjectivity" ("Wesen und Formen der Intersubjektivität"), but then we lose sight of a particular metaphysical thesis related to the notion of sympathy. When Scheler *does* use the word "sympathy", he uses it in a broad sense, according to which all forms of human interaction are accompanied by particular forms of sympathy. At the same time, the concept of sympathy denotes a metaphysical thesis which responds to Cartesianism. Descartes and modern philosophy have, through their radical separation of res cogitans and res extensa, disrupted the old notion of the sympathetic interdependency of things. They conceive of the relationship of things in the world in purely causal terms: bodies affect bodies. Explaining the world in this way leaves little room for sympathy. For Scheler, "sympathy" refers to an ultimately inexplicable relation between things—in this case between living beings, and more specifically, between human beings. Which "layers of existence and experience of people who live next to each other and live together" we can grasp, "all this depends on what kind of ontic *ties* there are between one human being and another" (Scheler 2008, p. 215).

I will proceed in four steps. In Sect. 8.2 I examine the relationship between *The Nature of Sympathy* and the theory of feelings that Scheler develops in *Formalism in Ethics and Non-Formal Ethics of Values* (*Der Formalismus in der Ethik und die materiale Wertethik*). Then, in Sect. 8.3, I turn to Scheler's contribution to the modern debate which centers on the Theory of Mind and its seminal question: what do we do when we understand others? In Sect. 8.4 I address the additional answer that Scheler provides in the second edition of *The Nature of Sympathy* in response to the question: how can we have an experience of others? Finally, in Sect. 8.5, I discuss

the correlations between the sympathetic functions from *The Nature of Sympathy* and the various social units which are introduced at the end of *Formalism in Ethics and Non-Formal Ethics of Values.*

8.2   The Theory of Feelings and the Various Forms of Sympathy

It is important to take note of the relationship between the theory of feelings that Scheler puts forward in his work *Formalism in Ethics and Non-Formal Ethics of Values*, and his theory of forms of sympathy. It is obvious that there exists a relationship between the two theories, since Scheler wants to show that the different forms of sympathy are accompanied by different modes of feelings.

Scheler's theory of feelings is grounded in several assumptions about consciousness that are shared by the early Husserl in his *Logical Investigations*. Husserl wants to expose the equivocations in the concept of "feeling", and therefore differentiates between "sensation" (for lack of a better translation of *zuständliche Empfindung*) and intentional movement (*intentionale Bewegung*). When we speak of hearing, for instance, we could mean one of two things. We could be referring to the plain sensory hearing of a tone or we could mean the understanding of what was expressed through the heard sounds. Another example is pain: we speak of "pain", but mean one thing when we speak of psychic pain (*seelische Schmerzen*), and something entirely different when we speak of a purely sensory feeling. According to Husserl, "feeling" in the strict sense of the word must always contain an intentional component: it must be directed at or related to something. It must determine or intend something (in a very primitive, but wholly cognitive sense of "intend" and "determine").

Husserl's distinction between sensory and intentional moments of feelings forms the starting point of Scheler's theory of feelings. In light of the many different phenomena that can be characterized as "feeling", Scheler suggests we distinguish between four classes of feelings and between four different types of values, which are grasped through our *feeling* of these values. The criterion for this distinction lies in the various relationships between sensory and intentional moments of the feeling in question. Speaking of "sensory" always refers to the specific quality of a sensation—how does it feel? The word "intentional" refers to moments of apprehension and being directed at something. For example, the sensory experience of feeling ashamed is specific to *this* feeling, and it is always connected to the intentional moment of shame, i.e., to the relationship to what one is ashamed of. Scheler settles on a distinction of four classes of feelings. We can further differentiate within these four classes, since the relationship of sensory and intentional moments is different in every individual case. Scheler identifies the four classes as follows:

(a) The *purely sensory* feelings, which are characterized by their lack of intentionality. A purely sensory feeling can be either pleasant or unpleasant in character. An example of such feeling is physical pain.

(b) The *vital feelings* and
(c) the *psychic feelings*. In both these kinds of feeling, sensory and intentional moments exist in a necessary and essential relation to one another.
(d) The *purely spiritual* feelings (certain forms of love and hate), which contain absolutely no sensory component; they are only comprised of intentional moments.

Let us skip the purely sensory feelings for the moment and take a closer look at the vital, psychic, and spiritual feelings. For Scheler, examples of vital feelings include dread or hope, or moods like weariness or vigor, while sorrow or psychic joy count as psychic feelings. The difference between vital and psychic feelings is not always clear, even though Scheler claims that they are clearly distinguished. It consists merely in a shifting of emphasis within the relationship between sensory and intentional moments. In vital feelings the sensory moment tends to dominate and in psychic feelings the intentional moment carries the most weight. However, there *is* a strict divide when it comes to the spiritual feelings, in that they completely lack any sensory moment (Scheler 1973).

The classification of feelings is important when it comes to distinguishing between forms of sympathy. The basic idea here is that feelings foster a social bond between human beings. Scheler places the forms of sympathy in the following onto-genetic and logical order:

1. Unification (*Einsfühlung*), i.e., "identification through feeling" ("gefühlsmäßige Identifizierung", Scheler 1923, p. VIII), which can occur either as the feeling-the-same through an "infection of feeling" (*Gefühlsansteckung*) or as feeling unified with the other. Unification through feeling ("Einsfühlung") is character-ized by a lack of consciousness of the individuality of the other.
2. Sensing (*Nachfühlen*) is *understanding* the feelings of the other.[3]
3. Fellow feeling (*Mitfühlen*) is the participation in the feelings of the other. There are two forms of true fellow feeling: feeling-with-one-another (Miteinanderfühlen) and fellow feeling-with another's feelings.

Scheler first examines that kind of encounter with the other that is not (or not yet) accompanied by an awareness of the fact that the other is a different individual than I am. According to Scheler, this form of intersubjectivity arises for instance when we unconsciously imitate the expressive gestures of one or more others, which evokes in ourselves the feelings which the other experiences. This is the level of unification through feeling mentioned above. An example of this is the cheerful atmosphere which arises when people infect each other with their good mood. However, only the vital and psychic feelings can be infectious in this way, since only in them is there an essential connection between expression, perception, and

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[3] In the English translation of *Wesen und Formen der Sympathie*, *The Nature of Sympathy*, the word "*Nachfühlen*" is translated as "vicarious feeling". This translation leads to the misunderstanding that I would have the same feeling as the person whose feeling I understand. However, understanding here does not mean that I have a feeling similar to the other's, but rather that I feel that *she* is in a certain mood. It is important to note that this understanding is an understanding *through feeling*. For this reason, I propose the translation "sensing" as in the example: "I sensed that she was sad".

meaning. Only vital and psychic feelings, for instance a cheery mood or immense joy, are necessarily connected with a particular expression, and only *through* this expression (that is, through the imitation of each other's expressive gestures), are the feelings infectious. Purely sensory feelings like physical pain such as a toothache are not infectious in this sense. Spiritual feelings are not infectious either.

Scheler's approach, which illuminates the so-called pre-intersubjective aspect of human interaction, enables us to understand a host of social phenomena. For example, many learning processes in the process of growing up take place on the level of the infection of feeling, i.e., long before we understand humans emphatically as others. We learn most feelings and moods from our fellow humans. Our nature may very well be already attuned to human interaction, but without such interaction with others actually taking place, only organic feelings, such as hunger, thirst, etc., could develop. There is a special "extreme borderline case" of infectious feeling which Scheler calls "unification through feeling" (*Einsfühlung*; Scheler 2008, p. 16; translation modified).[4] The ego feels or experiences herself as completely unified or dependent on other people. In addition, Scheler distinguishes a form of unification through feeling *with nature* (the so-called "cosmovital unification").

So Scheler initially introduces unification through feeling as a specific form of the extreme form of infection. It therefore seems that a total infection, i.e., an infection of all aspects of life, leads to unification through feeling. And this is indeed the case. However, Scheler in addition describes examples of unification through feeling which are not infection, because the I who through feeling becomes part of another person does not feel the same thing as this person. The following example, which is borrowed from the realm of animal behavior, may illustrate this. "A white squirrel, having met the gaze of a snake, hanging on a tree and showing every sign of a mighty appetite for its prey, is so terrified by this that it gradually moves towards instead of away from the snake, and finally throws itself into its open jaws. It is of no consequence whether this be a case of conscious suggestion alone (quite involuntary, of course, on the snake's part), or whether it may not also involve a hypnotic narcosis of the squirrel's otherwise active higher centers—plainly the squirrel's instinct for self-preservation has succumbed to an ecstatic participation in the object of the snake's own appetite, namely 'swallowing'. The squirrel is unified in feeling with the snake; and thereupon spontaneously establishes corporeal 'identity' with it, by disappearing down its throat." (Scheler 2008, p. 21f.; translation modified.)

The second level of feeling is "sensing" (*Nachfühlen*). Sensing refers to the understanding of the feelings or the emotional state of the other. It is something more than the mere knowledge we receive when, for instance, we hear that a friend is sad. Sensing is understanding the other's feelings, which are immediately conveyed through her expressive gesture. When we see or hear the sadness of another,

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[4] It should be noted that the word *Einsfühlung* contains an "s" and thus differs from the word *Einfühlung* (empathy). A second thing to note is that the meaning of the word *Einsfühlung* includes not only the unification with the other through feeling, but also the experience itself of this unity of feeling.

we understand something much different than when we receive the plain information that she is sad.

In the 1910s and 1920s, the argument by analogy and the empathy theory were the two main schools of thought explaining how we understand others. Scheler turns against both these theories, arguing that they presuppose what they are trying to explain: in order to attribute a feeling to another person on the basis of an inference by analogy, they must have already acknowledged the other as an other. According to Scheler, both theories operate within the Cartesian division between body and mind. We would first see a foreign body and then, by recognizing this body as similar to our own, we would—through reasoning by analogy or by unconscious empathizing—proceed to the second step of experiencing this body as the body of another ego. Scheler breaks with all theories that understand our experience of the other in terms of a process of inference. We *immediately* experience the other as another, or in other words, we experience his emotional state through expressive gestures.

For Scheler, expression (*Ausdruck*) is the name for the psychophysically neutral (*psychophysisch neutrale*) behavior of the lived body (*Leib*). Behavior is psychophysically neutral, in this view, because it is not restricted to either the physical or the mental ("psychic") domain. Rather the categories of behavior, feeling, lived body, and expression *precede* (and in a sense encompass) the distinction between the mental and the physical. Expression is "the very first thing that the human being apprehends of what lies outside him" (Scheler 2008, p. 239). This principle is valid both from an epistemological and from an everyday life perspective. When we are sad, for example, this is neither only a mental state nor only a physical condition. It is also not the sum of certain physical and mental properties. We do not see the physical body (*Körper*) of the other, but rather the lived body and its expressive behavior. The fact that the experience of the other cannot be inferred from the perception of the physical body, i.e., that it cannot be controlled in a reconstructive manner, does not mean that we cannot describe it from an ontogenetic perspective. Ontogenetically, the development of our sense of the difference between self and other begins when an "immediate flow of experiences which is undifferentiated in terms of mine and thine" (Scheler 2008, p. 246) opens up. "Within this flow there is a gradual formation of ever-more stable vortices, which slowly attract further elements of the stream into their orbits and thereby become successively and very gradually identified with distinct individuals." (Ibid.)

Initially the human being lives more "in others" than he does in himself. The ideas and feelings of a young child—apart from hunger, thirst, etc.—are those of its environment, of its parents, and of its other relatives. The life of the child itself is still latent. Only gradually does the child discover itself as a being that also sometimes has its own feelings, ideas, and aspirations.

On the third level within the order of the forms of sympathy we find the "fellow feelings" (*Mitgefühle*), that is, both the feeling-with-one-another (*Miteinanderfühlen*)[5] and fellow feeling-with another's feelings. The latter kind, fellow feeling-with, is

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[5] *Miteinanderfühlen* is often translated as "co-feeling".

feeling sorry for (*Mitleid*) or rejoicing with someone (*Mitfreude*). A fellow feeling is a feeling of a particular sort: it is *not* my feeling of the other's feeling! The nature of fellow feeling is rooted in the implicit or explicit recognition of the other as distinct from me. Scheler warns against confusing fellow feeling with a feeling which is merely occasioned by infection or unification.[6] Scheler also rejects another popular interpretation of fellow feeling, which supposes that it requires the act of empathizing (*Einfühlung*), or a sort of "putting oneself in another's shoes". By placing ourselves in another's shoes, we are ultimately only feeling sorry for or rejoicing with ourselves, since we are preoccupied only by our *own* feeling.

What, then, is the nature of the other form of fellow feeling: feeling-with-one-another? The best illustration of this is the following example, well-known among those familiar with Scheler:

> Two parents stand beside the dead body of a beloved child. They feel with one another the 'same' sorrow, the 'same' anguish. It is not that A feels this sorrow and B feels it also, and moreover that they know that they are feeling it. No, it is a feeling-with-one-another (*Miteinanderfühlen*). B's sorrow is in no way an 'objective' matter for A here, as it is e.g. for their friend C, who joins them, and commiserates 'with them' or 'on their sorrow'. On the contrary, they feel it together, in the sense that they feel and experience in common, not only the self-same value-situation, but also the same keenness of emotion in regard to it. The sorrow, as value-content, and the grief, as characterizing the functional relation thereto, are here *one and identical*. (Scheler 2008, p. 12f.; translation modified.)

Now arises the question of why Scheler conceives of feeling-with-one-another (*Miteinanderfühlen*) as a case of fellow feeling (*Mitgefühl*). When he speaks about the foundational dependence between various forms of sympathy, Scheler emphasizes: "As has been shown, it is through fellow feeling, in both forms, as immediate feeling-with-one-another and fellow feeling with, that 'other egos in general' (already given previously as a field) are brought home to us, in individual cases, as having *a reality equal to our own.*" (Scheler 2008, p. 98; translation modified.)

Immediate feeling-with-one-another is not a "mutual" or "reciprocated" feeling or understanding; it is rather a fellow feeling which is *shared* by two or more subjects (the parents) in regard to another (the child), whereby the feeling of the other feeling subject (for example, the mother if I am the father) is not an object of my experience.[7] It is important to distinguish from this feeling-with-one-another

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[6] This does not mean that there is no overlap between fellow feeling and feeling occasioned by infection. In pure fellow feeling one does not experience sensory feeling. In pitying a drowning person, for instance, I do not need to reproduce the feeling of drowning, as many have claimed. I do not need to reproduce bodily pains when I sympathize with someone in pain: "Thus, to pity a drowning man, I should have to be stricken for a moment with fear like his own; to feel sorry for someone in pain, I should need to feel a twinge of it myself. But the purer and truer the fellow feeling, the less does this happen; the more it does occur, the closer we approach to a condition of infection through feeling, which actually does consist in such a reproduction of feeling in others; and the effect of this is to *lower* the moral value of this attitude accordingly." (Scheler 2008, p. 47; translation modified).

[7] As regards the passage concerned, the English translation of *Wesen und Formen der Sympathie* is not loyal to Scheler's intentions. Cf. the German: "Es ist … das Mitgefühl in seinen beiden Formen des 'Miteinanderfühlens' und des 'Mitgefühls mit', die uns das zuvor schon als Sphäre gegebene

a different phenomenon: the mutual fellow feeling-with (*Mitgefühl mit*), which occurs when I feel sorry for your loss and you feel sorry for mine. In the latter case your feeling is an object for me, and vice versa.

At the beginning of *The Nature of Sympathy* Scheler announces that he will first examine "processes which one may describe as 'rejoicing-with' and 'commiserating'; these being processes in which we seem to have an immediate 'understanding' of other people's experiences, while also 'participating' in them" (Scheler 2008, p. 3). We should interpret this as a definition of one type of fellow feeling (*Mitgefühl*), because rejoicing-with and commiserating are the two forms of this type of fellow feeling. Scheler continues: "Let us now turn to fellow feeling, which is primarily based upon those constituents of understanding the emotions already dealt with. Here there are four quite different relationships to be distinguished." (Scheler 2008, p. 12.)

What then follows is the distinction between (1) immediate feeling-with-one-another, e.g. of one and the same sorrow with someone, (2) fellow feeling "about something", (3) mere infection of feeling, and (4) true unification through feeling. Scheler here speaks of "quite different" relationships and, in fact, we are concerned with four very different phenomena. However, thereafter it becomes clear that (1) and (2) belong together and are called "true fellow feelings". Both are located on the same level of sympathy.[8] In addition, it becomes clear that (3) and (4) also belong together: both kinds of feeling precede the consciousness of the other as other.

In the table of contents of the English translation of *Wesen und Formen der Sympathie*, these distinctions (in the German: *Scheidungen*) are announced as "Classification of the Phenomena of Fellow feeling" (Scheler 2008, V). This sounds as though there is a distinction between four different types of fellow feeling, which is not what Scheler meant and which is also not the sense of the German "*Scheidungen in den Phänomenen des Mitgefühls*" (Scheler 1923, XV; italics mine). Only immediate feeling-with-one-another and fellow feeling-with are types of fellow feeling. Sometimes Scheler speaks of the latter two kinds of feeling as *true* fellow feeling. However, this does not mean that there are untrue fellow feelings; rather it indicates that there are feelings which can be mistaken for fellow feelings. The characteristic which the two types of fellow feeling have in common is that, in these cases, the other is a *distinct* other.

Scheler's criticism of Schopenhauer again makes clear that he recognizes two types of fellow feeling. Scheler argues that the so-called metaphysico-monistic theories are to be rejected because, "in fellow feeling proper, the distance of the persons and their respective and reciprocal awareness of separatedness is kept in mind

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'fremde Ich überhaupt' im Einzelfalle zum Bewußtsein gleicher Realität bringen" (Scheler 1923, p. 115) and the English: "it is through fellow feeling, in both its mutual and its unreciprocated forms, that 'other minds in general' (already given previously as a field) are brought home to us, in individual cases, as having *a reality equal to our own*." (Scheler 2008, p. 98.). The translation does not do justice to the meaning of the word *Miteinanderfühlen* (feeling-with-one-another), as this is wrongly explained in terms of a *reciprocity* between the subjects of the feeling (like the parents in the example above).

[8] Scheler calls feeling-with-one-another explicitly "the highest form of fellow feeling" (Scheler 2008, 13). It is remarkable that many interpreters of Scheler's famous example of feeling-with-one-another ignore this important characterization.

throughout, as is also the case with both its components, sensing, and (in the narrower sense) fellow feeling. The reason is that fellow feeling is neither infection nor unification. Even in a feeling-with-one-another where this feeling is a suffering of the same evil and of the same quality of the state of one's feeling—i.e., in the extreme case of fellow feeling, where there is no distinction as yet between sensing and feeling-with-one-another—the functions of feeling remain distinct, and the phenomenon itself includes an awareness of difference among its separate sources in two, three, or x individual selves". (Scheler 2008, p. 64; translation modified.) In the other case of fellow feeling, it is characteristic that the fellow feeling focuses on the feeling of the other as other. The feeling is first understood through sensing (*Nachfühlen*), and then undergoes a second step of feeling sorry for (*Mitleid*) or rejoicing with the other (*Mitfreude*). It is essential that my pity and his sorrow are two different facts. In regard to feeling-with-one-another (*Miteinanderfühlen*), this is not at all the case. Here, sensing (*Nachfühlen*, i.e., understanding the feelings of the other) and fellow feeling (*Mitfühlen*) are "so woven together, that an experienced differentiation between the two never arises" (ibid., p. 12f; translation modified).[9]

This raises two questions. Firstly, how should we understand Scheler's statement that the father and the mother from the example above feel the same and, in a sense, share one feeling? Secondly, are there any criteria which help us distinguish between infection of feeling (*Gefühlsansteckung*) and feeling-with-one-another? After all, in both cases two people feel together and in both cases the other is not an object of experience. If Scheler distinguishes between two different forms of we-intentionality (*Wir-Intentionalität*), which cannot be reduced to the sum of individual feelings, then there must also be a defining criterion of each form of "we" which allows for this differentiation. In both cases, it is obviously *not* meant that two or more feel the same, if "feeling" means the sensory quality of feeling. "But just as the same mental content can be present in a multiplicity of acts, so it can also be present to a number of different individuals. Just as we can revive, recall, and grieve … over the same painful experience at different periods in our life, so we can also live this experience as one and the same in our suffering-with-one-another. To be sure, we can never experience the same (physically localized) sensory pleasure or pain. These states are confined to the individual in whom they occur, and can only be like one another, never identical." (Scheler 2008, p. 258; translation modified.)

What Scheler says here about sensory states also applies to infectious feeling. It would be absurd to speak of the same sensory lust that two people feel. Perhaps it would be possible for these two persons to feel the same sensory lust if their consciousness was linked—but then there would no longer be two beings. When

[9] In the last edition of *Wesen und Formen der Sympathie* which was authorized by Scheler (1923), this passage is presented under (3) infection through feeling, immediately after the sentence "but totally different than fellow feeling is the feeling which is determined by infection" (Scheler 1923, p. 11, 2008, p. 13; translation modified). Scheler here again describes the interconnection between the phenomena presented under (1) and (2). In both kinds of fellow feeling the person senses and participates in the sorrow of the other; but only in the second kind of fellow feeling are sensing and participation in the experience distinguishable as acts.

Scheler speaks of the same feeling that is collectively felt in feeling-with-one-another, he is referring to feeling *as an intentional act*. Feeling is "only a function—without its own intended state of feeling" (Scheler 1973, p. 43). What is shared is the kind of intentionality, not the accompanying sensations. However, intentional feelings are not bound to a self; they are felt by a conscious I, but whether they are grounded in the I as a self which feels them remains open. One can clarify this with an example of infectious feeling. In most cases where an I allows itself to be infected by others, he is not conscious of how this occurs. Only in rare cases do we realize that something we feel really does not belong to us. Often a yawn of another causes us to yawn although we are not at all tired, or we laugh at a joke and believe ourselves to be happy, and then we suddenly realize we did not understand the joke. These examples show that "my" feelings do not necessarily belong to me.

Scheler thus suggests that many individuals could plausibly feel the same, although this "feeling" does not refer to the sensory quality of the feeling, but rather to the collective intentional moment in which multiple individuals participate. When we relate Scheler's contribution to the theory of collective affective intentionality to contemporary debates, we need to keep in mind two things: (1) Scheler had a special concept of intentionality which is intrinsically related to his theory of apprehension through feeling, and (2) the possibility of an immediate (also unconscious) understanding starts from bodily expressive behavior. Let me clarify these points.

Ad (1) Some philosophers assume that conscious experience (*Erleben*) is either sensory (a sensation of qualities) or has the form of representations or judgments which can be formulated as propositions. For these thinkers the entire domain of feeling, i.e., of intentional apprehension, has to remain obscure. From the classical mentalistic point of view, it is impossible to explain the phenomenon of a shared feeling of the same feeling (token identity) as different from the feeling which a number of subjects have separately (type identity). Shared feeling in the strict sense is here excluded: cogitationes can always only be similar and have to remain individual. With his concept of intentional feeling, Scheler addresses an original phenomenon which mentalistic ontology fails to recognize. Since this feeling shows itself in expressive behavior, it can be felt in common by more than one individual: together we rejoice in a different way than each by her- or himself.

An example may help us understand how Scheler's concept of intentionality differs from other concepts. Vital feelings already have intentional character. This is illustrated by the fact that these feelings include a valuing of events which are not thematized within the sphere of representation and understanding. Disgust and shame are indications of something else. Disgust, for instance, is the experience of a threat to one's health before one emphatically establishes the nature of the threat. Both disgust and shame are already cognitive, but they precede the judgment that can be formulated as a proposition. In Scheler, intentionality does not simply mean being directed at something, but rather an evaluation in the sense of an appreciating and depreciating (*Vorziehen und Nachsetzen*). Our relationship to the world is normative from the beginning. We do not first perceive our environment only then to attribute values to it; rather we evaluate our environment primarily through feeling, so that we can later transform this feeling into a propositional judgment. A connection between

two or more human beings, which is constituted by a feeling in common, is only possible because sensory and intentional moments of the vital and psychic feelings are necessarily linked in expression and perception. Such a connection between human beings is possible both in phenomena of unification through feeling and in feeling-with-one-another. We are concerned with a very broad concept of feeling: through feeling we do not only understand the *feelings* of others, but also their opinions, judgments, and beliefs. The same is true of the phenomenon of infection of feeling. We are not only infected by another's feelings, but also by her opinions, beliefs, or judgments.

Ad (2) Although, in the example of the mourning parents, the suffering of the father does not become an object for the mother, nor vice versa, it must somehow be unconsciously perceived in his/her expressive behavior—an unconscious sensing. Without the theory of social cognition, without the theory of the possibility of the connection between human bodies through psychophysically neutral expressive behavior, an essential part of Scheler's explanation of the immediate feeling-with-one-another would be lacking. The reason for this is that sensing is a precondition for feeling-with-one-another. Although the father with his feeling does not become an object for the mother, a sensing, which is intertwined with fellow feeling, is essential to feeling-with-one-another. So we can only fully understand Scheler's theory of collective intentionality on condition that we also examine his theory of sensing, i.e., of the immediate perception of the other.[10]

In his essay *Der Krieg als Gesamterlebnis* (1915; the title means: war as a total experience), Scheler describes the phenomenon of general "enthusiasm for war" (*Kriegsbegeisterung*), and marks it as proof for the thesis that feeling together goes beyond the individual, that it is *überindividuell*:

> Away with those arbitrary constructions of a false science which says that collective feeling is merely a complicated assembly of experiences of individual human beings, and, in addi-

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[10] Recently, Schmid has introduced Scheler's theory in the current debate about collective affective intentionality. In his elucidating discussion of Scheler's examples, Schmid shows which conditions a complete explanation of the possibility of real togetherness must fulfill. He discusses Scheler against the backdrop of Goldie's claim that feelings are intentional, and champions a phenomenological turn in the debate (Schmid 2008). However, Schmid leaves open the question of whether a concept of intentionality like Goldie's differs from Scheler's. According to my interpretation of Scheler, the fact that feeling*s* are intentional is not the most important thing; the main point is that *feeling* is intentional. The debate between the analytic and the phenomenological tradition should not avoid but address this crucial difference.

Krebs also acknowledges that Scheler's feeling-with-one-another is an irreducible category of feeling: "The parents feel one and the same sorrow because their feelings are contributions to a single coherence of sense." (Krebs 2011, p. 37) Krebs is right that, in this example, the content of the father's and that of the mother's feeling should be the same in order that feeling-with-one-another can occur. However, my interpretation differs somewhat from Krebs's: I think that according to Scheler the criterion of feeling-with-one-another is ultimately not the content of the experience, but rather the shared movement of the heart. It is this movement of the heart, which suffers, that constitutes feeling-with-one-another. Since Krebs interprets the example of the mourning parents differently than Scheler himself, Scheler's thesis of intentional feeling ends up playing a less significant role in her account than it should.

tion, a reciprocal knowing or suspecting that the 'other' would experience something similar. No! It has become fully clear to us that this collectivity of experience, creation, suffering is itself a peculiar, final form of all experience, that in this form of a true thinking-with-one-another, believing-with-one-another, and willing-with-one-another occur positive and new contents, which cannot merely consist of the possible sum of individual experiences, because they belong to a completely different zone of being and values than the world which is accessible to the individual as an individual. (Scheler 1916, p. 3; our translation.)

It is unclear in this example whether what is being discussed is a form of unification through infectious feeling or of genuine feeling-with-one-another. When Scheler wrote his essay in 1915, it seemed to him that the enthusiasm for war was an example of immediate feeling-with-one-another. But if this is indeed the case, Scheler changed his mind about this interpretation (Scheler 1923).

This distinction between feeling-with-one-another and unification through feeling is perhaps difficult to identify in individual cases. As long as we believe that we collectively feel, i.e., that we feel the same feeling for the same reasons, then we believe we feel-with-one-another. In some cases this estimation is correct, but in other cases we later realize that we were mistaken: we assumed that what we felt were *our* feelings, when they were actually the feelings of others. In the latter case we are dealing with mere infection of feeling. This brings me to one of the main points of Scheler's theory of collective affective intentionality. Scheler distinguishes between two forms of collective intentionality: a primitive and a developed form of feeling together. Both forms are possibilities of human nature. In many cases, like Scheler's example of the enthusiasm for war, it is difficult to decide which form of collective intentionality we are dealing with. Both from the perspective of the subject concerned and from that of the observer it is hard to determine whether we are dealing with infectious feeling or with feeling-with-one-another. But this difficulty does not detract from the fact that these are two different phenomena. The crucial difference lies in the motive or reason for the feeling. For instance, sorrow through infectious feeling is not grounded in my own reaction to a perceived experience.

Perhaps it is not yet clear why it makes sense to describe cases of mere infection through feeling and unification through feeling in terms of we-intentionality. Here it is helpful to return to Scheler's famous example of the mourning parents, and especially to take a look at how the example is discussed more extensively in the essay *Exemplars of Persons and Leaders*, which Scheler wrote as a complement to his social philosophy but which was published only posthumously:

(1) Parents who loved their child are standing in front of the child's corpse. They have two pains and two complexes of negative bodily feelings: for instance they may feel weak. But they share one suffering which they feel 'with one another'. (2) Someone else joins the parents who was not as close to the child as they are. He has fellow feeling with the parents; he grasps their suffering as present in his perception, viz., he sees 'that they suffer' but without in any way getting involved in their suffering-with-one-another. However, he is now himself suffering from this fact. (3) Yet another person sees the parent's tears and woes (say, an elderly errand woman) and is, by a spontaneous inclination to imitate, induced toward analogous impulses of movements. Consequently, analogous states of feeling, which are interconnected with expressive impulses, are reproduced. These states of feeling of course bear no relationship to the fact of the dead child or only enter into such a relationship secondarily, through judgment. (Scheler 1987, p. 160; translation modified.)

Let us now turn to the example of the common enthusiasm in war times and assume that this is not a case of immediate feeling-with-one-another, but rather of unification through infection of feeling. As noted, the concept of infection does not only pertain to feelings, but also to judgments, attitudes, and actions. In the case of unification through feeling, I am not the source of these feelings (and so forth): they are adopted by me without my being conscious of their alien origin. Often they are wrongly regarded as one's own. Not only immediate feeling-with-one-another is characterized by a meaningful intentional movement towards something: the we-intentionality of unification through feeling is also characterized by such movement (e.g. towards the hope of winning the war). But whereas in feeling-with-one-another we are concerned with responsible, feeling, thinking, judging individuals, in unification through feeling this is not the case.

However, the example of the elderly woman who sees the mourning parents represents a special case of mere infection through feeling. Here, someone is infected by the sorrow of others without understanding the motive of their sorrow. Although she feels sad, the intentional movement of her sadness is unfulfilled, i.e., it does not have an aim. This is the reason why feelings which come to be through infection wane pretty quickly. This normally happens when the incentive—the feeling which is perceivable in the expressive behavior of others—disappears.

8.3   The Theory of the Immediate Perception of the Other

Scheler's theory of the immediate perception of other minds (*Theorie der unmittelbaren Fremdwahrnehmung*) differs from most approaches to the theory of mind. Scheler breaks with the assumption that the experience of the other can only be conveyed through the perception of the other's physical body. It is not the physical body which is immediately given but rather the lived body (*Leib*) and its expression (*Ausdruck*): "For we certainly believe ourselves to be immediately acquainted with another person's joy in his laughter, with his sorrow and pain in his tears, with his shame in his blushing, with his entreaty in his outstretched hands, with his love in his look of affection, with his rage in the gnashing of his teeth, with his threats in the clenching of his fist, and with the tenor of his thoughts in the sound of his words." (Scheler 2008, p. 260; translation modified.)

The perception of the other does not target isolated physical characteristics of her body but focuses rather on her total expression. The whole of the expression is greater than the mere sum of its individual bodily parts: "I can tell from the expressive 'look' of a person whether he is well or ill disposed towards me, long before I can tell what color or size his eyes may be." (Ibid., p. 244.) According to Scheler, we do not first see the redness of someone's face and *then* conclude—consciously or unconsciously—that they are ashamed. We *immediately* perceive the other's shame *in* his expression. The expressive gestures of another are not first perceived as a series of sensory perceptions, or as qualities and capacities of a physical body, and then regarded as signs of an inner psychic experience. We instantly understand that the other is ashamed.

Important here is the new designation of expressive phenomena and the corresponding concept of the lived body (*Leib*). Scheler conceptualizes expression as non-deducible and primitive and, technically speaking, as the most primitive category of perception, even more fundamental than the non-deducible categories of the physical and the psychic. Both from an ontogenetic and from an epistemological perspective, the categories of psychic and physical, or living and non-living, are subordinate to expression.

The special nature of Scheler's theory becomes fully apparent when we compare self-perception with perception of the other (*Fremdwahrnehmung*). Understanding one's own feelings is both similar and different to the process of understanding the feelings of others. It is similar insofar as understanding one's own feelings is attached to expressive behavior; it is different insofar as our own feelings are only mediately accessible, since we understand our own expressive behavior *not* through introspection but rather indirectly through others, through our actions.

The Cartesian tradition has always assumed the authority of the first person and the evidence of one's own feelings. It does not allow for reasonable doubt that I am the one who is experiencing my feelings. Scheler would not deny this claim. However, the evidence exists only in regard to its sensory quality: since it is also possible, according to Scheler, that I can experience feelings that are in reality not my feelings at all, such as when I allow myself to be infected by the cheerfulness of a group I find myself in the midst of. While in the group I believe that I am happy; upon leaving I notice that my happiness dissipates, because it was never "my own".[11] Scheler thus vehemently opposes the assumption of the self-evident character or the transparency of the life of feelings. The reason for this is twofold. Firstly, I can be wrong with regard to my own feelings; secondly, I do not become conscious of my own feelings immediately, since achieving self-understanding is only possible through intersubjective activity.

Scheler assumes that it is just as difficult for us to understand our own psyche as it is to understand the psyche of the other. A first thing to note about this assumption is that it implies that Scheler is here restricting his concept of the psychic to a particular class of phenomena, viz. to the understanding of one's own *intentional movements* and those of the other. The *sensory feelings* which are only experienced by each person separately are here excluded. In this way, the problem of other minds as it is occurs within the analytic tradition since Carnap is not yet solved, but it *is* transformed.[12] Whereas this tradition holds that we need to deduce the sensory feelings

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[11] Of course, these feelings *are* my own in the sense that I experience them. However, they are not my own in the sense that it is a relatively contingent matter that I happen to have them, which is illustrated by the fact that I lose these feelings once their source—the feelings of the others—is no longer present.

[12] Mulligan interprets Scheler in the same way as I do, and his reading is in line with many passages in Scheler. Mulligan is consistent when he observes that the concept of the psychic is bound to the public and intersubjectively accessible sphere, which he distinguishes from the domain of private entities, i.e., sensory feelings "which are not psychic phenomena" (Mulligan 2010, p. 609; translation ours). However, when Scheler explicitly addresses the question of what falls within the scope of the psychic, he says: "The sphere of the psychic is certainly broader than that of intentional acts.

of others from their physical appearance (the argument by analogy), Scheler does not explain the understanding of others in terms of sensory feelings in the first place, but rather in terms of their intentional movements, i.e., their feelings of happiness, anger, and so forth, which are perceived immediately in their expressive behavior.

8.4 The Experience of the Reality of Others

In the preface to the second edition of *The Nature of Sympathy*, Scheler describes the changes and amendments he has made to his book, which appeared 10 years earlier under the title *Zur Phänomenologie und Theorie der Sympathiegefühle und von Liebe und Hass*. Here he addresses (1) the meaning of "unification through feeling" (*Einsfühlung*), and (2) the foundational order of the different forms of Sympathy. In section C of the chapter entitled *Nature and Scope of the Problems*, Scheler again addresses the changes he made to the book, but this time he does not mention amendments but rather mistakes he now recognizes in the approach of the first edition. He criticizes himself for insufficiently distinguishing various problems and for misunderstanding the order in which these problems are to be placed. I will now highlight what I consider to be the most important difference between the first and the second edition of *The Nature of Sympathy*. It is a difference which has up until now remained unacknowledged. The change casts Scheler's theory in a new light.

In the last section of part C of the book, Scheler criticizes himself for not having considered the following questions: "(a) What constitutes the *reality factor* in an object generally, and how does the object *present* itself, in principle, to a conscious subject as such? (b) What constitutes the *mental or spiritual* reality of a conscious self and of self-consciousness generally (whether in myself or another), as distinct from mere *awareness* "of" that reality, and how is this reality given? (c) In what way and by what means are we first acquainted with the reality of the mental and spiritual center in *others* generally, apart from a merely discursive knowledge of the other's conscious self and its contents." (Scheler 2008, p. 216f; translation modified.)

The difficulty now lies in the fact that Scheler has already answered this question in the newly added fourth chapter of part A: *Metaphysical Theories*. However, he only *now* informs his readers about the relationship of this thesis to the theory of the first edition. The theory of the first edition boils down to the following claim: we have the experience of the other by understanding and reproducing the expressive gestures of the other. This thesis is now revised, but the revision is not consistently clear throughout Scheler's work. The thesis now reads: the entire experience of the other requires experiencing the other as real. However, we can only have this experience

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It encompasses sensations and sensory feelings." (Scheler 1915, p. 53; translation ours.) But this passage does not detract from the validity of Mulligan's interpretation; it is only an indication of the conceptual and terminological complications Scheler encountered in his search for a language which differs fundamentally from the language of the Cartesian tradition.

through participation (*Teilnahme*) in the feelings of the other, i.e., through feeling-with-one-another and fellow feeling-with.[13]

Scheler's critical attitude toward the Cartesian tradition also emerges from the fact that he calls into question the separation between epistemological and normative perspectives. Because Scheler at the time of the first edition of *The Nature of Sympathy* had not yet in view the problem of reality, he was not able to pose the problem of the experience of the other in all its aspects. According to the Scheler of the second edition, to understand the feelings of the other (sensing) does in itself not suffice to constitute the experience of the other. In a certain sense, it is merely one of the conditions for this kind of experience. Only through acts of participation in the other's feelings do we gain the experience of the other in the sense of the conviction *that* across from me there is, in reality, another. In other words, only in the two kinds of fellow feeling, i.e., in the "feeling-with-one-another" (*Miteinanderfühlen*), as in the example of the parents' grief, or in the simple case of my rejoicing with, or pitying, another (*Mitgefühl mit*), is the other experienced as real: "Fellow-Feeling essentially involves the ascription of reality to the subject whose feelings we share." (Scheler 2008, p. 98; translation modified.)

8.5 Scheler's Theory of the Forms of Collective Intentionality

In *The Nature of Sympathy*, Scheler weaves the different forms of togetherness into a fundamental order: fellow feeling (*Mitfühlen*) is based on sensing, and sensing (*Nachfühlen*) is in turn based on both unification through feeling (*Einsfühlung*) and infection of feeling (*Gefühlsansteckung*). This is primarily an epistemological, descriptive thesis, which states: only after cognitive achievement A is realized, is the realization of cognitive achievement B possible. Indeed, Scheler not only believes that every fundamental cognitive achievement *can* be realized over and over again (even if higher levels of sympathy have already occurred), but also *have to* be realized over and over. Otherwise the higher functions would be disturbed. Therefore Scheler, adopting a normative perspective, speaks of "*right* cooperation of sympathetic functions". All forms of sympathy should always be fostered and developed, "if man is to achieve the full realization of his ideal capacities" and "not just one of them" (Scheler 2008, p. 103).

History has shown "how the ideal potentialities of human nature have achieved their partial realization and characteristic stamp in Indian, Classical, Christian, and modern Western Culture" (Scheler 2008, p. XIVIII). These historical and societal processes can be evaluated within the framework of social philosophy. Scheler presents his theory of the forms of social units in the final chapter of *Formalism in Ethics*

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[13] I argue this more extensively in Schloßberger 2005, p. 203f.

and Non-Formal Ethics of Values.[14] The order of the forms of social units corresponds to various forms of sympathy.[15] Scheler differentiates between the masses (*die Masse*), the life-community (*die Lebensgemeinschaft*), society (*die Gesellschaft*), and the integration of all these social units into the social unit of the "collective person" (*die Gesamtperson*). Each of the social units correlates with certain kinds of human togetherness, which are carried by different sorts of feeling. The masses establish human togetherness through mere infection of feeling and other types of unification through feeling (*Einsfühlung*).[16] In a community of persons, there is feeling-with-one-another, without actually objectifying the feelings of another, but not yet fellow feeling with the other *as* other. Here, there is an understanding of "constituents of unity" (*Glieder der Einheit*) but not an understanding "that objectifies foreign beings in some kind of way". By contrast, in society there is a kind of understanding but this is not the immediate understanding of expressions (*Ausdrucksverstehen*); the latter is sensing (*Nachfühlen*). Instead, understanding in society rests on inference by analogy (ibid., p. 517), without any infectious feeling or participation in the feelings of another. It is the sphere of contracts, mistrust, distance, and convention. Again, specific founding relations are effective here, in that there is, "No society without community" (ibid., p. 520). So, according to Scheler, "community is the foundation of society" (ibid.; translation modified).

The correlation of the forms of sympathy (sensing and the two kinds of fellow feeling) with the various forms of social unit entails hermeneutic complications which can be tackled by beginning with a description of the correlation between "feeling-with-one-another" and the community as a social unit. In *Formalism in Ethics and Non-formal Ethics of Values*, Scheler writes: "Any attempt to 'explain' this peculiar phenomenon of the 'experiencing-with-one-another of something' by

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[14] The first edition of *Wesen und Formen der Sympathie* was published in 1913 under the title *Zur Theorie und Phänomenologie der Sympathiegefühle und von Liebe und Hass*. Also published in that year was the first half of *Der Formalismus in der Ethik und die materiale Wertethik*. The second half of the latter work, which discusses the various forms of social units (e.g. societies or communities), came out in 1916. According to Scheler this second half was ready for publication already in 1913, but publication was deferred because of the war. This is remarkable because, if Scheler was indeed concerned with the problem of a foundational order at that early stage, then one would expect to find passages on this topic in the first edition of *Wesen und Formen der Sympathie*. There is, however, no (extensive) discussion of a foundational order in that edition. Only the expanded second edition of 1923 discusses such an order.

[15] These types of social unit are "ideal" in the sense of Weber's "ideal types": they are independent from the empirical realm. But contrary to Weber's ideal types, they are not constructions but rather a priori essences.

[16] The correlation of forms of sympathy and social units is a complicated matter because Scheler in *Formalism in Ethics* does not yet distinguish *unification through feeling* (*Einsgefühl*) and *infection through feeling* (*Gefühlsansteckung*). The phenomenon of unification through feeling is not introduced until the second edition of *The Nature of Sympathy* of 1923. In 1916 Scheler still writes that the masses are constituted by "infection through feeling and involuntary imitation" (Scheler 1973, p. 526). But in 1923 he states: "There is true unification through feeling still to be found in the herd, the horde and the masses, whereas in personal communities, such as that of the family, it is only sensing that is involved." (Scheler 1923, p. 97; translation modified; cf. p. 219).

saying that A experiences something that is experienced by B, and that both, in addition, know of their experiencing it, or that they only 'take part' in their experiences in terms of a mere 'fellow feeling-with', would be a fully erroneous construction." (Scheler 1973, 526; translation modified.) One could be inclined to think that "experiencing-with-one-another" means something different than "feeling-with-one-another". However, the quoted passage is followed by a footnote in which Scheler refers to page 9 of *Zur Phänomenologie und Theorie der Sympathiegefühle*, where the example of the mourning parents, which is here discussed for the first time, is explained in terms of "feeling-with-one-another". This reference makes clear that "experiencing-with-one-another" (*Miteinandererleben*) and "feeling-with-one-another" (*Miteinanderfühlen*) pertain to the same phenomenon and are thus both correlated with the community as a social unit.[17] That this is the correlation Scheler has in view also follows from his logic of foundation: the abstract understanding of society, which operates on the basis of arguments by analogy, presupposes immediate sensing as its foundation. This sensing necessarily exists in the social unit of the community; otherwise Scheler could not argue that the community precedes, and is the foundation of, society.

However, at the same time Scheler assumes that fellow feeling is based on sensing, so that he faces difficulties regarding the systemization of those phenomena which are located on one level of sympathy and its correlating social unit. It should precisely be a marker of community that it allows for feeling-with-one-another (collectively shared experience), but does not allow for understanding, which requires distance instead of the kind of fellow feeling which consists in the participation in the feelings of the other. This distance requires experiencing the feeling of the other as other. There are two ways in which we might be able to solve this tension within Scheler's thinking: we could refuse to place both forms of fellow feeling in the same category within the foundational order of sympathetic cooperation. But this does not solve the problem, which is produced by Scheler's understanding of the foundational interdependence between sensing and fellow feeling. If sensing indeed serves as a foundation for both forms of fellow feeling, then it is unclear how sensing and fellow feeling can be intertwined within the phenomenon of feeling-with-one-another. The alternative is that we locate both forms of fellow feeling and of sensing on the level of the community of persons. However, Scheler would object to this strategy that, on this level, the other person is not yet perceived as another person. But an argument in favor of the second strategy is that sensing cannot be correlated with society, because in society understanding is only possible through arguments by analogy.

The collective person (*Gesamtperson*) as a social unit is conceivable as a synthesis, which at the same time is more than just a synthesis. Within the collective person all social units complement each other. It is the only form of collective living in which the *unsocial sociability* (*ungesellige Geselligkeit*) and the different arrangements of human nature can effectively be realized. Scheler emphatically does not play off community and society against one another: "If one asks what the societal

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[17] Krebs has a different reading: she thinks that "feeling-with-one-another" correlates with the social unit of the collective person (Krebs 2011).

form and the communal form mean and achieve in terms of the establishment of the highest moral ideal, one can do justice to both forms only by refusing to measure one against the other as its supposed superior. One must measure both society and life-community against this uniquely factual highest form." (Scheler 1973, p. 539.) Scheler distinguishes between an "intimate person" and a "social person". It is human nature to live with a distinction between the personal and the public sphere, i.e., between community and society, and to live in both these spheres.[18] Every human being who is a member of the collective person is at the same time an individual person (*Einzelperson*). Scheler emphasizes, in order to prevent misunderstandings: "A collective soul-substance is, of course, nonsense" (Scheler 1973, p. 523). The collective person is called a "person" because, like the individual person, it has responsibility. A finite individual person can only realize himself on condition that he belongs to a collective person. He is not a genuine individual until the collective person to which he belongs exists: "in our view, however, all persons are, with equal originality, both individual persons and (essentially) members of a collective person". (Scheler 1973, p. 524.)

We need to avoid a particular misunderstanding about the thesis that there is a foundational order of mass, community, society, and collective person: the relatively lower level within this order does not lose its function, i.e., cannot disappear, when a higher level is founded upon it. Ideally, the various forms of social unit exist beside each other in equilibrium. Each of these units has its proper function. With each social unit correspond certain cognitive abilities. The distinction between various social units—masses, life communities, societies, and collective persons— Scheler considers to be *a priori* in the phenomenological sense of the word. Whether this distinction exists in a specific historical situation, or whether a human being actually partakes in all social structures, is an empirical question. A single person can only be an individual if she is also a part of the collective person. Scheler's differentiations are ideal, and they are not necessarily realized in their pure form. On the one hand, they serve the function of marking social-psychological developments in history. On the other hand, Scheler uses them to distinguish between more and less successful collective historical embodiments of human nature. Scheler points out how in Asian cultures there is a prevalence of intersubjectivity brought on by infectious feeling, whereas in European cultures, a one-sided rationalism prevails. He sees and supports the possibility of balancing the two sides, of establishing a rational equilibrium between different approaches to human nature: between community and society, between the public and the private, between the childlike and the adult aspect of the soul (Scheler 1927).

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[18] It is interesting to note the parallels between Scheler's view and Helmuth Plessner's *Limits of Community*. Although Plessner turns against the predominant tendencies of his time to convert all forms of society into community, he ultimately, like Scheler, argues in favor of a balance of community (*Gemeinschaft*) and society (*Gesellschaft*): "The problem of a social philosophy which does not seek to ignore, passively, the huge discrepancy between the real tendency of things and that of persons as spirits (*Geister*), is this: to find the kind of spiritual-ethical balance just described, out of which the basic moments of societal life—not of the specific style of a period, but rather, so to say, of the essence of the societal modality of life as such—appear sensible and necessary as factors securing human dignity" (Plessner 1999, p. 81; translation modified).

The theory of social units and their correlative forms of sympathy clearly shows the teleological character of Scheler's anthropology. It is human nature to realize all the various forms of human encounter, i.e., to live within the various social units. Each of these units has its own value, meaning, and function.[19]

(Translation by Katelyn Fricke and Jasper van Buuren)

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Chapter 9
Communal Feelings and Implicit Self-Knowledge. Hermann Schmalenbach on the Nature of the Social Bond

Hans Bernhard Schmid

Abstract It is widely accepted in the received literature that the decisive feature in the constitution of community, and indeed its ontological core, is some sort of collective acknowledgement of the community, and mutual recognition between the members. A prominent version of this claim is that communities exist insofar as their members believe they exist, and that the communal bond is mutual sympathy. Yet this view is at odds with rather obvious facts: community members often dislike each other, and are far from acknowledging the existence of any such bond. How can these phenomena be accommodated in the view that community is a matter of attitude rather than of brute objective facts? This paper suggests an answer that is inspired by the work of the German phenomenologist Hermann Schmalenbach (1885–1950). The claim is that the basic communal ties are plural implicit self-knowledge of the participants as members of the community. Implicit self-knowledge is often not reflectively transparent. Community members are plurally self-aware without thinking of themselves in "we"-terms. Where individuals consciously conceive of themselves as members, the community is turned into what Schmalenbach proposes to call a communion.

Hermann Schmalenbach's name is not usually listed in the pedigree of the phenomenological movement. He has no entry in Herbert Spiegelberg's (1965) monumental and authoritative historiography, nor does he figure in Hans-Rainer Sepp's (ed., 1988) illustrated collection of testimonies of the lives and works of Edmund Husserl

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and his followers. Yet a phenomenologist Schmalenbach was – both by self-profession and by ascription (Lüschen/Stone 1977, iv) – and a surprisingly original one at that. His publications, though comparatively few in number, cover an impressively wide array of topics, ranging from metaphysics to epistemology, from the study of the origins of philosophy to the philosophy of religion, from aesthetics to the philosophy of education (a bibliography is in Schmalenbach 1977, 263–266).

The historians of the phenomenological movement are not the only ones to be somewhat negligent of this body of work, however. References to Schmalenbach are generally scarce in almost all of Schmalenbach's many fields of work, both within and outside the phenomenological movement. Herman Schmalenbach, it seems, is an almost forgotten figure in the shadows of the past.

This "undeserved neglect" (Lüschen/Stone in Schmalenbach 1977, vii) may be partly due to biographical circumstances. Schmalenbach's position at the University of Basel (1931–1950) placed him on the safe side of the political disasters to come, but also removed him from the centers of the German speaking discourse, and may have prevented him from influencing a greater number of students. Even locally, he was overshadowed by the towering figure at his department colleague Karl Jaspers, with whom, apparently, he had "no intimate relationship" (Lüschen/Stone in Schmalenbach 1977, 8); the fact that in his phenomenological work, Schmalenbach was closer in spirit to earlier realist phenomenology of the Austrian tradition than to later existentialist phenomenology certainly did not help.

There are, however, two notable exceptions to the general neglect of Schmalenbach's work – a major one in social and sociological theory, and a minor (but remarkable) one in the philosophy of mind. In social and sociological theory, Schmalenbach is often mentioned in the context of the influential distinction between community and society, or association, as developed by Ferdinand Tönnies in his *Gemeinschaft und Gesellschaft*, originally published in 1887. It is hard to overestimate the importance of Tönnies' distinction for the emerging social sciences around the turn of the twentieth century, and it has proven to be of lasting influence on social thought ever since. Schmalenbach's contribution to this debate consisted in the suggestion, made in the early 20s, to extend the traditional community/society-distinction to a triad by adding communion (in German: "Bund") as a third (and intermediate) "basic social form".

In subsequent social theory, the concept of communion had special appeal to what has come to be called group theory, especially in the United States. It is connected to the view that earlier social and sociological theory underestimated the importance of the human capacity to band together, independently of differences in nature and background. In communions, people unite in the pursuit of a shared purpose, or in the sharing of a joint focus. The paradigmatic case Schmalenbach chooses for his analysis is the fellowship of a charismatic leader. Communions differ from communities in that their members often break their communal bonds when they form a communion, and in that membership of communions often span across different social and cultural backgrounds. Communions differ from societies in that they are not seen by their participants as instrumental for their individual purposes, and in that they do not entail an organizational or institutional framework.

Often-quoted as Schmalenbach's conception is, however, it has largely been taken to be of historical interest only in the relevant literature, and it certainly figures in the history of social and sociological theory rather than among its systematic theoretical or empirical tools.

The second exception to the "undeserved neglect" of Schmalenbach's work is certainly less prominent than the first one. In parts of the recent German speaking philosophy of mind, Schmalenbach is sometimes mentioned and commended for a certain view on self-consciousness, or self-knowledge, a sort of self-awareness that Schmalenbach calls "implicit" *(implizites Selbstwissen)*. This conception – developed most extensively in Schmalenbach's chief work *Geist und Sein* (*Mind and Being;* Schmalenbach 1939) – has earned him a place in some of the accounts of the history of the theory of pre-reflective self-awareness. Theories of pre-reflective self-awareness (self-knowledge, or self-consciousness) claim that the basic way in which subjects with conscious experiences and full-fledged agency are aware of their experience and agency cannot be conceived of as proper self-representation, or reflective self-knowledge, and that self-representation presupposes pre-representational self-awareness. The central thought is that we are not usually aware of ourselves in the way we are aware of the targets of our attention or intentions, and even where we do focus on ourselves in that way, that reflective self-observation is *of* the self in the right way only in virtue of pre-reflective self-awareness.

This has been analyzed under a wide variety of labels and within more than one philosophical tradition. In the German speaking world, it is most prominently associated with the so-called Heidelberg school of self-consciousness, and even though the protagonists of the Heidelberg school are generally disinclined to include the Phenomenological tradition in their camp, a paper from the context of Schmalenbach's *Mind and Being* can be found in an influential anthology of the history of the Heidelberg school (Frank [ed.] 1991, 296–366).

The first piece of Schmalenbachian heritage is a view on a particular form of relations between humans, the second is a perspective on the fundamental way in which cognizers and agents are related to themselves. The first idea is about togetherness, the second idea about selfhood. At the face of it, the concept of communion and the theory of pre-reflective self-knowledge have little or nothing to do with each other, and as far as I can see, there is no passage in Schmalenbach's work that addresses their relation explicitly, even though Schmalenbach comes close to linking his two ideas when he briefly touches upon the topic of collective consciousness in a passage of his *Mind and Being* (Schmalenbach 1939).

In the following, I shall argue that we need a version of Schmalenbachian theory of implicit self-knowledge in order to make good sense of his conception of communion, and of its contradistinction to community. The claim is that communal relations – that is, relations that constitute membership in a community – are of the kind of "implicit self-knowledge", only that the "knowledge" involved here is of the plural rather than the singular kind. The "self" known in this "knowledge" is not some singular "I", but a plural "we".

In the view to be developed in the following, communion differs from community in several respects. Whereas in community, the plural selfhood is not reflectively

transparent, there is reflective self-awareness of the plural attitude constitutive of communion in the case of communion. Thus the most general statement of the claim of this paper is the following: in order to see the full strength of Schmalenbach's contribution to social theory, we need to take into account his contribution to the philosophy of mind. Schmalenbach's theory of implicit self-knowledge has to be extended to the plural, in order to develop an adequate conception of collective consciousness.

The paper is divided in three parts. The first section introduces the traditional community/society-distinction, as drawn by Ferdinand Tönnies, and discusses some features of Schmalenbach's conception of communion, largely from the perspective of the history of social and sociological theory. The second section attempts to develop a somewhat more systematic view of the issues at stake here by zooming in on Schmalenbach's comments on the nature of communal bonds, and especially his objections against Tönnies' conception. This reveals a fundamental problem with which Schmalenbach is struggling in these passages, and which concerns the question of the "mental" nature of basic human social bonds. The last section develops a solution to this problem by picking up on Schmalenbach's theory of the implicitly self-referential nature of consciousness. A plural version of implicit self-knowledge is suggested. The concluding passages mention some revisions in the concept of communion which might be necessitated if the suggested reading of the nature of communal bonds is accepted.

9.1 Community, Society, and Communion

Since the publication of Ferdinand Tönnies' seminal work "Gemeinschaft und Gesellschaft" in 1887, the distinction between the two basic forms, or perhaps aspects, of human sociality mentioned in the title has dominated large parts of the debate on the foundations of social science. The book has been translated into English under at least three different titles: as "Community and Association" in 1955, as "Community and Society" in 1957, and as "Community and Civil Society" in 2001, and the fact that the translation of Tönnies' "Gesellschaft" keeps changing over the decades shows how contested Tönnies' distinction is.

In current social ontology, references to Tönnies are rare (an exception is Tuomela 2013). However, it is hard to overestimate the influence of this book on social and sociological theory, and on the philosophy of the social sciences. An example for this influence from the 80s of the last century is communitarianism, a movement both in social science, social theory, and social policy that has put community on the map of the general public discourse. Communitarians have always explicitly referred to Ferdinand Tönnies as the ancestor of their movement. Even though communitarianism seems to have lost a great deal of its initial momentum and public visibility over the last decade, the general thrust is still very much present

in much of social thought, and perhaps to a higher degree than ever before.[1] The distinction between community and society (or association, or civil society), and the critical aim connected to it, is continued in the emphasis of the role of solidarity and belonging for social life, in the increasing interest in "social capital" in economic theory, in the focus on the role of trust in human cooperation, and the general importance of social identities.

"Community" has become the catchword of a whole bundle of views on the basic structure of the social world. A unifying feature that most of them share is that they are usually set against such ideals as unbound free market capitalism, industrialized mass society, a technocratic understanding of politics, but also against strong views of the social role and significance of the state, and against Big Government. The opposing positions are sometimes lumped together under the critical term "individualism" or "atomism", and against this, the focus on community usually emphasizes the role of stable social bonds, particular collective identities, shared culture and traditions, and solidarity.

The concepts of "community" and "society", used in contradistinction to each other, have always been "thick" or perhaps even "essentially contested" concepts. They involve descriptive as well as evaluative elements. As a particularly conspicuous recent example for this, Jeremy Rifkin even projects the distinction between community and society on transatlantic relations: "The European Dream emphasizes community relationships over individual autonomy, cultural diversity over assimilation, quality of life over the accumulation of wealth, sustainable development over unlimited material growth, deep play over unrelenting toil, […] the rights of nature over property rights, and global cooperation over unilateral power" (Rifkin 2004, 3). As always with "thick" and contested concepts, it is difficult to isolate the descriptive features from the evaluative or normative elements – hence the "essential" nature of the contest. Yet looking at Tönnies' theory may help to grasp some descriptive tenets. One of the distinguishing features between community and society highlighted by Tönnies (as well as other authors) is that societal relations are valued as an instrumental good for some other purpose, while engagement in community relations is intrinsically motivated. The standard participant in a market exchange will not engage in this activity for its own sake, but rather for the satisfaction of some other need, that is, the benefit that is expected from the transaction. An average neighbor or family member will not relate to the respective interaction in that way. Of course, community relations will suffer if they are permanently to their members' disadvantage, but that does not mean that where members engage in

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[1] As far as the general discourse is concerned, a look at Google's ngram viewer may be instructive – the ngram viewer makes Google's whole books database, containing publications from 1800 to around 2000, available for checking the relative frequency of words, or combinations of words. Checking the ngram viewer for "community" reveals a rather astonishing career of the term in English book publications, starting at around 1900, and peaking in a quadrupled relative frequency (percentage of occurrence per words used) at around 2000. Tellingly, a check with "society" reveals that while that term has been used much more frequently over all of the history recorded by Google's ngram viewer, it was finally surpassed by "community" shortly before the end of the twentieth century.

communal relations, they do so only with some instrumental goal in mind. Communal ties may often be instrumentally useful, but they are not usually seen by the members as means to an end. This seems to suggest that community must be seen, by its members, as having intrinsic value. Intrinsic values are related to action, and choice, in that they determine the ultimate ends we pursue. However, community in the sense analyzed by Tönnies is not something we "choose" at all, or so it seems. Communities are unlike the groups that have come to be the focus in later group theory; they are not associations of friends or fellows that we choose for ourselves, but social identities into which one has to be born to be a member. In his account, community has to do with who we are rather than with what we do and what we want.

Another feature of Tönnies' account of community is that it is developmentally prior to society (or association); this is sometimes cast in the view that community is somehow more "natural" than the "artificial" societal relations. Communal relations come first both in the ontogeny and the phylogeny of human sociality. Together with the first feature, this means that human sociality does not start out with strategic reasoning. The way in which communal relations are depicted in the relevant accounts often smacks of early childhood, and of early stages of human civilization. The most direct way to approach Tönnies' basic argument, however, is from his critique of the Hobbesian contractualist approach to society. This reflects the genesis of Tönnies' work; a series of articles on Hobbes leads Tönnies to his *opus magnum*, and to a monograph on Hobbes (for a detailed interpretation cf. Merz-Benz 1995). Tönnies' argument against Hobbes is that no conception of a social form arising from an agreement between self-interested individuals can be self-sustaining; contractual relations, if they are to work, presuppose pre-contractual pro-social motivation of some sort. The narrow kind of rational self-interest envisaged for the parties of the contract by Hobbes, the claim goes, is insufficient as a social bond.

At this level of abstraction, Tönnies' idea of the community/society-distinction may not seem altogether unique, and one may prefer Emile Durkheim's views on the development and transformation of solidarity that partly parallel, partly continue, and partly revise Tönnies' views on community and society. Durkheim was among the early readers (and indeed reviewers) of Tönnies' seminal book, but large parts of his thoughts had already taken shape before he encountered Tönnies' congenial conception (Durkheim 1997 [1895]). Durkheim's view that the modern "Cult of the Individual" tends to overlook the pre-contractual conditions of any social contract, and that there has to be a basic form of solidarity that is a precondition of any form of social integration echoes similar thoughts in Tönnies' work. Durkheim famously introduces the term "collective consciousness" in this context, arguing that the transformation of society from a more collectivist form to a more individualist form is a matter of mentality (attitudes and dispositions), and that the kind of mind involved here is not of the (individual) psychological kind, but consciousness that is *collective*, and an irreducible and external social fact. Tönnies also claims that the nature of the communal and social is mental, but his term is "der Wille" ("the will") rather than consciousness (though he uses "Bewusstsein", or consciousness, too). Corresponding to his dichotomy of the social domain, he distinguishes

two fundamental forms of the will: *Wesenswille* (usually translated as "natural will", sometimes as "intuitive will"), corresponding to community, and *Kürwille* (usually translated as "artificial will", "arbitrary will", "free choice", or even "rational choice"; literally translated: the choosing [or: electing] will), at work in (civil) society (or association).

A plethora of differences between the two conceptions notwithstanding, the degree of agreement between Durkheim's and Tönnies' views is remarkable. In Durkheim's as well as in Tönnies' version, the diagnosis is that there is a form of social unity that is different from the proper societal or associational form, that is developmentally more basic at the social level, and that is overlooked in much of social thought that tends to construct human sociality from the point of view of individuals and their own interests, actions, and choices. Societies rest on communal foundations, because communities provide large parts of the motivation necessary for societies to work. Moreover, it is argued that the modern focus on the individual is not only a problem of social theory, but also a problem of real social life. Especially in later twentieth century conceptions, the claim is that societal relations, while drawing on community-related resources, tend to erode their own base by not reproducing their presupposition. Societal relations tend to replace communal relations to a degree at which they may simply break down.

In a paper from 1922 by the title "Communion – a Sociological Category", Schmalenbach argued that the dichotomy of community and society (civil society, association, or whatever term one prefers for Tönnies' "Gesellschaft") has to be extended to a triad. Communion, Schmalenbach suggested, must be added as an intermediary. Communion has similarities with both community and society, but it also features a series of distinctive differences. Communion shares with community the motivational feature that the unity is not instrumentally valued. The participants in a communion do not see their form of unity, or the relations in which they stand to each other, as an instrumental means to some further (individual) end. Communion is a sort of social union in which the unity is somehow "essential", thus reflecting a feature of the *Wesenswille*, or "essential will", placed at the heart of community in Tönnies' analysis. At the same time, communion shares with society, or association, the feature that it is consciously chosen by the participants – remember that Tönniesian communities are not the kind of freely chosen group identities that have come to be called "communities". In fact, something like "consciously chosen community" is exactly what Schmalenbach highlights, except for the fact that he decides to give it a special name: communion. Nobody is born to be a communion member, or becomes a member unwittingly or unwillingly. Thus communion differs from community in that the form of togetherness reflects individual choices. This corresponds to the feature of *Kürwille*, or "choosing will", that is the core of Tönnies' analysis of society.

In this way, communion cuts across Tönnies' dichotomy. It is, Schmalenbach argues, an intermediate form, but in his analysis, Schmalenbach makes clear that he does not see it simply as a transitional phenomenon, or a more or less coincidental overlap between community and society. Rather, he argues that communion has to be seen as a third type.

Fortunately, Schmalenbach's paper is available in English translations. An abbreviated version, translated by Kaspar D. Naegele and Gregory P. Stone, is included in the first volume of Talcott Parsons' important collection *Theories of Society* (Parsons [et al., ed.] 1961, 331–347). Parsons lists Schmalenbach's communion under the category "ascriptive solidarities", where it is joined with such predecessors of group theory as Georg Simmel's reflections on the nature and role of secrecy. A full English version of Schmalenbach's paper, for which Stone signs as the sole translator, is in Schmalenbach 1977 (64–125). The translators have decided to render the key term "Bund" with "communion" rather than "union", "band", or "covenant", which may seem to be equally plausible candidates. The reason for not choosing "union" or "band" is probably that in his analysis, Schmalenbach emphasizes the "sacred" nature, or "religious atmosphere", that this "basic social form" often (though not always) acquires – a tone that seems to be nicely captured with the English term communion, though "covenant" perhaps preserves this note as well.

Schmalenbach does not cast his theory of communion in a purely ontological fashion by providing a list of individually necessary and jointly sufficient conditions in order for a social phenomenon to be a proper communion. The category of communion is developed within a description of concrete historical social phenomena, a fact that no attempt to bring Schmalenbach's considerations to bear on social ontology can ignore. Sociological descriptions seem to be closer to Schmalenbach's heart than universal definitions. The paradigmatic cases of communion are religious sects, especially sectarian movements among young people, and even that type of communion has its paradigmatic exemplar, the George circle, to which Schmalenbach himself was loosely affiliated for a couple of years shortly before that circle started to take on more sectarian forms (we will return to this shortly). But Schmalenbach's aim is not "idiographic", to put it in the terms of Neo-Kantian theory of science, that is to say, he does not aim at providing a description of a single phenomenon in its unique individuality. Rather, he thinks that what is exemplified in the George circle captures a feature that is present in other cases, too – Schmalenbach mentions friendships of youths, or romantic "friendship clubs" (Schmalenbach 1977, 71f.), and if his analysis is to be believed, similar phenomena are part and parcel of any society.

On a level that may be more abstract than Schmalenbach himself would have liked to have it, the basic phenomenon at which Schmalenbach directs our attention is that of a number of individuals, often adolescents or young adults, and often from different backgrounds, gathering together in the pursuit of a common cause of which they are typically deeply convinced in a way that makes the focus of their joint attention matter to them more than just in some instrumental way. The unifying experience is not just watching a sunset together, jointly going for a walk, or painting a house together, and typical communions are not voluntary associations in which people temporarily band together to pursue some joint project together. Rather, the joint focus of attention has something like existential import. In the paradigmatic case, this focus is a charismatic leader (more on the role of charisma below).

Schmalenbach further emphasizes that communions have a certain "emotional tone" to them, and that they are emotional in origin and nature: "Whenever

individuals or small groups are seized with emotion, the urge to preach, to convert, or to form a congregation seems to be imminently close to the center" (Schmalenbach 1977, 71). Communions are, Schmalenbach argues, not communities, because it is often (though not always) in breaking away from their communal backgrounds – families and other traditional ties – that the participants come to enter into a communion. And the basic difference between a communion and an association can be illustrated by the further development communions usually take, when they survive: they organize themselves, rules and regulations are enforced, and the unifying emotional momentum, the "religious atmosphere" is lost in the process of transformation of a communion into an association.

Schmalenbach's suggestion had a considerable impact on the discourse on social theory in the 1920s. The great master Ferdinand Tönnies himself took Schmalenbach's paper so seriously that four years after it came out, he felt obliged to react to it in the preface to the sixth and seventh edition of his book (Tönnies 1926, xii ff.). Tönnies is utterly defensive in his reaction, though. He does not think that communion is a third type, to be added to community and society; rather, he suggests, communions may well be subsumed under society. Communions are simply associations, only that the participants do not pursue their individual aim, but are joined together in their focus. Tönnies weighs the fact that communions are consciously chosen, and thus similar to the societal relations, heavier than the distinguishing features of the intrinsic motivation and non-institutional form of communions.

In spite of this authoritative dismissal, Schmalenbach's idea was not entirely forgotten, and it even made it into the Anglo-American sociological discourse. In a footnote of his "Study of the Primary Group" – a seminal work in group theory – Edward Shils referred to Schmalenbach's paper as a "thoughtful essay" that deserves more attention (Shils 1951, 54). And as already mentioned above, Talcott Parsons included an abbreviated version of Schmalenbach's paper on "communion" in the first volume of his influential anthology on the foundations of social theory.

In spite of Shils' footnote and the partial translation of Schmalenbach's paper in Parsons' anthology, however, it did not attract any attention in later research. How is this contrast between initial response and later neglect to be explained? What was it that seemed attractive about the idea, and why did it not catch on in the later discourse? Was it simply because of the very special role of youth movements in the time between the two World Wars that Schmalenbach's communion struck a chord with his audience, or was Schmalenbach on to something more general, that deserves attention beyond the special interests of his time? And if the latter should be the case, why, then, did work on communions and their analysis not continue?

Let us first focus on the particular (and in some ways perhaps somewhat peculiar) historical context of Schmalenbach's analysis. As mentioned above, Schmalenbach's remarks on communion are permeated with references to the George circle. This culturally influential circle of people that spans across the German speaking world was focused on the person of the poet Stefan George as their unifying figure. In a monograph whose title includes the telling expressions "aesthetical fundamentalism" and "German antimodernism", the sociologist and

historian Stefan Breuer (1995) gives an impressive account of how this initially loose network of friends, with roots in the early 1890s and bound together by admiration of the ambitious and perhaps somewhat over-self-confident poet's work, eventually turned into something like a sectarian fellowship with closed gates, culminating in a proper mysteries cult in the late 1910s and 1920s. George's volume of poems by the title *Der Stern des Bundes*, published in 1914, played a central role in the transformation of the George Circle, and seems to have served as something like the constitution of the communion. This title added the concept of "Bund" to the self-description of George's network as a "Kreis", or circle. George's *Stern des Bundes* was translated into English as "The Star of the Covenant" rather than "The Star of the Communion", thus making it difficult for the reader of the translation to see the tight connection between George's and Schmalenbach's reflection on "Bund".

That Schmalenbach's reflection on communion relies heavily on George is most obvious from the fact that in the central passage in which he proposes the concept of communion, Schmalenbach gives a long quote from The Star of the Covenant, and in this passage, there is talk of breaking away from one's roots and family, being transformed and even born anew in an act of one's own choice that brings about a radical break of the structure of the social world, and forges a wholly new unity among the participants; "common and uncommon men alike […] born together from the ardor in their gazes"; "fathers, mothers are no more. From filial devotion, cast by lot, I choose my own masters of the world" (Schmalenbach 1977, 70f.). Schmalenbach continues after this quote saying that "from George one understands that the communion is like a religious association, just as he himself has understood it so often", thus virtually delegating the definition of communion to George's own socially extended self-conception.

It is difficult to understand the full extent of Stefan George's influence in historical retrospect, and it seems easy to dismiss the phenomenon as historically and sociologically rather idiosyncratic. Yet Schmalenbach was not alone in giving what we may call the George-experience great systematic weight in the formation of the basic concepts of social science. As Breuer (1995) makes marvelously clear, Stefan George was the model on which Max Weber built his influential conception of "charisma". In Weber's sociology, and especially in an essay posthumously published in the same year as Schmalenbach's paper (Weber 1922), "charisma" characterizes one of three types of legitimate rule (sometimes translated as "domination", or "authority"), and it is obvious that this triadic structure resembles Schmalenbach's triad rather closely.

Weber's *legal rule* is recognized for the "procedural correctness" of the ways in which it is exerted. Similarly, in Schmalenbach's conception of society, the rational and "cool reserve" between the participants predominates. Weber's *traditional rule* is recognized as legitimate by its subjects insofar as it follows the trodden paths of history. This corresponds to Schmalenbach's view of the bonds of community, that consist of such factors as family ties and belonging to a language group. Weber's *charismatic rule* is recognized for – and accepted as legitimate because of – the extraordinary, non-quotidian qualities of the leader. Correspondingly, paradigmatic

cases of Schmalenbachian communions are those in which the participants are focused on and unified by an emotional attraction to a prophet-like figure.

Schmalenbach's suggestion differs from Weber's analysis in that it distinguishes forms of union rather than types of rule, but at least within an Aristotelian form of thinking of the social world, in which the forms of togetherness between people is the form of authority, it may seem that the conceptions are really closer than the terms suggest.

Even though his description of communion is largely focused on examples and concrete sociological insights, Schmalenbach does some conceptual work by listing a number of general features. First of all, he argues that communions are a matter of emotions, or feelings. Communions are constituted by affective experiences of the participants. Interestingly, Schmalenbach's analysis of how the charismatic figure affectively unites the participants in a communion is rather reductive in spirit. There is a combination of two affective attitudes at work here: "One must feel alone before God and this must be accompanied by a 'side feeling' of immersion with others" (Schmalenbach 1977, 27). Even though large parts of Schmalenbach's analysis of communion sound rather theocratic, Schmalenbach allows for cases in which the focus is not some perceived deity or God. Any object can be the focus, and often the focus is community. The reductive spirit of Schmalenbach's analysis is obvious from the fact that in his view, communion is established and constituted by a combination of conscious feelings toward (a) the "felt God" (or any object or community) and (b) the felt presence of other members of the "faith". Thus the emotional structure of communion is not a straightforwardly "shared emotion" in something like the sense of Max Scheler's "immediate co-feeling" (Scheler 1954 [1912]; Schmid 2009), or in the sense of Max Scheler's non-reductive analysis of collective enthusiasm, where he explicitly rejects that any such attitude could be analyzed in terms of a combination of individual enthusiasm together with some form of reciprocal attitudes between the participants. In that regard, Schmalenbach is closer to the reductive phenomenological analysis of shared experiencing developed by Gerda Walther (Walther 1923). Walther analyses cases of shared experiencing, or joint attention, in terms of individual attention together with an elaborate structure of mutual empathy and identification. *Mutatis mutandis*, Schmalenbach seems to have something like this in mind with his conception of the affective bond of communion, but it seems obvious that he does not aim at taking a position within the ongoing debate about non-reductivism in the phenomenology of collective intentionality of which he may not even have been aware.

When Schmalenbach emphasizes the consciously felt, joint emotional experience of communion, and the structure of fellow feeling involved in it, this certainly involves a polemical point against Tönnies and his claim that a similar affective bond is already involved in community. Some sort of affectively felt "mutual understanding" between the participants is part and parcel of Tönnies' conception of community (Schmalenbach 1977, 25f.). Tönnies writes of the kind of understanding he has in mind: "Mutual understanding rests upon intimate *knowledge* of one another, reflecting the direct interest of one being in the life of another and willingness to share in his or her joys and sorrows" (Tönnies 2001 [1887], 33).

Schmalenbach's objection against this view is rather straightforward, and indeed hard to deny. He points out that in many cases – though luckily not always – members of families and other communities do not really like each other, and that typical communal relations persist in the face of highly divisive affective attitudes, far from mutual participation in "joys and sorrows". Families, in his view, are not bound together by such bonds of sympathy or fellow feeling; very often, they are the locus of a great deal of envy and perhaps even flat-out hatred. Schmalenbach reproaches Tönnies for romanticizing community; Tönnies' "passion for community" led him, Schmalenbach claims, to a "distorted view". Schmalenbach claims that Tönnies' conception of community is an heir of "Goethean romanticism", and it is a late culmination of the movement which discovered "the great organic bonds", that is, "the Volk and the nation, also the family, kinship, and neighborhood groups" (Schmalenbach 1977, 65). As becomes clear from the general objection of romanticism and the specific objection raised against Tönnies, this movement involved a fundamental misunderstanding of those fundamental bonds, in Schmalenbach's view – a misunderstanding that Schmalenbach aims at correcting with his revision. But then, the open question is: what is community, if not a structure of mutual sympathy of some sort?

The first move of his critical revision of the concept of community is that Schmalenbach substracts the emotional component, and focuses on the pure "organic bond" itself, the "natural, intrinsic solidarity" (ibid., 70). Thus it may appear at this point that Schmalenbach's view is that communities exist solely in virtue of "circumstantial relations", or natural "givens" – above all, blood relations, but perhaps also such factors as physical proximity and common language – without any sort of knowledge, awareness, or consciousness of these factors as unifying features. If the "blood relations" mentioned by Schmalenbach were mere biological facts, however, this would certainly not amount to a particularly plausible conception. It is rather obvious that the fact that a child has a biological father does not in itself constitute a family relation between them of the sociologically relevant kind; just think of Plato's ideal republic, where among the guardian class nobody except the ruler knows who is whose offspring, and where there are, as a consequence, no families in the sociological sense, but rather a big unified community of all. Similar points could be made with regard to physical proximity, and perhaps with regard to similarity of language. Such relations, thus conceived, do not by themselves constitute any sort of sociological meaningful community – unless they are recognized in a suitable way by the participants. This is the thought that has driven many theorists – Moritz Lazarus and Georg Simmel, another transitory sympathizer of the George Circle, among them – to claim that all social units are constituted by the members' "consciousness of that unit" (Simmel 1983 [1908], 22), meaning that for individuals to form any sort of "we" that is not purely distributive, it is necessary that the members think of themselves in these terms – and that it is this "thought" *alone* that constitutes a community.

I do not find this line convincing, and using an example that Schmalenbach would classify as a communion, it seems rather obvious that for a circle of old friends to persist in spite of the scarcity of meetings requires more than the individual

participants' mere beliefs to be members of such a circle, and their willingness to be together. It is true that sometimes, circles of friends disband simply because the participants do not want to participate anymore, and have come to see themselves in terms of different social relations. But sometimes, it happens that even though the participants would very much like to continue, and identify with their circle of friends very much, they simply find out that somehow, their bond has been dissolved: e.g., the usual feeling of connectedness does not come up anymore, there is a shared feeling of awkwardness instead, and even the shared memories that used to unite them so much do not seem to be shared anymore, as everyone seems to connect different ideas with them.

Schmalenbach does not subscribe to the radical idealistic view; he obviously does not think that community can be "willed" into being in such a way that the attitude alone constituted community. But neither does Schmalenbach mean to claim that biological facts or objective cultural similarities *alone* constitute communities. There is middle ground here between a purely idealistic version of the Simmelian conception of community, and an objectivist view of the basic social bonds. The middle ground is that while "objective" factors do play a role, they do not constitute communities *by themselves* – a suitable "subjective" element has to be added to the objective base. This is exactly what Schmalenbach suggests concerning the basic structure of community: "Community is a social relationship that flourishes *on the basis of* a natural, 'intrinsic' solidarity" (Schmalenbach 1977, 70) – the base alone, whatever it may consist of, does not by itself make the community. Schmalenbach acknowledges that community involves some form of "community-consciousness" (ibid., 73), and that seems to mean: some sort of attitude. Following is the quote in which this is stated most clearly (though the thought expressed here pervades Schmalenbach's entire analysis):

> Little as the objective presence of blood bonds suffices as a condition for community, and much as one must know about it, knowledge of the purely external, physical blood relationship would be meaningless for the formation of community if there were no inner psychic apprehension simultaneously present with the external, physical blood relationship. (Schmalenbach 1977, 76f.)

Thus the emerging view is that there need to be some attitude-independent "objective conditions" (ibid., 75) at the base, which are then recognized or "apprehended" (in some way) by the relevant individuals, which thereby become a community. The "objective conditions" – whatever they are – are necessary rather than sufficient conditions of community. But what, then, has to be added for there to be a community? What exactly is that "apprehension", that subjective condition, that together with the "natural" features is sufficient for community, and how exactly does it relate to the "objective" factor?

Schmalenbach's conception of community seems to follow what may be called the "conservative" strand in the ontology of collective identity (cf. Schmid 2005). The view seems to be roughly the following: while both subjective and objective factors – "givens" as well as conceptions – play a role in the constitution of community, the self-conception or apprehension as a community can only follow patterns that are pre-existing in the realm of objective facts, such as spatial differences, or perhaps even biological features. The conservative view is that

communities cannot be created or invented, but only "found" in the objective circumstances – like in Samuel P. Huntington's conception, where collective identities do not exist independently of the individuals' consciousness thereof, but where the only role for "civilization-consciousness" is to raise awareness of the differences in the social world that exist independently of that consciousness. "Civilization-consciousness" cannot "invent" identities with new borders; rather, those have to be found in the world. The only role something like subjective attitude can play is raising an awareness of the objective factors, not creating new bonds, and tying together people from different backgrounds, as a more liberal conception would perhaps like to have it.

More "liberal" conceptions have suggested that the kind of consciousness involved in community plays much more fundamental a role, so that attitudes may "create" communities independent of any "objective" factors. But the view that "subjective conception" or "apprehension" as a member is susceptible to the will, while objective factors are not, is far from being unproblematic, and perhaps due to a prejudice about the nature of our mind. It is far from obvious that it is easier to change our attitudes concerning who we are and to whom we belong than our "backgrounds", or objective circumstances. Very much in line with this insight, Schmalenbach, while upholding that community rests on objective factors rather than merely on attitude, also asserts that communities can be "made", so that the basic unities of our social lives are no unchangeable "givens" that are predetermined by factors independent of our attitudes.

The "making" of a community, however, has to proceed indirectly; you cannot simply "make" people see themselves as a group just like that. Communities cannot simply be "willed into being" – neither from within nor from without. But it is possible to put individuals into circumstances that make it likely that they will develop the suitable attitudes. The "foundations" of community include such "objective factors" that are, to some degree, at our disposal (a likely example seems to be physical proximity), and usually give rise to the kind of attitudes that constitute a community. Or, as Schmalenbach puts it, one can "'do something' about the formation of community by doing something else and then viewing (…) the establishment of at least the basis for community" (ibid., 75).

Clearly, the bonds of community are not in the objective facts alone, but rather in some form of the mental "representation", or "apprehension", or "consciousness" (of whatever sort) thereof. Thus the ontology of the community is "psychological" (*seelisch*), only that the relevant attitudes in question need to have some objective, or attitude-independent content – or so Schmalenbach seems to be claiming. The underlying ontology is that first comes the "external" similarity between the prospective members, which are then turned into members by means of some subjective recognition of these facts, which brings us back to the decisive question of what exactly this attitude – recognition, categorization, apprehension, or whatever it might be – really is.

Inspecting Schmalenbach's somewhat meandering flow of thought more closely, however, some negative claims hit the eye. "The formulation upon which community rests is frequently not recognition", he argues. There are several strands in this

text that follow this line, but the strongest point he makes is that communities may exist even where they are not recognized, or acknowledged, as existing by their members: "We may even consciously resist acknowledging community" (Schmalenbach 1977, 77).

The text makes quite clear that Schmalenbach is not simply stating that you may be member of a community even if you dislike your community, and if you would much prefer not to be a member. Rather, the claim is that communities may exist even if its members do not *take it to exist* (in any way). In other words, there may be communities of which nobody knows – not even its members. How does this square with the earlier claim that the communal bond involves something "internal", some "psychic apprehension", some attitude from the side of the participant?

Let us first consider the decisive quote in some more detail: "Little as the objective presence of blood bonds suffices as a condition for community, and much as one must know about it, knowledge of the purely external physical blood relationship would be meaningless for the formation of community if there were no inner psychic apprehension simultaneously present with the external, physical blood relationship." (Schmalenbach 1977, 76f.) It becomes obvious here that in Schmalenbach's conception, there are not only two factors to consider in the analysis of the nature of community, but really three. There is not only the distinction between the objective or circumstantial side, and the subjective of "mental" factors. Rather, two elements are to be distinguished on the subjective side: "knowledge" and "psychic apprehension", which seem to be two rather different phenomena. When Schmalenbach claims that members of a community need not recognize or acknowledge their community, and may even resist acknowledging its existence, this does not mean that the community in question is constituted purely objectively, without any subjective side. Rather, the claim seems to be that "psychic apprehension" of one's community does not entail "knowledge". Individuals may ignore their community, and perhaps even believe that there is no such community, and still constitute a community, as long as there is "psychic apprehension" of that community.

But what, then, is that mysterious apprehension? Schmalenbach characterizes it in the following (rather poetic) way, again distinguishing it from knowledge – the "it" in the quote refers to the community: "One can be aware of it, and perhaps one must be aware of it. But even if one is aware of it, the awareness at best resembles only an inner glow in a clouded stream, which shimmers underneath and which embodies knowledge not at all" (ibid., 77). In the context of this rather poetic passage, Schmalenbach characterizes the "psychic" nature of community as a property of the blood relationship itself, suggesting that the distinction between the "external", "natural", "objective" on the one hand, and the sphere of the mental, or the attitudes of the participants, on the other, ultimately collapses to a psychophysical monism.

For this purpose, he uses the concept of the *unconscious*: "There must be a psychic blood relationship that, as such, has something of an unconscious quality", and further: "The formulation upon which community rests is […] a modification which the unconscious has internalized as part of our psychic makeup" (ibid., 77).

"Community owes its psychic existence to the unconscious" (ibid., 78). For the concept of the unconscious, Schmalenbach refers his readers to Eduard von Hartmann and Gustav Theodor Fechner. Certainly, these conceptions are worthy of careful examination and are perhaps plausible candidates for conceptual reconstruction, but in the context of current social ontology and philosophy of mind, the Fechnerian idea of some psychophysical unconscious to which Schmalenbach alludes here certainly cannot be, as such, taken as a satisfying answer to the question. "The unconscious" may have been an accepted and sufficiently clear notion in Schmalenbach's own time. For us current readers, it oscillates between the obvious (non-occurrent mental states, such as the belief that the earth is round when you're not thinking of it) and the mysterious (a sort of consciousness that is not really conscious at all), and the latter becomes dominant where it is claimed that external facts are mental in the way suggested by Schmalenbach. The decisive question still is: what is the mental nature of community, given that it is not acknowledgement or recognition, which may exist in the absence of any such acknowledgement or recognition, and even exist where the community members explicitly deny that they are members?

9.2   Plural Implicit Self-Knowledge

A rather instructive reading of Schmalenbach's conception of communion, and especially of its distinction to community, can be found in *"Mitmenschliche Begegnungen in der Milieuwelt"*, an early work by the phenomenologist Aaron Gurwitsch. The book has been translated into English under the title "Human Encounters in the Social World", a title that omits the central conceptual tools "Mitmensch" (co-human, fellow human) and "Milieuwelt" – milieu, or milieu-world. This exceptionally rich phenomenological exploration of the foundations of social theory was originally conceived and written between 1928 and 1931, but due to the rather adverse circumstances of the time, it was published only in 1976 (the following references and quotes are to/from the German original).

Gurwitsch's reading of Schmalenbach's theory of community, to which he devotes a couple of pages in the second half of the book (Gurwitsch 1976, 179–184), is instructive in that it gives a clear analysis of the basic problem, that is, Schmalenbach's rejection of Tönnies' sympathy or fellow-feeling based conception of community, his insistence on the "psychic" or mental nature of communities, and his claim that on the side of its members, communities need not be "conscious" at all (Gurwitsch 1976, 180) – Gurwitsch puts the term in inverted commas. He adds the further interesting claim, as Schmalenbach's view, that where communities are "conscious", they tend to be transformed into communions.

Gurwitsch is very much aware of the affinities between Schmalenbach's and Weber's conceptions, and he thus approaches the question of the mental nature of community by placing it in the context of Max Weber's thoughts on tradition; remember that Schmalenbachian community corresponds to Weberian "traditional rule" or "traditional authority", where the relevant questions are taken by the par-

ticipants to be settled by the past. With this, the topic in this passage is history, or "historicity" – the title of the chapter in which Gurwitsch addresses Schmalenbach. The suggestion made here is that the way in which communal bonds tie us together regardless of our "conscious" attitudes (acceptance, recognition, denial, or rejection) is in the way history roots us in the past. It is essential for community that it extends across time into the past – community typically includes ancestors who are long dead (Gurwitsch 1976, 182). In this reading, the decisive feature of community turns out to be that it is never initiated anew in the way communions are. Gurwitsch completes his argument by listing a number of passages from Tönnies' own work in which the link between community and historicity is emphasized.

The question is: If the ontological core of communities are traditions, on what base can they be legitimately individuated in such a way that they persist even where they are rejected, or believed not to exist by their members? It is clear that not any conception of history and the identity of tradition will do for Gurwitsch's (and Schmalenbach's) purpose. A tempting answer to the question may be that where practices are sufficiently similar, and causally connected in a suitable way, traditions can legitimately be said to encompass even agents who deny any connection to the tradition in question. If this is the line to be taken, however, and if it is plausible to say that community, in terms of a collective identity ultimately boils down to the identity of a tradition, it is unclear what the "mental" nature of community really is. After all, the story to be told about community, then, is a matter of objective similarities and causal connections. And that may be plausible for some conceptions of tradition, but perhaps not for a conception of collective identity, or community membership. Obviously, the relevant conception of historicity and the identity of tradition has to be a considerably different one.

In his discussion of historicity, Gurwitsch turns to Dilthey's conception of the relation between historicity and community in the following passage. Gurwitsch commends Dilthey's holism as true and relevant, but he also quotes from Paul Yorck von Wartenburg's letters to Dilthey some rather scathing criticism of the conception of empathy on which Dilthey's conception of community is based. The chapter thus ends on a somewhat inconclusive note. Sharp-minded as Gurwitsch is in revealing the basic conceptual problem in Schmalenbach's conception of community and communion, and as the material that Gurwitsch brings to bear on Schmalenbach's views is, the passage closes without a final answer to the question of what exactly the mysterious "psychic" nature of community, that poetic "inner glow" in the "clouded stream that is not knowledge", may be.

In order to approach the question of the kind of attitude, or mental state, or psychic feature that is co-constitutive of community anew, let us first consider some of its features that have come to the fore in the above discussion. First, it is obviously a self-directed attitude in that the apprehension is of the community, by its members, and not by an outside observer. It may not be a *de se*-attitude, but it is certainly a *de nobis*-attitude, that is, it is first-personal, even though it may not be first-personal in the singular, but rather in the plural. Second, it is an attitude that is compatible with the self-referential belief not to be a member of the community, or the belief that the community in question does not exist. One potential way of making these features – the "taking" oneself to be a member without "believing" to be a member, or with the

belief not to be a member – compatible with each other is along the lines of the distinction between pre-reflective self-awareness and reflective self-referential attitudes. In the case of singular self-awareness, it has repeatedly been claimed that the fundamental way a subject's mental state is accessible or transparent to that subject as his or hers cannot be of the sort of attitude that is "of" him- or herself in the way his or her beliefs about the world are "of" the world. Furthermore, the claim is that it is only in virtue of that peculiar relation to itself that (access-) consciousness is possible. Consciousness may involve a qualitative aspect, "something it is like", if you will, but any such "what-it-is-likeness" does not occur independently of somebody *for whom* there is something it is like. The *subjective aspect* of consciousness is the peculiar way in which the "what-it-is-likeness" is for the experiencer. The subjectivity in question is not a matter of the fact that a candy may taste different to you than to me, but rather, a matter of access: that consciousness involves a basic sense of "mineness".

Schmalenbach is among the recognized proponents of this general view of the structure of self-consciousness, self-awareness, or self-knowledge (the terms used vary from theory to theory, and will be used interchangeably in the following; Schmalenbach's own term is "implicit self-knowledge"). He develops it quite extensively in the context of his *opus magnum* Geist und Sein (Schmalenbach 1939), as well as in smaller publications from around that time. Schmalenbach here analyzes, among other mental phenomena, what he calls "object-oriented experiences", that is, occurrent cognitive intentional attitudes. These experiences, Schmalenbach claims, "experience themselves", just as any consciousness is "of" itself in that fundamentally different way than the experience of the world is "of" the world (Schmalenbach 1939, 215f.; 374ff.). The kind of "meaning" involved in conscious or occurrent intentionality always "means itself" in a way that is different from the way intentionality "means" some worldly object or content in that it is *implicit.* Throughout most of his writings on the topic, Schmalenbach uses the Term "Wissen" (knowledge") calling the way in which such knowledge is always "of itself" *implicit self-knowledge.*

An attractive feature of the view that the subjective aspect of consciousness may be of that peculiar kind is that it sheds light on some peculiarities of self-misconceptions. Whoever takes himself to be somebody else has an attitude that involves a mistake in *predication*, but not in identification, because it is *of himself* that he believes that he is somebody else. In this way, pre-reflective self-awareness is constitutive even for self-misrepresentation at the reflective level. The suggestion to be made in the following is that the Schmalenbachian case of social self-misrepresentation is of the same *nature:* whoever is a community member, but believes not to be a community member, is the former in virtue of implicit self-knowledge, and believes the latter in virtue of self-misrepresentation. The "inner glow", the "psychic apprehension" of which Schmalenbach poetically speaks in his above quotes, the basic nature of the communal bonds is, in other words, implicit self-knowledge – and the decisive step to take in order to see how this is possible is to consider that not all first-personal knowledge, not all self-consciousness or self-awareness is of the singular kind. The first person has a plural, too, and

so does our self-consciousness and –awareness (Schmid 2014a). We may be plurally self-aware of us, as a group, without having a corresponding reflective attitude, or even in the face of conflicting self-(mis)representations.

Jean-Paul Sartre, another important ancestor of the phenomenology of pre-reflective self-awareness, considered the possibility of taking the theory from the singular to the plural in the third part of his "Being and Nothingness", but shied away from the "nous-sujet" for reasons partly having to do with his Cartesian heritage, partly with his political agenda (cf. Schmid 2012). Schmalenbach, in his *opus magnus*, mentions the concept of collective consciousness affirmatively, and considers the possibility of "different stages of over-individual consciousness", such as "the European consciousness" (Schmalenbach 1939, 327ff.). He clearly does not mean an aggregate or an average attitude, but he does not explain how his first-personal analysis of consciousness may apply to consciousness that is not individual consciousness but collective. Nowhere in his work, as far as I can see, does Schmalenbach consider the possibility to take his extremely sharp-minded and rich account of the first-personal nature of consciousness to the plural. His remarks on collective consciousness are the closest he comes, but he does not make the final step.

In conclusion, a short remark on where the suggestion that Schmalenbach's "inner glow" is implicit plural self-knowledge leaves his distinction between community and communion. In the light of this suggestion, Schmalenbach's oscillating between the claim that communities are built on external objective factors, and the claim that those "objective factors" are in fact mental seems to make sense. Implicit plural self-knowledge is not subjective in the sense beliefs or conceptions of ourselves are, and it is independent of such self-conceptions. But neither is it objective in the sense biological blood relations are. Implicit plural self-knowledge is not proper knowledge, but it is "apprehension" nevertheless, and if that is what communities are, Schmalenbach need not endorse the conservative line of thinking about community. Who we are is "up to us", but not in the way that communities can be willed into being by means of some arbitrary self-categorization, but in the way in which our shared lives involve a plural implicit self-conception, a pre-intentional "sense of 'us'".

At the same time, this sheds a critical light on Schmalenbach's communions. Schmalenbach does repeatedly emphasize that where the communal bond becomes conscious to the participants, a community is transformed into a communion, and this is very much in line with the given interpretation, as implicit and pre-reflective plural self-knowledge then becomes explicit and reflective plural self-knowledge. However, Schmalenbach emphasizes that communions often do not involve communities. The phenomenon he has in mind is of people from different backgrounds joining together, and that is certainly a real and important phenomenon against which only overly conservative conceptions would close themselves off. But especially given Schmalenbach's paradigmatic example, and his emphasis on the fact that communities can exist even though their members believe they do not, the possibility should be considered that conversely, communions may not exist even though their members believe they do. The "conscious emotional experience" that

Schmalenbach places at the heart of his analysis may be delusional, and it will be delusional where communion has no communal core; only where people are bound together by a pre-intentional "sense of 'us'" can their affective and cognitive reflective self-conception refer to themselves in the right way.

Whatever the necessary adaptations and changes may be that result from a combination of Schmalenbach's two basic insights, it seems obvious that the neglect Schmalenbach's work has been suffering over the past half of a century is indeed undeserved.

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Chapter 10
Phenomenology of Experiential Sharing: The Contribution of Schutz and Walther

Felipe León and Dan Zahavi

Abstract The chapter explores the topic of experiential sharing by drawing on the early contributions of the phenomenologists Alfred Schutz and Gerda Walther. It is argued that both Schutz and Walther support, from complementary perspectives, an approach to experiential sharing that has tended to be overlooked in current debates. This approach highlights specific experiential interrelations taking place among individuals who are jointly engaged and located in a common environment, and situates this type of sharing within a broader and richer spectrum of sharing phenomena. Whereas Schutz' route to the sharing of experiences describes the latter as a pre-reflective interlocking of individual streams of experiences, arising from a reciprocal Thou-orientation, Walther provides a textured account of different types of sharing and correlated forms of communities.

10.1 Introduction

Although there is a widespread consensus in contemporary debates that the capacity to share intentions plays a pivotal role in the establishment of human forms of sociality (Tomasello et al. 2005; Rakoczy 2008), it is still an open question what this sharing amounts to. Many agree that, when applied to intentions and other experiences, the talk of sharing isn't merely metaphorical, and that it involves either something more than an aggregation of individual subjects' experiences, or something altogether different from such an aggregation (for review see Tollefsen 2004; Schweikard and Schmid 2013). For instance, according to one influential approach, shared or collective intentions, although located in individual minds, are characterized by a

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sui generis psychological mode (Searle 1990, 1995, 2010; Gallotti and Frith 2013).[1] Other theorists have argued that shared intentions can be accounted for in terms of individuals' intentions with the form 'I intend', characterized by specific interrelations at the level of their propositional content (Bratman 1999, 2014; Pacherie 2007), whereas a third family of prominent proposals has suggested that shared intentions ought to be attributed to collective or plural agents (Rovane 1998; Gilbert 1989; Pettit and List 2011). It has by now become customary to describe these approaches to collective intentions in terms of *mode-*, *content-* and *subject-* approaches (Schweikard and Schmid 2013).

In spite of their differences, these groups of proposals tend to be underpinned by some common presuppositions. In the first place, they have usually focused on the sharing of intentions, since the latter are taken to play a crucial role in joint actions. The rationale for this preference seems to be that, analogously to the way in which individual intentions are taken to be relevant in explaining individual actions, shared intentions are taken to be as relevant in accounting for joint actions. In recent years, however, there has been an increasing focus on the capacity that minded beings have for sharing other types of mental phenomena, like emotions (cf. von Scheve and Salmela 2014; Schmid 2009) and perceptual experiences (cf. Eilan et al. 2005; Seemann 2011). Secondly, traditional approaches to the sharing of intentions have tended to overlook certain aspects of the cognitive, experiential and affective interrelations between individuals that might be of relevance if the latter are to share intentions and get involved in joint engagements. Think of the mutual recognition that potential collaborators in a joint activity might engage in; consider the sense of joint control that they often enjoy over a joint action in order to accomplish it successfully (Pacherie 2011, 2014; Tollefsen 2014); or think of the sense of mutual trust that is often crucial if the jointness of an activity is not to be disrupted (cf. Seemann 2009; Schmid 2013).

These and other relational aspects of shared engagements are not usually highlighted in much of the theorizing about the sharing of experiences. This is clearly the case with Searle's approach, which in spite of recognizing that collective intentions involve a "sense of us" (Searle 1990, 414), and of "doing something together" (Searle 1995, 24), allows for the possibility that a subject may have we-intentionality even in the absence of any other subject (Searle 1990, 407).[2] And, apart from Searle's, other influential approaches, like Bratman's (1999, 2014) and Gilbert's (1989, 2014), even if sympathetic towards the idea that individuals must stand in actual and specific interrelations in order to share intentions, have focused mainly on the propositional (Bratman) and normative (Gilbert) dimensions of this relationality. Perhaps one might be sceptical from the outset about the relevance that relational and experience-based aspects, like the previously mentioned, may have in accounting for the sharing of intentions. But then again, one might also ask whether it is possible to obtain a proper understanding of what sharing actually amounts to if one neglects the experiential dimension and fails to analyse the very structure of a

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[1] In the analytic philosophical tradition, the expression "shared intention" was introduced by Bratman (cf. Gilbert 2014, 97). Here it is used as neutral with respect to the different accounts.

[2] For some critiques, see Schmid 2009; Pacherie 2007; Meijers 2003.

we-experience. As Tollefsen has recently argued, the complexity of joint agency demands taking into account both the personal and the subpersonal levels of analysis (2014, 28). More in detail, she notes that "the qualitative aspects of doing things with others", or as she also calls it, "the phenomenology of joint agency" has been for the most part overlooked in the literature (2014, 22), and goes on to defend the idea that "the experiential aspect of doing things with others plays a role in the control and monitoring of joint actions" (2014, 14). While Tollefsen readily acknowledges that her use of the term "phenomenology" does not refer to the philosophical tradition to which Husserl, Heidegger and others belonged (Tollefsen 2014, footnote 1), her comment is nevertheless suggestive. It is well known that classical phenomenology offers sophisticated analyses of intentionality. Might it also offer insights on the topic of collective intentionality and experiential sharing?

The contemporary debate on collective intentionality in analytic philosophy has spanned three decades, but questions concerning the structure of experiential sharing (broadly construed) and social reality have obviously been a long-standing concern in philosophy, and, as it happens, also in classical phenomenology (Scheler 2008 [1913/1923], Schutz 1967 [1932], Walther 1922; Gurwitsch 2012 [1931], Stein 2010a [1917], b [1922], Husserl (1952, 1973), von Hildebrand 1975 [1930]).

In the following contribution, our main aim is to present some details of these partially forgotten resources by considering the early work of the phenomenologists Alfred Schutz (1899–1959) and Gerda Walther (1897–1977). We will show that both Schutz and Walther developed, quite independently of each other, insightful analyses about the structure of experiential sharing. Furthermore, we will argue that some of their ideas can be brought together in an approach to sharing that highlights specific experiential interrelations taking place among individuals who are jointly engaged and located in a common environment. Given the richness and broad scope of Schutz's and Walther's analyses, we cannot here do full justice to their accounts. Rather, we will focus on Schutz's account of what he terms the "we-relationship", and on the elements of Walther's proposal that enrich and clarify some of Schutz's ideas. In particular, Walther's distinction between types of communities and correlative forms of sharing will be discussed, as well as her notion of "communal experiencing" (*Gemeinschaftserleben*) that she distinguishes from related phenomena, such as empathy (*Einfühlen*) and sympathy (*Mitfühlen*).

Instead of following the chronological order of publication of Walther's and Schutz's contributions (Walther's doctoral dissertation *Ein Beitrag zur Ontologie der sozialen Gemeinschaften* was published ten years before Schutz's book), we will start with the latter. The reason for this is that, as we will see, Schutz's analysis of the social world explores some of the ground that is presupposed in Walther's account.

10.2   Alfred Schutz

In his 1932 book *Der sinnhafte Aufbau der sozialen Welt: Eine Einleitung in die verstehende Soziologie*, Alfred Schutz faults Weber for failing to offer a proper account of the constitution of social meaning, and more generally for being too

uninterested in more fundamental questions in epistemology and theory of meaning. It is this lacuna that Schutz then seeks to overcome by combining Weber's interpretive sociology with reflections drawn from Husserl's phenomenology. According to Schutz, one of the more specific shortcomings of Weber's theory is that it fails to acknowledge the heterogeneity of the social world. As Schutz writes, "Far from being homogeneous, the social world is structured in a complex way, and the other subject is given to the social agent (and each of them to an external observer) in different degrees of anonymity, experiential immediacy, and fulfilment" (1967, 8. Modified translation).[3] In the fourth and central part of the book (1967, 14), Schutz proceeds to distinguish four different spheres within the social world: the sphere of the "directly experienced social reality" (1967, 142) (*soziale Umwelt*), the "social world of contemporaries" (1967, 142) (*soziale Mitwelt*), the "social world of predecessors" (1967, 143) (*soziale Vorwelt*) and the "social world of successors" (*soziale Folgewelt*) (1967, 143).

The realm of directly experienced social reality, or to put it differently, the *social surrounding world*, is the one in which the social world is open for direct experience, and within which others are presented as fellow men (*Mitmenschen*). It would be wrong, however, to restrict the social reality that a subject has experience of to this social dimension. According to Schutz, we must recognize that there is also a social world of contemporaries (*Nebenmenschen*), that coexists with the subject and is simultaneous with his duration, although the lack of spatial proximity prevents other subjects' experiences from being grasped as originally and directly as it is possible in the social surrounding world. Furthermore, a subject can also be directed to a world of predecessors (*Vorfahren*), that existed at some point but does not exist anymore, and to a forthcoming world of successors (*Nachfahren*), that can be apprehended only in a vague and indeterminate manner.

According to Schutz, the face-to-face encounter characteristic of the *social surrounding world* provides for the most fundamental type of interpersonal understanding (Schutz 1967, 162). It is at the basis of what he terms the "we-relationship" or "living social relationship", which is the central concept in his account of experiential sharing. In accordance with a view to be found in other classical phenomenologists (Stein 2010a [1917], Scheler 2008 [1913/1923], Merleau-Ponty 2002 [1945]), and which has seen a revival in recent years (Zahavi 2011; Gallagher 2008; Smith 2010; Krueger 2012; León 2013; Overgaard 2012), he endorses the idea that the experience of the bodily mindedness of others is prior to and more fundamental than any understanding of others that draws on imaginative projection, memory or theoretical knowledge (1967, 101). We only start to employ the latter strategies when we are already convinced that we are facing minded creatures, but are simply unsure about precisely how we are to interpret the expressive phenomena in question. To that extent, there is a level at which the other is given as "unquestionable" (*fraglos*) (1967, 140). By this Schutz does not mean that we have an infallible access to another subject's experiences, but rather that any kind of doubting, theoretical reasoning, etc.

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[3] The English translations of passages from Schutz's book have throughout been modified where necessary, in order to provide a more accurate rendering of the original.

about the latter presupposes that they are given in the first place to us. In the context of the social surrounding world, other subjects are given on the basis of what Schutz calls the "Thou-orientation" (*Du-Einstellung*), that is, "the intentionality of those acts whereby the Ego grasps the existence [*Dasein*] of the other person in the mode of the original self" (1967, 164; cf. Zahavi 2015). Along similar lines, Schutz allows for a "genuine understanding of the other person" (*echtes Fremdverstehen*) (1967, 111), where our intentional act is not directed at the observed body, "but through its medium to the foreign experiences themselves" (1967, 111. Modified translation).

One requirement that must be in place in order to allow for such a genuine understanding is that the perceiving and the perceived subject's streams of consciousness are "simultaneous" or "co-existent" (1967, 102). Drawing on ideas found in Bergson (1967, 103), Schutz argues that "whereas I can observe my own lived experiences only after they are over and done with, I can observe yours as they actually take place. This in turn implies that you and I are in a specific sense "simultaneous", that we "coexist", that our respective streams of consciousness intersect" (1967, 102). What is at stake here is more than a mere objective simultaneity. Indeed, Schutz argues that if we take seriously the idea that we have a direct access to other people's experiences, and that this direct access is grounded on the simultaneity of the streams of consciousness, we should deny that the epistemic asymmetry between the first-person and the second-person perspectives entails that the access I have to your experience is somehow secondary or parasitic when compared to the access you have to your own experience. Actually, and quite to the contrary, if we follow Schutz's analysis, my perspective on you and your experiences is to some extent privileged in that I can be thematically aware of the latter as they unfold pre-reflectively, whereas you cannot be thematically aware of your own experiences prior to reflecting upon them (1967, 102, 169).

How are these ideas concerning the possibility of a direct perception of other subjects, of the simultaneity of the streams of consciousness, and of the distinctiveness of the second-personal access related to Schutz's notion of the we-relationship? According to him, the Thou-orientation can be in principle one-sided (1967, 146), that is, it doesn't need reciprocation or communication.[4] However, when two (or more) individuals engage in a reciprocal Thou-orientation, i.e., when each – in the face-to-face relationship – relates to the other as a you, we have what Schutz calls a "we-relationship" or, as he also calls it, a "living social relationship":

> I take up an Other-orientation toward my partner, who is in turn oriented toward me. Immediately, and at the same time, I grasp the fact that he, on his part, is aware of my attention to him. In such cases I, you, we, live in the social relationship itself, and that is true in virtue of the intentionality of the living Acts directed toward the partner. I, you, we, are by this means carried from one moment to the next in a particular attentional modification of the state of being mutually oriented to each other. The social relationship in which we live is constituted, therefore, by means of the attentional modification undergone by my

[4] The fact that Schutz allows for a one-sided Thou-orientation is surprising and must ultimately be considered a mistake (cf. Carr 1987; Zahavi 2014). For a more extensive discussion of the significance of reciprocal Thou-orientation and second-person perspective taking, see Zahavi 2015.

> Other-orientation, as I immediately and directly grasp within the latter the very living reality of the partner as one who is in turn oriented toward me. We will call such a social relationship a 'living social relationship'. (Schutz 1967, 156–157)

The living social relationship or we-relationship allows for different levels of concretisation (*Konkretisationsstufe*). For example, the richness of a face-to face conversation with an old friend obviously differs from simply apprehending a stranger as a minded being, with no concern for his or her specific experiences. As a limiting case, Schutz even refers to a "pure we-relationship" (1967, 164), characterized by an apprehension of the other's *Dasein*, of his bare presence, rather than of his *Sosein*, that is, of his being in a certain determinate manner (1967, 164). Furthermore, the experiential immediacy (*Erlebnisunmittelbarkeit*) of a we-relationship can vary along a spectrum in its intensity and intimacy (1967, 168, 176). A conversation, for instance, can be animated or offhand, eager or casual, superficial or quite personal, and so forth (1967, 168).

A crucial element in Schutz's account of the social relationship in the surrounding world is that the distinctiveness of the latter is constituted in the first place by an "interlocking" of perspectives. As he puts it, "This interlocking [*Ineinandergreifen*] of glances, this thousand-faceted mirroring of each other constitutes in the first place [*überhaupt erst*] the peculiarity of the social relationship in the surrounding world" (1967, 170. Modified translation). Although Schutz emphasizes the reciprocal and interlocking character of the we-relationship, it is however important to get clearer on what precisely this "interlocking" really amounts to. Importantly, the we-relationship doesn't come about as a result of a mere summation and alternation of your and my Thou-orientations; rather it involves something new. In being directed to your experiences, I apprehend them in a manner which is in principle foreclosed to you, and, since, at the same time, you are aware of my apprehension of your experiential life, your experiences are modified in a certain way (1967, 171). However, in order for the idea of interlocking to gain sufficient weight, the modification at stake cannot be incidental, but must be constitutive of the interlocking character of the we-relationship. Were your experiences not modulated by my apprehension of them and vice-versa, we could each have them in the absence of any joint engagement. This is why Schutz insists that, as a result of living in such a we-relationship, we affect each other immediately (1967, 167).

Schutz occasionally writes that the singular reflections (*Spiegelungen*) from the I to the Thou, and vice versa, are not differentiated, but apprehended as a unity in the we (1967, 170):

> Within the unity of this experience [the we-experience] I can be aware simultaneously of the experiences of my own consciousness and of the series of experiences in your consciousness, living through the two series of experiences as one series, that of the common we. (Schutz 1967, 170. Modified translation)

Although he even writes that we are then "living in our common stream of consciousness" (1967, 167), one must be cautious not to be misled by this and similar statements. In fact, rather than entailing a fusion that destroys individuality, the suggestion here is that our respective streams of consciousness are interlocked to

such an extent that each of our respective experiences are colored by our mutual involvement (1967, 167, 180). Had there been any kind of true fusion, the focus on the you constitutive of the we-relationship would be dissolved. Furthermore, as Schutz emphasizes, the temporal closeness between you and me, within the we, goes hand in hand with spatial proximity but discontinuity (1967, 166).

Schutz insists that the we-relationship and the interlocking of perspectives are primarily pre-reflective and lived through. By this he means that if, while participating in a we-relationship, one tries to thematically observe or reflect on the latter, one will thereby disrupt it and withdraw from it. As he writes, "To the extent that we are going to think about the experiences we have together, we must to that degree withdraw from each other. If we are to bring the we-relationship into the focus of our attention, we must stop focusing on each other. But that means stepping out of the social relationship in the surrounding world, because only in the latter do we live in the we" (1967, 167. Modified translation). The greater my reflective awareness of the we-relationship, the less am I involved in it, and the less am I genuinely related to my partner as a co-subject (1967, 167).

Until now, some of the crucial elements of Schutz's analysis of the we-relationship have been highlighted: direct perception of other subjects, co-existence of streams of consciousness, second-person authority, reciprocity, and pre-reflective character. Of these conditions, the recognition of the distinctiveness of the second-personal access complements the idea of direct perception when the latter is understood as reciprocal. At the same time, we have suggested that the second-person authority sustains the pre-reflective interlocking of experiences that, according to Schutz, marks the distinctive character of the we-relationship. But would these preconditions be sufficient for the constitution of a we? Think of a situation where two people are having an argument and end up insulting each other. Even though the case may be constructed such that all of the aforementioned conditions are met, one might nevertheless have reservations about describing the situation as one involving a shared we-experience. Part of the problem might be due to the fact that Schutz's paradigmatic example of a reciprocal Thou-orientation, namely the "face-to-face" situation, is precisely a situation where two individuals confront each other. Curiously enough, however, when Schutz wants to illustrate the reciprocal (*wechselseitig*) character of the Thou-orientation, as it happens in the we-relationship, he departs from his standard case and mentions an example where the focus is not on the you, but rather on the world:

> Suppose that you and I are watching a bird in flight. […] Nevertheless, during the flight of the bird you and I have "grown older together"; our experiences have been simultaneous. Perhaps while I was following the bird's flight I noticed out of the corner of my eye that your head was moving in the same direction as mine. I could then say that the two of us, that *we*, had watched the bird's flight. What I have done in this case is to coordinate temporally a series of my own experiences with a series of yours. (Schutz 1967, 165)

In the case of experiential sharing, the experience is no longer simply experienced by me as *mine*, but as *ours*. That is why it makes perfect sense to articulate the experience in question with the use of the first-person plural. One interesting feature of Schutz's example, however, is that the moment of sharing doesn't arise

when the subjects are reciprocally directed to each other, but rather when both are jointly directed at an object in the world. Of course, one might well think that the face-to-face encounter is a precondition for focusing on a common object, and that a focus on the other subject and on the common object may alternate as a specific perceptual situation unfolds. Nevertheless, and in spite of Schutz's occasional indications to the contrary, it seems that the face-to-face encounter isn't yet sufficient in order to achieve the desired reciprocity, rather what is also needed is a kind of coordination that is sustained by a common focus on an external object or project in the world (Carr 1987, 271).

It might here be important to insist upon the difference between being-for-one-another (*Füreinandersein*) and being-with-one-another (*Miteinandersein*). Whereas the you-me relation can be dyadic, the we often involves a triadic structure, where the focus is on a shared object or project. Not only can there be cases of intense you-me interactions, such as strong verbal disagreements or arguments, where there is not yet (or no longer) a we present but, even in more conciliatory situations, paying too much attention to the other might disrupt the shared perspective. The couple who is enjoying the movie together can serve as a good illustration of this. Their focus of attention is on the movie and not on each other. However, this is not to say that emotional sharing is independent of and precedes any second-person awareness of the other. We shouldn't make the mistake of equating consciousness with thematic or focal consciousness. After all, I can remain aware of my partner, even if I am not thematically aware of her, and it is hard to make sense of the notion of shared experiences, if other-awareness in any form whatsoever is entirely absent.

At this point, it will be useful to consider different types of interlocking systems that may come about as a result of different common foci. Gerda Walther's investigation on the ontology of social communities proves useful to locate the reciprocal Thou-orientation investigated by Schutz within a broader and more textured account of experiential sharing. After all, there might well be *shared experiences* which are not *we-experiences* in Schutz's sense.

10.3   Gerda Walther

In her 1919 dissertation *Ein Beitrag zur Ontologie der sozialen Gemeinschaften* (Walther 1922) Walther offers a far more detailed analysis of we-intentionality than the one found in Schutz. Her analysis of experiential sharing is in particular situated within a more overarching investigation on the ontology of social communities.[5] Since Walther concedes that she, in dealing with this latter topic, is presupposing an account of how we come to know foreign subjects (1922, 17), one might also say

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[5]As we have already said, a full analysis of the book falls beyond the scope of this contribution. Walther's work is still fairly unknown (but see Caminada 2014 and Schmid 2009, 2012).

that Walther's investigation to some extent presupposes part of the ground that Schutz was later to cover in his analysis of the Thou-orientation.[6]

Walther starts out by pointing to the insufficiencies of some standard accounts of communal life. A social community is distinguished by the fact that its members have something in common; there is something that they share (1922, 19). However, for a number of individuals to constitute a social community, it is not enough that they simply have the same kind of intentional state and are directed to the same kind of object. Such a match could obtain in situations where the individuals had no awareness or knowledge of each other. And that would be insufficient. What must also be required is some knowledge that the individuals have of each other. Moreover, the knowledge has to be of a special kind. Assume that A, B, and C are three scientists living in three different countries who are all working on the same scientific problem. The mere fact that each of the scientists knows about the existence of the other two would not as such make them into a community (1922, 20). But what if they interacted with one another? As Walther observes, such a reciprocal interaction, where each individual influences the intentional life of the other definitely brings us closer to what we are after. However, something would still be missing. Consider the case of a group of workers who are brought together to finish a construction, and who interact in order to obtain the same goal. To some extent they work together, but they might still consider each other with suspicion or at best with indifference (1922, 31). Seen from without, they might be indistinguishable from a communal group, but they only form a society (*Gesellschaft*) and not a community (*Gemeinschaft*). For the latter to obtain, something more is needed. What is missing in the two latter cases is the presence of an inner bond or connection (*innere Verbundenheit*), a feeling of togetherness (*Gefühl der Zusammengehörigkeit*). It is only when the latter is present that a social formation becomes a community (1922, 33). As Walther writes,

> We are standing here on the same ground of those theorists […] that consider the essential element of the community to be a '*feeling of togetherness*', or an *inner unification* [*innere Einigung*]. Every social configuration that exhibits such an inner unification, and only those configurations are, in our opinion, communities. Only in communities can one strictly speak about communal experiences, actions, goals, aspirations, desires, etc. (in contrast to experiences, actions, etc. that may be the same or similar, and that can be present in societal relations [*gesellschaftlichen Verbindungen*]). However, not every social relation exhibits such a feeling of togetherness, such an inner bond. (Walther 1922, 33. Emphasis in the original)

To enjoy a we-experience, say, a shared feeling of joy, is to experience the other as participating with me in that experience. Thus, the joy is no longer simply experienced by me as *mine*, but as *ours*, *we* are experiencing it. The we in question is, however, not something that is behind, above or independent of the participating individuals (1922, 70). The we is not an experiencing subject in its own right.

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[6]Walther makes reference here, amongst others, to Husserl, who is also one of the key sources of Schutz's book, in particular of the latter's concept of *Du-Einstellung* (cf. Schutz 1967, 101). As for the topic of *Einfühlung*, Walther refers to Stein's *Zum Problem der Einfühlung*, and to the *Anhang* of Scheler's *Phänomenologie der Sympathiegefühle* (later made part of his *Wesen und Formen der Sympathie* as the last section of the last part of the book. Cf. Schlossberger 2005, 148).

Rather the we-experiences occur and are realized in and through the participating individuals (1922, 70). The latter consequently come to have experiences they would not have had, were it not for the fact that they stand in certain relations to others. But again how does this happen? It is not as if I first as an isolated individual have individual experiences that I then compare with the individual experiences of others, and which I then, if I think they experience the same as I, unite myself with in order to grasp the experiences as communal experiences. Such processes might eventually occur prior to the establishing of communal experiences, but they are not themselves true communal experiences. True communal experiences are experiences which on the basis of a prior unification emerge from *us*, from the others in me, and from me in the others (1922, 72). Consider as an example a situation where two individuals are admiring a beautiful vista. The other individual expresses his admiration and I grasp his admiration empathically. At this stage, the admiration is given as foreign and not as my own. I might also personally admire the view. But even so, his admiration is given to me as his own, and therefore not as ours. At some point, however, the situation might change and we might come to enjoy the vista together. Although I do not see the vista through his eyes, his admiration of the vista becomes part of my experience of it (and vice-versa). Thus, each of us comes to have a complex experience that integrates and encompasses several perspectives at once. According to Walther, this peculiar belonging-to-me of the other's experience is what is distinctive and unique about we-experiences (1922, 75).

In her analysis, Walther carefully distinguishes communal experiences, or experiential sharing, from empathy, imitation (and emotional contagion) and sympathy. In the first place, to grasp the experiences of the other empathically is quite different from sharing his experiences. In empathy, I grasp the other's experiences insofar as they are expressed in words, gestures, body posture, facial expressions, etc. Throughout I am aware that I am not myself the one who originarily lives through these experiences, but that they belong to the other, that they are the other's experiences, and that they are only given to me *qua* expressive phenomena (1922, 73). Even if we by coincidence had the same kind of experiences, this would not amount to a we-experience. Despite the similarity of the two experiences, they would not be unified in the requisite manner, but would simply stand side by side as belonging to distinct individuals (1922, 74). Secondly, we also need to distinguish experiential and emotional sharing from imitation or contagion. In the latter case, I might take over the experience of somebody else and come to experience it as my own. But insofar as that happens, and insofar as I then no longer have any awareness of the other's involvement, it has nothing to do with shared experiences. The latter consequently requires a preservation of plurality. Finally, to feel sympathy for somebody, to be happy because he is happy or sad because he is sad also differs from being happy or sad *together* with the other (1922, 76–77). It is only when the subject experiences that the experience which is there in the other also belongs to him- or herself that we have a true communal experience (1922, 78). In the true communal experience it is as if a ray departed from my own experiential life and became interwoven with the experiential life of the other (1922, 79).

What exactly does Walther have in mind when she refers to this inner bond, this feeling of togetherness? She claims that it amounts to more than some kind of reciprocal influence that subjects may have on each other (*Wechselwirkung*), and seeks instead to explain it in terms of a certain reciprocal unification (*Wechseleinigung*) (1922, 63), intrinsically characterized by its affective character. The feeling of togetherness is precisely a feeling, and not a judgment or an act of cognition, although the former can certainly give rise to the latter (1922, 34). Walther next distinguishes different types of unification ranging from an actual and voluntary unification to a broader and more habitual unification. Although the latter presupposes the former, its relevance is nevertheless highlighted by Walther when she writes that "the habitual unifications are almost more important for the foundation of communities and of the communal life than the actual unifications, that dissolve quickly" (1922, 48), and that "the habitual unification is what, in the first place, must found and underpin [*untergrundieren*] the whole communal life" (1922, 69). This emphasis on habitual unification is not meant to undermine the importance of our direct awareness of and interaction with others, rather it goes hand in hand with Walther's distinction between we-experiences in the narrow sense of the term – which require spatial proximity and temporal simultaneity (1922, 66, 68) – and communal experiences. People can experience themselves as members of a community, can identify with other members of the same community, and can have group experiences even if they do not live temporally and spatially together, i.e., even if – to use some terms from Schutz – they are not fellow men or contemporaries. Some communities, which Walther calls "personal communities" (*personale Gemeinschaften*), come about because different individuals directly bond with each other. In other cases, however, the bond between individuals is mediated by a relation to specific objects (be they objects of art, religious associations, territories, rituals, scientific methods, social institutions, etc.). As a result of being bonded with these objects, the individuals might then also feel unified with other people who are likewise attached to the same kind of objects, even if they have never met them in person (1922, 49–50). Walther refers to the latter form of communities as "objectual communities" (*gegenständliche Gemeinschaften*). The more the unification of the members is conditioned by the unification with external objects (rather than being dependent on direct interpersonal interaction) the more the knowledge that the different members have of each other can be indirect, and the greater their spatio-temporal separation can be (1922, 82).

Consequently, Walther emphasizes that not every unification is dependent upon the subject's first having empathically encountered other subjects with similar experiences. However, the merely presumed presence of similar content and the merely presumed presence of other humans with whom one is unified, but of whom one doesn't know anything, does not yet amount to a real community (1922, 81). To have a real and fully constituted community it is important that the fulfilment of the intention that is directed at other human beings is brought about by direct *or* indirect (depending on the kind of community) real experience, where the different members are standing in reciprocal relationships to one another (1922, 82). The relational

element is preserved, even in those cases where subjects do not have a direct access
to each other.

Insofar as a community is institutionalized and organized around specific exter-
nal objects, the concrete interaction between the members of the community is of
less importance for the maintenance of the community. In those cases, by contrast,
where the community is primarily interpersonal, the reciprocal interaction is much
more important (and the focus on external objects might primarily be a means to an
end, namely that of being together) (1922, 91–93). In the former case, the members
are also far more replaceable than in the latter. Some communities, like friendships,
families and marriages, are not regulated by a shared external object or goal. They
are unified without pursuing common goals, but even in these cases, the communal
life is penetrated by a shared meaning or goal, although the goal, instead of being
external, is the flourishing of the community itself. Walther calls these forms of
communities "reflexive communities" (*reflexive Gemeinschaften*) (1922, 67).

Coming back to the we-experience in the narrow sense of the term, the fact that
it involves a certain unification or integration does not entail that it lacks any inter-
nal complexity. According to Walther, the following moments must be distin-
guished: (1) the experience of A is directed at an object, (1a) the experience of B is
directed in a similar way as A at the same object. (2) At the same time, A empathi-
cally grasps the experience of B, (2a) just as B empathically grasps the initial expe-
rience of A. (3) A's unification (*Einigung*) with the empathically grasped experience
of B, and (3a) B's unification with the empathically grasped experience of A. (4)
Finally, A empathically grasps B's unification with A's experience, (4a) just as B
empathically grasps A's unification with B's experience (1922, 85).[7] As the follow-
ing diagram, which is Walther's own (1922, 86), illustrates, one might even talk of
a certain web of intentionality:

<hr>
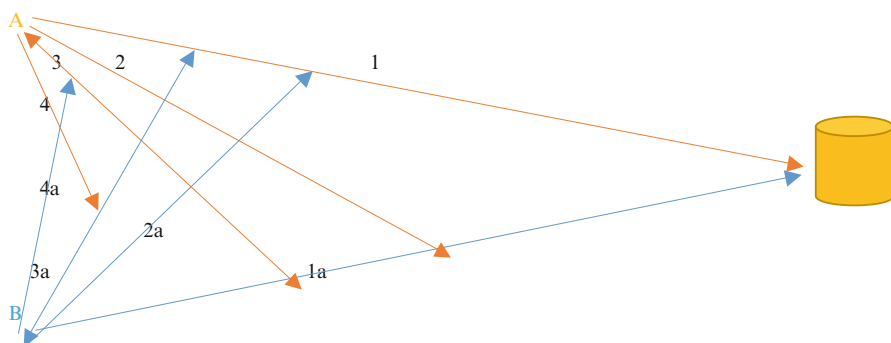
[7] A somewhat similar account can also be found in Husserl. Consider for instance the following
quote from 1922: "An act, in which an I is directed to another, is founded first of all on the follow-
ing: I_1 empathically apprehends I_2, and vice-versa, but not only this. I_1 experiences (understands) I_2
as understandingly experiencing [*verstehend Erfahrenden*], and vice-versa. I see the other as an
other that sees me and understands me. Furthermore, I 'know' that the other also knows that he is
seen by me. We understand each other, and in the mutual understanding we are spiritually together,
in contact" (Husserl 1973, 211).

It is important to note that the different components of the we-experience distinguished by Walther are characterized as *moments* of an experience that is "entirely lived through as a unit" (1922, 85). However, in spite of this, one might still wonder whether Walther's account does not given rise to an infinite regress. *Prima facie*, it is not clear why the account stops at 4a. In order for the we-experience to take place, wouldn't it be necessary to also include a moment 5, in which A would be empathically directed at B's empathic awareness of A's identification with B's experience (and a corresponding moment 5a)?[8] And if so, wouldn't it be necessary to also include a moment 6, and so forth? This objection not only serves to highlight some distinctive elements of Walther's proposal, but also pinpoints one limitation of it. The infinite regress objection relies on the possibility of empathically apprehending empathic experiences; to put it differently, it relies on the possibility of iterative empathy. Since Walther acknowledges that A's and B's respective experiences described in 4 and 4a are partially founded upon iterative empathy (1922, 85; cf. Stein 2010a, 30), it is surprising that she doesn't consider the difficulty her own account runs into, were the empathic acts to be performed *ad infinitum*.

But perhaps the *actual* performance of such empathic acts is not something required by her account. To put it differently, one way out of the difficulty might be to emphasize that, even if the performance of such acts of iterative empathy remains a possibility for A and B, such higher-order iterations are not needed in order for the we-experience to take place. Rather, what is important is that each subject is aware of the unification described in 3/3a, which is something that would already happen in 4/4a. On this reading of Walther's proposal, the regress would be stopped by noting that the we-experience involves a distinctive affective component, and that this component, together with each subject's awareness of the latter would be sufficient for basic sharing (A and B must each be aware of the affective bond described in 3/3a). This interpretation is consistent with Walther's emphasis on empathy and unification, and with her resistance to any attempt to explain sharing on the basis of explicit acts of knowledge or judgement (1922, 34).

Still, the infinite regress objection does highlight what appears to be a limitation of Walther's account. Walther's diagram suggests that the empathic apprehensions going on at 2/2a and 4/4a are of the same kind, namely thematic and focal. However, this need not be the case. While paradigmatic cases of empathy are focal and explicit, there are also forms of other-awareness that are less salient and objectifying, and which might precisely be found in we-experiences of the kind explored by Walther. As remarked in the previous section, in those cases in which a we-relationship involves a triadic structure, paying too much attention to the other person might disrupt the shared perspective. This echoes Schutz's idea that the we-experience is primarily pre-reflective and lived through, an idea that Walther seems to agree with. As she writes, in spite of the fact that the we-experience has a

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[8] As Schweikard and Schmid express the concern: "How could there be a shared experience between *A* and *B* if *A* is *unaware* of the fact that *B* is empathetically aware of *A*'s identification with *B*'s experience, or some such?" (Schweikard and Schmid 2013. For discussion, see Schmid 2012, 132ff.).

complex structure, each subject need not be intentionally directed to that structure as an object of experience. Instead, what might be involved is "a distinctive, immediate *Innesein* in the background of consciousness, an empathic and identifying living in-the-other and with-one-another [*ein eigenartiges, unmittelbares Innesein im Bewusstseinshintergrund, (…) ein einfühlend-geeignigtes In- und Miteinander-leben*]" (1922, 85). In such a context, a thematic awareness of the other could involve a disruption of the we-experience and of the affective bond delivered by the unification. This should also make it clear why it would be problematic to include further hierarchies of empathy in the account.

10.4   Conclusion

Schutz's analysis of the we-relationship provides an account of one type of experiential sharing characterized by the spatio-temporal proximity of the involved individuals. According to him, the distinctive character of the we-relationship is marked by a pre-reflective interlocking of individual streams of experiences, arising from a reciprocal Thou-orientation. The latter is dependent upon the possibility of directly perceiving the other subject's embodied mindedness, and on the distinctive character of the second-personal access to the subjective life of others. Walther concurs with Schutz in recognizing the importance of the we-relationship, but she locates the latter within the broader notion of communal experiences. At the core of the latter there is an affective unification, or feeling of togetherness, that can occur even if individuals don't live spatially and temporally together. The more the unification of the members is conditioned by the unification with external objects, as it happens in Walther's "objectual communities", the more the knowledge that the different members have of each other can be indirect, and the greater their spatio-temporal separation can be.

There are several aspects of Schutz's and Walther's proposals that we have not been able to address, and that would merit further consideration. Despite this, however, it should be abundantly clear that both Walther and Schutz in their respective accounts of experiential sharing highlight the importance of a topic we started out with, namely relationality. On both accounts, a preservation of the self-other differentiation is a precondition for experiential sharing and we-intentionality.

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Part III
The Values and Ontological Status of Social Reality

Chapter 11
Communities and Values. Dietrich von Hildebrand's Social Ontology

Alessandro Salice

Abstract Within the debate on the ontology of social groups, a prominent view holds that, if one wants to know what a group is and how a group is created or constituted, one has to look at the internal or subjective conditions that either the group's members or the group as such have to fulfill. This idea is clearly illustrated by a by now rather standard approach to we-ness, which seeks to locate this property either in the subject of a given attitude (which, most perspicuously, is used to being characterized as an *intention*), or in the mode of the attitude or in its content. This view also suggests that there is *one* prototypical notion of group which conceptually has to be traced back to one of the three constituents of an intentional attitude and that the main way to access the notion of a group is by means of the concept of intention and/or intentional action.

The present paper tackles a fairly divergent approach to the ontology of groups put forward by Dietrich von Hildebrand in his book on the *Metaphysics of Community*. First, von Hildebrand argues that there are different kinds of social groups and that, accordingly, individuals can be 'together' in radically different ways. In particular, he substantially weakens the relevance that contemporary debate ascribes to the notion of shared intention and shared agency. Said another way, the existence of groups does not necessarily require their members to intend to do something together and to act according to this intention. Especially when it comes to communities (understood as a specific kind of group), he suggests a – within social ontology so far relatively unexplored – principle of constitution: instead of looking for the internal and subjective conditions that regulate the group's constitution, he rather stresses an external one, i.e., the "virtus unitiva" or the unifying virtue that *values* can exert over individuals and which might bring them to constitute a group.

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11.1   Introduction

Within contemporary debate on the notion of social groups, a prominent view holds that, if one wants to know what a group is and how a group is created or constituted, one has to look at what may be called the "internal" or "subjective" conditions that either the group's members or the group as such have to fulfill. This idea is clearly illustrated by a distinctive approach to collective intentionality that has today come to be seen as a classical treatment of this notion (cf. Schweikard and Schmid 2013). According to this approach, the we-ness has to be sought either in the subject of a mental state, or in the mode or content of this state.

Authors like Margaret Gilbert (1989), Christian List and Philip Pettit (2011), or Hans Bernhard Schmid (2003) hold, for instance, that what makes a given mental state collective is its *subject*: a collective state is eminently realized by a group, and the group itself ontologically rests upon joint commitments, aggregation of beliefs and desires, or peculiar relations among the individuals. Others, by contrast, argue for the idea that, although all mental states are carried out by individuals, some of them are characterized by a primitive and irreducible mode, by a *we-mode* (cf. Searle 1990 and Tuomela 2007). Finally, those authors who develop approaches similar to that of Michael Bratman (1993) claim that there is no need to postulate entities such groups, or *sui generis* types of mental states like we-intentions. Rather, they argue that collectivity has to be found in the *content* of the state: the fact that we intend to do something is nothing other than the fact that I intend to do something with you, you intend the same, and our agentive plans mesh.

Whatever view one is willing to endorse within this debate, such general approaches to collectivity seem to couple with two additional, more or less tacit, assumptions. The *first* is that there is *one* prototypic notion of group or collectivity, which conceptually has to be traced back to one of the three structural elements of a collective experience. In this sense, we-ness or collectivity has to be accorded to those entities – and presumably to *only* those entities, if any – that satisfy the conditions set out in the tripartite analysis of a mental state, understood in terms of subject-mode-content. The *second* assumption is tied to the fact that the mental states that are most perspicuously investigated within this approach are *intentions* (cf. Schmid 2012: 30ff). In other words, this view holds that the main way to access the idea of group is by means of or *via* the concept of intention and/or intentional action.

At the beginning of the twentieth century, phenomenology developed several insights about collective intentionality that are germane to contemporary debate. As it has been shown in recent literature, phenomenology extensively discussed the ontology of social objects and groups (cf. Mulligan 2001; Schmid 2012), and it is very likely that Edmund Husserl even coined the expression "social ontology"

(Salice 2013). To be sure, the positions of phenomenologists diverge partially from some of the assumptions of contemporary debate illustrated above. In particular, not only do phenomenologists replace the idea of a prototypic notion of collectivity—identified either by the subject or the mode or content of the experience—with a classification of different kinds of collectivity—after all, not only "being," but also "*we*," is said in many ways—but, they also present a more differentiated account of the experiences setting the foundations for the existence of groups (intentions are only one, and probably not the most fundamental, kind of mental state occurring in the mental life of a group). However, they generally agree with the contemporary approach that the constitution of a group has to be explained by means of a clarification of the subjective or internal conditions that the group or the group's members have to fulfill. For instance, Max Scheler assiduously stresses the role that shared feelings play for a group's constitution (cf. Scheler 1923, 1913/1916: 529ff): the constitution of a group is accompanied (if not: initiated) by the fact that the members share some relevant feelings. Similarly, Edith Stein (cf. 1922: 116–174) and Gerda Walther (1923) begin their investigations by outlining the psychological characteristics of an experience that makes it an experience of the collective kind.

Within the Munich and Göttingen circles of phenomenology (on this tradition of phenomenology, cf. Salice 2015), Dietrich von Hildebrand[1] contributes to this debate with the publication of *Metaphysics of Community* in 1930.[2] This work represents a truly remarkable contribution. First, the book is a political manifesto: written in the age in which Nazism began to cast its cloud over Germany, the volume contains a clear and unmistakable statement against that ideology (within phenomenology, Hildebrand's loud voice on this matter contrasted with other lower – if not even consentient – voices). Moreover, if one considers that other early phenomenologists devoted either chapters or, at most, stand-alone essays to the notion of groups, this monograph of almost four hundred pages can be seen as the most ambitious, complex and extensive project within phenomenology to articulate a comprehensive social ontology.

Indeed, there can be no doubt about the fact that Hildebrand conceived of his work as a contribution to the phenomenological project of a social ontology, i.e., to the project to develop a material or regional ontology (an "eidetic") of social objects (cf. Salice 2013). Hildebrand himself makes this point in the introduction to the second edition of the book, wherein he writes: "the investigations […], with which we are concerned here, are – *qua* ontology of the community – of *a priori* nature. They are dealing with *essential analysis* [*Wesensanalyse*] […]" (Hildebrand 1975a: 12). Indeed, his contribution to the phenomenological approach to social ontology is so crucial that, I would argue, any historical reconstruction thereof cannot

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[1] In the following, I leave out the German honorific "von". Hildebrand did not employ it when referring to himself (cf. Schuhmann: 1992 n. 1).

[2] Quotations in this article stem from the fourth volume of Hildebrand's *Collected Works* (1975a); all translations are mine. In her husband's biography, Alice Hildebrand mentions that Siegfried Hamburger, a close friend of Hildebrand and member of the Munich-Göttingen circles of phenomenology, "closely collaborated" on this work (cf. Hildebrand 2000: 227). For the time being, I am not in a position to determine what role Hamburger played in (and in what way he contributed to) the production of the volume.

overlook Hildebrand's role. Yet, his social ontology is not only important for the history of the phenomenological movement: the aim of this paper is to show that his position also bears relevance with regard to systematic debates. In fact, in his book, Hildebrand develops a theory of groups and of communities that is unique in several respects.

On the one hand, following Scheler and others, in his work Hildebrand argues that there are different kinds of social groups whose constitution is regulated by different kinds of ontological mechanisms. For instance, love communities and/or families are different from associations, states or nations. In accordance with this point, he also claims that it is not the case that for all social groups the pivotal concept is one of intention or action, which is to say that groups do not necessarily have to intend to do something or to intentionally act in order to exist.

On the other hand, he opposes the view generally held by *both* phenomenologists and contemporary authors, according to which what a group is has to be explained merely by referring to the group's or its members' subjective features. Rather, he explores a – within social ontology so far neglected – principle of constitution: instead of looking for the internal or subjective conditions that regulate group constitution, he stresses an *external* one. This is what he calls the "virtus unitiva," i.e., the unifying virtue or force that *values* can exert over individuals and that might bring them to constitute a community. Although not all kinds of groups require values as a coalescing principle (associations [*Vereine*] and life-spheres [*Lebenskreis*] do not), groups like nations, states, love communities, and friendships, as well as mankind as such, do.

To present an example, suppose that a number of medical scientists are struggling to find the cure to a sickness, motivated by the feeling that it is valuable to find such a cure, for this would save the life of a number of patients. Suppose further that not only is this fact not common knowledge among the scientists, but that the scientists also do not even know each other. In this case, Hildebrand would argue, the scientists are already aggregated thanks to the *virtus unitiva* of this value. In a sense, they already form a community – and this is a necessary condition for these individuals becoming aware that they are a group and hence for acting as a *we*.

Hildebrand does not deny that subjective conditions have to be fulfilled for a group like this to act *as* a group (in particular, its members have to be aware of being part of a group). Still, as far as its ontological structure is concerned, such subjective conditions, Hildebrand contends, do not represent the deep, genuine tie among the individuals for, while these ties can be recognized (and *are* recognized when the subjective conditions are satisfied), they are not *created* all at once when such conditions are satisfied. Rather, the glue connecting the individuals has to be sought in the fact that individuals are constantly geared to values and that the values toward which they produce a response (*Wertantwort*) "incorporate" the individuals in themselves. As we will see in Sect. 11.4, Hildebrand holds that the individuals incorporated within the same value are "unified" and form a group.[3]

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[3]Accordingly, Hildebrand's theory seems to be compatible with the "non-intentionalist" strand in the current debate on social ontology (cf. Cripps 2011, Sheehy 2002), for it shares with this strand

The article is organized as follows: in Sect. 11.2, I sketch the subjective conditions (or "personal principles," to use Hildebrand's own words) that need to be fulfilled for communities to come into existence. In Sect. 11.3, I concentrate on the ontological structure of communities. Here, I also shed light on Hildebrand's distinction between I-Thou and *we*-communities by clarifying in what sense *we*-communities are real wholes bearing the ontological status of quasi-substances. This investigation shall lead to the role that values play when it comes to explaining what a *we*-community is (Sect. 11.4).

11.2 The Personal Principles of Communities

According to Hildebrand, the term "community [*Gemeinschaft*]" bears two fundamentally different meanings. Communities in the first sense ultimately boil down to social relations between *two* (and no more than two) persons. These are communities only in the broad or weak sense of the term; they are I-Thou communities ("*Ich-Du-Gemeinschaften*"), for there is no *we*, no group, to be acknowledged here. By contrast, "communities in the strong sense" or "we-communities" are groups in the robust sense of the word. In *we*-communities, different persons – different personal substances – give rise to an entity which itself bears a quasi-substantial nature (Hildebrand 1975a: 113). Generally, groups are constituted by at least three persons, but we will also discuss cases in which a duo-personal I-Thou community can give rise to a *we*-community (cf. the end of Sect. 11.4). Hildebrand does not employ the term "group," but hereafter I use it as a suitable substitute for the concept of *we*: all *we*-communities are groups, but not all groups are *we*-communities, the former (i.e., the notion of group or *we* in a more general sense) encompassing also other kinds of groups like associations or societies, for example.

Looking at I-Thou communities, the relations to which they eventually reduce are of a peculiar kind as they are typically brought about by experiences of a social kind. Hence, we need to first have a look at what Hildebrand has in mind when he speaks of social experiences able to generate I-Thou communities. Within phenomenology, the idea that individuals have mental powers of an intrinsic social nature was not new at the time during which Hildebrand worked on his book. In his masterpiece of 1913 on the *Apriori Foundations of Civil Law*, Adolf Reinach delivered an articulated theory of so-called "social acts" (namely all those acts like questions, promises, orders, bets… which nowadays go under the name of "speech acts").

In his theory, Reinach presents three insights that are of importance for Hildebrand's theory of I-Thou communities. First, social acts are essentially

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the insight that the existence of (at least some kinds of) groups does not rely on the individuals' awareness of being members of a group. Still, Hildebrand's position is metaphysically even more radical than that of the non-intentionalist: whereas non-intentionalists generally assume that individuals have to at least cooperate to reach a shared—or even an individual, but only jointly reachable—goal, Hildebrand does not rely on the notion of cooperation in his account.

in-need-of-being-heard (*vernehmungsbedürftig*), i.e., these acts are successfully realized if their addressees apprehend their contents (that which has been promised, ordered, or questioned) and, in some cases, their type (their being promises, questions or orders). Second, Reinach argues that, if successfully issued, such acts generate entities with a *sui generis* metaphysical status: for instance, if successful, a promise brings about the promisee's claim and the promisor's obligation to fulfill the promise. These are two eminently *social* relations for they hold between persons and are generated by social acts. Third, Reinach argues that every social act ontologically rests upon two different components (for an overall reconstruction of the structure of the social acts, cf. Mulligan 1989: §2): the first is an inner experience, i.e., an experience that does not need to secure uptake and hence needs not be externally expressed. For instance, promises *are founded by* willing, questions by incertitude, and communications by belief. (If these inner elements are missed, the whole experience is said to be insincere). The second component is the act of meaning something (*Meinen*, *Meinensakt*). In a sense, this act is in charge of what could be called the "locutionary" dimension of the social experience for it consists in a linguistic act with a propositional structure (cf. Salice 2009).

In his book, Hildebrand approvingly refers to Reinach's theory of social acts[4] but, at the same time, he rejects what he believes to be an unmotivated limitation of the sociality's sphere to linguistic experiences. In particular, he points out that there are several emotional stances (*Stellungnahmen*) that – together with social acts – share the characteristic need-of-being-heard.

Roughly, emotional stances are our reaction to an object or state of affairs and its values: e.g., I can be thrilled by or indignant about the positive or negative value of a given object. Within this class of experiences, one can identify a subclass whose intentional object is – and can only be – a person. Hildebrand qualifies these kinds of stances as "etero-directed" (*fremdpersonal*, cf. also Reinach 1913: 159f), and he points out that such stances fall into two kinds: either one can love, hate or admire someone for years and keep these stances in one's "silent and solitary life [*im stillen Seelenleben*]," as it were. Or these experiences demand to be expressed to their addressees. In this second case, Hildebrand claims, we face kinds of mental states that radically differ from social acts, from silent stances, as well as from combinations of both.

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[4] In his monograph of 1930, Hildebrand mentions only two authors with a phenomenological background: Reinach and Scheler (the latter is the target of several criticisms). No reference is made to Edmund Husserl. Although influenced by Husserl (and especially by his *Logical Investigations*), the Munich and Göttingen circles of phenomenology, to which Hildebrand belonged since 1907, pursued a research agenda that diverges fairly from Husserl's phenomenology. These differences cannot be traced back (only) to the criticisms that both circles raised against Husserl's transcendental idealism during the so-called *Idealismusstreit*, for they also concern the works of Husserl's *prima maniera* (cf. Salice 2012a). Such distance is also reflected by the personal relations between the members of both circles and Husserl: Hildebrand, e.g., always referred to Reinach (and not to Husserl) as his single teacher in Göttingen ("mein einziger Lehrer," cf. Hildebrand 1975b: 78).

Etero-directed stances are not social acts (and in particular not acts of communication) for, while the intentional objects of such acts are always states of affairs *that* such-and-such, the object of the stance is a person. Nor are they silent stances (*stille Stellungnahmen*) that are somehow expressed by fortuity, for *all* stances (not only the social ones) have a tendency towards expression (if you are disappointed, you might frown). However, this tendency is not conscious and, even if it may become conscious, it is not addressed to anyone. By contrast, social stances *are* addressed to someone (who is also the intentional object of the stance) and ask to be apprehended. Finally, social stances are not combinations of an act of communication with a concomitant (silent) stance in the sense that the subject communicates to the addressee that she has a certain stance, for in this case the stance is something that the subject reflectively grasps, conceptualizes, and in a further conceptual – not necessarily temporal – step expresses, whereas social stances are realized and experienced *insofar as* they are expressed.

Social or uttered stances usually receive a gradual response from the side of their addressee and Hildebrand describes four such kinds of responses. The first is actually not a response at all, for the stances are simply ignored (e.g., the addressee does not hear them). Second, the addressee can merely take note of them (she consider the stance as being a mere communication, e.g., she merely takes note that someone loves/hates her). Third, she can be affected by the qualitative aspect of the stance (e.g., she is emotionally touched by the expressed love/hate). This case can lead to a fourth set of circumstances wherein the addressee can emotionally respond to the stance (she loves/hates the lover/hater). By climbing this intersubjective ladder, as it were, addressor and addressee come gradually closer to each other and, if the stance is positively characterized (i.e., if it is an experience of love or a cognate one – s. Sect. 11.3 for this proviso), in its last stage, both persons come to be "unified [*vereint*]," which amounts to saying that a social *relationship* holds *between* both persons. At this juncture, it is crucial to stress that all these scenarios (including the one of unification or *Vereinigung*) are "governed" by a face-to-face principle: metaphorically speaking, in these situations both persons always look at each other (on this, cf. Salice 2016).

A completely different situation is established when individuals come to build a community in the strong sense of the word, i.e., when they become members of a *we*: while in reciprocated social stances, persons direct their sight to each other, here they – *together* – direct their intentional acts to the world. This togetherness comes in degrees and, just as in the case of unification *via* etero-directed stances, Hildebrand identifies four different stages of *we*-unification. The lowest is reached when one person simply experiences something – *together* with another person (e.g., they are together in danger). In this scenario, Hildebrand claims, the other person is not in any way the object of my acts (I am not consciously engaged in them with the other), but the fact that I am in danger together with her (even if she ignores my existence) modifies my experience: it colors it and gives it a peculiar note. The second stage is entered when "the two persons mutually know about each other" (*jede der beiden Personen weiss von der anderen*, cf. Hildebrand 1975a: 33): both persons are strung side by side (*nebeneinander*), as it were, and they form a *we* to which they are connected like parts to a whole. In this case we already have a group

although, in a sense, the group remains dormant or inactive. The first step out of such inactivity is made in cases of joint attention, i.e., when two persons look at something together. Here, "according to its sense and intention, the experience from the outset exhibits the character of 'together with the other'" (Hildebrand 1975a: 33). That is, there is one object to which the experiences are directed and which is intended by means of the very same sense or concept (e.g., the object is grasped *as* an artwork by both subjects). The tokens of the experiences at issue here are different and distinct, but they coincide in their type (e.g., both persons are *perceiving* the object) and, more importantly, the experiences are characterized by a peculiar *we-*mode (these are not solitary perceptions, but together-with-the-other-perceptions). It is only in the fourth and last stage that unification reaches the apex in which there is only *one* single token of a mental act occurring in a plural subject. This experience can be an act (together, two or more persons can perform one single order or promise, cf. also Reinach 1913: 164f) or a stance (together, the two parents mourn the dead child, cf. also Scheler 1923: 23f).

At this juncture, Hildebrand clearly states that both forms of unification – that of I-Thou communities and that of *we*-communities – are conceptually separated from each other. More specifically this means that, first, the members of I-Thou communities might be at the same time members of *we*-communities: members of a married couple, e.g., can be members of both an I-Thou community and a *we*-community. However, this circumstance is not required: the existence of an I-Thou community is not a necessary condition for the existence of a *we*-community. There are *we*-communities whose members never entered into a relevant intersubjective relation in the sense that no social act and no etero-directed stance happened "among" them (cf. Hildebrand 1975a: 123). But then the question arises as to how a person can be a member of a group although she never engaged in an intersubjective intercourse with the other members. Is it at all possible to be a member of a group without the members' relating communicatively or emotionally to each other? In order to answer this question, we first have to explain the metaphysical structure of the two kinds of communities we just differentiated.

11.3   The Metaphysics of Communities

Concerning I-Thou communities, the mental and the metaphysical dimension of communities run parallel, as it were. That is to say that it is only when the addressee reciprocates the addressor's social stance *in a certain way*, and hence only when the parties involved are aware of each other in an intersubjectively salient way, that an I-Thou community in a metaphysical sense is generated. When an uttered stance reaches the third and (more significantly) the fourth level of reciprocation, it generates a relation, which Hildebrand respectively calls either a "rapport [*Verhältnis*]" or a "relationship [*Beziehung*]" and which obtains between the two persons involved.

For instance, just as the promisor and the promisee enter into two different relations by means of a successfully realized act of promise (the promisor has the

obligation towards the promisee to fulfill the promise and, conversely, the promisee bears the claim towards the promisor that the promisor's promise has to be fulfilled), so a stance of *hate* – which has achieved at least the third level of reciprocation – generates what Hildebrand calls a "rapport" of enmity. Obligations and claims, like enmity, outlive the act and are "interpersonal realities" of their own kind; in particular, they are not describable in purely psychological terms,[5] although they are created by mental states. However, a proper I-Thou community presupposes a bond or a connection that cannot be found in those stances that – in analogy to hate – track a detachment or a disjunction between persons. Only love and cognate stances, especially when they attain the fourth level of reciprocation, are able to produce not a mere rapport but a true "relationship" between the two persons involved (cf. Salice 2016).

Since I-Thou communities are social relations and since relations are generally held to be states of affairs (cf. Reinach 1911), I-Thou communities are *dyadic* states of affairs – i.e., states of affairs constituted by two persons, namely the addressor and addressee of a social stance or social act. As such, they are not *causally* active, i.e., they cannot enter into chains of causes and effects, but only chains of grounds and consequences (cf. Reinach 1911). For instance, the *fact* that I am your friend (that a relation of friendship obtains between me and you) grounds the fact (*consequence*) that I have the obligation to help you in case you are in need. We can develop this insight further: if one takes the capacity to initiate or to modify chains of causes and effects as a fundamental trait for being an agent, then this implies that there is a class of communities that not only are *not* agents, but also *cannot* be agents. It would be a category mistake to ascribe agency to this kind of communities: relations do not and cannot perform actions. We have, in other words, a dimension of sociality which is not coupled with the concept of agency. (Note, however, that this is not to say that that the members of an I-Thou community cannot constitute a we-community: in this case, these very two individuals can perform actions together – but then it is the we-community and not the I-Thou community which is acting.)

Still, this is only *one* of the (many) dimensions of sociality, according to Hildebrand: as we saw above, there is a sense in which we, *together*, can perform an order or in which we, *together*, mourn a relative. Thus, concerning *we*-communities, it turns out that agency is a sufficient – and still not a necessary – condition for their existence. That is to say, it is not the case that – for an entity to be a *we*-community – this entity has to act. However, *we*-communities are entities which, contrary to I-Thou communities, *can* act. This directly leads to the question of how these groups have to be constituted in order for them to authentically perform actions. This

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[5] The most stringent arguments in support of this point are adduced by Reinach (1913: 148f): first, claims and obligations can last for years without any changes, and it is questionable whether there are experiences of such long-standing duration. More importantly, claims and obligations exist even when their bearers sleep or experience a loss of consciousness. Reinach admits that there are feelings such as the feeling of being entitled and that of being obliged. However, we can have these feelings even when the corresponding claims and obligations do not exist and, vice versa, these entities can exist even if we do not have any feelings about them.

question might be specified in the following way: if a group performs actions, it has to be a subject, but how can a sum of subjects be itself a subject? The question – as Hildebrand phrases it – is about whether *we*-communities belong to the ontological category of *substances* and, to anticipate what follows, his answer is that they are *not* substances, but they can still instantiate a set of properties that a peculiar type of substance, i.e., persons, can instantiate (e.g., *we*-communities can act). For this reason, they can be qualified as quasi-substances (*Quasi-Substanzen*, *Substanzartig*, cf. Hildebrand 1975a: 127, 131). How do individual substances and quasi-substances differ?

The main ontological characteristic of *we*-communities is that they are *real wholes* (*reale Ganzheiten*). They are *real* in the sense that they are not mere subjective or collective "projections" of the mind: projections in this sense are months, days or birthdays on a calendar. These terms only apparently pick out real existing entities within the time continuum, whereas in reality there is no pre-given period of time before and independently of the description or the concept of "month" or "life year". But communities are real also in another sense: members of communities constitute a unity *cum fundamento in re*, i.e., they build up a "communal body [*Gemeinschaftscorpus*]" – this is a aggregate constituted by the group's members upon which the group, as a whole, is erected. Communal bodies are different from the extrinsic aggregations of individuals instantiating the same properties (e.g., the "redheaded") or the same species (e.g., "the lions"), for these do not function as the physical substrate of a group. But then, provided that communities are *real*, in what positive sense are they *wholes*? True to the descriptive ontology that so typically characterizes early phenomenology, Hildebrand formulates his answer to this question after providing a description and a comparison of several kinds of wholes.

First, communities are *not* wholes in the sense in which a piece of metal is a whole: in contrast to mere stuff (like water or all the other elements denoted by mass terms) that does not have a shape (*Gestalt*) of its own and can only "receive" shape from other objects, a piece of metal has a well-defined and contoured form and hence it has to be considered a substance (Hildebrand 1975a: 17f, 125). Such substances are not simple, but they are not constituted by what Hildebrand calls "proper parts (*echte Teile*)" either. That is to say that they are divisible (insofar as they are not simple), but only in an arbitrary way, for there is no proper part to be found in wholes of this type. (Another way to put this point is by saying that there is no intrinsically right or wrong division of a piece of metal.) Accordingly, there is no whole here that comes before the parts and no parts that come before the whole.

The second kind of wholes that may come into consideration are organisms. Organisms are also substances but, unlike the wholes of the first kind, they *do* comprise proper parts, namely *organs*. Such parts are characterized by the fact that they cannot exist *per se*, for they collapse once they are detached from the organism. This makes living substances non-divisible (in the sense that the organs would degenerate if divided from the wholes), yet still mereologically complex, entities: contrary to the first kind of entities, here the whole comes before the parts. Note also that organisms cannot be unified in a more comprehensive organism, as they possess an ontological independence, which cannot be lost *sive* ontological decay of the organism itself (Hildebrand 1975a: 125f).

For reasons that shall soon become clear, communities do not fall within this second species either, but have to be described in terms of the third kind of wholes Hildebrand discusses. Whereas the two previous classes encompass mereologically complex *substances*, the entities to be subsumed under the third class of wholes do not have the status of substances. Such wholes are not simple and have proper parts, but these parts are self-sufficient or independent (*selbständig*), i.e., their existence does not depend on the existence of the whole. Prime examples of such entities are melodies: melodies exist only if they are founded (*fundiert*) by single notes, but the single notes can also exist *per se*. Even though Hildebrand does not employ this expression, it is not difficult to recognize that he is operating with the notion of "object of higher order," as developed under the different labels of *Gegenstände hörerer Ordnung*, *Gestaltsqualitäten*, *figurale Momente*, etc. in the Brentano School and especially in the works of Christian von Ehrenfels (1890), Alexius Meinong (1899), Carl Stumpf (1873) and Husserl (1891) himself.

To summarize: in contrast to the first kind of wholes, objects of higher order have parts and, in contrast to the second, these parts "bear [*tragen*]" the whole, so that one can arguably say that here the parts come *before* the whole. Hildebrand contends that exactly this fact characterizes the metaphysical structure of *we*-communities: communities are constituted by individuals, i.e., they are constituted by substances and, even more precisely, by persons, which may exist before and independently of communities.[6] But this fact, again, shows that communities cannot be *substances* – for they lack the shape typical of substances of the first type and the specific self-sufficiency that qualifies the substances of the second type. Due to the fact that, just like melodies, *we*-communities are not accidents either, only the *sui generis* ontological nature of such entities remains to be stressed: they are real wholes only in this peculiar sense.

At this juncture it might be worth stressing that, since this conception denies that *we*-communities are substances, it also denies that they are persons, persons being a kind of substance. In particular, the very idea of a "collective person [*Gesamtperson*]" (as especially advocated by Scheler, cf. his 1913/1916: 523ff) is held by Hildebrand to be absurd for two different reasons. According to the first, the idea that individual persons might literally *fuse* (*verschmelzen*) in one entity is ontological non-sense, for persons are living substances and, hence, they are entities that display self-sufficiency and independence. It is ontologically impossible to deprive persons of these attributes (which would be required if they were to be fused): "never can a new person be constructed from several persons; never can a person be the material from which other persons are created; never can two persons fuse in another person" (Hildebrand 1975a: 131).

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[6] Hildebrand sees only one exception to this principle: endorsing St. Paul's view, Hildebrand (cf. Hildebrand 1975a: 128) admits that, in the case of the *Corpus Christi mysticum*, the individuals come after the whole and that the Holy Church has to be described in terms of an organism, cf.: "For as in one body we have many members, and the members do not all have the same function, so we, though many, are one body in Christ, and individually members one of another" (Romans 12, 4–6).

   The second reason for taking the notion of *Gesamtperson* to be absurd is that, in advocating that communities are persons, Scheler overlooks the fact that the two species of person and community belong to different ontological regions. "[Communities] exhibit only certain moments that possess some analogy to the personal being, but which do not refer to the ontic crucial difference" (Hildebrand 1975a: 131):,[7],[8] in *Metaphysics*, Hildebrand qualifies persons as conscious and free entities, which "own themselves" and possess an ego (Hildebrand 1975a: 19, 131), and none of these characteristics can be ascribed to communities.

   Hildebrand's position with respect to these claims is not easy to make out, but the following explanation seems to be compatible with his view. First and foremost, groups do not possess an ego, for it is absurd to assume that groups have an ego that is independent from the members' egos. However, also absurd is the idea that a group has an ego that is dependent on the members' egos, for it presupposes that the members' egos fuse into a super-individual ego – which, as we saw, is ontologically impossible. If freedom is a property of will, then *we*-communities are not free, for what the community wants has to depend on what its members want: one needs the volition of two individuals, at least, for a community to will something. Consequently, we-communities do not "own" themselves: assuming that Hildebrand here means something like the capacity of individuals to freely design their own life projects, communities lack this capacity for, as we saw, they lack freedom. As far as

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[7] Regarding Scheler's position, it has to be stressed that Scheler is not explicitly mentioned in the text and that the very first objection Hildebrand formulates seems not to apply to him, for Scheler does not define the notion of person by means of a metaphysical concept of substance (as Hildebrand, on the contrary, does, cf. Theunissen 1977: 391) and, furthermore, Scheler was well aware that a *Gesamtperson* is not a more comprehensive singular person (*umfangreichere Einzelperson*, cf. 1913/1916: 527 n. 1). Still, Hildebrand's *second* objection implicates Scheler insofar as he *does* hold that the *Gesamtperson* is a person in exactly the same sense as is a singular person: both are correlative ("In our view, however, all persons are, with *equal* originality, both individual persons and (essentially) members of a collective person" Scheler 1913/1916: 528, Eng. tr. 524) and both have the *same* axiological rank (Scheler 1913/1916: 528). Scheler's claim of a correlation between individual and collective persons is challenged by what is stated above, and the refusal of his second claim (sameness of axiological rank) is a direct consequence of the refusal of the first claim (Hildebrand 1975a: 11).

[8] Although Hildebrand's mereological description of groups in terms of higher order objects clearly evokes Husserl's conception of "personality of higher order [*Personalität höherer Ordnung*]", Husserl's view is also affected by Hildebrand's criticisms insofar as such entities are described as authentic persons (cf. "The collective person, the collective spirit […] actually and truthfully is personal; there is an essential higher genus which connects the individual singular person and the collective person" Husserl 1918–1921: 203, my trans.). This notwithstanding, both views have astonishing analogies: in particular, the notions of spiritual touch, of I-Thou community and of love communities constantly also recur in Husserl. However, it is doubtful whether Hildebrand is consciously (but implicitly) referring to Husserl here: although Husserl's interest in social ontology seems to arise in the first decade of the twentieth century (cf. Husserl 1910), some of his most important contributions to this field are developed in lectures and *Forschungsmanuskripten* to be dated after Hildebrand leaves Göttingen in 1912 (in his introduction to Hua XIV, Iso Kern states that these investigations grew out of previous research conducted in *Ideen II*, which notoriously took its first steps in 1912, cf. Husserl 1918–1921: XXIII).

consciousness is concerned, it is true that the individuals may be conscious to be part of the group, but the community itself cannot be said to be conscious of its own experiences and, *a potiori*, of itself.

11.4 Kinds of *We* and the *Virtus Unitiva* of Values

Speaking of communities as objects of higher orders which rest upon or are founded by persons leaves a question open. What is the specific glue that connects the individuals to each other? Ontological research on the objects of higher order generally assumes that it is only if the *inferiora* enter certain relations that they can build a *superius*. For instance, Meinong speaks of the "principle of partial coincidence [*Prinzip der Partialkoinzidenz*]" (Meinong 1899: 389), according to which objects of higher order like complexions ontologically request that relations bind their members (and vice versa). Husserl, too, states that the figural moments depend either on monadic or relational properties of their members (Husserl 1891: 204). In the case of *we*-communities, what are the *salient* properties or relations that the members have to enter into in order for them to be a group? Note that Hildebrand already denied that *we*-communities presuppose I-Thou communities. It can be possible that *we*-communities ontologically overlap I-Thou communities in the sense that both entities have the same members, but this is not a necessary condition: "Leaving aside the fact that classical types of communities are polypersonal formations [*pluropersonale Gebilde*], most communities like state, nation, family, association, party etc. […] do not even presuppose an explicit reciprocal acquaintance of the members" (Hildebrand 1975a: 138).

In answering this question, Hildebrand provides the reader within phenomenology – and as far as I know within relevant literature on social ontology – with a unprecedented classification of groups in which three different coalescing principles and, correspondingly, three different kinds of groups are identified. These principles are: the extrinsic life conditions (*äußere Lebensverhältnisse*, cf. 1975a, b: 140f), the – social – act of forming a contract (*Vertragsschließen*, cf. 1975a, b: 139) and, finally, the values' *virtus unitiva*. Before tackling the third element, let us briefly discuss the first two notions.

The extrinsic life conditions (in particular the fact that persons share the same *Lebensraum*) underlie the growth of the "lowest and spiritually poorest [*ungeistigste*]" (1975a, b: 141) kind of group, the life-sphere or *Lebenskreis* (cf. also Scheler's conception of "life community (*Lebensgemeinschaft*)" in 1913/1916: 530). This is a particularly primitive group that issues from the extrinsic situations (like the geographical ones) in which the individuals happen to live together. Extrinsic conditions alone, however, are not enough: Hildebrand remarks that in this case the members have to develop mutual beliefs about the existence of the other members in the same habitat (1975a: 141). Coming back to the personal principles of groups we discussed above, we see that the individuals need to reach at least the second of the four levels

to form a *we*: life-spheres rest upon cognitive relations among their members (especially mutual beliefs about the existence of the individuals and their mental states).

If the life-sphere represents the most natural (in the sense of "designless") form of community, associations are the most artificial. Almost all aspects in the life of an association are regulated and controlled. This is because the existence of such communities has to be traced back to conscious and deliberated acts of individuals. Indeed, associations are brought into existence by social acts. Hildebrand does not explain in detail what the acts in question are here, and he merely refers to Reinach's *Rechtsbuch* (Hildebrand 1975a: 139), but it is fairly manifest that he is thinking about acts of the sort Reinach called "enactments [*Bestimmungen*]". The notion of enactment plays a central role in Reinach's social ontology for these acts can literally "create" states of affairs. In particular, enactments posit states of affairs as states of affairs *that ought to be* (*Seinssollen*, cf. Reinach 1913: 245), and this can happen in at least two different ways. In the first, that which is enacted as "ought to be" are "events of the external and of internal nature, such as actions, omissions etc."; these are events that need to be realized and its realization is exacted from all those for whom the enactment is efficacious or valid (Reinach 1913: 245, Eng. trans. 109). For instance, if the city's mayor enacts the construction of a bridge, this construction is exacted from the population. In the second case, the enactments point at social entities (i.e. entities bearing the same metaphysical status of claims and obligations, cf. note 5 above) in the sense that the existence of such entities is posited as "ought to be." Here, Reinach argues, social entities are immediately created (e.g., a judge can create or annihilate claims or obligations simply by means of a verdict, i.e., of an enactment).[9] The last is the case that Hildebrand most likely has in mind when discussing associations: by means of enactments, individuals have the possibility to bring social objects – associations included – into existence. Note, however, that here too we have an analogous subjective condition that accompanies the generation of this second kind of we-communities: to be successful, social acts need to secure uptake. Hence, among the existence conditions of associations we again find some cognitive relations between individuals.

No such relations have to figure among the existence conditions of states or nations. What is the glue then that connects the individuals here? In order to provide an answer to this question, one has to look at one insight that Hildebrand takes to be fundamental to the human essence. Humans, according to him, are constantly oriented to values. Not only do they respond to values when they feel happiness (*Freude*), admiration (*Bewunderung*), enthusiasm (*Begeisterung*), respect (*Achtung*), love (*Liebe*), etc., but they also have the possibility to create things that instantiate values. In all these cases, individuals enter into direct contact with axiological

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[9] Of course, enactments are efficacious only if their subjects have some form of authority (this is something that Reinach states *en passant*, but which represents the starting point of Stein's investigations about the State, cf. Salice and Gombocz 2006, Schuhmann 2005). The analogy between, on the one hand, Reinach's theory of enactments and Hildebrand's employment of this notion in the specific case of associations and Searle's conception of declarations (2010) on the other can hardly be overlooked: "We can create boundaries, kings, and corporations by saying something equivalent to 'Let this be a boundary!' 'Let the oldest son be the king!' 'Let there be a corporation!'" (Searle 2010: 100).

entities. When an individual enters into such direct contact with a value or an entire domain (*Bereiche*) of values (like the domains of aesthetic, moral or scientific values), then the individual, Hildebrand contends, is "incorporated" in the values themselves (Hildebrand 1975a: 67ff). This is not to be taken as if the individuals *instantiate* the values in the same sense in which the objects do but, still, the values "become real" in the person who adequately responds to them. Hildebrand does not provide the reader with an exact analysis of his statement, but we believe the following reconstruction is compatible with his view.

Suppose an object *x* (be it an artifact or not) has a positive value V^+ and that person *a* enters a relation with V^+, either because *a* creates *x* or *a* emotionally responds to *x*'s V^+, then *a* is "incorporated" in V^+, i.e., the ontological structure of *a* is somehow affected by the relation with V^+: "[This][10] is a moment [*Moment*] in the being of the individual, something, which characterizes it, which affects the atmosphere emanated by this individual" (Hildebrand 1975a: 68). Within phenomenology, the term "Moment" is used in the technical sense of an individualized property: according to Husserl's theory of predication as developed in the third of his *Logical Investigations* (cf. Husserl 1901), properties are not present in the objects in which they are exemplified (for instance, the idea of redness is not participating in any red things that I represent to myself). Rather, the object has a *moment* belonging to the property at issue. *Mutatis mutandis*, Hildebrand is stating here that a value can become "real" in two different ways – according to the first, the value *directly* affects the objects *x, y, z…n*: *x* has a V^+-moment$_1$, *y* has a V^+-moment$_2$… According to the second, the persons responding to V^+ also bear certain V^+-related moments which, however, are of a different kind with respect to V^+-moment$_{1, 2…n}$. (They are different, we said, because the responding person is not instantiating values in the same sense in which the object or artifact does.) I refer to these moments by writing the terms in capital letters V^+-MOMENT$_{1, 2…n}$.

The fact that a given object *x* has a given moment *m* belonging to the property P is a necessary condition for *x*'s entering a relation with all objects *y, z…n* that have moments belonging to the same property P. This is notoriously a relation of *similarity* and, accordingly, *x* is said to be *similar* with *y, z…n* in a certain respect, namely, in respect to P. The same can be said in relation to what we called the V^+-MOMENT$_{1, 2…n}$ and *indeed* this is Hildebrand's most substantial point in his book, for here we find the *glue* we were looking for: values unify persons. Returning to the above-sketched reconstruction, we can now say that all persons *a*, *b*, *c*,…*n* incorporated in V^+ and hence bearing V^+-MOMENT$_{1, 2…n}$ enter a perspicuous, coalescing relation that *unifies* them. Such unification, he goes further, exists even *before* the subjects involved are – in any sense – aware of it: "One awakes in the consciousness of this previously existing objective togetherness and unity. One finds this fundamental 'reciprocal approaching [*Sich-Angehen*]' and 'belonging together' already in the experience as something which has been constituted independently of the experience

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[10] "This" in the quotation points to the "realization [*Realisierung*] or the becoming real [*Realwerden*] of values in humans." I am grateful to Kevin Mulligan for having asked me to make this point clearer.

itself" (Hildebrand 1975a: 102).[11] To come back to our initial example in Sect. 11.1, if a number of persons is working on the same problem, feeling its value, then they are incorporated in the same value or in the same axiological domain and, hence, they are already unified. Such constitution proceeds by means of ontological necessity and does not rest upon the individual awareness of being a member of a group (howsoever this may be conceived). If, due to some psychological circumstance, the individuals come to be aware of each other, then the objective existence of the group starts to be accompanied by such awareness, and the group can act as a group.

We now need to add three general comments to make this reconstruction conclusive.

First, when Hildebrand speaks of values, he means objective values *contra* the personal preferences that individuals might have. Preferences arise and disappear together with the individuals, while values are objectively existing entities (cf. Hildebrand 1916: 48ff). This is a crucial point to keep in mind: the fact that x and y prefer beer to wine does not make x and y a group before and independently of the relevant cognitive relations they possibly enter.

Second, only certain values are suited to generate groups: to be sure, all values *qua* values objectively unify, but only for some kinds of values does the unification they produce coincide with the constitution of a community. Hildebrand remains imprecise as to exactly what axiological domains are able to form groups and confines himself to mention the – fairly vague, to be sure – domain of law, the axiological domain relevant for love in its manifold forms, the domain of culture (cf. Hildebrand 1975a: 144) and that of morality (Hildebrand 1975a: 145). He adds that the position in the hierarchy of values is irrelevant to their group building function, e.g., the sphere of art – though hierarchically higher than the sphere of culture – is not capable of aggregating individuals into a group.

More importantly, though, is the third comment: Hildebrand argues that humans need to be embedded in historical situations in order for them to be incorporated in those values in charge of group constitution. This is an interesting remark, for it shows that Hildebrand (like Reinach) is well aware of the limits of apriorism when it comes to describing social reality. Eidetic laws regulate the constitution of groups, but this does *not* amount to saying that *history* can be studied by investigating

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[11] What about negative values? Can they exert unifying force? The answer Hildebrand gives is complex, but ultimately in the negative ("metaphysically, negative values are powerless" 1975a: 70 n.1). If the individuals respond adequately to negative values, these do not unify: persons, who reject the same x based on its negative value, are not unified by this negative value even if they bear mutual belief or reciprocal understanding of each other. (Yet, this is *not* to say that they cannot build an association, e.g., by means of a contract, cf. 1975a: 151). If the individuals do *not* adequately respond to them, i.e., if the individuals inadequately perceive them as values, then they are "formally" (not actually) unified – but this unification is provided by the "mock value [*Scheinwert*]" (by the apparent value that, in their eyes, allegedly affects x), not by the negative value as such (1975a: 104, 151).

essences, i.e., essences delimit a range of possibilities, but the fact that one of these possibilities is eventually actualized in history does not depend on essences.[12]

To make this point clearer, we might look at how Hildebrand accounts for the state community. Such community is created by means of individuals being incorporated into the sphere of law. Here, individuals can respond to legal values (i.e., such values can become "actual") only if they stand in such a situation that makes it possible for them to be acquainted with the values at issue: "If one considers a number of hermits living in such an isolation that everyone would live only for oneself without contact with the others, then the legal sphere would never become actual" (Hildebrand 1975a: 146). Hildebrand identifies such a situation with the life-sphere – humans have to share the same *Lebensraum* and be aware of each other in order to enter into contact with legal values and, possibly, to make the necessary steps to create a state (Hildebrand 1975a: 209f). Is this a *petitio principi*? Is a community (the state) explained by means of another community (the life-sphere)? It seems not, for the state is a *toto genere* different kind of community with respect to the life-sphere – the eidetic laws superseding the constitution of these two entities are and remain distinct, although states require life-spheres to come into existence.

Before concluding this section, one needs to come back and justify a statement made above. One of the elements that characterizes I-Thou communities is their duopersonal reality, whereas we-communities can be either duo- or pluropersonal. So far we only discussed pluropersonal we-communities, but in what case can we-communities be duopersonal? Since such communities cannot be described as life-spheres or as associations, one has to look at the value-based (*wertfundiert*) communities to find out in what sense two individuals may form a *we*. To explain this point, it might be helpful to come back to the values' *virtus unitiva* and highlight that Hildebrand's theory allows for the following subcase: above we considered only the possibility that V^+ affects material objects or artifacts. However, there is no necessity to apply this restriction, for values can also affect persons. If so, it can happen that person *a* adequately responds to a personal value, for instance, *a* may love person *b* insofar as *b* bears a V^+-moment$_1$. In this case, person *a* is incorporated in V^+, i.e., *a* bears a V^+-MOMENT$_1$. This is the first condition for the generation of an authentic *duo-personal* group, e.g., of a love community. Now, if *a*'s love is reciprocated by *b*, i.e., if person *b* loves person *a*, then we saw that *a* and *b* enter a social relation (and this is an I-Thou community) simply by the fact that the etero-directed stance has been reciprocated. If *a* and *b* do instantiate the very same value,[13]

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[12] Similarly, in his *Rechtsbuch*, Reinach develops an a priori system of law, but he does not deny the existence and the autonomy of positive law (which is contingent and relative to the historical interests of a given community in a given situation): both are different ontic regions, and the very possibility of positive law is justified by the fact that there is an a priori law (cf. Reinach 1913: 238–278 and Salice 2012b).

[13] What if they do not? As it is often the case, *b* may love *a* in response to a *different* value from the one that makes *a* love *b*. If this is the case, then there is no single value that aggregate *a* and *b*. Hildebrand devotes a lot of resources to solving this enigma, and his solution can be summarized as follows (cf. Hildebrand 1975a: 78–91: in this form of love (which is also the highest form), love is not directed to one single value, but to a whole complexion of values (to a *Gesamtwert*) affecting one person. Granted, the complexion of values affecting *a* is different from that affecting *b*, and *a*

then this represent a sufficient condition for the creation of a we-community over and above the I-Thou community: indeed a would bear a V^+-moment$_2$ and consequently b too would bear a V^+-MOMENT$_2$. Due to the two V^+-MOMENTs, a and b are incorporated in the same value and hence are united and constitute a group (personal values belonging to those kinds of values which are able to aggregate individuals into a group). That is, a and b are members of an I-Thou community and, concomitantly, of a we-community.

Note that a and b already know they are an I-Thou community, for they reciprocate their love. In addition, note also that, since love is a value-tracking experience, all I-Thou communities based on love (erotic love, friendships, or parents-children communities, for example) already are objective we-communities: they are we-communities because the value tracked by the emotion of love exerts unifying power on the lovers. But now the question arises as to how their members can become *aware* of being a *we*-community and not only an I-Thou community. Hildebrand here cannot resort to mutual beliefs: as we saw, the persons involved already have these beliefs (a knows that b knows that a loves b and vice versa). His idea is that only a reciprocal "formal identification of the other's independent life" can make the *we* constituted by a and b "awake" (Hildebrand 1975a: 136). That is, "the stream of life [*Strom des Lebens*] with its events does not address an isolated independent life, but both persons together. The other's "point" [*die Sache des anderen*] plainly becomes one's own point. Instead of an isolated 'I' […] a sharp defined 'we' is emerged" (Hildebrand 1975a: 136f).

11.5   Conclusion

To recap: Hildebrand argues for the idea that there are different kinds of collectives. The most general distinction to be drawn is between I-Thou and groups: the first are *dyadic* relations that do not and cannot act, whereas the second involve a *we*. Groups are to be analyzed in terms of life-spheres, associations and "value-based-" or *we*-communities. The last kind identifies communities in the proper sense and Hildebrand's investigations thereof perhaps represent one of his most important and original contributions to social ontology. These communities are quasi-substantial (and hence apersonal) entities, i.e., they are entities of higher order that, due to their ontological structure, are able to perform actions. Their existence is due to the unifying force of values and does not depend on cognitive relations among the members (however these may be described), whereas all other kinds of groups require such relations (in some sense or the other).

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loves b in virtue of a different *Gesamtwert* from the one motivating b's love for a. Still, Hildebrand argues, both complexions can intersect in some domain, i.e., a and b can share some axiological domain, which makes it possible for the common domain to fulfill the unifying function.

Given the fact that life-spheres almost completely lack collective mental life and that associations boil down to artificial constructions, Hildebrand concludes that groups in the full-blown sense of the word are only value-based communities – in their multiple types (Hildebrand 1975a: 157). This also indicates the criterion that Hildebrand adopts to formulate his statement: interestingly enough, although he claims that *we*-communities are not and cannot be persons, we-ness is taken to manifest itself in its liveliest or most authentic form in those kinds of groups that display the largest likeness to persons.

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Chapter 12
Ingarden's "Material-Value" Conception of Socio-Cultural Reality

Edward M. Świderski

Abstract Ingarden did not contribute directly to the 'social ontology' to which several of his colleagues in the Göttingen Kreis made significant contributions. His life-long preoccupation with the idealism – realism controversy and the ontology of art and aesthetics kept him at some remove from investigations of empathy, social acts, and the metaphysics of community. He did however share with his colleagues the conviction that the theory of values initially propounded by Scheler, the 'material-value' theory, is sound. Given that, according to this conception, values are ideal qualities and thus objective, they underlie and shape human relations. Three contexts of considerations in Ingarden's thinking attest to the role he assigned to values, thanks to which aspects of his work are relevant to phenomenological social ontology: the ontology of the work of art, the ontology of responsibility, and Ingarden's reflections on the status of cultural entities. Key to the first two contexts is the notion of the "value situation" in which "response to value" on the part of subjects in direct contact or separated in time and space is suggestive of a kind of 'social cement'. Reflecting on the nature of cultural entities Ingarden held that the impetus to bring cultural entities into existence is motivated by the desire to incorporate and share (transcendent) values. In this last regard I draw attention to a recent attempt to read Ingarden's ontology of purely intentional objects (artworks) into contemporary social ontology (Searle's institutional facts) and note that it fails to take into account the role Ingarden ascribed to values.

Keywords Material values • Value situations • Response to value • Artworks • Responsibility • Cultural entities as value posits

It is by no means obvious that Ingarden's name would figure on a list of phenomenologists who contributed to themes in 'social philosophy' (whether or not this descriptor is understood in contemporary terms). Nothing in his writings indicates that he took any interest in the sorts of considerations of social phenomena studied

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by other phenomenologists of his generation (e.g. Max Scheler, Adolf Reinach, Edith Stein, Dietrich von Hildebrand) or the later generation (first of all, Alfred Schutz). Ingarden's philosophical interests, but likewise perhaps the circumstances[1] in which he philosophized, go some way to 'explain' this (benign) neglect. For one thing, his single-minded preoccupation with the idealism-realism controversy – the question whether the world does/does not depend for its existence on consciousness - as he read it out of Husserl's transcendental idealism certainly played a key part in this regard. Ingarden staked out the premises of the 'controversy' along Husserlian lines, that is, by assuming for the sake of his investigation the 'transcendental' standpoint of the monadic ego and the sharp separation between two spheres of being, that of the 'external world' and the 'immanent sphere' of pure consciousness for which the former has the status of a constituted noematic correlate.[2] Ingarden's purpose was to push this scheme to its limits by bringing to light what he considered to be the questionable presuppositions and, as he suspected from the start, the metaphysical decisions at the heart of Husserl's enterprise. It was another matter, however, to show how, with certain modifications to this consciousness-world scheme, a metaphysical realism could be spelled out and defended, an achievement that, in the end, eluded Ingarden.[3]

In this scheme alterity (the alter ego), intersubjectivity, cultural forms, social practices, etc. remained unthematized. The standpoint remained that of the philosophizing ego committed to the 'principle of all principles': the philosophizing ego acknowledges only that which is *leibhaft gegeben*, that is, intuitively self-evident, viz., the data of 'immanent perception' and the objects of 'apriori cognition', Ingarden's terminology for eidetic intuition.[4] Ingarden was aware that this program had its costs: in his critical remarks to Husserl's *Méditations cartésiennes* he problematizes Husserl's attempts to identify what is 'Ichfremd' concluding that, although Husserl does correlate the possibility of experiencing the world with

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[1] I refer to his circumstances in Poland which for the greater part of his academic career meant a considerable degree of isolation from the philosophical – and phenomenological – mainstream in Europe and elsewhere.

[2] I refer here to the first Chapter of *Streit*, Vorbereitende Betrachtungen, §2. "Die Voraussetzungen der Streitfrage und ihre vorläufige Formulierung" (Ingarden 1964. I).

[3] Readers without the time and/or energy to tackle Ingarden's voluminous writings dedicated to his main philosophical problematic have today an abundance of secondary literature to choose from. A useful though not entirely updated site "Ontology: Theory and History from the Philosophical Perspective" created and maintained by Raoul Corazzon, contains an extensive section devoted to Ingarden, his works, translations, and secondary literature (http://www.ontology.co/biblio/ingarden-biblio.htm). A nice introduction to Ingarden's enterprise overall is by Amie Thomasson (2012). An earlier careful presentation is by Guido Küng (1975). For a complete account and analysis of Ingarden's work as a whole go to Rynkiewicz' massive *Zwischen Realismus und Idealismus: Ingardens Überwindung des transzendentalen Idealismus Husserls* (Rynkiewicz 2008).

[4] I am following Ingarden's account of Husserl's phenomenology in, among other texts, his Oslo lectures of 1967 (Ingarden 1992). Ingarden submitted Husserl's early and his own views about the cognitive reach of phenomenology to a final assessment in the study left unfinished at the end of his life devoted to the theory of knowledge (Ingarden 1996).

intersubjectivity, all that follows from Husserl's analysis is that the 'world' is 'objective', not that it exists in and for itself, as Ingarden understood existence. Ingarden did not provide, so far as I know, an alternative proposal with regard to intersubjectivity [Ingarden 1998 – Schriften zur Phänomenologie E. Husserls].[5]

The foregoing remarks notwithstanding, Ingarden's career could well have taken a different turn. His early ambition – around 1913 – had been to write a dissertation devoted to the person, an undertaking that Husserl considered to be ill-advised, however. More than 30 years later Ingarden recalled in the first Polish edition of *Streit*:

> I occupied myself with questions concerning the human person in my youth already, as early as 1913. At that time I had been studying a number of writers (Dilthey, Simmel, et al.) with the intention of writing a doctoral dissertation on the subject. For strictly circumstantial reasons, however, I reached an agreement with Husserl, in the autumn of 1913, to write on intuition in Bergson. All the same, the question of the human person never left me (Ingarden 1960, 256–257).

The reference to Simmel, one of the 'classics' of early sociology and neo-Kantian *Kulturphilosophie*, tempts one to imagine that, had Ingarden remained true to his original convictions to write about the person, he might have examined in this connection the nature of the social tie, the consciousness of sociality, as Simmel put it; so too he might have examined Dilthey's historical world, the realm of objective spirit, perhaps the theory of expression as well in relation to the person. Speculating further it is notable that 1913 marks the publication of Scheler's first edition of the study on the nature and forms of sympathy, which we can assume that Ingarden read. We do know that his close friendship with Edith Stein included discussions about the notion of the person which, in her case, was a central theme in her doctoral dissertation concerned with the nature of empathy, precisely a 'social' emotion, if I may say.[6] In short, it would be implausible to suppose that Ingarden was unfamiliar with questions concerning alterity, intersubjectivity, and how they relate to the nature of personhood.

All this notwithstanding, one thing that was characteristic of all these figures, Scheler in particular, was their profound axiological sense; that is, all attributed, in one way or another, a central place in their respective considerations to value, more exactly, to different kinds of values and the roles values play in shaping human existence. Ingarden, too, was deeply imbued with this axiological sense.[7] My

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[5] Notwithstanding the appraisal of the generally 'asocial' character of Ingarden's reflections, I will show below that his conception of the artwork does leave room, and quite essentially so, for communication.

[6] In her correspondence with Ingarden Stein thanks him for his critical remarks directed to her dissertation and recognizes that she has more work to do to clarify her ideas about the phenomenon. I am not familiar, however, with the details of Ingarden's criticisms (Ingarden's letters to Stein have not survived). Cf Allen n.d.

[7] Indeed I venture to suggest that no small part of his worries about Husserlian idealism was motivated by this sense – as if to say that his decided realism in matters of ontology and epistemology was at heart a direct consequence of a decided axiological (value) realism. For instance, in his ontological account of responsibility he makes the existence of values a central ontic condition for its possibility.

argument here is that to the extent that there is any sense of the social, of sociality and its basis, present in his works it is grounded in the way he believed values enter into and shape human (co-) existence. Ingarden, as we shall see in detail, came with time to speak of 'man's reality', that is, that domain in the world that is suffused with value - culture, as Ingarden denoted this 'reality'. On his reading culture testifies to our capacity to perceive, respond to, and as far as possible realize values which, in regard to their value-natures (qualities), remain *transcendent* to the cultural forms, the artifacts, which we constitute to embody them, however imperfectly. And in particular Ingarden's remarks in different contexts of his writings suggest that such cultural value-posits mediate, indeed create, the occasions for relations among humans; we create and sustain our societal reality by virtue of our mutual recognition of and reference to values, as well as by our experience in common of bringing these values concretely into our midst (value-realization).

Ingarden's 'vision' of the axiological foundations of social reality carries more than just a hint of classical visions of communal life (indeed of the *polis*). Though I have no textual evidence to this effect, I would cite in this connection Plato and Aristotle as distant influences.[8] We will see how convinced Ingarden was that, if human existence has a point, it lies in our creating the conditions in which the True, the Good, the Beautiful, as well as Justice (his addition to the classical trinity), come to acquire pride of place in our lives as ideals to pursue, individually and in common. However, I have Kant in mind as well, though again without textual support. Kant's distinction[9] between 'culture' – to which he ascribes a moral prerogative with regard to personal flourishing – and 'civilization' as the external order of rules and conventions within which we conduct our business with one another, ideally in a rational and virtuous manner, appears to me to be in keeping with Ingarden's way of thinking. For Kant as for Ingarden, the join between culture and civilization is located in the person: just as particular persons may respond to and seek to realize the 'higher' values (i.e. the true, the good, the beautiful…), thereby attesting to their intrinsically 'good will', a setting in which many persons pay respect to, whether or not jointly, the same values is conducive to a 'civilization' rich in incentives to promote the 'good will' of each as well as mutual tolerance.[10]

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[8] Both Plato and Aristotle served Ingarden well in his detailed ontological investigations: his conception of Ideas certainly owes its inspiration to Plato and much of his ontology draws on Aristotle's categories, in particular that of the natured substance with essential and accidental properties, as even a cursory examination of his Habilitation, *Essentiale Fragen*, will show.

[9] *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht*, 1784, in the sixth part (*Absatz*) in which Kant associates "*die Idee der Aufklärung*" with morality and freedom in relation as well to a *Staatsvertrag*.

[10] Simmel's 1911 *Logos* essay *Begriff und Tragödie der Kultur* is redolent of the kind of 'vision' I am ascribing to Ingarden. The many and historically diversified cultural forms ought to enable the 'person' to flourish, and this happens if and when the 'subject' appropriates the values incorporated within these cultural forms, the nature of which is such as to foster reciprocal ties rather than individualization (atomization), an abstractive force, the bane of modernity, which is tantamount to the destruction – the tragedy – of civilization.

Be all this as it may, this 'vision' of the cultural foundations of social reality is not without its difficulties and ambiguities (at least as regards Ingarden's formulations). One difficulty concerns the concept of value; the other has to do with the concept of value realization. As to value, Ingarden went almost out of his way to argue that we know precious little about values (their natures, mode of existence; Ingarden 1969); as to value-realization, though he was strongly committed to the idea Ingarden provided no clarification of it. Hence his remarks about values and culture, and about the way culture is the foundation of 'human reality' (coexistence in a cultural context), are more in the nature of a promissory note for a fully articulated conception. Moreover, much of what he has to say about values and culture is redolent rather of a philosophical anthropology, to the effect that orientation to value, understood as a form of transcendence, is the salient characteristic of 'man' in search of spiritual fulfillment.[11]

Notwithstanding these reservations and the absence of explicit resources to back up the argument, I will pursue it in the manner of an educated guess. The case I want to make is that Ingarden did believe that our coexistence is grounded in cultural forms the principal coefficients of which are objective values. The kind of sociality in question here is not therefore intersubjectivity, it is rather our common sense that we share a 'meaningful' world.[12] I will pursue the theme by examining three contexts in which values are of the essence for Ingarden and show how at critical points within these contexts commonality mediated by values comes into play. The first is well-known, being among Ingarden's major achievements, viz., his aesthetics, in particular his conception of the (literary) work of art. For Ingarden, works of art are the privileged 'space' of aesthetic value, communion with which is not only life-enriching for a given person, it is also culturally fundamental. The second context seems to be less well known, viz., Ingarden's ontology of responsibility. Here too values are pivotal, they are a salient ontic condition of responsibility. Values shape human relations according to how we enhance or harm one another's well-being, by 'realizing' in our actions either positive or negative values, in the latter case incurring responsibility that clings to us so long as we do not rectify the 'value situation' by 'realizing' an appropriate corresponding positive value. In the third place, I will examine Ingarden's remarks about 'man's reality', as he called it, that is, his remarks about cultural artifacts and the role played therein by values.

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[11] Ingarden's Polish students and disciples have reported that he expressed unease about these ideas, because they failed to meet the demands of the rigorous analytic conceptual work he had established for himself. But there is no question that he did not take these views seriously.

[12] I have only recently discovered that Dietrich von Hildebrand developed in considerable detail a theory of the constitutive role of value within the community. He speaks in this connection of the 'virtus unitiva' of values – the "Wesenszusammenhang von Wert und Vereintheit" (Hildebrand 1930/1975). Alessandro Salice summarizes Hildebrand's insights as follows: "Von Hildebrand's idea is that individuals are constantly geared to values and that the values toward which they produce a response (*Wertantwort*) "incorporate" the individuals in themselves" (Salice 2015). Ingarden mentions, but no more than mentions, Hildebrand in several places as a proponent of the 'material' value theory he himself embraces.

My discussion of this last context will gain in pertinence, I hope, in that I will examine a recent attempt by Amie Thomasson (2005) to adapt Ingarden's concept of the purely intentional object – in particular the artwork – to current discussions in social ontology. I want to show that however much Thomasson's efforts may provide dividends for social ontologists today, she overlooks the importance Ingarden attached to values in this context, that is to say, to the way in which values sustain and explain the very raison d'être of specific kinds of cultural artifacts and the social practices they enable.[13] I will describe this truncated appreciation of Ingarden's theories as 'immanentist' and contrast it with Ingarden's own 'transcendent' view of the cultural foundations of institutions and practices. All the same, however, what I have to say will remain sketchy for want of sufficient resources in Ingarden's own writings.[14]

12.1   The Artwork and Mutual Response to Aesthetic Value

Let me start with a caveat. To speak of artworks in relation to sociality – e.g. communication and dialogue – evokes for many the dialogical aesthetics of Bakhtin who already in his early (in part phenomenologizing) works, but in particular in his Dostoevsky book considered such features as the author's ethical interaction with his hero, the many voices in dialogue in a narrative, and the creative encounter of writer and reader as constitutive of literary language and art. Although suggestive parallels between Bakhtin and Ingarden could certainly be found, especially with regard to readerly reception as a form of 'interaction' with a work, Ingarden's and Bakhtin's underlying intuitions and their theoretical articulation concerning the nature of art appear to be considerably different.[15]

Ingarden conceives the finished (literary) artwork as a stratified, schematic, and embodied meaning-entity.[16] That an artist succeeds in producing an artwork depends on his ability to exploit essential connections governing strata within the work – depending on the medium and genre – each of which contributes in a specific way to its overall aesthetic character. A successful novel, say, is an artwork thanks to the

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[13] It does not appear that social ontology today, say in the style of Searle's work, pays attention to values (understood as 'material values'). Zaibert and Smith 2007.

[14] Ingarden's Polish students and disciples have pushed and prodded Ingarden's writings on aesthetics, values, man and culture producing a rich body of literature which is both commentary and construction. I have in view, among many others: Władysław Stróżewski, Andrzej Półtawski, Maria Gołaszewska, Adam Węgrzecki, Zofia Majewska, Anna-Teresa Tymieniecka. Półtawski has exerted his influence in the pages that follow, cf. Poltawski 2011. Another study which goes to the heart of these questions is by Majewska 2010.

[15] I am not aware of any large-scale attempts to compare Bakhtin and Ingarden with regard to the nature of the literary work of art.

[16] The sources for the literary work of art are Ingarden 1965/1972, 1973, 1968/1997. Ingarden research in the ontology of other art forms is in Ingarden 1962. A presentation and discussion is Mitscherling 1997.

artist's 'poetical' use of language, a use which shows that the artist is alive to the potential carried by artistic and aesthetic value-qualities first within the linguistic stratum of the work and then in the supervening strata that make up the world of the novel. Ingarden builds his theory in such a way as to show the close constitutive connection between the stratified 'structure' of an artwork rich in qualities of value and (readerly) reception responding to and actualizing the potential carried by these values. In the first place, a work is schematic, i.e. underdetermined, incomplete in significant ways; as such it exhibits latency, a potential for completion, realization. What the artist has wrought "appeals," so to speak, to the receptive public for its actualization (to bring the work out of its potential state),[17] on the one hand, and completion, on the other, which Ingarden fixes with the term 'concretization'. According to Ingarden, concretization by the recipient of a work is (should be) guided by her growing sensitivity to the qualities of values and their interplay within the work's structure. In *Vom Erkennen des literarischen Kunstwerks*, the companion volume to his first treatise, *Das literarische Kunstwerk*, Ingarden provides a phenomenology of reading in which concretization figures prominently.[18]

Ideal-typically, the reader brings the text to life following the cues provided by the 'poetical' linguistic stratum and thereby gains access to the "represented world." Moreover, as she reads the recipient fills out, now one way, now another, 'places of indeterminacy' (*Unbestimmtheitsstellen*) depending on how she 'responds' not only to the story line but as well to the emotional atmosphere of the work. As if in the grips of a teleological movement, she grows increasingly conscious of the interplay of text and narrative, of representation and affect, and is drawn to achieve a sense of polyphonic harmony among all these elements now rife, in her reception, with valences prompting an aesthetic, i.e., emotional, response. This affective aspect or phase of the encounter with the polyphonic harmony of the artwork connotes for Ingarden the constitution of the 'aesthetic object', precisely the point of contact by the recipient, according to him, of the value(s) that the work bears. Describing this experience as 'contemplation' Ingarden understands it virtually as a communion with a value revealing itself in and through the work. Subjectively, the aesthetic experience is not the Kantian free play with its attendant pleasurable sense, turned inwardly, but quite to the contrary, a form of self-transcendence for the sake of contact with the value the work reveals to the recipients.[19]

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[17] Wolfgang Iser, who (together with Robert Jauss) conceived a *Rezeptionsästhetik* on the basis of Ingarden's aesthetics, speaks in this connection of the 'Appellstruktur des Textes' (Iser 1970).

[18] The locus classicus is in Ingarden 1968/1997, § 24 "Das ästhetische Erlebnis und der ästhetische Gegenstand." That Ingarden intended his description to apply generally to all kinds of artworks, and not only to literature, is demonstrated by his choice of example (in a book about readerly reception): the statue ‚Venus of Milo'. I will simply transpose to the literary case the salient moments in Ingarden's account of the aesthetic experience of the Venus. I have examined Ingarden's views on aesthetic experience against the background of Kant's theory of the aesthetic judgement in Świderski 2013.

[19] Self-transcendence is the counterpart in Ingarden's theory of the concept of the aesthetic attitude which connotes the suspension of any practical, personal (psychological), and theoretical interests

It needs to be stressed that the constitution by the subject of the aesthetic object has as its basis the artwork, that is, in Ingarden's terminology, a purely intentional object that is existentially heteronomous. Whatever characteristics this object has have come to it from without, from the meaning-projective acts of the creator of the artwork; it enjoys no intrinsic, existentially autonomous features. Notwithstanding the heteronomy of the artwork, its creation has been guided, on Ingarden's view, by the explicit or inchoate sense of value-qualities that the work either succeeds or fails to include. And these value-qualities are not existentially heteronomous (though Ingarden never clearly spelled out their ontic modality); at the very least they are 'objective', although it is likely, as we shall see more in detail below, that more than objectivity accrues to value-qualities (and values). For the moment, however, it appears that this somewhat peculiar situation, in which a purely intentional object comes to 'realize' (bear) qualities of a kind which are not grounded in intentionality, opens a way to the mutuality I am seeking to accommodate in this context.

In the first place, Ingarden spoke in this connection of a *rencontre* between the artwork and the 'creative' subject, as well as between the work and the 'receptive' subject.[20] By "*rencontre*" he seems to have wanted to note the way in which 'subject' and 'object' interact in the course of the work's creation and reception, the way in which mutual adjustments occur between text and author, text and reader in the course of a temporal dynamic compatible with the idea of the ongoing 'life' (history) of the work. To say that that the created object is itself active within the '*rencontre*' sounds mysterious until we remember that the purely intentional object that is the work is suffused with qualities of value: as such, it 'induces' responses, it exercises an attraction, exciting the imagination. All this notwithstanding, however, the initial *rencontre* occurs first of all between the artist and the object he or she brings into being and whose first recipient he or she is. Nothing precludes the case of the solitary recipient of the work who is also its creator; the idea of a recipient other than the artist is not predetermined merely by talk of '*rencontre*'. Least of all is there any basis to conclude that artist and alter, the recipient, somehow 'meet' by way of communing with one and the same work. In this last regard, Ingarden was sufficiently 'formalist' in his aesthetic outlooks as to put out of play any question of the author's intention that the recipient would wish/need to seek out in order to grasp the meaning of the work.[21]

However, Ingarden supplemented the idea of *rencontre* with the concept of the 'situation', the 'aesthetic situation'. The logical structure of the aesthetic situation (AS) can be cast in the form of an ordered quintuple:

(as the condition for 'aesthetic judgment'). Ingarden explicitly takes over the notion of the aesthetic attitude in his account of aesthetic experience.

[20] Presentation and analysis of this notion, as well as that of the 'aesthetic situation', as Ingarden understood these expressions, is in Miskiewicz 2012.

[21] Among other things, he was scathingly critical of so-called psychologistic accounts of the nature of art and their pendants fixed to such theoretical artifacts as *Nacherlebnis*, *Einfühlung*, and the like.

(AS)=< artist, work (comprising its material embodiment), recipient, context, value >.[22]

Significant here is that value figures in the aesthetic situation as a primitive, that is, value is not related to valuation, ascription of value on the part of author and/or recipient. The work occasions access to the values to the extent that the work is successful in 'realizing' the value. We can understand the 'aesthetic situation' as an 'objective' frame of reference underwriting the standing possibility of mutual recognition of a work's values on the part of the artist as well as on the part of suitably sensitive recipients (allowing for 'historical context' as a relevance condition, i.e., kinds of response to a work are conditioned in part by the context in which it is received). Although it may be overstating the idea, we can say that the successful work links artist and recipient by virtue of the witness each pays to the same values to which the work gives access, thanks to which artist and recipient participate, whether or not knowingly, in an axiologically potent sphere of meaning.

One indication that this interpretation is not altogether askew of Ingarden's intentions has to do with his notion of 'metaphysical qualities' to which certain works of art can give access[23] – for instance the 'tragic', as a quality that pervades the world of the novel as a kind of overarching 'mood'.[24] Ingarden speaks of these metaphysical qualities as "apparitions" in the artwork, that is, in terms suggesting their transcendence to the work. In their qualities they are not aesthetic *sensu stricto*, nor do they supervene on artistic and aesthetic value-qualities of this or that stratum of a given artwork. He rejects the suggestion that they are properties of the works or of the mental states of artists and recipients. Admittedly, this is not true of the work's own aesthetic value, which is "grounded in" the sustaining aesthetic and artistic valences present throughout the work.[25] But Ingarden does insist that to capture the value of the work, especially the metaphysical qualities to which it may draw attention, is to experience a degree of spiritual fulfillment which is not 'merely' aesthetic, if this is taken to mean the kind of garden-variety 'pleasure' with which

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[22] I have chosen to include 'context' although it does not feature prominently in Ingarden's considerations. It seems nevertheless to belong here inasmuch as Ingarden does allow for the history of work in relation to the many and varied concretisations it affords. There is no hint of relativism here, however, as Ingarden holds on staunchly to the identity of the work grounded in its schematic structure.

[23] Ingarden (1965/1973, § 48) provided a list of sorts that includes: "… the sublime, the tragic, the dreadful, the shocking, the inexplicable, the demonic, the holy, the sinful, the sorrowful, the indescribable brightness of good fortune, as well as the grotesque, the charming, the light, the peaceful, etc." One wonders how to complete the "etc."

[24] There has been speculation as to whether the influence of Heidegger, about whom Ingarden remained largely silent, is present in his notion of metaphysical qualities, viz., Heidegger's "*Stimmung*." It is more likely, however, that Scheler played a role in regard to the idea of experiences of this kind. Ingarden in fact translated Scheler's essay on the tragic (Ingarden 1922).

[25] It is unclear whether Ingarden would agree that, in relation to the sustaining qualities throughout the several strata of the work, the overarching aesthetic value of the work should be considered as a 'supervenient' property. Though he intended his conception to be ontological, his descriptions are rather of a phenomenological, experiential character, relative to perceptual modes and affective inclinations and responses; in point of fact, he frequently speaks of the value qualities and the value itself as *Gestalts*.

the tradition since the eighteenth century has been preoccupied.[26] Ingarden is by far more high-minded: he wants this kind of experience to be a spiritual enrichment, a major resource of our personal flourishing, by virtue of the contact it affords a person with another realm, that of values and what they portend.[27] From this point of view, the artwork promotes mutual recognition on the part of all concerned of the 'transcendence-within-immanence' of the values to which a work gives access. The successful work of art is a kind of beacon calling attention to itself and directing the minds and hearts of the many who follow its beam to that luminous something beyond which, in the broader context of culture, acquires an additional force, that of a cultural value. In the last part, this theme will be paramount.

12.2   Responsibility and Its Ontic Foundations

Ingarden had more than one purpose in mind when he set out to examine responsibility (Ingarden 1970). In the first place, he wanted to know what ontic conditions need to obtain for our responsibility to be possible; he believed that, if there is responsibility at all, it has to be grounded in the way the world is and in particular the way we are in the world. He was especially concerned to investigate how it is that someone can continue to bear responsibility for his deeds over time. In his view, this is a remarkable state of affairs the clarification of which extends well beyond imputing responsibility to an agent; the answer has to come from 'within' the structures of the agent and the way this structure inflects with the world. At the time he composed the study Ingarden was able to press into service his existential- and formal- ontological investigations, including his attempt in the last volume of *Streit* to recast the concept of causality in terms of 'relatively isolated systems.' To these investigations he added an account of the embodied human person who comprises several such interlocking causal systems sustaining the psyche (*Seele*) and consciousness in existence.[28]

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[26] To be sure, for many Ingarden's aesthetics is a relic of the past in that he does unambiguously relate the essence of the artwork to the aesthetic function – an artwork is the occasion for aesthetic experience which seeks satisfaction in the encounter with aesthetic values (and metaphysical qualities). Cf. Carroll 2001.

[27] "These "metaphysical" qualities (…) which reveal themselves from time to time are what makes life worth living, and, whether we wish it or not, a secret longing for their concrete revelation lives in us and drives us in all our affairs and days. Their revelation constitutes the summit and the very depths of existence. (…) [T]hey are perceivable in their specific (…) uniqueness only when we ourselves live *primarily* in the given *situation* or, at the very least, when we feel at one with someone who lives in such a situation and do not search out metaphysical qualities" (Ingarden 1965/1973, 291–292; italics in the original). Notice the phrase "when we feel at one with someone …"

[28] Ingarden was no substance dualist; much of what he writes about the structure of the human person could well put him in league with 'naturalists', on the condition of course that the naturalism in question is of the non-reductionist variety. But there are too many open questions here to permit a facile conclusion; that he favored metaphysical realism is all too clear, but the complication as far as

An essential condition for incurring responsibility is that the person be the source of her own acts, they have to proceed directly from her, freely, from what Ingarden calls her 'Ich-Zentrum'.[29] So too must her acts be effective, they have to bring about states of affairs that would not otherwise obtain had the agent not acted, be it causally (physically damaging something or someone) or constitutively (producing a work of art, insulting my neighbor). What Ingarden wished to highlight is that to speak about responsibility is to underscore a real relation – again a *rencontre*, if you will – between the acting person and the world, a relation grounded in a succession of events or states of affairs throughout which the self-identical agent bears responsibility, and for which she can also assume or be called to assume responsibility, a relation that is possible only if time itself is real, avers Ingarden.

Let me note that by ontologizing responsibility Ingarden was hoping to turn an additional trick, viz. to undermine Husserl's insistence on the fundamental character of the transcendental ego for whom the world and the ordinary self's relation to the world are relativized to the meaning they are constituted to have. To this Ingarden replies succinctly: to bear responsibility requires that the agent, her actions, and the results they bring about be real, that is to say, they cannot belong merely to the sphere of immanence, to pure consciousness; they must be productive of and maintain in existence a real relation.[30]

But the crucial component of this story has yet to be stated. What is it that I am responsible for, according to Ingarden? Not merely the fact of having brought about a state of affairs that would not otherwise have occurred (wiping the crumbs off the table). What is gained by invoking responsibility in regard to some such 'change'? Clearly, more is required. The change I brought about intentionally has done some harm, in certain cases some good perhaps, and to the degree that I do bear responsibility for this my act, the intention it carries, indeed my very core, my 'Ich-Zentrum', from which the act proceeded, are retroactively stamped by negative valences. It is this onset of positive and/or negative valences riding piggyback on what occurs as well as on the person herself that is crucial to Ingarden's account. He states his thesis flatly: were there no positive and negative valences in a robust sense, that is, were there no values tout court, responsibility would not be possible (Ingarden 1970, 38). "In a robust sense" means that, because Ingarden is exploring the ontic conditions of responsibility, the effects arising out of a particular kind of '*rencontre*' between the acting person and the world, then these valences, too, must enjoy (some

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a naturalist perspective goes is that Ingarden seems to have thought about values in realist terms as well. With regard to his ontology of consciousness (including the psyche, self-consciousness, and the question of the body) Ingarden examined these matters in chapter XVI of *Streit*.

By his little treatise on responsibility Ingarden satisfied an ambition frustrated much earlier while he was still under Husserl's tutelage: to write about the person. At the same time, the treatise contains some pithy criticism of Husserl; handled ontologically, the responsibility question became a fundamental means to argue against transcendental idealism. Cf. Świderski 2005.

[29] I owe to a reviewer the information that the notion first appears in Pfänder's *Motive und Motivation* of 1911. I had assumed that Ingarden took it from Scheler and Stein.

[30] Ingarden nowhere mentions Husserl's ethics, referring in this context only to Max Scheler, Dietrich von Hildebrand, and Nicolai Hartman.

kind of) 'realness'. This real, or if one prefers 'extra-subjective', foundation is manifest in, though it is not identical with, the essential (ideal) connections among the 'material', that is, qualitative natures of the values "realized" in any given *Wertzusammenhang*. The upshot for Ingarden is that by my actions I may bring about not merely changes in the world but contribute to the emergence of so-called value situations (*Wertsituationen*).

Analogously to the case of the aesthetic situation described above, the situation in which I incur responsibility involves my complex internal structure and external outreach (the reasons impelling my behavior), a context comprising a determinate set of states of affairs, in particular those pertaining to other persons and their behaviors, … and a *Wertzusammenhang*, the overarching valence configuration, grounded in the material qualities of the specific value-types. The latter injects the dynamic tension, the axiological charge binding the remaining components of the situation and pointing it in a particular direction. A given situation may provoke judgmental wrath, cry out for justice, and/or reveal what should be done, what values have to be realized in order to lower the tension, redress the harm done, and return positive values to the world.

In the course of his discussion, Ingarden goes to some pains to discuss and dismiss the several 'isms' that typically enter into theoretical consideration of values. The varieties of subjectivism (psychologism), conventionalism, historicism, sociologism, and so forth are all dismissed in favor of the claim that values must have an objective standing, though as noted this claim is buttressed by Ingarden's elaborate ontology of responsibility grounded ultimately in the stratified substantial structure of the person.[31] I draw attention to Ingarden's polemic in this regard because it sheds light on the way he understands the very few examples he provides in what is a terse conceptual study. The examples are of value-situations in which responsibility is incurred, in one case, not by a single individual but by a pair of individuals and, in the other case, by a collective. Ingarden examines the case of an amorous relation (Ingarden 1970, 27 f.) spoiled by intentions that are less than sincere and noble and the case of persons on board a vessel at sea caught up in a potential disaster (ibid. 22 f.). While we could speak in both these cases of sociality, of degrees of joint behavior, it will turn out that, here too, mutuality, mutual recognition of something 'transcendent' – values - needs to be added in order to capture the nature of these particular value situations.

In the case of an amorous relation gone wrong, Ingarden writes about the delicate balance between two parties who in the end contribute, in differing degrees, to the violation or destruction of specific values, in this case those belonging to the authenticity of a loving relation. In the case of the scramble by endangered persons to save a ship Ingarden invokes a common response to values thanks to which those at risk

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[31] "Nur sofern man den Menschen und insbesondere seine Seele und seine Person für einen realen, in der Zeit verharrenden Gegenstand hält, der eine spezielle, charakteristische Form hat, ist es möglich, die Postulate der Verantwortung zu erfüllen. Als eine handelnde Person muß der Täter noch eine besondere Form haben, welche ihm das Handeln in der realen Welt und die spezifischen Verhaltensweisen beim Tragen und Übernahme der Verantwortung ermöglicht" (Ingarden 1970, 66).

come more or less spontaneously to adjust their individual intentions, coordinate their behavior, and act in concert as an '*echte Gemeinschaft*' (22). Ingarden wants to say the responsibility can be joint in the first amorous case, depending on the way each agent in relation to the other recognizes, assents to or resists, indeed perhaps ignores, the emerging value-situation; analogously in the case of the group, it is a distinctly collective responsibility (*Mitverantwortung*) to which the parties are jointly committed by way of the mutual 'perception' of specific values. Although the examples are of significantly different kinds of value-situations, in each instance the interaction and what it involves – mutual knowledge, adjusting intentions, coordinating behavior, promoting or frustrating each other's desires and the claims on another person - are mediated by values in the robust meaning Ingarden attaches to the concept. It is as if he would be ready to say that, in the absence of values human interaction would not be 'interaction' (*echt gemeinschaftlich*), such that effects flowing from mutual knowledge, coordinated intention and behavior, and the like, depend in the first place on the response to values.

To sharpen the focus of my interpretation, let me briefly contrast the story I am telling about Ingarden's vision with that of Margaret Gilbert. Gilbert has championed the idea that there are cases in which several individuals succeed in constituting a plural subject – a 'we' - thanks to a commitment to a goal they jointly underwrite (Gilbert 1996 *Living together. Rationality, sociality, and obligation*. Lanham. Md. Rowman & Littlefied). Here I am not concerned in the first place about the plural subject, Gilbert's we, though it is central to her account of sociality. Rather, what is of interest in the present context is that, according to Gilbert, the normativity inherent in the commitment as well as in the ensuing activity of the parties concerned is instituted by and amidst them, by their joint commitment; that is, it arises within the space of the bond they institute voluntarily. Among other things, this means that they set the conditions, whether or not explicitly, which govern what each is to do in order for all to be able to achieve their common purpose. In contrast, I suggest, Ingarden's examples involve more than Gilbertian 'jointness', more than the institution of specific rights and obligations arising out of the parties' mutual agreement. His normativity rests on the additional mutual recognition – be it vivid or not - of values and the conditions governing their realization. He wants to say that the situation of a couple within an amorous relationship is governed – essentially – by far more than their "mutual consent" in the moment. He had in mind, of course, an awareness of preconditions and consequences, but also the responsibility each party can be expected to recognize for the other's well-being, for instance in case one or the other is unclear about his or her motives and commitments. Ingarden would say that resisting the temptation to succumb to the pleasure of the moment is an act of self-transcendence conducive to the 'realization' of a 'higher value'[32] which both

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[32] Here, talk of 'higher values' is to be understood in Scheler's meaning, according to which a value ranking can be determined by comparative principles such as, for example, a value's longevity, the depth of satisfaction it provides, the degree to which it remains intact depending on what may happen to its bearer, etc. Here as elsewhere in his axiological considerations Ingarden appears to suppose readers' familiarity with Scheler's theory and language.

parties (can) may acknowledge, despite the pain this may occasion. Failure to do so, insincerity, and the like, will then weigh on one or both parties; one or both will 'bear' responsibility in the pregnant meaning Ingarden assigns to the term. In the case of the potential disaster at sea the joint action by the vessel's occupants to prevent it from sinking pays witness to their response, however spontaneous and 'from-the-gut', to the 'transcendent' values of life and mutual succor. Here as well, failure to respond, cowardice, and the like, would be tantamount to incurring and bearing responsibility for failing to 'realize' values.[33]

12.3   Culture as Our 'Human Reality'

In the preceding, I have had recourse to such expressions as value-situations, axiologically potent spheres, and value-transcendence. It should be clear by now that these are the kinds of expressions which belong to the concept of culture as Ingarden understands it. It is time to examine culture, that is to say Ingarden's 'vision' of culture as our 'human reality', the framework for our coexistence. The contexts discussed so far – art and the nature of responsibility – suppose the objectivity of value, as we have seen, but 'culture' provides the overarching framework for an integral 'human reality' in which the value of value, so to speak, takes pride of place. To speak of the value of value in relation to culture as Ingarden understands it is to fix attention on his conviction that our cultural artifacts provide access to values, that we value the former because they represent so many contributions to the "realization of values". As we shall see, realization is not parsed as creation or constitution of value; instead, our cultural artifacts are means by which we, individually and severally, gain access to values, much as language, perhaps the primary artifact, enables us, individually and severally, to articulate that access.

In contrast to the style of my discussion so far, I want to proceed this time from the perspective of a third-party interpretation.[34] Outside Poland Ingarden has played

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[33] A further example of the 'transcendence of values', as Ingarden appeared to understand it, is found in his short dedication at the start of *Streit*. He writes there that he means it to be a sign that the spirit of the Polish nation continued to live despite the destruction it suffered throughout the war. It is not difficult to understand this sentiment within the broader context of Polish history in view of the pride to which Poles so often give expression regarding such phenomena as the Polish-Lithuanian Commonwealth, a liberal order in which freedom of conscience went hand in hand with patriotism (not nationalism), or the persistence of the patriotic bond despite the 130 years of partition and foreign occupation. What lies beyond the sentiment is the perception, as it were, of a divide between empirical reality and the ideal realm of values, such that, although the empirical carriers of the values come and go, sometimes by being crushed and destroyed, the ideal realm continues to exist out of harm's way, so to speak. But this suggests, too, that those in tune with this ideal realm of values have to shepherd it – that is their prime responsibility: never to let these values escape from their sight or, worse still, to compromise them.

[34] As regards the theme under consideration, there are precious few such interpretations. Ingarden's aesthetics has of course long been his calling card, attracting many who know little about his grander philosophical ambitions. The responsibility problematic has attracted very little attention

no noticeable role in investigations in social ontology, with one exception: in 2005 Amie Thomasson published an essay entitled "Ingarden and the ontology of cultural objects," in effect a first attempt to flesh out Ingarden's conception of the purely intentional object in a way that could make it "interesting" for social ontologists within the analytical camp, with John Searle in the lead.

Thomasson's interests in Ingarden's ontology are sparked by, among other things, the state of the discussion about 'social objects' among those philosophers who have been debating Searle's ontology of social reality, and lately civilization. However, this particular question about 'social objects' could appear to be misguided since, thanks to an exchange between Searle and Barry Smith some years ago, we know that Searle rebuffed the idea that there is anything like a 'social object', somehow not on a par with the good old things out there in nature. He chastised Smith for importing into the context of his concerns ideas that are alien to it, ideas which Smith, on the other hand, as a seasoned aficionado of all things Austro-Hungarian and ontological, would well be expected to champion (Smith and Searle 2003).

Thomasson sides with Smith and argues in favor of social objects, or social *and* cultural objects as she puts it; it remains an open question whether in context the 'and' signals a fundamental difference and distinct criteria of classification.[35] Thomasson acknowledges that the main difficulty, the astonishment, a social ontologist may experience contemplating the prospect of 'social and cultural objects' is this (as stated by Searle and quoted by Thomasson): we have "a sense that there is an element of magic, a conjuring trick, a sleight of hand in the creation of institutional facts out of brute facts," so that "In our toughest metaphysical moods we want to ask … are these bits of paper really *money*? Is this piece of land really somebody's *private property*?" (Searle 1995, 45; Thomasson 2005, 131) Searle's answer has been that they are 'real' so long as *we* believe it to be case … within a context of collectively recognized status functions and constitutive rules that supply the binding force to the social cement, viz., deontic powers of various degrees of strength distributed across the practices tethered to these functions, themselves "attached" to bits of matter, and the rules they rely on. Thomasson, eager on the one hand to avoid the Scylla of reductionism – so-called social objects are nothing but lumps of matter – as well as the Charybdis of what she labels projectivism on the other hand – social objects are nothing but mind-creations that remain where they originate, which view she more or less attributes to Searle – seeks to assist by augmenting the range of possibilities by adding to the ontological categories with which to grapple with these questions. After all, if all you have in your ontological tool box

among philosophers outside Poland. There have been attempts in Poland – e.g. Lipiec 1972 – to put Ingarden to good use in social ontology, though these efforts seem not to have paid dividends in Poland, perhaps because they were intended to reinforce the Marxist conception of social being.

[35] For instance, *prima facie* walking together (Margaret Gilbert) could be an instance of a 'social object' distinct from an artefact like a cathedral, which is a 'cultural object'. However, it does not require much sociological and cultural anthropological imagination to collapse the distinction as soon as a 'social object' as simple as walking together is seen in light of the many conventions, norms, stereotypes – cultural accretions - heaped upon it from one social grouping to another.

is the category of material things, on the one hand, and the category of some sorts of mental bits, on the other, then it seems you do have to settle for saying either that the cathedral at Reims (an example taken from Ingarden's essay on the nature of the architectural work) is just a heap of stones or that it is a figment of the imagination, individual and collective (think in this last regard of Cornelius Castoriadis' 'imaginaire radical').

The issue becomes, is there a way to break out of the mutual isolation of the real (material) and the mental (psychological); is there some way we can safely attribute a robust ontic status to artifacts without engaging in speculative metaphysics? Ingarden has the needed additional ontic category, Thomasson believes, that of the purely intentional object, which she allies with the "constitution-without-identity view" of artifacts generally. As she summarizes, "[t]his gives room to understand concrete cultural objects such as flags and churches as entities rigidly dependent on their physical bases without being identifiable with them, and as dependent on consciousness without being mere phantasms" (Thomasson 2005, 135). Thus, *pace* Searle and all who think alike, there are after all 'social objects' – or cultural objects – on the condition however that they be characterized along Ingardenian lines as purely intentional, that is, objects with their ontic sources in intentional acts but with ontic foundations in material bearers thanks to which they are objectively accessible. Searle for his part enjoys repeating that institutional facts are ontologically subjective – in that they arise out of and are kept in being by collectively recognized status functions – but epistemologically objective, in that being the instituted facts they are there are some things we may think and say about these facts, not to mention how we may behave with regard to them, which are erroneous. Thomasson, we could say, attempts to shore up Searle's ontological subjectivism with recourse to Ingarden's category of the purely intentional object; Searle's institutional facts thereby acquire a measure more of 'objectivity' turning into 'socio-cultural objects' after all.

Thomasson has 'exploited' Ingarden to mend fences elsewhere, however much her reading of Ingarden is subtle and interesting in its own right. In so doing she has overlooked what was for Ingarden an important, perhaps the most salient, consideration with regard to the status of purely intentional objects and the role they play in our lives, according to him. In a word, they are value-bearers and we make them in order to access values. Straightaway a word of caution in regard to what I mean by saying "we make them in order to …" This could be read as a functional characterization as when one asks 'what functions should artworks serve?', with answers ranging from "in order to give pleasure," "to educate the sentiments," "to teach us things about ourselves we can't know otherwise," "to capture the beauty of nature," and I know not what else. Perhaps as well, then, "in order to access values …," though this sounds strained. For Ingarden, the matter has nothing to do with 'functionality' in this sense. For him, it has far more to do with the astonishing 'fact' – if this is the right expression – that the human condition appears to 'need' contact with a transcendent something and that the attempts to achieve this contact have sedimented over time building up the sphere of being which he identifies as "man's reality," i.e. culture. It is not that at the dawn of time humans started tinkering

with materials and bit by bit (sic), by trial and error, so to speak, managed to discover how to construct cathedrals. If anything, Ingarden wants it the other way round: it belongs to our nature to recognize in the tinkering an aspiration for contact with something beyond the here and now and satisfying far more than immediate needs and pleasures. For him, it is this aspiration which forms the basis of cultural reality and which has come to underpin our organized forms of 'social' behavior in relation to 'objects' like cathedrals.

Nearly at the close of her essay Thomasson inquires: "Yet the question remains: why should we accept that consciousness can create any objects at all, even if we limit it to creating purely intentional objects? This may not have been a question that Ingarden even considered, given his starting place and approach to ontology …." (133–34). I maintain that Ingarden did entertain the question, but with respect to that sphere of being to which prof. Thomasson hardly even alludes, viz. the sphere of values. Admittedly, Ingarden was sure that we know little about values, which is to say he knew not how to accommodate values in his ontology (be it with regard to their mode of being, to what it is that makes values valent, and what it means to 'realize' values). For example, in the lectures on ethics he held at the Jagiellonian University in the 1960s, he opined that:

> Values are not real either in the sense in which an electrical current is real or [in which] human anger or fascination are real, but nor are they mere intentional correlates of our feelings, demands, musings and evaluations. We need to find some kind of middle way, some kind of distinctive *modus existentiae*, which would on the one hand be something other than mere reality and on the other hand something more than mere intentionality, an ordinary human phantasm thrown over the world [Ingarden 1989, 337].

Notwithstanding his ignorance and the disquiet it seemed to cause him, Ingarden held fast to the vivid sense of the presence, the attraction to and of value, especially in the cultural realm, the raison d'être of which consists in producing the conditions for the realization of value. In a short text dating from the 1930s Ingarden states:

> All those things we call values – such as goodness, beauty, truth, justice, and so forth, are not found in the physico-biological substratum of our human world, but indeed emerge only in that "superimposed" reality we have created, a reality appropriate to man, or, at least, like goodness in the moral sense – these values become manifest through that reality, or *demand its creation* for their embodiment [Ingarden (1983, 29–30); italics mine – EMS].

To this passage Ingarden appends a footnote which is particularly indicative of his 'vision'.

> This is not yet tantamount to saying [with reference to the creation of the conditions for the realization of values – EMS] that values are themselves created by man. To ask what there source is, or whether we can speak at all of their having been created, is an entirely new perspective of questioning which is no longer within the scope of the problems of man's essence. The only thing that is of crucial importance for man, is that he is able to attain to that sphere of being which is comprised of values [Ibid. 31; italics mine – EMS].

Taken together these passages are sufficient to answer Thomasson's question quoted above: though we may know little about our ability to 'create' objects of a special sort, we needn't wonder whether consciousness can do so, because we have and pursue the experience of what our creations convey to us – the experience of values.

Ingarden's position here is noteworthy in the light of his distinction between ontology and metaphysics: where the competence of the former is restricted to examining essential pure possibilities the latter has the mandate of determining which of these possibilities, for any given domain of objects, comes to be in fact. But in the present context we have another picture: Ingarden knows not what values are, ontologically, he cannot generate the range of pure possibilities with respect to which the metaphysical decision about their factual existence will fall, but, convinced of their presence in and impact on our lives, he assures us that we do in fact access their sphere of being, that is, we can indeed affirm their existence.[36] The claim is metaphysical but shorn of an ontological fundament; it is unassailable for all that (*dixit* Ingarden).[37] Recall the reference in the theory of the artwork not only to values *sensu stricto* but to 'metaphysical qualities'; recall too the reference to values in the analysis of responsibility. For Ingarden, in these contexts, values are not an accretion, accidental and relative as far as the essence of the artwork or the nature of responsibility are concerned, they are in both instances, and throughout culture as a whole, fundamental to what these 'things' really are in relation to what we are and can do.

> [Man] first attains to his genuine stature as a human being because, and only because, he creates a reality which manifests or embodies in itself the values of goodness, beauty, truth and law; because in his life, or at least in that in which it is of sole importance, he remains in the service of realizing values within the reality he has created; only thus does he attain to the mission that tells of his humanity: he becomes a man who mediates between what is merely 'nature' and what he can divine only crudely, as if in a reflection, through the values he had disclosed and embodied [Ingarden 1983, 30].

My talk of 'windows of opportunity' in Ingarden's works betokening a glimpse of coexistence, of sociality, that I have glossed as mutuality, mutual recognition of value, dwelling together in axiologically potent spheres, etc. rather than intersubjectivity, feeds on the spirit of this last quotation. Our 'cultural objects' underpin our social ties thanks to our common, mutual recognition of the sphere of values which are the raison d'être of such modes of behavior as artistic and aesthetic practices together with the traditions they have spawned.

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[36] This strong claim on my part concerns the texts about 'man's reality', not the more analytical texts about the nature of value in which Ingarden is far more careful, in the manner of his sober ontological pursuits.

[37] This is a claim that approximates a 'transcendental argument'. Our experience of values is an unassailable fact; some of these experiences are particularly acute, in particular in the arts, where we are actively engaged; therefore, it must be the case that we are effective in creating artworks since otherwise we would be at a loss to explain how it is that we have such vivid experiences of aesthetic qualities and values (as well as metaphysical qualities revealed against the background of artworks). In short, our experience of values discloses to us a great deal about how the world is (has to be) organized and how we fit into the ways of the world.

Ingarden adapts a similar 'transcendental' approach with respect to the ontic foundations of responsibility. In this case, as in the case of culture generally, he is implicitly rebutting arguments by skeptics against the existence of values.

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Chapter 13
A Priori of the Law and Values in the Social Ontology of Wilhelm Schapp and Adolf Reinach

Francesca De Vecchi

Abstract In my paper, I investigate the problem of whether, and how, in Schapp's (*Die neue Wissenschaft vom Recht. Eine phänomenologische Untersuchung*) and Reinach's (*Die apriorischen Grundlagen des burgerlichen Rechts*) theories of *a priori* structures of the law, values can be connected with the law in an *a priori* relation. I suggest that, ultimately, Schapp's foundation of the law in the evaluations of values is not as such an *a priori* foundation, while Reinach's *eidetics* of the law involves genuine *a priori* connections, but they solely concern the being of the social and legal entities and *are not grounded in values*. Nevertheless, I argue that Schapp's theory of the *a priori* foundations of the law in values entails an analysis of the ontological status of values, of the sociality of values and of the sharing of values from which emerges an account of the *existential relation between* law and values that is very significant for social ontology. I point out that such account opens up a quite fruitful perspective on the *existential foundation* of the law, grounded on the *essential tendency* of human beings to enjoy values to the full. I underline that this perspective represents a completely new and compelling inquiry by social ontology into the *existential quality* of social entities and into the greater or lesser *degrees* of vitality, fullness, fairness, *etc.* of social entities. I suggest that this is a crucial point which has to be highlighted not only in order to do justice to Schapp, but also to devote greater attention to the needs of the *Life-world* in social ontology.

Keywords Values • *A priori* of the law • Social ontology • Eidetics • Existential foundation

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13.1   Introduction

13.1.1   *A New Science of the Law: A priori, Pregivnesses and Values*

The work of Wihlem Schapp on *The New Science of the Law. A phenomenological Investigation* [*Die neue Wissenschaft vom Recht. Eine phänomenologische Untersuchung*] (1930) represents a significant complement to the work of Adolf Reinach on *The A Priori Foundations of the Civil Law* [*Die apriorischen Grundlagen des bürgerlichen Rechtes*] (1913) for at least three highly interconnected reasons.[1]

Firstly, Schapp situates his research within the frame of the so-called "early phenomenology" (which arose at the beginning of the 1900s in Gottingen and Munich with Edmund Husserl, Johannes Daubert, Alexander Pfänder, Adolf Reinach, Max Scheler, Edith Stein, Dietrich von Hildebrand, Moritz Geiger),[2] claims to work in

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[1] Wilhem Schapp [1884–1965], philosopher and jurist, studied Philosophy and Law in Freiburg, Berlin, Göttingen and Munich. Among his teachers were Heinrich Rickert, Georg Simmel, Wilhem Dilthey and, above all, Edmund Husserl. Animated by Dilthey's seminar in Berlin on Husserl's *Logischen Untersuchungen*, in 1905 Schapp decided to study with Husserl in Göttingen, where he stayed until 1909. Under the direction of Husserl, Schapp wrote his dissertation on *Beiträge zur Phänomenologie der Wahrnehmung*, published in 1910 (see Schapp 1959). Schapp did not take up an academic career, but worked as a lawyer and notary. Thanks to his professional activities, Schapp dealt with issues of philosophy of law, which led him to the publication of *Die neue Wissenschaft vom Recht*, in two volumes: (1) *Eine phaenomenologische Untersuchung*, 1930, and (2) *Wert, Werk und Eingentum*, 1932. In the same years, Schapp also wrote *Zur Metaphysik des Muttertums*, published only in 1965. After the second world war, Schapp's philosophical interests turned towards philosophy of history; he published the trilogy: (1) *In Geschichten verstrickt. Zum Sein vom Mensch und Ding*, 1953; (2) *Philosophie der Geschichten*, 1959; (3) *Wissen in Geschichten. Zur Metaphysik der Naturwissenschaft*, 1965. On a reconstruction of the biographical and philosophical work of Schapp, see Joisten 2010. Schapp's contribution to social ontology seems limited to the book *The New Science of the Law* (1930, 1932).

[2] On early phenomenology and the phenomenological circles of Munich and Göttingen, see Spiegelberg 1960 and Salice 2015. On Schapp's biography in relation to the phenomenological movement, see Schapp 1959, an *Erinnerung an Husserl*, where Schapp provides biographical notes on his years spent in Göttingen; see also Schapp 1910, his dissertation on *Beiträge zur Phänomenologie der Wahrnehmung*, which contains a very short *Lebenslauf*, which is worth quoting here: "I, Wilhelm Albert Johann Schapp, was born on October 15th, 1884, in Timmel, East Frisia. I attended high school first in Leer and later in Wilhemshaven. During Easter of 1902 I entered the University of Freiburg im Breisgau, where I remained for three semesters. Here, alongside lectures on law and national economics, I heard the lectures of Professors Rickert and Cohn. Then I went to Berlin where, alongside lectures on law and economics, I attended the lectures of Professors Dilthey, Stumpf and Simmel. In October 1904 I passed the first bar exam at the Kammergericht in Berlin. As a visiting student I attended the lectures of Professors Husserl, G.E. Müller and Cohn in Göttingen for about five semesters, and also took part in their seminars. After that I went to Munich as a visiting student for two semesters, where I attended the lectures of Privatdozents Geiger and Scheler, and participated in the seminars of Professors Lipps and Pfänder. I wish to express my most sincere thanks to all of my distinguished teachers, but especially Professor Husserl, to whom I am indebted for his generous and enduring support, and under whose influence all my philosophical thinking stands" (this *Lebenslauf* is published in English

the field of the *"a priori in the law"*–the same research field as Reinach's *a priori* foundations of the civil law–and argues that his investigations are very near to Reinach's.[3]

More precisely, Schapp aims to develop a *New Science of the Law* [*Neue Wissenschaft vom Recht*] that must be distinguished from the *Legal Science* [*Rechtswissenschfat*], i.e. from "the science of any positive law or also of every positive law" [*die Wissenschaft irgendeines positive Rechtes oder auch aller positive Rechte*]. According to Schapp, the *Legal science* is a science that indubitably exists, but is a science whose scientific status is uncertain. The *New Science of the Law*, which Schapp intends to outline, would, instead, indubitably be a science: it would deal with the *a priori* structures of the law.[4] In his *Science of the Law* [*Wissenschaft vom Recht*], Schapp identifies four "*pre-givennesses*" [*Vorgegebenheit*] of the law: four legal structures which, according to Schapp, are four *a priori* structures of the law, i.e. structures which are universally and necessarily present in any positive law. They are the following:

(i) The *rational contract* as pre-givenness [*Der vernünftige Vertrag als Vorgegebenheit*]

(ii) The *promulgation of law* as pre-givenness [*Die Bestimmung als Vorgegebenheit*]

(iii) The *forbidden action* as pre-givenness [*Die Unerlaubte Handlung als Vorgegebenheit*]

(iv) The *property* as pre-givenness [*Das Eigentum als Vorgegebenheit*].

Secondly, the *rational contract*, analysed by Schapp, corresponds to the *social act of promising* [*versprechen*] elucidated by Reinach: according to Schapp, the contract is a mutual act of promising.[5] From both the conclusion of a contract and promising, a claim [*Anspruch*] and an obligation [*Verbindlichkeit*] arise, independently from any positive law. More generally, Schapp refers explicitly to Reinach's analysis of social acts and focuses on the essential structure of social acts.[6]

Thirdly, unlike Reinach, Schapp's work on the *a priori* of the law includes a theory on the *relation between values and law*. In this theory, values are the

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translation on the Official Blog of The North American Society For Early Phenomenology: http://nasepblog.wordpress.com/2013/12/31/wilhelm-schapp-lebenslauf/).

[3] See Schapp 1930: 182: "Zu der Zeit, als in Göttingen und München von Husserl, Daubert und Pfänder im ersten Jahrzehnt des neuen Jahrhunderts die Methode der Phänomenologie mit unendlicher Sorgfalt und Energie ausgebildet wurde, hätten wir nicht gedacht, daß über dasselbe Untersuchungsgebiet, welches wir etwa mit dem *a priori im Recht* abstecken können, so verschiedenartige, wissenschaftlich ernst zu nehmende Forschung vorgelegt werden könnten. *Wir selbst stehen mit unseren Untersuchungen Reinach am nächsten*" (italic is mine).

[4] See Schapp 1930: Preface. On Schapp's *New Science of the Law*, see, Loidolt 2012: 123–129 and Di Lucia 1997: 150–163.

[5] On the idea of the contract as mutual act of promising, see Scheler 1916: VI Section "Formalismus und Person", B. ad 4 "Einzelperson und Gesamtperson". Astonishingly enough, Schapp never refers to Scheler in his work.

[6] See Schapp 1930: 4. Abschnitt, Erster Teil: "Studie über die Kundgebungen im Vertragsschluß. Die Akte"; see Reinach 1913 (1989), § 2.

foundation of the law. This is a very original and interesting aspect of Schapp's work with respect to Reinach. Let us see what Schapp himself states about Reinach's work and about the relation between law and values:

> Wir haben von Reinach mehr gehabt als von allen anderen. […] Die Stärke Reinachs liegt in der Untersuchung der Akte und in ihrer sauberen Abgrenzung gegeneinander und in der Herstellung einer Beziehung zwischen den Akten und den Rechtsverhältnissen. Der Widerstand, den Reinach gefunden hat, liegt wohl darin begründet, daß *er seine Untersuchung mit den abstrakten Akten beginnt, daß er die Fundierung der Akte in den Wertungsgrundlagen übersieht oder wenigstens nicht behandelt*.[7]

Although Schapp acknowledges the great importance of Reinach's analysis of social and legal acts for the phenomenological investigations on the law and for his own work on the "science of the law", he criticizes Reinach's neglect of the role of evaluations of values [*Wertungen*] as foundations of social and legal acts. According to Schapp, Reinach's investigations of social and legal acts are "abstract" investigations because of that neglect: investigations in which the acts are not connected with an essential part of them, i.e. with the evaluations of the values in which they are grounded. Schapp intends to show that there is an essential, *a priori* connection between social and legal acts and the evaluations of values, and to fill the void in Reinach's work. More precisely, Schapp aims to show that the "*world of values*" [*Welt der Werte*] constitutes the "*infrastructure*" [*Unterbau*] of the "*rational* and *mutual contract*" [*vernünftiger, gegenseitiger Vertrag*], which is a "pre-givenness", an *a priori* structure, of the law.[8]

It is important to specify that the character of "rational" [*vernünftiger*], attributed by Schapp to the contract as "pre-givenness of the law", is based on the fact that the conclusion of the contract is preceded by evaluations' processes of values, i.e., that the decisions to exchange and share values are taken from the contracting parties after an attentive evaluation of the values in play.

13.1.2   What Is at Stake in the Relation Between Values and A priori of the Law

In my paper, I shall discuss Schapp's and Reinach's different positions on the relation between values and the *a priori* of the law. Here follows a rough outline of the two positions:

(i) Schapp's position: there are values (both individual and collective values), and they are salient in people's everyday life, in which people enjoy values [*genießen Werte*]; values are the foundation of the "rational contract" [*vernünftiger Vertrag*] that is a "pre-givenness" [*Vorgegebenheit*], i.e. an *a priori*

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[7] Schapp 1930: 182 (italics mine).

[8] This is also the title of the second chapter of the first part of Schapp's book: "Der Unterbau des gegenseitigen Vertrages. Die Welt der Werte".

structure, of civil law; so, *values are the "infrastructure"* [*Unterbau*] *of an a priori structure of the law*; more in general, according to Schapp, *values are necessary for law to exist: there is no law if there are no values*.

(ii) Reinach's position: there are values and they are salient in people's everyday life, in which they are the object of an intuition that is a "feeling value" [*wertfuhlen*].[9] There are *a priori foundations of the law*, and these are mere social and legal "laws of essence" [*Wesensgesetze*], i.e. *a priori* connections which solely concern the being of the social and legal entities and which *are not grounded in values*.[10]

I shall argue that in both positions I see *two* different *problems* concerning the relation between values and the *a priori* of the law:

(i) Regarding Schapp, the problem is that, if the rational contract is an *a priori* of the law and if values are the infrastructure of the rational contract, then the relation between values and rational contract should be an *a priori* relation itself; is it really so? More precisely: is the moment of the evaluation of values really necessary for the rational contract to be performed?

(ii) Instead, with respect to Reinach, a different question has to be raised: do values have any role in Reinach's theory of the *a priori* foundation of the law? Is it possible to build a valid theory of the law, and more precisely of the *a priori* of the law, without including in it a relation between values and the law?

Through the analysis of Schapp's and Reinach's positions on the relation between values and the *a priori* of the law, I shall address the issue of the *a priori* within that particular "material ontology" or "regional ontology" that is *social ontology*.[11]

I will argue that Schapp's idea of the *a priori* of the law is very different from Reinach's, and, that, ultimately, *Schapp's a priori of the law are not genuine a priori*: the foundation of the law in the evaluations of values (in the worlds of values, and, as we will see, in the exchange of values between two individuals, which are part and counterpart of a contract) is not as such an *a priori* foundation, i.e. a necessary and universal foundation.

On the contrary, I will argue that Reinach's theory of the *a priori* of the law is a valid theory, because the *a priori* connections of the law Reinach highlights are genuine *a priori*, universal and necessary. In the course of the paper, I will present my arguments on this topic.

However, Schapp's theory of the *a priori* of the law has the merit of pointing out the problem of the relation between *values and the law*, a very important problem in *social ontology*. The relation between values and the law and, more generally, the relation between values and normativity on the one hand, and values and social

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[9] See Reinach 1913/1914.

[10] See Reinach 1913 (1989): § 8.

[11] On the concepts of "regional ontology" and "material ontology", see Husserl 1913: First section. The expression "Social ontology" occurs for the first time in a manuscript by Husserl (1910), entitled *Soziale Ontologie und deskriptive Soziologie* (Husserl 1910: 98–104). On social ontology as regional ontology, see Salice 2013; De Vecchi 2013.

reality on the other, is a crucial topic that is, however, often neglected in social ontology.[12] This topic implies the problem of the *justness of the norms* that ground social reality–societies, communities, states, and, more in general, all institutions– and also implies the problem of how we share values, i.e. the problem of which *values* can be *collective*, and how they can be the object of *collective intentionality*. Even John Searle, who, in his theory on the creation of the social world, intends to identify all the "ingredients" needed to create social reality (constitutive rules, declaration speech acts, collective intentionality, etc.), and to pinpoint the conditions for social reality to exist, does not address the problem of the relation between social reality and values: the problem of *what we need in order to have a just and fair social reality* and the problem of *which kind of collective intentionality can grasp values*.[13] This is exactly the problem of the role of the values in social ontology. I do not address this problem in the current paper, but it is a crucial problem indeed in social ontology.

In this paper, I limit myself to an investigation of the problem of whether, and how, in Schapp's and Reinach's theories of *a priori* structures of the law, values can be connected with the law in an *a priori* relation. In doing so, I will inquire into the nature of the ground of the relation between values and law in Schapp: I will point out that this ground is an *existential* one, in the sense that it is deeply embedded in the quality of the existence of both values and human beings. This existential perspective of Schapp's work on values and the law is indubitably highly original and fruitful in social ontology, and represents a first step towards filling a very significant *lacuna* in social ontology.

In order to adequately present Schapp's theory of the *a priori* of law, which is much less known than Reinach's theory of the *a priori* of the law, I will dwell on Schapp longer than on Reinach.[14]

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[12] However, there are of course some rare cases of studies in social ontology which deal with values and with the relation between values and normativity. See, for instance, Gilbert 2000 on "collective guilt", Miller 2010 on "Moral Foundations of Social Values", Caminada and Malvestiti 2012 on "Norms, Values and Society: Phenomenological and Ontological Approaches", Roversi 2014 on "value-oriented" or "axiological meta-institutional concept", and some of the phenomenological contributions to social ontology such as Scheler 1913/1927 on "The being of the person as the main values in the history and in the community". On Hildebrand's work, see Salice 2016; on the importance ofScheler's axiology for understanding values' crucial role for social unity, see De Vecchi 2015. Stein 1925 on "the state from perspectives of value" and Hildebrand 1930 on "essence and value of the community"on Hildebrand's work, see Salice 2016).

[13] Searle 1990 and 2010. Nevertheless, I have to remark that the last chapter of Searle's book on social ontology is devoted to the problem of human rights, a problem, as Searle himself states, that is necessarily connected with the problem of values, see Searle 2010: chapter X.

[14] On Reinach's theory of the *a priori* of the law, many significant contributions have already been written: see Mulligan 1987; Smith 1990; Di Lucia 1997; Benoist 2005; Lorini 2008; Benoist-Kervegan 2008; Besoli-Salice 2008; Smith-Zelaniec 2012; Loidolt 2012, 2016; De Vecchi 2012a, b, c, d, 2013.

13.2   Schapp

I shall concentrate on the first part of Schapp's book, that devoted to the "The rational contract as pre-giveness" [*Der vernünftige Vertrag als Vorgegebenheit*]. It is in this part of his work that Schapp develops his original account on the relation between values and the *a priori* of the law, and within this account that he takes up Reinach's analysis of the essence of social acts, in particular, the act of promising in its variation of the "mutual promising contract" [*gegenseitiger Versprechensvertrag*].[15]

13.2.1   The Main Thesis

Very basically, the structure of Schapp's main thesis and arguments on the relation between values and law is the following:

(i) Viewed from the side of the values: there are values; individuals "*enjoy values*" [*genießen Werte*], evaluate values in their everyday life and constitute their "*world of values*" [*Weltwert*]; values are the quintessence of the life individuals live everyday; individuals *exchange* and *share* their *world of values* with other individuals, and the "*rational-mutual contract*" [*vernünftiger, gegenseitiger Vertrag*] comes into play in this sharing: "the mutual contract consists in the fact that, from the world of values of one, something is transplanted into the world of values of the other and *vice versa*".[16]

(ii) Viewed from the side of the law: there are "*pre-givennesses*" [*Vorgegebenheiten*], *a priori structures of the law*, among which, the rational contract; in the rational contract, and, more precisely, in its paradigmatic case of the mutual contract, values are the objects of "evaluations" [*Wertungen*] and "reflections" [*Überlegungen*] by the individuals constituting part and counterpart of the contract; then, the contracting parties decide to share their worlds of values: to take on in their world of values some values of the world of values of the other; values and processes of reflection on values are the "infrastructure" [*Unterbau*] of the rational-mutual contract, which is a "pre-givenness", i.e. an *a priori* structure of the law.

Thus, the fundamental elements of Schapp's thesis and arguments are: the existence of values, the evaluation of values and the decision of exchanging or of sharing values in individuals' everyday life. These elements together constitute the ground on which the rational-mutual contract takes place as a pre-givenness of the law; more concisely, the rational-mutual contract as *a priori* structure of the law is grounded in the values and in the reflection's processes on values. The problem, as

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[15] See Schapp 1930: 1–67.

[16] Schapp 1930: 27: "Der vernünftige gegenseitige Vertrag besteht nun darin, daß aus der Wertwelt des andern etwas verpflanzt wird und umgekehrt".

above announced, is whether the relation between values and processes of reflections on values as infrastructure of the rational-mutual contract, and the rational-mutual contract itself is an *a priori* relation, a necessary and universal relation. In other terms: for a rational-mutual contract to exist, is it *always necessary* that the contracting parties have reflected on the values in play? If the relation between values and processes of reflections on values, on the one hand, and the rational-mutual contract itself, on the other, is not a necessary and universal relation, then Schapp's theory of the *a priori* of the law is not a valid *a priori* theory of the law.

As already mentioned above, it is necessary to highlight that, accordingly with such thesis and argument, Schapp's foundation of the law in values, which are considered the quintessence of individuals' everyday life, has the character of an *existential foundation*. By "existential foundation", I mean here "existential" in the sense derived from "existentialism". In other words, according to Schapp's theory, the law is rooted in something that deeply characterises the existence of human beings and makes of it a meaningful existence, that is, exactly, values. This is of course an original and worthy perspective on the foundations of the law.[17]

13.2.2   The Main Objections

I will argue that Schapp's theory of the *a priori* of the law is not a valid *a priori* theory of the law. Why? Because the feeling and grasping of values (values which, according to Schapp, should be necessarily evaluated for the rational contract to be performed) is not a necessary fact: people could be afflicted by "value blindness" [*Wertblindheit*],[18] and so may not be able to grasp and thereby evaluate values. Thus, the moment of the evaluation of values – a moment that according to Schapp is a necessary one – could never even take place.

Rather, Schapp's foundation of the law in the evaluation of values is only a *probable foundation*, a foundation which could be described in terms of human beings' "essential tendency" (but not essential necessity!) to grasp and to feel values. Therefore, the tendency, inscribed in the essence of human beings, to "enjoy the values" (as Schapp is given to say) represents just a *motivation* for the existence of the law.[19]

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[17] I refer to "Existentialism" as the Philosophy of existence whose protagonists were philosophers such as Karl Jaspers, Martin Heidegger, Jean Paul Sartre, Jean Hersch and others. In the philosophy of law, existential approaches to the foundations of the law are those of Hersch 2008; Weil 1949; Cossio 1983.

[18] On the issue of the "value blindness", see Scheler 1916; Hildebrand 1916 and 1918, and Reinach 1912/1913.

[19] Husserl speaks of a "relation of probability", as distinguished from the relation of necessity, in the case of the "symbolic relation" or of the "motivational relation", for instance the relation between a sign functioning as an indication [*Anzeichen*] of a certain thing and the thing indicated by the sign: smoke indicates fire, a flag is a sign of a nation, *etc*. (Husserl 1901, I *Logische Untersuchung*: § 1–7). The idea of an "essential tendency", i.e. of a tendency that belongs to the

On the other hand, it must be remarked that Schapp's theory of the *a priori* of the law could work as *valid a priori theory*, i.e. could have the characters of necessity and universality, if, instead of values and of evaluations of values as foundations of the rational contract, Schapp identified the *foundations of the rational contract in individuals' preferences*, in "what can be interesting for me" and in the corresponding evaluation of such preferences and things which can be of interest for an individual. In this case, Schapp's claim of an *a priori* foundation of the rational contract could be valid: the rational contract is founded in individuals' evaluations of their own preferences and interests; before concluding a contract, the individuals constituting the two parties of the rational contract have taken the decision to conclude the contract on the basis of the evaluation of the what is of interest for them, i.e. on the basis of the very subjective value that a thing can have for an individual.[20]

Very connected to this last point is a problem that is intrinsic to Schapp's account of the foundation of law on values. This is the problem of the *confusion between values and goods*, i.e. between values and valuable things, the things which are the bearers of values. Such confusion is a critical point in Schapp's theory of values and the *a priori* of the law: ultimately is it goods or, rather, values which constitute the foundation of the law? Is it the sharing of values or rather the sharing of goods (which are the bearers of values) that has to be normed by the rational-mutual contract?

However, I am convinced that Schapp's work is of great importance for social ontology. Schapp's theory of the *a priori* foundations of the law in values entails at the same time an account of the existential relation between values and law; this account emerges from Schapp's analysis of the ontological status of values, of the sociality of values and of the sharing of values. Therefore, and more explicitly: if, on the one hand, Schapp's theory of the *a priori foundation of the law in the values* is susceptible to the objections I have just mentioned, on the other hand, such theory also contains an account of the relation between values and law as an *existential relation*, as a relation embedded in the quality of existence both of values and of human beings. Thus, beyond my objection that Schapp's *a priori* of law are not genuine *a priori* as such, and that Schapp's theory needs some, albeit small, modifications in order to work (as just mentioned above, instead of values and of evaluations of values as foundations of the rational contract, Schapp should identify the *foundations of the rational contract in individuals' preferences*), I am convinced that the *existential foundation of the rational contract in values* is a highly original

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essence of a certain entity is presented by Reinach (1913: 172–173). I will return to this important point in the Sect. 2.6 of this paper.

[20] The difference between objective values, which belong to an objective order of values and which can be grasped and felt by individuals (but which can also be ignored and neglected by individuals who are blind to values), and values which are subjective and are actually only individuals' preferences, was analysed by Hildebrand 1916 and by Reinach1913/14. See the following passage by Reinach 1913/14: 297–298: "So ist es ja *de facto* gewiß nicht, daß jedermann in allen Fällen in seinen praktischen Erwägungen eingestellt ist auf das […] Wertvolle und Rechte. Manche Menschen mögen diese Einstellung überhaupt nicht kennen. *Neben dem Wertvollen an sich gibt es das, was von Interesse ist für mich*" (italics mine).

outcome of Schapp's work, representing an extremely fruitful contribution to social ontology.

I will return to all these arguments later. I will now analyse the main elements and passages of Schapp's theory. I will tackle, firstly, the issue of the *ontological status of values* and of their relation with individuals' intentionality; secondly, I will address the issue of the *sociality of values*, including the problems of *collective values* and of *sharing the values*, and thirdly, the crucial and conclusive issue of the *relation between values and the a priori of the law*, i.e. the passage from values to the law.

13.2.3   *The Ontological* Status *of Values*

Schapp does not develop a theory of values comparable to the very extended, fine-grained and exhaustive theory of values presented by Max Scheler in his master-piece, *Formalism in Ethics and Non-formal Ethics of Values* [*Der Formalismus in der Ethik und die materiale Wertethik*] (1916).[21] Schapp just outlines an account of values as grounds of the rational-mutual contract and of the positive law in general. Thus, Schapp's theoretical contribution on values is partial and limited: values just play the role of counterpart of the law within the frame of Schapp's theory of the law (it is not by chance that the title of Schapp's work is *The New Science of Law*: "*Values*" does not occur in the title).

13.2.3.1   Claims Regarding Values

The following quotation presents some of the main claims characterising Schapps' idea of values:

> Was unter Wert zu verstehen ist, ist leichter zu fühlen, als begrifflich zu umgrenzen. Der Wert ist irgendwie ein Akzent der wertvollen Gegenständlichkeit. Er ist selbst aber nicht der Gegenstand theoretischer Betrachtung, sondern in eigenartiger Weise etwas Gegenständliches an dem Wertvollen, welches im Genuß erfahren wird. Dies „Genießen"ist etwas ganz anderes, als sich theoretisch mit einem Gegenstand beschäftigen.[22]

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[21] Very surprisingly, Schapp does not refer to Scheler at all, and behaves as if Scheler's phenomenology of values (Scheler 1916) did not exist. He affirms: "Die Grundlagen der Wertlehre sollte die Rechtswissenschaft von der Phänomenologie der Wertlehre erhalten. Die Wissenschaft über die Werte ist aber erst im Entstehen begriffen. […] Wir haben versucht, eine eigene Wertlehre in den gröbsten Umrissen aufzustellen. Soweit ich sehe, berühren sich unsere Untersuchungen am nächste mit denen von Beck „Wesen und Wert"[…]", Schapp 1930: 184. Schapp's neglect of Scheler's account constitutes a real theoretical *lacuna* in his theory. If he had considered Scheler's account, he would have avoided problems like the confusion, or the insufficiently clear distinction, between values and goods. Schapp's neglect of Scheler is truly puzzling, because Schapp was aware of Scheler's account on values, see Schapp 1959.

[22] Schapp 1930: 7.

(i)   Claim regarding values as an accent, as a quality of the valuable objectivity

Values are "*an accent of the valuable objectuality*" [*ein Akzent der wertvollen Gegenständlichkeit*], and, therefore, are not to be identified with valuable objectivity. In other words, *values have to be distinguished from their bearers*, from goods that are valuable objectivities.

The distinction between values and goods is very important for preserving a transcendence of the type of the value with respect to its instantiations in goods: without such distinction, a value, for instance friendship, would be identified with a certain instantiation of friendship in a certain bearer.[23] Unfortunately Schapp is not sufficiently rigorous with regard to this claim: in his theory, he often seems to confound values and goods, and to speak of goods instead of values. For instance, he speaks of people dear to one's heart as values or of a cathedral as a value:[24] they are of course bearers of values like, respectively, love or friendship and religiousness, but they are not values themselves.

(ii) Claim regarding the experience of values in enjoyment

A value "*is experienced in enjoyment*" [*im Genuß erfahren wird*]. In effect, values are not the object of a theoretical consideration: enjoying values is very different from focusing on objects theoretically. Thus, the intentional mode of grasping values is an affective mode. Values are enjoyed trough the "capacity of enjoying" [*Genußfähigkeit*] that belongs to the field of the feeling and not to the field of the cognizing and that, as capacity, can be adequate or inadequate, and can be increased or decreased.[25]

Values are grasped by *enjoying* and are objectified, "known" (in a very different sense of theoretical knowledge), by *savouring*. Schapp states two axioms about the enjoying and savouring of values: "Without enjoying, values cannot be got by persons" and "without savouring [*Kosten*], any value can be objectified".[26]

(iii) Claim regarding the correlation between values and disvalues

Besides values, there are also *disvalues* [*Unwerte*]. Disvalues are not enjoyed. Rather, they are borne. For instance, "we bear a pain. Pain as quality has the character of a disvalue",[27] i.e. the painful is a disvalue.

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[23] Scheler's characterisation of values implies a very strong distinction between values and goods, cfr. Scheler 1913: First part, First Section "Materiale Wertethik und Guter-Respektive Zweckethik", §1 "Guter und Werte".

[24] See Schapp 1930: 13, 20 (and see *infra* Sects. 1.4.1 and 1.4.2).

[25] See Schapp 1930: 7. It is necessary to remark that the early phenomenologists' works on values had already identified the act of grasping values as an affective act, the so-called "Wertfühlen", and spoke of a capability to grasp values which can be more or less developed, and in some cases not developed at all (as is the case of blindness to values). Concerning all these issues, see Scheler 1913, Hildebrand 1916 and 1918 and Reinach 1913/14.

[26] Schapp 1930: 9.

[27] Schapp 1930: 10: "Wir erleiden z.B. einen Schmerz. Der Schmerz als Qualität hat dabei den Charakter des Unwertes".

There is a broad parallel between values and disvalues and between "valuable objectuality" [*wertvollere Gegenständlichkeit*] and "disvaluable objectuality" [*unwertvollere Gegenständlichkeit*].[28] "*The world of values and disvalues is the actual world we live in*", it is the quintessence of our life. "Without values, the world would be just a scheme, something purely mathematical which has no interest for us".[29]

(iv) Claim regarding the existential independence of values from individuals' enjoyment of values, and regarding the dependence of the meaningful existence of values on individuals' enjoyment of values

The existence of values is independent of individuals' enjoyment of the values, just as the existence of objects is independent of individuals' perceiving the objects.[30] However, the *meaningful existence of values is dependent on individuals' enjoyment of them*: "values that are not enjoyed fail to achieve their purpose in relation to human beings".[31]

Thus, Schapp distinguishes between the *existence of values*, on the one hand, and a *meaningful existence of values* on the other. Schapp's argument for this claim is that our enjoying the values can be more or less complete, i.e. more or less adequate. So, there are degrees in enjoying values–just as there are degrees in knowing objects.[32] The point is that values achieve their fullest vitality only when they are enjoyed to the full.[33] So, *values exist fully only on the condition of being enjoyed to the full*.

Schapp's claim regarding the meaningful existence of values extends the concept of existence and of existential dependence to the idea of "quality of the existence". Values that are not enjoyed to the full do not achieve a full and vital existence.

It is worth noting that Reinach makes a similar observation on the quality of existence of claim and obligation: the meaningful existence of claims and obligations is the one which is satisfied by the corresponding realizing action, by which they end their existence "in a natural way" and thus are not compelled to last in

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[28] Schapp 1930: 9–10. Also concerning the issue of the double polarity of the world of values, positive values and negative disvalues, see Scheler 1913, Hildebrand 1916 and 1918 and Reinach 1913/14.

[29] Schapp 1930: 11: "Diese Welt der Werte und der Unwerte ist die eigentliche Welt in welcher wir leben. […] Ohne diese Werte wäre sozusagen die Welt nur noch ein Schema, etwas rein Mathematisches ohne jedes Interesse für uns".

[30] See Schapp 1930: 12: "Der Gegenstand hat diesen Wert, auch wenn er zufällig nicht genossen wird, ebenso wie der Gegenstand existiert, d.h. nach unserer Meinung existiert, auch wenn er nicht wahrgenommen wird".

[31] Schapp 1930: 11: "Die Werte, welche nicht genossen werden, haben für den Menschen ihren Zweck verfehlt".

[32] Schapp 1930: 11: "Ebenso wie die Erkenntnis dem Gegenstande mehr oder weniger adäquat sein kann, kann auch das Genießen mehr oder weniger vollkommen sein".

[33] Schapp 1930: 12: "Diesen Begriff der Adäquatheit müssen wir festhalten. Er bedeutet ein Auskosten des Wertes bis zum Letzten. Erst im so verstandenen Genuß erreicht der Wert die vollste für ihn mögliche Lebendigkeit".

senseless agony. This quality of existence of claim and obligation is something inscribed in the *eidos* of these entities.[34]

The consideration of the quality of the existence of an entity–and not only the consideration of its mere existence or inexistence–is a very important topic, unfortunately often neglected in social ontology. Even one of the most complete social ontological theories, that of Searle, neglects this point. Searle intends to explain how social and institutional reality is created and maintained in existence, but he does not address the axiological quality of that existence, i.e. whether it is a just and fair or unjust and unfair social reality.[35]

(v) Claim regarding the interdependence of the quality of existence of values and the quality of existence of individuals

The greatest importance of enjoying values is that "from this enjoyment flows a force for the rest of human life in the most varied directions".[36] "The e*njoyment of values seems to be the actual source of life*, which supports life and by which life creates the strength and the courage to live on".[37] In other words, through enjoying values, the life of human beings gains fullness: there is an interdependence between the *quality of the existence of values* which are enjoyed to the full, and the *quality of the existence of individuals* who enjoy the values to the full; enjoying values to the full brings forth both the fullest aliveness of values and human beings' fullest life force.[38]

13.2.3.2 The Existential Character of Values

Schapp's claims regarding the ontological status of values represent both a *realistic and existential account on values*. It is a *realistic* account of values because values are considered as real entities which inhabit our "life-world" [*Lebenswelt*],[39] and which we experience as axiological qualities of the things, of the people and of the facts of our everyday life. It is also an *existential* account of values (here, "existential", again, in the sense of "existentialism") because *values' quality of existence and human beings' quality of existence depend on one another*: for a meaningful existence, values need to be enjoyed to the full, and human beings need to enjoy values to the full; only if this condition is satisfied, can both values and human beings reach their full vitality.

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[34] Reinach 1913: 173 (English translation 1983: 32). On this passage by Reinach, see De Vecchi 2013.

[35] See Searle 1995 and 2010.

[36] Schapp 1930: 12: "von diesem Genießen strömt eine Kraft aus für das weitere Leben nach den verschiedensten Richtungen".

[37] Schapp 1930: 13: "Das Genießen scheint vielmehr daneben noch der eigentliche Lebensquell zu sein, welcher das Leben trägt, aus dem das Leben Kraft und Mut zum Weiterlebe schöpft".

[38] See the similar concept of "*Lebenskraft*", presented by Edith Stein 1922.

[39] The expression "Lebenswelt" is by Husserl 1936.

As I will show, the existential character of values is strictly connected with the existential character of law in Schapp's account. I will dwell on this point in detail.

13.2.4   Sociality of Values

To sum up: I have dwelt upon the ontological *status* of values and highlighted the need of values to be enjoyed to the full, and the need of human beings to enjoy values to the full, a mutual need on which Schapp insists strongly. I will now address the issue of the sociality of values: Schapp shows the pervasiveness of values in individuals' existence, both singular and collective existence: without values, social life would not be possible; among values, there are specifically "collective values" and values which can be shared and exchanged.

13.2.4.1   Values and Social Life

Where are values? Where do we enjoy values? According to Schapp, values are firstly in the human individuals [*Menschen*] we deal with and live with. Human individuals are *valuable individuals*. Schapp means both the single individual and the multiple collective forms which individuals together give rise to: *milieu*, town, country, etc.[40]

Value relations [*Wertbeziehungen*], which take place in and with all these kinds of collective forms, constitute *social life*: "value relations, which of course are mutual relations, are the social life indeed. Without value relations, it would not make sense to speak of social life".[41] And without the value relations of social life, the life of the single individual would be very poor: "it is enough to consider what the life of a single individual would lose, if in his/her life there were no more playing children, no more women and men we care about".[42]

Schapp's claim is true: without social life's value relations, grounded in inter-subjective and interpersonal relations, human life would be very poor indeed. Values pervade individuals' existence, first of all because the individuals we deal with and live with are themselves bearers of values.

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[40] See Schapp 1930: 13: "Dasselbe Verhältnis findet aber nicht nur dem Einzelnen gegenüber statt, sondern der ganzen Umgebung gegenüber, dem Kreise, in dem wir leben, der Stadt, in der wir leben, dem Lande in dem wir leben, der Zeit, in der wir leben". See similarly Husserl's idea of the constitution of social and cultural life, Husserl 1912–1928: § 51.

[41] Schapp 1930: 13: "Wertbeziehungen, welche natürlich gegenseitig sind, sind in Wirklichkeit das soziale Leben. Ohne sie hätte es keinen Sinn, von sozialem Leben zu sprechen". See also here, Husserl's idea of social reality as grounded in mutual inter-subjective and interpersonal relations, Husserl 1912–1928: § 51.

[42] Schapp 1930: 13: "Man brauch sich nur vorzustellen, was das Leben des Einzelnen verlieren würde, wenn es keine spielenden Kinder, keine Frauen, keine Männer von Bedeutung in seinem Leben mehr geben würde".

However, the examples of the value relations of social life presented by Schapp are problematic because of their ambiguity: "children playing", "women and men we care about" are neither values as such nor value relations as such; rather, they are bearers of values or of value relations. The problem is that Schapp does not distinguish, on the one hand, between the *value* as such and the *bearer* of the value that is a *valuable objectuality*, a *good*, and, on the other hand, between the value as *type* and the value as *token*. Coming back to Schapp's examples, Schapp does not distinguish:

– between, for instance, *love* as a value and my wife as a bearer of love, as a good, on the one hand, and love as the type of the value love and love as the token of the value love, which is embodied in my wife, on the other hand;
– between, for instance, *vitality* as a value and my children playing as bearers of vitality, as a good, on the one hand, and vitality as the type of the value vitality and vitality as the token of the value vitality, which is embodied in my children playing, on the other hand.

13.2.4.2 Collective Values

Schapp addresses the issue of *collective values*. Are there values which can be *enjoyed only collectively* and which cannot be enjoyed by a single individual? According to Schapp, there are *values that are essentially collective*: values that can be enjoyed only by a community of individuals together. Examples of collective values presented by Schapp are a town's cathedral,[43] and, more generally, values connected to the state: the state itself is a collective value. According to Schapp, cathedrals and states are examples of collective values because they require the "converging of many individuals" [*Zusammengehen von vielen*] (for instance, the religious community, in the case of the cathedral, or the citizens) to be adequately enjoyed.[44]

> [Der Staat] ist selbst ein Wert, ein Komplex von Werten, eine Welt von Werten, an welchen nur der Staatsbürger Anteil hat, in ähnlicher Weise wie nur das gläubige Mitglied der religiösen Gemeinde Anteil an deren Werten hat.[45]

Thus, *collective values need to be enjoyed collectively* in order to be enjoyed adequately, i.e. in order to be fully enjoyed. Collective values have to be distinguished from *values which can be enjoyed by more than one individual*, but which

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[43] See Schapp 1930: 20: "Man könnte fragen, ob es überhaupt werte gibt, welche der einzelne für sich allein nicht genießen kann, welche nur die Gemeinschaft in der Gemeinschaft voll genießen kann. Zu solchen Werte scheint z.B. ein Dom oder ein Münster zu gehören".

[44] Schapp 1930: 25: "Für das Wesen der Staates scheint es uns nun eine Hauptfrage zu sein, ob irgend etwas zum Staate Gehörendes Eigenwert für den Menschen hat und in welcher Weise es diesen Eigenwert hat, ob etwa in der Weise, wie der Sonnenuntergang für viele seinen Eigenwert hat, so dass jeder Einzelne ihn genießen kann, oder eher in der Art des Münsters und Gottes, dass ein Zusammengehen von vielen, ein Zusammengehen der gläubigen Gemeinde dazu gehört, um die Werte auszuschöpfen".

[45] Schapp 1930: 26.

do not need to be enjoyed collectively. For instance the sunset has a value for many individuals, but each individual can enjoy this value individually, solitarily, without sharing anything with the others.[46]

Schapp's distinction between collective values, which need to be enjoyed collectively, and values which can be enjoyed both individually and collectively, is a very perspicuous insight for the issue of *collective intentionality* in social ontology. In this perspective, Schapp's work offers a very original contribution to social ontology, not only for his dealing with values and with the relation between values and the law, but also for his addressing the issue of *collective values*, a very neglected issue in social ontology.

One question is not answered by Schapp, a question typically addressed by philosophers interested in the issue of collective intentionality: in the case of collective values, who, ultimately, is the subject of collective intentionality? Who is the subject who enjoys collective values? Is that subject the individuals within the community or rather the community itself?[47]

Moreover, it is necessary to remark that in his important reflection on values, Schapp continues to confuse values and goods. He does not distinguish: between religiousness as a value and the cathedral as a bearer of the religiousness of a community, as a good, on the one hand, and religiousness as a type of the value religiousness, and religiousness as a token of the value religiousness embodied in the cathedral, on the other hand; and likewise, considering the examples of the values of citizenship and beauty, I can raise the same objection against Schapp.

13.2.4.3   Sharing Values

It is in virtue of the possibility of exchanging, transferring and sharing values that there can be collective values. Schapp tackles the problem of the collective intentional modes by which values can be shared by individuals and transferred from one individual to another. This is a crucial point of Schapp's theory of the foundation of the law in values.

According to Schapp, each individual has her own world of values and that world of values is characterised by great variety[48]: the sunrise in my birthplace, the people

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[46] See Schapp 1930: 25.

[47] Schapp 1930: 20: "Ob dabei der Einzelne in der Gemeinschaft geniest oder ob es Sinn hat, zu sagen, dass die Gemeinschaft genießt, wagen wir nicht zu entscheiden". The problem of the identity of the subject of collective intentionality, whether a "collective subject", a "group mind", or rather only single individuals as the bearers of collective intentionality, is a crucial problem in studies of collective intentionality. To cite only a few of the main philosophers' positions on this issue, see Searle 1990 and 2010, Tuomela and Miller 1988; Gilbert 1989. In the phenomenological domain, see the analysis of "Common Mind" [*Gemeingeist*] by Husserl (1921–1928), of "Collective Person" [*Gesamtperson*] by Scheler (1916), of "Individual and Community" [*Individuum und Gemeinschaft*] by Stein (1922) .

[48] Schapp 1930: 21: "Wir haben davon gesprochen, daß eine Wertwelt einer bestimmten Seele zugeordnet sei und daß diese Wertwelt von der größten Mannigfaltigkeit sei".

I love to meet, and an infinity of other things.[49] Now, the point is that the *world of values of the one can be shared with and enriched by the world of values of the other*: the values of an individual can be exchanged with, transferred to and shared with the values of another individual. "There is the possibility to supply certain values to others, to transfer values to others […]. I can in some way facilitate others in accessing the values. I can point out to others the values which they have chanced upon without having assumed them into their world of values".[50]

Schapp properly remarks that sharing values does not imply a decrease of the values for the person who is sharing her world of values with another person. *Shared values* are not decreased values; rather, they are *increased values*. For instance, "*a shared joy is a doubled joy*".[51] Moreover, people can share their world of values in a very strong sense of sharing that brings forth a unitary world of values which is enjoyed by more than a single individual at the same time. For instance, according to Schapp, the worlds of values belonging to a husband and a wife build, together, a "unitary world of values", which the two individuals "enjoy as a unity".[52]

Schapp does not inquire into the problem of *what it really means to share values*. Values are not material things, such that sharing a value is not the same as sharing a bottle of wine or a cake. What does it actually mean to share a "unitary world of values" and to enjoy it "as a unity"? Why does sharing a value not imply, rather than a decrease of the value, an increase of that value? The neglect of these problems is also due to the fact that Schapp is still confusing values and goods, or, now, values and feelings. Schapp speaks of sharing one's own world of values with the world of values of another individual, but in Schapp's examples what is shared seems more like the bearers of values (goods) or feelings, than values themselves–for instance: the cathedral, the sunrise, the people I love to meet, etc., and joy.[53]

However, both the point on sharing values as implying an increase of the enjoyed values–"*a shared joy is a doubled joy*"– and the point on enjoying two different worlds of values as "a unitary world of values" are really crucial for Schapp's arguments on the foundations of law on values. It is because shared values are doubly

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[49] See Schapp 1930: 21: "Zu dieser mir zugeordneten Wertwelt gehört der Sonnenaufgang, den ich von Spitzengewebe der Wall-Allee dazu, welche in Winter auf dem lichten Hintergrund in immer neuen Munstern und Formen sich abhebt. […] es gehören dazu die Menschen, denen ich gern begegne, kurz, es gehört eine Unendlichkeit dazu".

[50] Schapp 1930: 21: "Demgegenüber scheint die Möglichkeit, andern solche Werte zu verschaffen, auf andere Werte zu übertragen […]. Ich kann wohl anderen auf manche Art und Weise den Zugang zu Werten erleichtern. Ich kann sie auf Werte hinweisen, an welchen sie vorübergehen, ohne sie in ihre Wertwelt aufgenommen zu haben".

[51] See Schapp 1930: 23: "Ein Wertkomplex, welcher einer Person zugeordnet ist, kann zugleich einer andern Person zugeordnet sein, ohne daß […] der Wert dieses zugeordneten Komplexes für den einzelnen Beteiligten sich mindert, er kann sich sogar durch die Beteilung mehren. Geteilte Freude ist doppelte Freude".

[52] See Schapp 1930: 23: "Die dem Mann und der Frau zugeordneten Wertwelten bilden in Wirklichkeit zum großen Teil eine einheitliche Wertwelt, welche zwei zugleich als Einheit genießen".

[53] Is the problem of what it means to share a value analogous to the problem of what it means to share a feeling? On the latter, see Schmid 2009: chapter 4, "Shared feelings".

enjoyed values, and it is because individuals are able to acquire values from one another, to enjoy the acquired values as their own values and thus to build a unitary world of values which is enjoyed as a unity, that, therefore, individuals, who need to enjoy values to the full in order to achieve a meaningful existence, tend to share and exchange values with other individuals, and, therefore are inclined to perform mutual contracts.

13.2.5   From Values to Law

I have addressed the issues of the ontological status of values and of the sociality of values in Schapp's account. These two issues represent the two steps by which Schapp assembles the elements he needs to show the foundations of the law in values. I now directly address the decisive issue concerning the relation between values and the *a priori* of the law, and, more precisely, the passage from values to law.

> Wir müssen nun die Verbindung herstellen zwischen dem ersten und dem zweiten Kapitel, zwischen dem *vernünftigen gegenseitigen Vertrag* und der *Welt der Werte*.[54]

13.2.5.1   Creation and Enrichment of Worlds of Values, and their Relation with the Law

> Dies Verschaffen von Werten, die Bereicherung einer anderen Wertwelt durch meine Handlung, ist ein Hauptgebiet der Jurisprudenz. Daß diese Möglichkeit besteht, ist eine Vorgegebenheit für die Jurisprudenz. Zwei große Gebiete der Wertwelt, in welchen diese gegenseitige Bereicherung möglich ist, haben die Römer kurz mit ihren Ausdrücken *jus commercii* und *jus connubii* angedeutet.
>
> Ein anderes Hauptgebiet der Jurisprudenz ist der Schutz der dem Ich zugeordneten Wertwelt gegen Beeinträchtigung, das Recht der unerlaubten Handlung. Die enge Beziehung dieses Teils der Jurisprudenz zur Moral leuchtet von selbst ein. *In einem Kosmos, der keine Werte enthielte, würde die Jurisprudenz den größten teil ihrer Bedeutung, wenn nicht alle Bedeutung verlieren*.[55]

The quotation above represents a very important passage of Schapp's work: in that passage, Schapp posits the *dependence of the law on values; without values, jurisprudence would not make sense*–so, Schapp concludes his reasoning here.

In more detail, Schapp maintains that "the creation of values and the enrichment of the world of values of the one through the activity of the other is the main field of jurisprudence". This possibility of "mutual enrichment" of one's own world of values is a "pre-givenness for jurisprudence". Shapp recalls that the ancient Romans used the legal expressions *jus commerci* and *jus connubi* for two great domains of mutual enrichment of the world of values. Finally, Schapp affirms that there are also other pre-givennesses of the law, like the pre-givenness that norms "the protection

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[54] Schapp 1930: 26 (italics mine).

[55] Schapp 1930: 22.

of the world of values belonging to a person against damage": "the law of the forbidden action", i.e. penal law.

Shapp seems here to argue that the law is grounded in the moral: the foundation of the law in values is ultimately a foundation of law in moral values, at least as regards the domain of law concerning the protection of the world of values, i.e. the "law of the forbidden action": "The close relation of this aspect of jurisprudence with the Moral is manifest". Unfortunately Schapp's analysis of the kinds of values we enjoy–be they moral values, aesthetical values, etc.–is not sufficient for a theory of values that makes these important distinctions, even, simply, as an outline. Moreover, the law could even be grounded in moral disvalues.

Finally, there is a problem in this crucial passage, a problem which remains the same: is Schapp actually speaking of values, or rather of goods? When he speaks of *jus commerci* and *jus connubi* is he not rather speaking of goods which are exchanged and shared? These goods are of course bearers of values, and their exchange or sharing may constitute the creation of a new world of values or the enrichment of pre-existing worlds of values, but they are primarily goods, and not values.

13.2.5.2   From the Worlds of Values to the Rational-Mutual Contract: "Infrastructure" and "Superstructure"

Let us examine more specifically the passage from the worlds of values of two individuals to the mutual contract between two individuals: "The rational-mutual contract consists in the fact that from the world of values of the one something is transplanted into the world of values of the other, and *vice versa*". So, the worlds of values and the exchange between the worlds of values represent the ground for the rational-mutual contract: "Without relation to a world of value, the mutual contract makes no sense".[56]

Now, the question is how that exchange between the worlds of values takes place.

> If now the requirements for the conclusion of a mutual contract are given, i.e. if a piece of the world of values of the one has to be somehow exchanged with a piece of the world of values of the other, then *the question is how this exchange takes place*. Here, we have reached the domain of jurisprudence.[57]

The exchange between worlds of values takes place through the law: the law norms the practice of exchanging values.

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[56] Schapp 1930: 27: "Der vernünftige gegenseitige Vertrag besteht nun darin, daß aus der Wertwelt des einen in die Wertwelt des andern etwas verpflanzt wird und umgekehrt. Ohne Beziehung auf einen Wertwelt gibt der gegenseitige Vertrag keinen Sinn".

[57] Schapp 1930: 27: "Wenn nun die Voraussetzungen für den Abschluss eines gegenseitigen Vertrages gegeben ist, d.h. wenn ein Stuck der Wertwelt des einen gegen ein Stuck der Wertwelt des andern irgendwie ausgetauscht werden soll, so *fragt es sich, in welcher weise dieser Austausch zustande kommt*. Damit sind wir in dem eigentlichen Gebiet der Jurisprudenz angelangt" (italics mine).

> If two pieces of two worlds of values are to be exchanged, the one with the other, then *the question is how that exchange happens*. According to the ignorant, nothing is easier than this. *From that exchange, the jurist has made a science, which is treated in rather developed laws in thousands of paragraphs*. For the jurist, the way of the exchange is the *mutual contract*. […] The requirement for the mutual contract is the particular relation of two worlds of values, in which a piece of the one urges to be exchanged with a piece of the other. We define this requirement as the *infrastructure* of the mutual contract, while the exchange itself represents the *superstructure*.[58]

More precisely, the legal figure that regulates the exchange between two different worlds of values is the rational-mutual contract. The worlds of values and the relation between two worlds of values which are about to exchange something constitute the requirement for the mutual contract, i.e. they are the ground or the "*infrastructure* of the mutual contract*", while "the exchange itself represents the *superstructure*" of the mutual contract.

Schapp describes very concretely the process that flows from the world of values of (at least) two individuals into the conclusion of the mutual contract.

Firstly, "in the mind of the individuals which are involved in the performance of the mutual contract, a series of reflections [*Überlegungen*] take place": these reflections are "evaluations" [*Wertungen* or *Abschätzungen*] of the values in play.[59] The individuals involved in the contract evaluate whether and how the exchange of values can enrich their own world of values.

Secondly, on the basis of those evaluations, some decisions [*Entschlüsse*] are taken. These decisions lead to the will-declarations [*Willenserklärungen*].

The will-declarations represent the moment in which the evaluations of values and the following decisions on the values to exchange are made known by the contracting parties to each other. The moment of the declaration and of the making known represents the superstructure of the contract: "in any contract, the infrastructure [*Unterbau*] consists in the evaluations [*Abschätzungen*] of the values to exchange [*umsetzen*], and the superstructure [*Oberbau*] consists in the making known [*Kundgeben*] which produces that exchange [*Umsetzung*]".[60]

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[58] Schapp 1930: 28: "Wenn zwei Stücke aus zwei Wertwelten gegeneinander ausgetauscht werden sollen, *so fragt es sich, wie dies im einzelnen vor sich geht*. Für den Laien ist nichts einfacher als dies. *Der Jurist hat aus diesem Austausch eine Wissenschaft gemacht, welche in entwichelteren Gesetzen in Tausenden von Paragraphen behandelt wird*. Der Weg des Austausches ist der gegenseitige Vertrag für den Juristen. Diesen betrachten wir nun genauer. Die Voraussetzung des *gegenseitigen Vertrages* ist das eigenartige Verhältnis von zwei Wertwelten, von welchen je ein Teil zum Austausch mit einem Teil der andern Wertwelt drängt. Diese Voraussetzung bezeichnen wir als *Unterbau* des gegenseitigen Vertrages, den Austausch selbst entsprechend als *Oberbau*" (italic is mine).

[59] Schapp 1930: 2.

[60] Schapp 1930: 34: "Bei allen [Verträgen] besteht der Unterbau in der Abschätzung der umzusetzenden Werte und der Oberbau in Kundgebung, welche diese Umsetzung bewirken".

13.2.5.3 The Conclusion of the Contract as Mutual Act of Promising and the *Rechtsfigur*

According to Schapp, "the *will-declarations*", in which the superstructure of the contract consists, "are not, in fact, just any will-declarations, they are rather *social acts*" [*soziale Akte*],[61] and the *mutual contract* is exactly a variation of the social act of promising: it is a *mutual act of promising*. Thus, as promising produces an *obligation* and a *claim*, so does the mutual promising-contract [*gegenseitiger Versprechensvertrag*] also bring forth a *claim* and an *obligation* that arise in the parts involved in the contract, independently from any positive law.

Schapp assumes Reinach's idea of social acts[62] (social acts are acts such as promising [*Versprechen*], permitting [*Erlauben*], commanding [*Befehlen*]), and affirms that "the essence" of social acts "was established by Reinach, with rare clarity, according to the phenomenological method".[63] Schapp highlights, as Reinach had already done, the double nature of social acts: their being both internal and external acts, i.e. their being acts of the mind [*Seele*] of their bearer, but also acts outside the mind of their bearer and between the minds of the bearer and the addressee.[64] "Social acts are psychic and inter-psychic processes that take place in the mind and among the minds".[65]

Schapp pinpoints the forms of the mutual contract (including any type of contract, from the "buying contract" [*Kaufvertrag*] to the wedding contract, etc.): the forms of the mutual contract, which are always constituted by an infrastructure and a superstructure, are not dependent on positive law and "are not obtained through universalization of the known positive laws". Rather, these forms constitute "the

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[61] Schapp 1930: 40: "Diese Willenserklärungen sind aber nicht beliebige Willenserklärungen, sondern *soziale Akte*".

[62] The fourth section of the first part of Schapp's work refers very explicitly to Reinach: this section is entitled *Studie über die Kundgebungen im Vertragsschluß. Die Akte*, and takes up Reinach's analysis of social acts, in particular, the "making known" [*Kundgeben*] of the social acts, pinpointed by Reinach as one of the essential moments of social acts, see Reinach 1913 (1989): § 3. Moreover, Schapp pinpoints two new paradigms of social acts:

(i) Social acts whose *addressee is not a human being*, but either a non human animal or God (concerning God, Reinach, too, had already pointed out the possibility of social acts addressed to God, such as praying; see Reinach 1913 (1989): § 3);

(ii) Social acts that are *original* [*Originalakte*] and social acts that are *artificial* [*Kunstakte*]: differently from original social acts, artificial social acts do not have a correspondence in the sphere of the pre-givenness of law (examples of original social acts are: promising [*versprechen*] and commanding [*bestellen*]; examples of artificial social acts are: admonishing [*anfechten*] and contesting [*mahnen*]), see Schapp 1930: 59 and following.

[63] Schapp 1930: 56: "Das Wesen dieser Vorgänge ist in selten klarer Art nach der Phänomenologischen Methode von Reinach festgestellt".

[64] See Reinach 1913 (1989): § 3. On the peculiar kind of acts which social acts are, see also Mulligan 1987 and De Vecchi-Passerini Glazel 2012

[65] See Schapp 1930: 40: "[Soziale Akte] sind psychische und interpsychische Vorgänge, d.h. Vorgänge, die sich zugleich in der Seele und zwischen den Seelen abspielen, wie z.B. Versprechen, Erlauben, Befehlen".

foundations of any positive law": "the positive law finds these forms and chooses the forms which seems to it appropriate and gives to such forms a more important meaning".[66] In other words, according to Schapp, the typical forms of the mutual contract are *a priori* legal forms.

Finally, Schapp identifies the *Rechtsfigur* of any kind of mutual contract: this would be a *whole* [*Ganze*] whose parts [*Teile*] are the *infrastructure* (worlds of values, evaluations of the values, the urge to exchange values, decisions to exchange values) and the *superstructure* (utterances of decisions and declarations of will) of the rational-mutual contract that brings forth *obligations and claims*.[67]

13.2.6   Objections Against the A Priori *Character of the Rational-Mutual Contract as Pre-givenness of the Law*

I shall address my objections against Schapp's *a priori* of the law and develop them in a *pars destruens* and in a *pars construens*.

13.2.6.1   *Pars Destruens*: The Rational-Mutual Contract Founded in the Values' Evaluation Is not a Genuine *A Priori* Structure of the Law

What ultimately are the *a priori* of the law in Schapp? What do "*a priori*" and "*a priori* of the law" mean according to Schapp?

(i) None of the elements involved both in the infrastructure and in the superstructure of the rational-mutual contract implies *a priori* connections

I argue that Schapp's pre-givennesses of the law, and, in particular, the rational-mutual contract (the case of Schapp's pre-givenness I have been dealing with), are not genuine *a priori* structures of the law, i.e. they are not structures of the law which are universally and necessarily valid, independently of any positive law, because the connections among the several elements involved in both the infrastructure and the superstructure of the rational-mutual contract are *not a priori*–necessary and universal–*connections*. In other words, the connections among these

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[66] See Schapp 1930: 35–36: "Die Formeln, welche wir für den gegenseitigen Vertrag im Unterbau und Oberbau gefunden haben, stehen nicht zu irgendeinem positiven Recht in besonderer Beziehung, und doch sind sie in irgendeiner Weise die Grundlage jeden positiven Rechtes. Die Formeln sind auch nicht auf dem Wege der Verallgemeinerung aus den bekannten positiven Rechten gewonnen, sondern das positive Recht findet diese Formeln vor und wählt die aus, welche ihm zweckmäßig erscheinen und gibt ihnen eine erhöhte Bedeutung".

[67] See, Schapp 1930: 63–64.

elements are not parts constituting a whole–as Schapp instead claims. Let us now inquire into this decisive point.

The relations between the *infrastructure* of the mutual contract (worlds of values, evaluations of values, the urge to exchange certain values, decisions to exchange certain values) and the *superstructure* of the mutual contract (utterances of decisions and declarations of will regarding the values to exchange) *are not a priori relations*: none of these relations is either necessary or universal. Even the relations among the elements both within the infrastructure and the superstructure *are not a priori relations*: the relations between the worlds of values and the evaluations of values, between the evaluations of values and the decisions to exchange certain values, on the one hand (with regard to the *infrastructure* of the mutual contract) and the relations between the decisions and the utterances of decisions or the declarations of will (with regard to the *superstructure*) *are not a priori relations*, either. Only the relation between the mutual contract (the social act of mutual promising) and the *obligation and the claim* brought forth by it are *a priori*, necessarily and universally valid relations–as Reinach had already shown.

It is necessary to specify that the fact that Schapp applies the label of "rational" [*vernunftig*] to the mutual contract is not sufficient to confer the character of necessity and universality to the relation among the elements of the mutual contract. According to Schapp, "rational contract" means that the contracting parties evaluate or reflect on the values in play before deciding whether to exchange and what they can exchange with each other. But the fact of *evaluating or reflecting on values does not necessarily imply that individuals grasp the values in play*.[68] The problem is that the fact of grasping and feeling the values (or of enjoying the values, as Schapp is given to say) is not a necessary fact: *people can be blind to values and may not be able to feel (enjoy) the values*.

Thus, individuals could decide to exchange something with each other and to conclude a contract without having grasped any of the values in play and without having evaluated any of the values in play.

As I remarked several times, a very critical point to consider is that in Schapp's work it is often not clear whether in the rational-mutual contract individuals decide to exchange some values, which are embedded in some goods, or, rather, they decide to exchange some things which can be bearers of values, i.e. goods.[69] Now, in the case that individuals exchange goods, the individuals may not be aware at all of the values of which the goods are the bearers: they are just interested in the "material things". This issue is totally neglected by Schapp. So a question arises:

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[68] The relation between reflection and values has definitely been analysed as a "symbolic relation" by Reinach (1913–14). In *The reflection: its ethical and legal meaning* [*Die Überlegung: ihre ethisce und rechtliche Bedeutung*] (1913/1914), Reinach focuses on the relation among values, reflection [*Überlegung*] and the criminal action punished by penal law as "murder". Reinach argues that in no case is the relation between the reflection on values and values a necessary relation. This is just a "symbolic relation". On this, see Salice 2012 and De Vecchi 2012f.

[69] See, supra § 13.2.3.1, 13.2.4.1, 13.2.4.2.

would Schapp's thesis on the foundations of the law in values still be the same thesis if the role played by values were instead a role played by goods?

(ii) *A priori* only in a chronological and hermeneutical sense

As I have just shown, the *a priori* of the law Schapp speaks of are not *a priori* in the genuine sense of the word "*a priori*". If anything, they can perhaps be considered *a priori* in only a very weak and partial sense of the term.

Firstly, they could be considered "*a priori*" in a chronological sense, because they precede the institution of any positive law.

Secondly, they could be meant as "*a priori*" in a hermeneutical sense: they are concepts whose comprehension is needed previously for an understanding of the law and, eventually, to become a jurist. This sense of "*a priori*" is, no doubt, a sense not only meant but also explicitly argued by Schapp himself. Let us see what Schapp affirms about the requirement [*Voraussetzung*] for the law to be learned and taught, in the passage entitled "How is the Science of law learned?" [*Wie lernt man Rechtswissenschaft?*], placed at the end of his work.

> The only requirement is that the pupil knows or feels what evaluation, what enjoyment and value, what promising, promulgating a law, commanding, what a claim, what satisfaction of a claim, what renouncement of a claim, are. The pupil cannot ever learn this, if he does not bring it with him. [...] *The construction of the law including the evaluation's foundations is as transparent as a mathematical construction.*[70]

In order to become a jurist, an individual must already have a pre-comprehension of the fundamental concepts of the law: the concepts concerning the worlds of values (evaluating and enjoying values) as well as the concept of social acts (promising, commanding, claims and obligations, etc.). But the most crucial point regards Schapp's claim about the relation between law and worlds of values: "The construction of the law including the foundations of evaluation is as transparent as a mathematical construction". Schapp is convinced that the relation between world of values and law is an *a priori* relation, and that this *a priori* relation is as evident as a mathematical relation. Thus, in this passage, Schapp combines both the meanings of "*a priori*": his *a priori* of the law are *a priori* both in the hermeneutical sense of preliminary concepts of the law and in the proper sense of being necessarily and universally valid (as mathematical entities).

Therefore, Schapp's idea of *a priori* of the law is very different from the "a priori" of the law, which characterise Reinach's work on law, as I will show in the second part of this paper. More generally, although Schapp's declarations about phenomenology and *a priori* matter, his *Science of the Law* has little in common with the phenomenological account of *a priori* as it was exemplified by Reinach.[71]

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[70] Schapp 1930: 179.

[71] According to Norberto Bobbio, the method by which Schapp analyses the mutual and rational contract "has nothing to do with phenomenology, although the declaration of principles of Schapp does", see Bobbio 1934: 76.

13.2.6.2   *Pars Construens:* **The Existential Character of the Law and the Probable Foundation of the Rational-Mutual Contract on Values; A Suggestion in Order to Save the *A Priori* Claim**

I claim that the concept of "pre-givenness" of the law, which characterises Schapp's idea of *a priori* foundations of the law, is an *anthropologically and existentially embedded* concept, and constitutes a *probable foundation* of the law on values. Finally, I suggest an interpretation of Schapp's account that permits to *save the a priori claim*.

(i) The existential character of the law and the essential tendency of the human beings to enjoy values to the full

The relations among the elements of the rational-mutual contract are, of course, not *mere contingent relations*: these relations constitute or contribute to constituting the rational-mutual contract. Thus, they are not simply casual relations. They are, more precisely, *probable connections* which are founded on the *tendency*, inscribed in the essence of human beings, to enjoy values to the full in order to make their existence a meaningful one.[72] Let us tackle this point in all its crucial aspects.

To clarify the point on the tendency inscribed in the essence of human beings to enjoy values to the full in order to make their existence a meaningful one, I introduce the idea of *essential connection of tendency* identified by Reinach. By describing the relation between an obligation and a claim produced by promising, on the one hand, and the actions which should realize them, on the other, Reinach states that it is not a necessary essential connection like the relation between promising and the claim and the obligation. It is instead *an essential connection of tendency*. As Reinach affirms by using precisely the verb "to tend [*tendieren*]":

> […] Promising *tends* towards the realization of its content by the promisor. It is destined to be dissolved. To every claim and to every obligation there "belongs" the realization of their content, not in the sense that the realizing action necessarily exists as soon as they exist, as claim and obligation exist as soon as the heard act of promising exists, but rather in something like the sense in which admiration "belongs" to a beautiful work of art, or indignation to a bad action.[73]

The action realizing the claim and the obligation is not necessary with respect to the claim and the obligation, but it is not only a possibility. It is an event towards which the promise *tends*: the obligation and the claim *motivate* the action that should realize them. Obligation and claim represent a "ground of probability" for the performance of their satisfying action, as a beautiful work of art or a bad action represents a motivation or a ground of probability for, respectively, admiration or indignation.

The relation of tendency is an essential relation, but not a necessary one: it belongs to the material essence of a certain entity, and it shows that the sphere of the essential relation transcends the dimensions of the necessity. Hence, it is very

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[72] See *supra* § 2.2

[73] Reinach 1913: 172–173; En. tr.: 32.

important in order to understand the concept of essence itself and particularly the *essences of social and legal entities*.

So, what remains of the need of values to be enjoyed to the full and of the tendency of human beings to enjoy values to the full, on which Schapp builds his theory of the ontological *status* of values, and, consequently, his theory of the foundation of the *a priori* of the law in values? What remains, of course, is all the significance of this need. This need is a tendency proper of the essence of values and of human beings. This is an extremely original and fruitful point of Schapp's work on values and law, a point giving Schapp a place of importance in social ontology.

It is in *values' need to be enjoyed to the full* and in *human beings' need to enjoy values to the full* that Schapp lays the *foundations of the law in values*: it is because values' meaningful existence and human beings' meaningful existence are so interconnected and interdependent upon each other, that the law and, even more so, the "pre-givennesses" of the law exist. It is in virtue of the mutual dependence of the quality of existence of values and of the quality of existence of human beings that the law, whose *raison d'être* is to regulate the relation between values and human beings, is characterized by pre-givenness, i.e. by structures which precede and are independent of the institution of any positive law.

In other words, Schapp's idea of the existence of "pre-givennesses" of the law, i.e. the idea of the existence of legal structures that pre-exist the positive law, is a humanly and anthropologically deep-rooted idea: there are pre-givennesses of the law, because the meaningful existence of both values and human beings depend upon each other, and the law, in the specific case of the rational-mutual contract, regulates the process by which values can be enjoyed to the full by the human beings, and human beings can enjoy values to the full. More precisely: it is because the need of human beings to enjoy values to the full leads human beings to exchange and share values (and, by so doing, human beings satisfy the need of values to be enjoyed to the full), that the rational-mutual contract takes place, as a pre-givenness of the law: it permits the regulation of those sharing and exchanging values.

On the one hand, this need implies that without values, there is no human existence worth living, and there would no rational-mutual contract worth being concluded. However, as already remarked, these are elements concerning the quality of the existence of human life as well as the quality of the kind of mutual contract. They do not concern the conditions of the mere existence, i.e. the necessary and sufficient condition for human beings to exist and for the rational-mutual contract to be accomplished.

On the other hand, the need of the values to be enjoyed to the full and the need of human beings to enjoy values to the full point out the need which human beings have for a just and fair existence, and, even more, for a just and fair social reality.[74]

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[74] Unfortunately, Schapp does not examine in depth this problem. He just states that any legal order is strictly connected with certain values (for instance, the legal order of a communist state is connected with communist values), but he makes no inquiry into this crucial relation. See Schapp 1930: 121–122.

(ii) The probable foundation of the rational-mutual contract on values

As I have pointed out the existential foundation of the law in values is not an *a priori* foundation in the rigorous sense of "*a priori*", i.e. in a sense based on necessity and universality: nothing is either necessary or universal, indeed, in the relation between values and the law. Nevertheless, the need of values to be enjoyed and the need of human beings to enjoy values, on the one hand, and the law, in the specific case of the rational-mutual contract as pre-givenness of the law, on the other hand, are in a *connection of probability*. Such relation of probability is given from the *tendency*, both of the nature of values to be enjoyed to the full and of human beings to enjoy values to the full; this tendency spreads out in the rational-mutual contract as the process in which values' need to be enjoyed to the full and human beings' need to enjoy values to the full are satisfied through the exchanging and sharing of values between individuals.

Thus, Schapp's foundation of the law on values is a "*ground of probability*" based on a "*connection of motivation*" (or *symbolic relation*) between values and the law.[75] From the existence of values and from the existence of the mutual dependence relation between values and human beings, we are led to the existence of the law and of the rational-mutual contract as a pre-givenness of the law, because the conclusion of the rational-mutual contract, which two individuals ratify to exchange some values of the one with some values of the other, is the act that permits the satisfaction of the need of values to be enjoyed to the full by human beings and the need of human beings to enjoy values to the full. On the other side of such connection of motivation: from the existence of the law and, more precisely, of the rational-mutual contract as the act whose performance consists in the exchange of values between two individuals, we return both to values' and to human beings' need respectively to be enjoyed and to enjoy to the full.

In this prospective, Schapp's *a priori* foundations of the law are very different from those of Reinach. As I shall point out, Reinach's idea of the *a priori* of the law implies a complete independence of the *a priori* of the law from human attitudes and activities. This is also the reason for the sharp distinction Reinach draws between *a priori law and natural law*: natural law is "human, too much human" with respect to the *a priori* law.[76]

To summarize: it is because human beings tend to enjoy values to the full in order to make their existence a meaningful one, that they tend to evaluate their world of values and the world of values of other individuals, that they tend to take decisions on certain values to be exchanged with other individuals, that they tend to declare such decisions, the ones to the others, and so tend to perform mutual contracts. None of these passages is necessary, but still each of these passages is probable in virtue of that tendency. In other words, these passages are only motivated–and they are not necessarily determined–by one another, and as such they may not even occur.

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[75] About the relation of motivation and the symbolic relation, see Husserl 1901: I *Logische Untersuchung*: § 1–7.

[76] See Reinach 1913: § 10 "Die apriorische Rechtslehre und das Naturrecht".

(iii) A suggestion in order to save the *a priori* claim

As I have already mentioned in the introductive paragraph of my paper, it is worth remarking that the variation of a single, but very important, element in Schapp's theory of the *a priori* foundation of the rational-mutual contract could permit Schapp to save the *a priori* claim (as a necessary and universal character) of his theory. It would be sufficient that, instead of evaluations of values as the foundations (as the infrastructure) of the rational-mutual contract, Schapp had spoken of evaluations of preferences: if Schapp only maintained that the rational-mutual contract is founded in individuals' evaluations of their own subjective preferences and interests, then his theory could be a valid theory of *a priori*. It could in fact be an *a priori* structure of the law, the whole constituted by the two essentially connected parts: the decision to conclude a contract and the conclusion of the contract performed by (at least) two individuals, on the one hand, and, on the other, the reflection or evaluation on what is important and what has a value for the same individuals as the ground of the decision of concluding the contract. The entire problem rests on the difference between a claim regarding the foundations of the rational-mutual contract on feeling, grasping and evaluating values which are objective and independent of the individuals (that is Schapp's claim), on the one hand, and a claim on the foundations of the rational-mutual contract on the evaluations of very subjective preferences and interests embedded in things which have a value for the individuals engaging in the contract. Also in this case, the lack of both a clear distinction between values and goods and of a robust theory of values in Schapp's *New Science of the Law* is the source of the weakness of his *a priori* theory of law.[77]

In conclusion, even if Schapp's work seems to miss the aim of an *a priori foundation* of the law (in the rigorous sense of the term *a priori*) on values (unless Schapp accepted the modification suggested just above), the perspective it opens up on the *existential foundation* of the law, grounded on the essential tendency of human beings to enjoy values to the full, on the one hand, and on the relation of motivation between values and the rational-mutual contract, on the other hand nevertheless represents the beginning of a completely new and compelling inquiry by social ontology into the *quality* of the existence of social entities and into the greater or lesser degrees of vitality, fullness, fairness, *etc.* of social entities. I think this is a crucial point which has to be underlined not only in order to do justice to Schapp, but also to devote greater attention to the needs of the *Life-world* in social ontology.

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[77] On a robust theory of values, see Scheler 1916 and Hildebrand 1916, 1918 and 1930.

13.3   Reinach

I shall present Reinach's idea of the *a priori* foundations of the law, developed in his *The A priori Foundations of the Civil Law* [*Die apriorischen Grundlagen des bürgerlichen Rechtes*] (1913), and the relation of such idea with the world of values.

13.3.1   *Two Issues on the* A Priori *of the Law and Values*

I shall address two issues:

 (i) What are the *a priori* foundations of the law according to Reinach?
(ii) Do values have any role in the *a priori* foundations of the law?

Regarding the first issue, I will point out that Reinach's idea of the *a priori* of the law is inscribed in the phenomenological frame of a "*regional ontology*" *of sociality*, i.e. of an *Eidetics of law*, that Reinach displays in his work. Accordingly, I will elucidate what Reinach's eidetics of law entails.

Concerning the second issue, as I remarked at the beginning of this paper, Reinach's idea of the *a priori* foundations of the law is independent of values.[78] I will question whether it is possible to build a valid theory of the law, and more precisely of the *a priori* of the law, without including within it a relation between values and the law.

I maintain that the two issues are deeply intertwined. Reinach deals with the idea of "*a priori* structures" [*a priorische Gebilde*] of the law, which are universally and necessarily valid, independently of any positive law. In this purely ontological frame, values have no place: the *a priori* of the law are mere "laws of essence" [*Wesensgesetze*], which concern solely the being of the law and which are neither bad nor good. From this perspective, moral values and the *a priori* of the law are not connected, just as moral values and mathematical entities (numbers or geometrical figures) are not connected. To make this point clearer: moral predicates of the *a priori* of the law would make no sense, just as moral predicates of numbers or of geometrical figures would make no sense.

Therefore, the problem of the relation between values and the *a priori* of the law is set up by Reinach in a very different way from Schapp. In Reinach's theory of the *a priori* of the law, there is no question of a relation between an "infrastructure", constituted by values, and a "superstructure" of a legal *a priori*.

In order to understand the sharp distinction assumed by Reinach between law and values, I shall elucidate what the *a priori* of the law are. As already remarked, Reinach's idea of the *a priori* of the law implies the phenomenological ideas of *Eidetics* and of *regional ontology*: Reinach's *a priori* theory of the law is an Eidetics of Law. Thus, I will present the important phenomenological topics of Eidetics and

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[78] See, *supra*, § 1.2

Regional Ontology: both constitute the theoretical frame of Reinach's work on the *a priori* of the law. I will show why moral axiological predicates do not make sense in this context.

13.3.2   Eidetics, Regional Ontology and Ontological Region

The phenomenological concept of "*Eidetics*" grounds in the phenomenological concept of "essence" [*Wesen, eîdos*].

The fundamental thesis on which the phenomenological eidetics is based is that there are essences, i.e. essential structures (species, types) of "things" ("things" is to be understood here in the very broad sense of entities of any kind: natural entities such as physical and psychic entities which have a space-time existence; ideal entities which are extra-temporal entities; etc.), and that we experience such essences. Therefore, we experience not only *empirical data*, but also "*non-empirical data*",[79] exactly the essential structures of "things", in virtue of which any individual and contingent "thing" (this person, this table, this triangle, this promise, etc.) is the exemplification of its species or essence, i.e. is the exemplification of a universal (person, table, triangle, promise, etc.). Expressed in other terms, any individual "thing" is the *token* of a *type*.

The act by which we experience the essences is a specific intentional act, called by Husserl "eidetic intuition" [*Wesenschau*].

It is necessary to remark that the eidetic science [*eidetische Wissenschaft*], defined by Husserl in the *Third Logical Investigation* (1901) and in the first section of *Ideas I* (1913), works on two axes: the axis of the *analysis of essences* as species (type) of individual (token), and the axis of the *a priori* connections among entities of different kinds (the so-called "synthetic a priori" or "material a priori", elaborated by Husserl in the *Third Logical Investigation*).[80]

In other terms, the eidetics works upon *two ontological axes*:

 (i) The *vertical axis* concerning the relation between an individual and its universal, a relation in virtue of which every individual is characterized as the individual of a certain type: this is the axis of the *intra-specific relation* or of *intra-kind relation* between the individual and the species or the kinds to which the individual belongs (between the token and its type). For instance: this red of my t-shirt belongs to the species "red", which belongs to the species "colour", which belongs to the sensible qualities.[81]

(ii) The *horizontal axis* concerning the ontological non independence (or independence) relations among entities of different kinds. This is the axis of the

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[79] Héring 1921: 495.

[80] See Husserl 1901 and 1913.

[81] See Husserl 1913: § 12.

> *inter-specific relation* between entities of different kinds, for instance, the non independence relation between colour and extension.

In such a way, Husserlian eidetics represent a fruitful ontological instrument by which it is possible to obtain the invariant structure of any phenomenon we may encounter in our "life-world" [*Lebenswelt*].[82]

The "eidetic science" is declined in the plural: there are several eidetic sciences corresponding to the several kinds of entities. Eidetics in phenomenology is a synonym of ontology: the idea is that there are several ontologies corresponding to the several ontological domains of reality. Husserl speaks of an "ontological region", i.e. of a certain sphere of reality, to which corresponds a certain "regional ontology" or a determined "regional eidetic".[83]

> Any concrete empirical objectivity finds its place within a *highest* material genus, a *region* of empirical objects. To the pure regional essence, then, there corresponds a *regional eidetic science*, or, as we can also say, a regional ontology.[84]

Regional eidetics or regional ontologies are *material ontologies*: they are ontologies grounded in the "material essence" that defines a certain type of entity. For instance, Husserl speaks of an "ontology of nature", which deals with natural entities, of an "ontology of the *geistig* world", which deals with entities such as persons, cultures, institutions, works of art, etc. Material regional ontologies are potentially infinite, just as the kinds of entities which inhabit the world are infinite.

It is necessary to remember that material ontologies are to be distinguished from the *formal ontology* that, differently from material ontologies which deal with entities of a certain material kind, deals with "anything in general" and studies the forms of any possible entity meant in the most extended logical sense. Formal ontology deals with the logical categories which are predicable of every entity in general, such as "the concepts of property, state-of-affairs, relation, identity, equivalence, number, whole and part, etc." and "contains the forms of all [material] ontologies".[85]

13.3.3   A Priori *Theory of the Law as Eidetics of Law*

In his lecture *On Phenomenology* [*Über Phänomenologie*] (1914), Reinach maintains the thesis of the existence of essences, and points out that such essences are constituted by *a priori* connections: by universal and necessary bonds, which are in the "things themselves" we experience. In other terms, the thesis of the existence of

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[82] On the two axes of Husserlian eidetics, see Husserl 1900/1901: III *Logische Untersuchung* and Husserl 1913: First Section. In general, on the concept of "Eidetics", see Husserl 1891–1935. See also Piana 1977. I worked on the two axes of the eidetics in De Vecchi 2012e. On the expression "Life-world" [*Lebenswelt*"], see Husserl 1936.

[83] See Husserl 1913: First Section.

[84] Husserl 1913: § 9 *Region and Regional eidetics* [*Region und regionale Eidetik*].

[85] On the relation between material ontologies and formal ontology, see Husserl 1913: §§ 9–10.

"non-empirical data", i.e. essential data, which are the object of eidetic intuition, is intrinsically connected with the possibility of the "so called *a priori* investigation", i.e. of the investigation of the *a priori* connections among the different kinds of entities (natural, ideal, cultural, social entities, etc.) which inhabit the world.

Thus, Reinach works on the Husserlian *material a priori* and develops an eidetics that is a science of *a priori* connections: therefore, an *eidetics* that arises on the *axis of inter-specific relations*, that is the axis of the *a priori* connections among entities of different kinds. One of the most paradigmatic examples of *a priori* connections analysed by Reinach is the *a priori* connection between the promising, on the one hand, and the obligation and the claim produced by the promising, on the other.

Reinach does not dwell upon the vertical eidetic analysis, but, necessarily, presupposes it: it is the eidetic hierarchy of belongings that determines the eidetic connections of a certain individual with other individuals. It is because this promise, that I made to you yesterday, is as such defined by the species "promise" (and by the intermediate kind "social act") of which it is an instantiation, that, this promise, as instantiation of the species "promise" and of intermediate kind "social act", existentially depends on the claim and on the obligation it produces, on the individual who is its bearer, on the linguistic expression that utters it, etc.

It is for this reason that it is possible to maintain that the *existential relations of non-independence are essential laws*: the existential non-independence of this promise (the promise I made to you yesterday) is inscribed in the *eîdos* of the promise, of which my promise is just an instantiation. In other terms, this is because the species "promise" existentially depends on the species "obligation", on the species "claim", on the species "linguistic utterance", on the species "person", etc.

Reinach shares Husserl's project of the "regional eidetics", i.e. of the several "regional ontologies" which study the different "ontological regions".

> The first thrust of phenomenology has been to trace out the most diverse of the domains of essence relationships, in psychology and aesthetics, ethics and law, etc. New domains open up to us on all sides.[86]

Thus, also for Reinach, *ontology* is a synonym of *eidetics*: more precisely, Reinach conceives ontology as an "*a priori* theory of the object",[87] i.e. as a science that deals with the *a priori* connections constituting the entities which inhabit a given ontological region. Therefore, there is an eidetics or ontology of the psychic entities, of the artistic entities, of the legal entities, etc. Reinach dedicates a very important part of his philosophy to the eidetics of the region of sociality: to what is now called "social ontology".

Social and legal *a priori* identified by Reinach represent the discovery in social ontology of the existence of *a priori* connections that define specifically social and legal entities.

Reinach extends the concept of *synthetic a priori*, defined by Husserl in the *Logical Investigations* (1901) to the social and legal sphere. As I have already

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[86] Reinach 1914 (1989): 549; En. Tr. 1969.
[87] Reinach 1913 (1989): § 1.

remarked, it deals with the thesis on the existence of *a priori* (essential) connections in the things themselves. It concerns, therefore, *ontological a priori* connections, on which the formulation of synthetic *a priori* propositions, i.e. of *epistemological a priori*, is grounded.

Reinach points out that there are *a priori* connections, which are specific to social and legal entities, and pinpoints the essential laws [*Wesensgesetze*] which can hold for these entities. In other words, social and legal entities are defined by a specific essential legality: synthetic *a priori* laws hold for the social and legal entities; these laws constitute the *a priori* law (or the *pure law*),[88] that is an *a priori* which founds the positive law.

> The laws which hold for these objects are of the greatest philosophical interest. They are *a priori* laws, and in fact, as we can add synthetic *a priori* laws. If there could hitherto be no doubt as to the fact that Kant limited much too narrowly the sphere of these laws, there can be even less doubt after the discovery of the *a priori* theory of the law. Together with pure mathematics and pure natural science there is also a pure science of right [*reine Rechtswissenschaft*], which also consists in strictly *a priori* and synthetic propositions and which serves as the foundation for discipline which are not *a priori* […].[89]

Some *a priori* laws of the law, which hold for social and legal entities, are, for instance: "Through the act of promising something new enters the world. A claim arises in one party and an obligation in the other"[90]; "We put forward the *a priori* law that the claim can only arise in the person of the addressee. It is *a priori* impossible that a person to whom the promise is not directed should acquire a claim from it"[91]; "As a matter of *a priori* necessity, every social act presupposes as its foundation some internally complete experience whose intentional object coincides with the intentional object of the social act".[92]

Therefore, the *a priori* of the law Reinach presents are, very plainly, *genuine a priori*: they are connections which are necessarily and universally valid.

13.3.4   *Legal* A Priori *of the Positive Law* vs. *Axiological* A Priori *of the "Just Law"*

Now, I return to the issue on the relation between the *a priori* of the law and values in Reinach: as I have shown, the idea of the *a priori* of the law does not imply any relation with values. More precisely: according to Reinach (and unlike Schapp), values do not play any role in the being of the *a priori* connections which constitute the foundations of the positive law. I will question whether it is possible to identify

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[88] On the concept of "pure law", see Stein 1925.

[89] Reinach 1913 (1989): § 1.

[90] Reinach 1913 (1989): §2, 148; En. Tr: 8–9.

[91] Reinach 1913 (1989): § 4, 172; En. Tr: 31.

[92] Reinach 1913 (1989): §3, 162; En. Tr: 22.

a relation between an *a priori* of the law and values which is not a relation constituting the *a priori* of the law (as in the case of Schapp's position), but just an extrinsic relation.

I argue that in Reinach the problem of the relation between values and *a priori* of the law takes place in an indirect relation between values and *a priori* of the law; the term of the mediation of this indirect relation is the positive law: the positive law, whose foundations are *a priori*, is susceptible to axiological evaluations based on the *a priori* connections of values. However this is not the issue with which Reinach is dealing.

In order to make this issue clearer, I shall quote a passage by Husserl on Reinach's *A priori foundations of the civil law*:

> [*The a priori foundations of civil law*] offers, in contrast to all legal philosophy outlines of the present, as of the past, a completely new type of attempt to actualize on the basis of pure phenomenology the long despised *idea of an a priori legal theory* [*Idee einer apriorischen Rechtslehre*]. With singularly sharp thinking Reinach draws into the light of day a great diversity of "a priori" truths that underlie all real and imaginable law; and these truths are, as he shows, *a priori* exactly in the sense that the primitive arithmetic or logical axioms are, and thus, like them, are graspable by insight as truths valid in general without exception prior to all experience [*Erfahrung*]. These *a priori* legal propositions, as for example, that a claim expires through fulfilment, that a possession passes from one person to the other through transfer, express nothing less than "determinations" (arbitrary stipulations that something shall be) as do all propositions of positive law. All such positive legal determinations indeed already presuppose concepts such as, for example, claim, obligation, possession, transfer, etc., concepts that are therefore *a priori* in the face of positive law. […]
>
> That which is completely unique to the work, masterly from every point of view, lies in its recognition that this *a priori*, belonging to the unique essence of any law in general, is to be sharply distinguished from another *a priori* that refers to all laws by means of norms of evaluation: for all law can and must be placed under the idea of "correct law" [*richtiges Recht*] – "correct" from the standpoint of morality or some objective expediency. The development of this idea led to a quite distinct *a priori* discipline, yet one that aims as little as Reinach's *a priori* legal doctrine at the realization of the fundamentally mistaken idea of a "Natural Law".[93]

In this passage, Husserl presents very clearly the two points I am dealing with: on the one hand, *the idea of the a priori theory of the law*, and on the other hand, *the distinction between the idea of the a priori of the law and the idea of the axiological evaluation of the norms, i.e. "the idea of the "just law""*, which is based on another *a priori*, no longer a legal but an axiological *a priori*.

The idea of the just law is plainly connected with the issue of the evaluation of norms, thus with the values that legal norms can and should embody, and with the issue of *an priori* "different from" the *a priori* of the law: the *a priori* which defines the world of values, I could also say the *material ontology of values*, and that should ground the idea of a "just law".[94] Now, Reinach does not deal with the *a priori* of

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[93] Husserl 1919: 49 (1987: 303).

[94] On the ontology of values, see Scheler 1916 (whose first and partial edition was published in the same journal, the *Jahrbuch für Philosophie und phänomenologische Forschung* and in the same year as Reinach's *A priori foundations of the civil law*)

the world of values and with its relation with the constitution of the just law. Reinach is dealing with a different issue: he just works on the *a priori* foundations of the civil (i.e. positive) law. In other words: Reinach tackles the problem of the existence of mere legal *a priori*, *a priori* of a legal nature, and he does not focus on the problem of the *a priori* foundation of the just law.

Therefore, Reinach's perspective does not imply that there is not a relation between *a priori* of the law and values. On the contrary this relation subsists, and it is essential, but only if we focus on the third and middle term of this relation: the positive law and the evaluation of its norms according to the axiological *a priori* which the norms of the just law embed.[95]

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[95] On the problem concerning the relation between the fairness of positive law and the *a priori* of the law, see Stein's very strong thesis, differing from Reinach's: "Where the pure law is in force, there "justice reigns". Justice is a value-predicate that […] can be attributed to an operative legal order and expresses its concurrence [*Übereinstimmung*] with the pure law […]", Stein 1925: II "Staat und sittliche Werte", § 2, p. 109; En. Tr. 2006: 51. According to Stein, and unlike Reinach and Husserl, the pure law, i.e. the *a priori* of the law, would be the just law.

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Chapter 14
Disenchanting the Fact/Value Dichotomy: A Critique of Felix Kaufmann's Views on Value and Social Reality

Sonja Rinofner-Kreidl

Abstract What is at stake in philosophical debates on values is whether it is possible to accurately describe our moral, aesthetic, religious or otherwise evaluative experiences without entering an ontological commitment to values as independently existing objects that cannot be reduced to physical objects. As far as values emerge in Felix Kaufmann's work this venerable debate is reduced to the question of how social scientists should deal with the fact/value dichotomy. The present essay aims at elaborating and challenging Kaufmann's thoughts on values and their impact on his understanding of social reality. In order to approach this aim I introduce two methodological issues, called *strata of experience* and *the philosopher's fallacy,* which offer a suitable framework for inquiring into Kaufmann's *Methodenlehre* (1936), his *Methodology* (1944) and other relevant materials.

In accordance with his positivist leanings, Kaufmann maintains that any legitimate concern for values must restrict itself to analyzing value judgments as part of a scientific methodology. Contrary to this, I argue that subverting and bypassing descriptions of everyday evaluative (e.g. moral) experiences, including fine-grained analyses of their intentional structure, represents a serious deficiency of Kaufmann's approach. The latter is brought to light by presenting Husserl's phenomenological investigation of evaluative experiences which neither complies with the narrow range of a purely scientific treatment nor embarks on the opposite extreme of value Platonism. It is this rigid opposition that lurks behind Kaufmann's relegation of values into the sphere of irrationality. Having contrasted Kaufmann's and Husserl's value inquiries, I conclude by taking stock of their implications. In doing so, I, first, try to figure out their overall understanding of social reality. Secondly, I ponder their presumable responses to current debates on entangling or disentangling views with regard to the fact/value dichotomy.

Keywords Value • Methodology (of social sciences) • Phenomenology • Strata of experience • Fact/value dichotomy

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It is a lucky coincidence when, on more or less rare occasions spread out over our intellectual history, a passionate interest in scientific research and an equally passionate interest in philosophy meet. Felix Kaufmann is among those outstanding persons whose work embodies such a lucky coincidence. The passion of a philosopher-scientist, according to him, lies in committing oneself to a thoroughly sober rational analysis. As is well known, Kaufmann's relating views have been nourished by quite different traditions. On the one hand, there is his affiliation or affinity to the Vienna Circle, which represented the hotbed of contemporary logical positivism, as well as his intimate knowledge of Hans Kelsen's pure theory of law (*Reine Rechtslehre*).[1] On the other hand, there is Husserl's phenomenology whose rational structure and general scheme Kaufmann deeply appreciated.[2] In later years, he moreover shows a growing interest in John Dewey's pragmatism. This stake, too, does not appear to have been of a merely accidental or superficial stamp. Reading Kaufmann's works we are inclined to say that bringing to bear and, to some extent, integrating these heterogeneous traditions and intellectual movements is a promising though not altogether unproblematic project.

Among the many aspects of Kaufmann's work that deserve attention, I restrict myself to his view on values. My motivation for doing so is two-fold. First, I, myself, am strongly interested in value theory and metaethics. Secondly, I am eager to come to terms with a hunch or presumption that, for a pretty long time, has haunted me with regard to Kaufmann, namely that his intellectual grip on both the positivist and the phenomenological approach might turn out to be far more questionable than hitherto thought. The general thesis I am going to carve out runs as follows: the blind spot of Kaufmann's methodologically anchored marriage between positivism and Husserlian phenomenology is his view on values and how we should appraise their impact on our daily life and scientific projects. At least with regard to his treatment of values and evaluative experiences Kaufmann's linkage of positivism and phenomenology strongly evokes the impression of a 'mésalliance' which gives rise to conflicting theoretical concerns. As will be shown in the following, the relating differences are of grave consequence from a theoretical point of view.

Kaufmann dealt with issues of value throughout his philosophical work. It is therefore necessary to come up with a radical selection and to arrange the material according to some special focus. I shall proceed as follows.

My first step will be to introduce two notions that play an important role in Kaufmann's methodological considerations: *strata of experience* and *the philosopher's fallacy*. Referring to Kaufmann's relating considerations will help to gain a clear grasp of his idea of doing philosophy without going into the details of his work. Later on, it will become clear that the notions of different strata of experience and the philosopher's fallacy are also suitable conceptual tools to elucidate some tensions implied in Kaufmann's double philosophical commitment to a positivist and a phenomenological approach. *In the second parts*, I shall screen and summarize Kaufmann's view on values, thereby focusing primarily on his famous 'Methodenlehre' (1936) and 'Methodology' (1944). My main concern in this section will be to analyze and challenge Kaufmann's treatment of value issues which, roughly, follows the idea of

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[1] Cf. Dahms 1985, Stadler 2003, Zilian 1990.

[2] Cf. Stadler 1997, Rinofner-Kreidl 2004.

a formal analysis in terms of a semantic ascent and strictly keeps within the boundaries of a scientific project.[3]

In the third parts, I shall present Husserl's intentional analysis of evaluative experiences as an alternative phenomenological approach to the problem of values. The basic character and impact of this approach can be appropriately understood by referring to those two guiding ideas of a philosophical analysis that I previously took up in Kaufmann's methodology: his idea of different though interrelated strata of experience and his idea that there are particular fallacies a philosopher must evade. Husserl's investigation of evaluative experiences neither follows the scientific restrictions that are characteristic of Kaufmann's approach nor subscribes to the opposite extreme of value Platonism that lurks behind Kaufmann's relegation of values into the sphere of irrationality.[4] It rather represents a suitable middle-path in between a narrow scientific treatment of value issues, on the one hand, and a free-floating ontological permissiveness and abundance with regard to values, on the other. *In the fourth part*, I shall summarize the results of my previous considerations. Doing so, I shall argue that the positing of a, roughly, positivist or phenomenological value inquiry is relevant with regard to our understanding of social reality and our treatment of the fact/value distinction.

14.1 'Strata of Experience' and 'the Philosopher's Fallacy'

Kaufmann approves of Husserl's method of analyzing different types of experiences and their correlating types of objects and states of affairs by inquiring into processes of *meaning constitution.* Given that we follow this Husserlian-type intentional analysis, it is obvious why it is of utmost importance to distinguish different strata of experience: "all regions of being, including those of physical objects, values, and the objects of mathematics and logic, are all to be clarified through phenomenological description of the interrelated strata of experience." (Reeder 1991, p. 69) On the other hand, what Kaufmann calls 'the philosopher's fallacy' consists in "the confounding of problems concerning statements about reality with problems related to the analysis of meanings." (Kaufmann 1940, p. 321) Seeing through and avoiding this fallacy is a basic requirement of any accurate and promising philosophical analysis. How are these two methodological notions related to each other? How does concern for different strata of experience help us to fend off the philosopher's fallacy and vice versa?[5]

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[3] 'Semantic ascent' indicates a shift from questions about objects (material mode of speech) to questions about how objects are linguistically represented and referred to (formal mode of speech).

[4] In the present context, I cannot dwell on Husserl's axiological investigations which, according to their general outline, strongly approach Kaufmann's style and direction of analysis. This is obvious, for instance, with regard to Husserl's critique of Kant's categorical imperative. See Rinofner-Kreidl 2010.

[5] A paradigm for this can be found in Kaufmann's interpretation of a priori knowledge. Cf. Kaufmann 1936a, pp. 33–36, especially p. 35, Rinofner-Kreidl 2007.

According to Husserl and other phenomenologists, a phenomenological investigation mainly consists in delivering accurate descriptions of diverse kinds of phenomena and, correspondingly, different modes of being-directed to appearing things. Within this framework it is essential to distinguish different levels (strata) or layers of experience. Doing so enables the phenomenologist to, step by step, analyze immediately given appearances into multifariously structured phenomena which contain different aspects or different types of content and refer to relating experiential activities. Hence a phenomenologist works on specifying the *logoi* of phenomena by analyzing their unity (and correlating unity of intentional experiences) into manifolds (*Mannigfaltigkeiten*) of interrelated moments (cf. Husserl 2001). Thereby it is important not to misinterpret the results of this inquiry. For instance, one must not mix up the components of the intended objects and states of affairs with constitutive moments that are real parts of the intentional experience or with those components that make up the intentional contents manifested in these very experiences. If we agree on this specification of the phenomenological task, it is obvious that committing the philosopher's fallacy as defined above threatens to annihilate the whole benefit of inquiries of this sort. According to the phenomenological approach, the given phenomena determine the scope and precise content of our experience. For phenomenologists, talking about 'strata of experience' indicates both a methodical discipline with regard to one's attempts to descriptively analyze phenomena and an unprejudiced readiness to take account of the given range of phenomena in the first place. A phenomenological understanding of the so-called philosopher's fallacy therefore goes beyond purely methodological issues. It is not only fallacious to confuse meaning analyses with statements about objects and states of affairs. It is equally wrong to cut down the range of possibly given phenomena (and correlating experiences), in the first place owing to purely theoretical (or even ideological) reasons. Kaufmann's understanding of the philosopher's fallacy as well as his interpretation of our talk about different strata of experience seems to follow a somewhat narrower path. In one of his later works, entitled 'On the Nature of Inductive Inference', he states:

> I have always been an empiricist in maintaining (a) it is the task of philosophy to explicate human experience, (b) that reference to 'transcendent ideas' is not permitted in the pursuit of this task, and (c) that there are no irrefutable statements of facts. But I have always protested against the view, prevailing among many contemporary logicians, that empiricism, understood in this sense, involves a commitment to nominalism. (Kaufmann 1945/1946, p. 609)

To be sure, what an empiricist specifies as the admissible scope of experience and, accordingly, what he considers to be 'transcendent ideas' does not naturally coincide with a phenomenological take. In any case, the meaning content of our concepts and the way we introduce philosophical problems is crucial. Kaufmann argues that many philosophical problems would not arise or, at least, would not hold sway over our philosophical disputes in such a persistent manner if everyone agreed that our first task in coping with philosophical problems is to uncover confusions that slip in unnoticed and henceforth determine the way the relating problems are defined. For instance, how could the controversy about universalism versus nomi-

nalism benefit from paying attention to the philosopher's fallacy and the distinction of different strata of experience? An answer can be found in Kaufmann's 1940 paper 'Strata of Experience':

> Is the meaning of universals a constitutive element in the meaning of the experience of things or is the latter meaning a constitutive element in the former? Obviously meanings of universals are constitutive elements in the meaning of any thing-concept and in this sense they are *ante rem*. There is, however, on the other hand a certain meaning of 'concrete' experience which is presupposed in the meanings of universals.
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>   The distinction between different strata of experience cannot, of course, be regarded as a solution of the problems involved, but rather as a small step in the approach to their formulation. These problems are, as I see it, the very problems of philosophy. If it is the goal of philosophy to make our thoughts clear and distinct, then the analysis of meanings is the chief task of the philosopher. As far as this analysis remains within the stratum of objective meanings it is logical analysis; as far as it transcends this stratum it may be called transcendental analysis. (Kaufmann 1940, p. 322)

How does our view on the quarrel between realism and nominalism change according to this statement? It is only with a view to the meaning analysis of thing-concepts that the primacy, that is, the *ante rem* status of universals can be claimed. This claim does not hold in an unqualified sense. It refers to a specific stratum of experience, namely our reflective analysis of thing-concepts. Provided that we either are absorbed in the different modes of experiencing concrete objects or concerned with noticing and analyzing these modes of experience, respectively, no such claim is appropriate. On the contrary, the previously given stratum of experience must be considered 'autonomous' at least insofar as it is the indispensable starting-point of all and every attempt to inquire into the possible modes of our relatedness to the world. Thinking about universals is part of this overall attempt. Doing so is meant to unfold the presuppositions of our epistemic as well as practical relation to a mind-transcendent sphere called '(social) reality'. ('Mind' here refers to the content of an individual consciousness.) What necessarily transcends the individual mind in terms of its real and actual content can nonetheless be analyzed as part of the intentional structure of consciousness. Hence 'world' denotes whatever operates as an encompassing tacit background of various experiences a possible consciousness may undergo. In other words: 'world' refers to the 'space' of possible experiences that do not occur in an isolated manner but, instead, are related to each other in terms of intentional horizons. Digging into the different layers of meaning involved in such mind-transcending intentional relations without thereby presupposing any ontological positings that go beyond the immanent sphere of intentionality is the task of a transcendental-phenomenological meaning analysis.[6] Contrary to a logical analysis dealing with objective meanings, a phenomenological inquiry operates within the sphere of subjectivity, that is, within the sphere of correlations between intentional experiences and intentional objects. Embarking on a transcendental analysis of meaning as sketched above amounts to de-ontologizing our philosophical disputes in favor of a methodologically informed and piecemeal descriptive work that keeps within the realm of pure consciousness. Though Kaufmann

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[6] See below Sect. 14.3, on the idea of the phenomenological reduction.

sympathizes with a phenomenological (Husserlian) approach, his understanding of meaning analysis nevertheless wavers between a transcendental analysis as sketched above on the one hand and a logical analysis on the other. Relating to evaluative experiences the balance shifts in favor of the latter.

14.2   Kaufmann's 'Semantic Ascent': Value Judgments Within the Limits of a Scientific Methodology

As indicated above, a phenomenological approach is concerned with investigating the intentional structure of experience. Accordingly, problems of values are problems of how to accurately describe their role and meaning within human experience and, in particular, of how values (of a specific type) are constituted in consciousness (cf. Kaufmann 1929, pp. 5, 7). At first sight, Kaufmann's treatment of value issues in his 'Methodenlehre' (1936) follows this route by strongly focusing on meaning analysis. Yet he interprets the latter in a sense that makes clear how strong though not in any sense uncritical his positivist leanings are.[7] According to Kaufmann, the following aspects require theoretical attention (Kaufmann 1936a, pp. 91 f): (a) whether values should be considered transcendent (as value realists and Platonists maintain); (b) whether values should be considered independent in ontological and epistemological terms, the latter referring to the assumption that there is a genuine type of knowledge concerned with values as distinct from knowledge of other (natural) beings; (c) whether values should be considered absolute and, correspondingly, whether knowledge of them can be attained in a presuppositionless manner; (d) whether *value* functions as a necessarily relational concept, that is, whether value judgments refer to value qualities ascribed to certain objects or to relations between (evaluating) subjects and (evaluated) objects; (e) whether values should be considered as parts of a hierarchical system of values with either a plurality of highest values or a single highest value from which all others receive their validity; (f) whether values should be considered to judge on the (so-)being of other objects, thereby involving a trans-temporal and intersubjective conformity of some series of verifications.

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[7] For instance, Kaufmann does not subscribe to the rigid idea of a unity-of-science program. He rather acknowledges a 'Methodenpartikularismus' as suitable and inevitable in the social sciences (Kaufmann 1936a, p. 221), although he also stresses the similarities between social sciences and (natural) sciences. As to Kaufmann's intermediate position between positivism and phenomenology (cf. Huemer 2003), which marks out a moderate unity-of-science view (cf. Helling 1985, pp. 250 ff), it is instructive to take note of his remark "daß meine Arbeit nicht als phänomenologische Theorie der Sozialwissenschaften zu bezeichnen ist, obwohl die Werke des Begründers der transzendentalen Phänomenologie, des großen Philosophen EDMUND HUSSERL, meine Gedanken stark und nachhaltig beeinflußt haben. Denn die in diesem Buche durchgeführten methodologischen Analysen stehen noch diesseits der Problemstellung der transzendentalen Phänomenologie; ihr Ziel ist ,Formalkritik', nicht ,Transzendentalkritik', wenn man diese beiden Begriffe im Sinne HUSSERLS versteht."(Kaufmann 1936a, p. III f [preface])

According to Kaufmann, the most important concern among the questions specified above is to figure out what it could mean to demand *correctness* when talking about values. Kaufmann's main theses in his 'Methodenlehre' can be summarized as follows.[8]

1. According to the requirements of a scientific treatment, we cannot refer to value objects (i.e., values as objects) that are said to belong to an independent sphere of reality. Following the device of a semantic ascent ('shift from talk of objects to talk of words'), which is the positivist interpretation of a philosophical meaning analysis (cf. Quine 1992, p. 169; Quine 1948/1949), we should instead confine ourselves to analyzing value statements. Value statements are relevant for a scientific investigation insofar as they are legitimate candidates for objectivity and verification. They are verifiable on condition that there are criteria of rightness. The relevant criteria are axiological rules whose justificatory functioning regarding given (types and tokens of) value statements parallels the justificatory functioning of the rules of scientific procedure regarding all those statements that are part of a scientific theory.

2. Value statements are part of our scientific framework if (and only if) we restrict ourselves to inquiring into *means-ends relations* and the relating *dependent values*. On this condition, value statements can be specified in terms of varying degrees of rationality. Acts of preferences can be analyzed as fact-based and entirely value-free. Doing so implies the relational character of all possible notions of correctness that are correlated with a variety of possible aims of acting (cf. Kaufmann 1936a, pp. 93–98, 102, 107). Therefore, Kaufmann holds: "*Alle Wertbegriffe sind sohin auf 'Seinsbegriffe' reduzierbar, d. h. durch sie definierbar* und die *'Werturteile' unterliegen* – sofern sie sich nicht als Definitionen entpuppen – prinzipiell den *gleichen Verifizierungsverfahren wie die 'Seinsurteile'* […]." (Kaufmann 1936a, pp. 105)[9] Contrary to this, *independent or absolute values* cannot be the object of scientific investigation. Relating to the latter, Kaufmann, as soon as 1929, in his 'Die philosophischen Grundprobleme der Lehre von der Strafrechtsschuld', presents an early version of what J. L. Mackie, some decades later, called an 'error theory' (Mackie 1977, chap. 1). Kaufmann argues that it is only due to the fact that in our everyday life purposes or ends for the most part and for the most time remain hidden that we are inclined to believe in absolute purposes or ends.[10] The naïve attitude of our daily social life gives us

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[8] As indicated above, the background assumptions of Kaufmann's line of reasoning with regard to values in his 'Methodenlehre' already come to the fore in an earlier work, namely in the first chapter of his monograph 'Die philosophischen Grundprobleme der Lehre von der Strafrechtsschuld' (cf. Kaufmann 1929, pp. 5–28). The continuity of Kaufmann's views on values from his early works until his latest is documented, for instance, in a very late article published in the year of Kaufmann's death (1949) which is entitled 'The Issue of Ethical Neutrality in Political Science' (cf. Kaufmann 1949). For reasons of space I cannot dwell on these publications.

[9] On the implications thereof in terms of Kaufmann's rejection of the is/ought dichotomy see Kaufmann 1936a, pp. 169 f, 175 f, 293 ff, 300; Kaufmann 1924, pp. 239 f. Cf. Hudson 1969.

[10] Cf. "Die Tauglichkeiten werden dann als *unselbständige Werte* aufgefaßt, wenn der *Zweck*, dem sie dienen, selbst *deutlich ins Bewußtsein tritt*; sie erscheinen aber als ,selbständig', ,unbedingt',

the impression to be related to values that transcend the sphere of instrumental rationality. Yet science unveils the naïve style of everyday thinking and acting which takes for granted allegedly 'given' purposes. Contrary to the assumption that one might warrant 'deep' and absolute value commitments and, accordingly, might attain a relating rational agreement, statements about absolute values cannot be acknowledged within the ambit of a scientific procedure unless they are reduced to statements about facts in the above-sketched manner.

We do not find any fundamentally different views on the issue of values in Kaufmann's 'Methodology' (1944) which appeared a few years later than his 'Methodenlehre'. Here, again, Kaufmann parallels theory of knowledge and theory of values by focusing on the notion of correctness which, in both areas, is defined in terms of implicit rules of procedure. The theory of knowledge aims at specifying the criteria of correct beliefs. Accordingly, the theory of value aims at clarifying the criteria of correct valuations. As far as knowledge is concerned we are interested in correct beliefs. When it comes to talk about values we are concerned with correct preferences. While in the former area correctness is assessed by referring to the rules of scientific procedure, we refer to axiological rules in order to judge on the correct or incorrect status of a given preference (cf. Kaufmann 1944, pp. 131 f). On condition that correctness depends on a set of rules already fixed Kaufmann argues that in both cases – with regard to both the decision on whether to include a given proposition within a theory due to its correctness and the assessment whether a given value judgment is correct – we end up with analytic propositions. This is obvious as soon as we go beyond the usually elliptic formulation of value judgments in favor of making explicit the relating rules.[11] As analytic propositions value judgments do not belong to the corpus of an empirical science. Yet Kaufmann stresses that it is unproblematic to admit sentences containing value terms into social science theories "provided their meaning is unambiguously established by axiological rules." (Kaufmann 1944, p. 238)[12] The integration of such sentences does not violate the principle of value-free science, prominently formulated by Max Weber, which Kaufmann already endorsed in his previous 'Methodenlehre'.[13]

,absolut', sobald jener Zweck so *fraglos* ist, dass er unter die Bewußtseinsschwelle sinkt und als gedankliches Rudiment nur das Bewusstsein zurückbleibt, dass die positive Bewertung bestimmter anderer Sachverhalte (der Mittel) *rational begründbar* ist." (Kaufmann 1929, p. 17)

[11] "When these criteria – the axiological rules and the procedural rules respectively – are made explicit, it is seen that the value judgment 'A valuation of a given object is correct in terms of a presupposed system of axiological rules by virtue of the properties of the object' has a form corresponding to that of the proposition 'A scientific decision concerning a given proposition p is correct in terms of a given system of procedural rules on the basis of accepted propositions.' Propositions of both kinds are analytic propositions." (Kaufmann 1944, p. 235) Cf. ibid., pp. 132 f, 200, 208.

[12] Cf. Kaufmann 1944, p. 200.

[13] Cf. Kaufmann 1936a, pp. 177 ff, 241; Kaufmann 1944, pp. 202 f.

This way of modelling the problem of values in accordance with the strictly immanent requirements of a scientific analysis corroborates the above-stated view on how, following Kaufmann's elaborations, the fact/value distinction should be 'disenchanted'. According to his later view too, it is only due to a misunderstanding of the scientific idea of objectivity and its logical structure as a whole (rules of procedure) that one may seriously talk about a 'fact/value distinction'. Understanding what has gone wrong when one feels inclined to talk in terms of this distinction requires abandoning an objectivistic interpretation of truth as a property of propositions and embarking on a coherentist conception of truth instead. Likewise, it requires rejecting an objectivistic interpretation of values as properties of objects. Doing so, Kaufmann paves the way for his above-sketched strictly immanent scientific treatment of values. Hence he may summarize the outcome of his treatment as follows:

> By misinterpreting value judgments as synthetic propositions of a particular kind and contrasting them with fact-statements, one is led to suppose a realm of values besides the realm of facts or existing objects. But the contrast between fact and value is not one between different realms of being, but between two different types of rules, namely, procedural rules and axiological rules. To different realms of being, different fundamental meanings would correspond, but no peculiar fundamental meanings can be found in the axiological rules. (Kaufmann 1944, p. 235 f)

This certainly amounts to a vigorous 'disenchantment' of the fact/value dichotomy. However, it should be noted that this result has been gained on condition of a very specific understanding of how science has to proceed in order to meet its tasks of 'objectifying' and explaining phenomena.

Among the most perspicuous shortcomings of Kaufmann's thoughts about evaluative experiences as they can be picked up from his works between the early years of the 1920s to 1949 are the following:

(i) Although Kaufmann is critical against sensualistic interpretations of experience in logical-positivist circles (cf. Helling 1985, pp. 239 ff), he nevertheless joins the radically anti-intuitionist view of many logical positivists. When he rejects the analogy of perception and value-ception (*Wertnehmung*), which is charged with assisting naïve intuitionism, he therefore seems to be influenced by an empiricist or positivist notion of what functions as factual basis of the relating experience.[14] As an equivalent to sensations on the part of value experience he marks out feelings, yet interprets them in terms of specific mental states one undergoes like, for instance, pain and pleasure. What is missing here is, above all, a clear-cut distinction between feelings and emotions. Consequently, it is not at all clear whether Kaufmann endorses a noncognitivist account of emotions which phenomenologists, in general, do not share. He strongly seems to be inclined to consider the relating spheres of human behaviour as merely subjective and, therefore, as unsuited for acting as a proper object of scientific or philosophical analysis.

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[14] For a detailed analysis of this presupposition see Rinofner-Kreidl 2015.

(ii) Kaufmann takes it that if we advance an analogical consideration of perception and value-ception we are committed to the view that values, like the objects of perception, are given as full-fledged and immediately grasped value objects.[15] Kaufmann confesses being unable to find any value objects.[16] He is deeply suspicious of the ability of grasping such objects by means of feelings. He therefore concludes that objects of this sort as well as the alleged immediately operating value cognition must be excluded from rational discourse. The only thing we do find in the empirical domain are specific psychic reactions on part of the subject involved, for instance reactions of disgust, indignation or fear. Therefore it might seem fit to endorse psychologistic or hedonistic ideas. Although psychologism and value hedonism perfectly meet the scientific demand for not going beyond mere facts, Kaufmann is very clear in denying them as misconceptions which ignore crucial distinctions that can be found in the relevant phenomena (cf. Kaufmann 1936a, pp. 92 f, 99–101, 104). Relating to this, it is obvious that Kaufmann fully agrees with Husserl's critique of psychologism (cf. e. g. ibid., p. 40 f). Yet Kaufmann's rejection of the opposing Platonist position goes beyond a phenomenological line of reasoning. It lacks metaphysical neutrality by blurring the distinction between abstaining from Platonism on purely phenomenological grounds (which is what a transcendental phenomenologist does) and arguing in an overly anti-Platonist vein. Equally, there is a clear difference between not mixing up statements about meaning with statements about reality, on the one hand, and arguing against specific (e. g. Platonist) interpretations of reality, on the other hand, thereby following certain ideals and methodological rules that are said to be required by an appropriate meaning analysis. Yet endorsing a reductionist account with regard to value experiences goes beyond purely methodological concerns. As will become clear in the following, it moreover ignores the intentional structure of evaluative experiences.

(iii) Kaufmann holds that statements about values can be reduced to statements about facts. Arguing along these lines amounts to what one may call a 'disenchanting' of the fact/value distinction although the precise meaning of the process at issue remains ambivalent. At first glance, 'disenchanting' seems to address an

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[15] He therefore does not distinguish between *value experience,* that is, *the experience of values as objects* and *evaluative experiences*, that is, *the experience of valuable objects and states of affairs*. Elaborating this distinction is vital to the alternative phenomenological approach I am going to present in the following.

[16] Kaufmann's relating concern seems to strongly lie with the claim for immediacy which, according to his understanding, excludes any reference to implicit meaning components referring to previous activities of understanding or reflecting (cf. Kaufmann 1944, p. 133). As I am going to compare Kaufmann's and Husserl's approach to value analysis, it is fit to stress that Husserl's phenomenological intuitionism does not confirm this idea of immediacy. It does not subscribe to the idea that grasping values by means of emotions should be understood in terms of a "rein passives Hinnehmen" (Kaufmann 1936a, p. 91). Cf. Rinofner-Kreidl 2014a. In the present context, it is the two-tiered analysis of value constitution that protests against the demand for simple givenness, that is, immediate experience of values. See below Sect. 14.3.

altogether trivial fact. If we take for granted that, from a rational point of view, the only thing we can judge on are either formal issues concerning the logic of scientific discourse and justification or matters of fact that can be empirically investigated, then we should, of course, consider any talk about values as irrational or hasty and pre-critical at best. Consequently, we should abandon the fact/value distinction because adhering to it suggests that both sides can be explained and made sense of (cf. Kaufmann 1944, pp. 137 f, 235 f). Realizing that this is not the case, according to a widely accepted ideal of scientific procedure (as Kaufmann and others argue), 'disenchants' our previous naïve understanding of the dichotomy. On the other hand, one may argue that even for scientists it does make sense to continue referring to the fact/value distinction on certain conditions. It is unproblematic to do so if we tacitly assume that 'value' means 'relative (dependent) value', including all those instrumental values that come into play on occasion of establishing scientific theories of this or that sort. However, it might be questionable whether this really represents a coherent view. Let us suppose that we agree on the instrumental value of, for instance, coherence, simplicity, 'beauty' or elegance of hypotheses, and similar theoretical values, and that we consider these ends to function as means to attain true or sufficiently warranted theories. How could we then argue that truth (or, for that matter, warranted assertibility) represents a relative value too? It therefore looks as if the 'disenchanting view' cannot be successfully brought to bear because it turns out that even within scientific theories it is impossible to get along with relative values *without any exception*. This being so, the scientific procedure, contrary to Kaufmann's considerations, seems to reproduce the very 'naivety' of the pre-scientific, life-worldly practice at a higher level: in performing all those particular acts and activities that correspond to the rules of scientific procedure, science remains bound to positing the absolute value of truth or warranted assertibility which cannot be plausibly analyzed as a merely relative positing. It is therefore unwarranted to hold that at least within theoretical, that is, scientific and philosophical contexts, it is promising to *completely* disentangle facts and values. Gleaning 'facts' and constructing scientific theories rather presuppose a commitment to some (absolute) values that, on their part, cannot be explained in terms of mere facts.[17] Kaufmann would not agree with this view. I take it that, apart from the fact that the stipulation of truth as an absolute value obviously is based on a mixing up of theoretical and practical ideas of correctness (cf. Kaufmann 1936a, p. 93 ff), he would point at the equivocal usage of 'absolute value'.

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[17] This objection touches on another issue that seems to be troublesome. If we refer to given scientific rules in order to prove that certain statements are correct (and can be rightly integrated into a given scientific theory), this leaves open two alternatives: we may either acknowledge that these rules, on their part, are justified by some presupposed rules of higher order (cf. Kaufmann 1944, p. 205) and put up with an infinite regress of justification. Or we may admit of an ultimately conventional agreement on rules of scientific procedure. As far as I can see, Kaufmann, ultimately, sides with the second alternative.

'Absolute value', first, may indicate that a commitment to values resists any attempt to be reduced to mere facts. Yet 'absolute value', secondly, may also convey the view that talk about values does not allow for subjectivist interpretations according to which values are a mere product of those acts that are directed to them. Thirdly, 'absolute value' may refer to the demand that values could be recognized without having recourse to any presuppositions, that is, could be immediately experienced. With regard to these different readings Kaufmann would insist that a scientific procedure, as proposed for instance in his 'Methodology', requires rejecting both immediate experiencability and a merely subjectivist interpretation of values (due to the fact that given preferences are subject to conditions of correctness) while showing that commitments to values can indeed be reduced to facts (cf. Kaufmann 1944, p. 133).[18] He therefore would argue that giving due attention to the semantics of our talk about values, on the one hand, and to the methodological underpinning of our scientific work, on the other, there are no interesting problems left with regard to values that would escape rational consideration.

What should we take from this? Both with regard to scientific and philosophical contexts it is obvious that whether or not we defend a fact/value distinction and what we precisely think about its meaning hinges upon non-trivial presuppositions. What is at stake here, in particular, is a specific understanding of what science and/or philosophy is about at all, what it should accomplish from an ideal point of view and what it actually does accomplish.[19] A positivist interpretation of the fact/value distinction, which restricts itself to relative values, turns out to be no less problematic than a non-methodological interpretation committing itself to some stronger claim. At this juncture, it therefore seems that the tables turn in favour of *the entanglement view* (cf. Putnam 2002). According to this view, it is impossible to offer a clear-cut and uncompromising fact/value distinction because it is impossible to state whatever facts without thereby, explicitly or tacitly, calling on some evaluative standard.

Kaufmann's treatment of value issues, on the whole, is confined to answering the question on what conditions it is justified to refer to values within a scientific framework. According to his understanding, it is the methodology of a particular

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[18] The same holds good with regard to truth. According to Kaufmann, truth must not be conceived either as a property of propositions or as a mere product of thinking. "An adequately formulated coherence theory of truth will not state that truth is created by and is thus dependent upon actual verification; it will rather state that the meaning of 'truth' is defined in terms of the rules of verification and invalidation. It is misleading to say that verification creates truth even if the terms 'true proposition' and 'verified proposition' are considered synonymous. Frequently, however, the term 'true' is not related to actual procedure but to possible procedure, and truth is understood as an ideal. We then mean by a 'true' proposition one that could be accepted if we had all knowledge relevant for the scientific decision concerning its acceptance and that, once accepted, could withstand all possible controls." (Kaufmann 1944, pp. 231 f)

[19] It is with a view to such taken-for-granted conceptions of science and philosophy that Putnam utters: "The worst thing about the fact/value dichotomy is that in practice it functions as a discussion-stopper, and not just a discussion-stopper, but a thought-stopper." (Putnam 2002, p. 44)

discipline or a general scientific methodology that settles the issue. It therefore does not come as a surprise that Kaufmann, due to his prevailing scientific interests, skips the whole issue of primary evaluative experience. Taking account of his relating considerations in the 'Methodenlehre' and elsewhere, one gets the strong impression that sticking to a methodological plane is meant to function as a bullwark against value Platonism. Kaufmann seems to be guided by the following rationale: dwelling on a phenomenological investigation of values that does not accept the limitations and requirements of a scientific methodology risks falling prey to value Platonism. Yet is it convincing to proceed like this? Is it necessary to do so for phenomenological purposes? Do we really have to radically curb our phenomenological stake in describing evaluative experiences in order to abstain from value Platonism? And, finally, is it only by accident that Kaufmann's narrowly scaled meaning analysis of value *judgments* fails to phenomenologically explore the realm of value *experiences*, thereby inquiring into the relation between values and the 'subjective' sphere of emotions?

14.3 A Non-Platonist and Non-reductive Alternative: Husserl's Intentional Analysis of Evaluative Experiences

As indicated above, there is a remarkable neglect of everyday evaluative experiences in Kaufmann's treatment of value issues. Although this deficiency can be explained by his prevailing concern for methodological issues, it is nevertheless astonishing given his phenomenological interests. In the following, I shall outline how one may approach evaluative experiences within the framework of a Husserlian intentional analysis, thereby taking seriously those methodological concerns that are implied in our talk about different 'strata of experience', on the one hand, and 'the philosopher's fallacy', on the other.

Entering this field of investigation, one crucial point is to ponder how to appropriately address the problems and how to allot the burdens of proof. Due adherence to the idea of different and interrelated strata of experience does not recommend straightforwardly responding to the challenge of Platonism at the level of primary experience. Yet this exactly is what Kaufmann does when he declares that values most obviously cannot be found in our immediate experience: "denn diese Werte sind nirgends ausweisbar" (Kaufmann 1929, p. 12). From a Husserlian point of view, the challenge of Platonism rather calls for a double strategy. First, we should acknowledge that it does not make sense to argue either in favor of or against Platonism at the primary level of evaluative experience. Platonism draws on specific presuppositions of human cognition that are said to be necessary in order to undergo experiences of this or that kind, to gain knowledge of this or that kind and so on. Therefore it is, secondly, plausible to dispense with combatting Platonism at the level of primary experiences and, instead, respond to a Platonist opponent by refer-

ring to the general methodical framework of a phenomenological analysis. The gist of the above consideration is that Platonism can be overruled without directly attacking it. We can do so by attending to a purely immanent, that is, intentional analysis of consciousness.

Accordingly, Husserl's intentional analysis of evaluative experiences resists getting involved in the controversy between moral realists arguing in favor of value Platonism and illusion theorists (*avant la lettre* like Kaufmann) arguing that value Platonism is wrong and that it results from a naïve trust in an allegedly immediate and flawless feeling of values, thereby ignoring the entirely 'queer' character of value objects. *This controversy tends to completely overshadow (or even 'swallow up') the descriptive-phenomenological interest in evaluative experiences.* Husserl's way out of this predicament, which he specifies in his lectures on ethics and value theory in the first decade of the twentieth century (cf. Husserl 1988), accurately meets the methodical issues referred to under the headings of 'strata of experience' and 'the philosopher's fallacy'. Kaufmann considers the relating insights to be 'a small step' in the process of finding an appropriate and promising formulation of the problems at stake. This 'small step', however, is crucial. Among others, it enables us to get rid of tacit background assumptions that burden our descriptive-phenomenological work. It is instructive to see that Kaufmann himself, from time to time, obviously loses grip on this basic insight although it is he who states the relevant connections. Let us, once again, come back to the above-cited passage where Kaufmann argues that bearing in mind the philosopher's fallacy and the fundamental fact of different strata of experience allows for 're-defining' the quarrel between realists and nominalists:

> Is the meaning of universals a constitutive element in the meaning of the experience of things or is the latter meaning a constitutive element in the former? Obviously meanings of universals are constitutive elements in the meaning of any thing-concept and in this sense they are *ante rem*. There is, however, on the other hand a certain meaning of 'concrete' experience which is presupposed in the meanings of universals. (Kaufmann 1940, p. 322, bold type, SR)

> Correspondingly, we can formulate the problem of values as follows:

> Is the meaning of values a constitutive element in the meaning of the experience of valuable things or is the latter meaning a constitutive element in the former? Obviously meanings of values are constitutive elements in the meaning of any concept of valuable things (Güter) and in this sense they are *ante rem*. There is, however, on the other hand a certain meaning of 'concrete' evaluative experience which is presupposed in the meanings of values.

As in the former case concerning the juxtaposition of a realist and a nominalist interpretation of meanings, it is questionable whether there really is an incompatibility between the statements uttered by advocates of value Platonism and their anti-Platonist opponents *if we give due attention to the different strata of experience involved as well as to the philosopher's fallacy*. Doing so means re-contextualizing the statements at issue by linking them to various strata of experience. Thereby, we should bear in mind that the meaning of 'experience' may alter when switching between different strata of experience. As a result, it could turn out that, for instance, the question 'are values made or discovered' is deceptive or does not make sense at

all owing to the different meanings and strata of experience involved. Arguing along these lines introduces a form of relationalism that very well corresponds with Husserl's idea of an intentional analysis. As Husserl points out on several occasions, for instance in his late manuscript on *Experience and Judgment* (cf. Husserl 1973), every such investigation has to reckon with different layers of meaning which, step by step, can be dismantled (*Sinnabbau*).

In this connection, it is instructive to take note of the parallelism with regard to meaning constitution and value constitution. It is surprising that Kaufmann does not dwell on this issue though he clearly recognizes how a phenomenological analysis of meaning constitution both evades nominalism and realism (Platonism). Especially on occasion of his appreciation of *Formal and Transcendental Logic* (and other works of Husserl's so-called transcendental period), Kaufmann leaves no doubt that he agrees with Husserl's middle-path steering clear of nominalism and realism as far as meaning is concerned. Nonetheless, he does not raise the issue of a parallel line of reasoning with regard to meaning Platonism and value Platonism. Trying to understand this omission, it is important to recall the then prevailing phenomenological accounts of value, prominently represented by Max Scheler and Nicolai Hartmann (cf. Scheler 1973; Hartmann 1962, 1963, 1967). Given Kaufmann's distinctive preference for a rational, rule-based scientific investigation, which, to a large extent, draws on logical analysis and philosophy of language, it is not surprising that he did not feel attracted to this type of a phenomenologically-based material theory of values (cf. Kaufmann 1936a, p. 105, 1936b, p. 215). On the contrary, he identifies this brand of value theory with a kind of dogmatism. According to Kaufmann's understanding, this 'theory' simply posits that there are some excellent persons who pretend to have immediate and absolutely certain knowledge about values, based on feelings that neither are intersubjectively accessible nor can be verified in terms of objective procedures. Kaufmann's response to this (certainly distorted) picture of a phenomenology-cum-ontology of values is to evade dealing with the whole issue of how certain modes of feeling are related to values, that is, to evade digging into the multifarious moral and aesthetic phenomena that are present in our everyday experience.[20] Correspondingly, his treatment of value issues hardly includes any reference to moral phenomenology and aesthetic phenomenology. His choice as a philosopher-scientist is to retreat to the logical and semantic analysis of value statements. From a historical and scientific point of view, this decision seems plainly clear and intelligible: it reflects the contemporary intellectual landscape as well as the non-phenomenological background assumptions of his general approach to value issues. Proceeding like this, Kaufmann, however, falls behind the systematic possibilities of a phenomenological investigation of evaluative experiences. Ironically enough, an inquiry of this peculiar type has been announced by his own methodological considerations when he stressed the fundamental role of different

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[20] Cf. "… the logical positivists did not regard ethics as a possible subject of rational discussion. Indeed, *their* fact/value dichotomy was not based on any serious examination of the nature of values or valuation at all; what they examined – and in a narrow empiricist spirit – was the nature of 'fact'." (Putnam 2002, p. 29)

strata of experience and the philosopher's fallacy. Husserl's description of the intentional structure of evaluative experiences does meet the relevant insights.

On pain of contravening its own methodology, a Husserlian-style phenomenology cannot endorse an ontologically based value theory that commits itself to an objectivistic stance in terms of value Platonism. A phenomenological approach nonetheless defends the idea that with regard to both theoretical and practical issues it is possible to establish a sufficiently strong notion of objectivity (cf. Drummond 1995). In doing so, Husserl claims to steer clear of value Platonism and value subjectivism. As indicated above, Kaufmann's approach to these extreme positions falls short of an appropriate, well-balanced critique. Rather, he seems to succumb to a hidden and unrecognized alliance between objectivism and subjectivism: due to his prevailing effort to strengthen a scientific attitude he 'at one stroke' rejects value Platonism and subjectivism, thereby passing over the difference between (a hedonist) subjectivism and (the overall, experientially rich realm of) subjectivity. Given Kaufmann's familiarity with Husserl's phenomenological approach, this is a surprising result. The relating shortcomings of Kaufmann's 'intellectualistic' approach to value experiences can be traced back to his failure to carefully analyze the intentional structure of the experiences at issue. When phenomenologists engage in this kind of analysis they withhold a commitment to value Platonism or value subjectivism. They rather are interested in finding out what it means to talk about values by exploring the peculiar modes of how reference to values is involved in evaluative experiences, for instance aesthetic or moral experiences. Yet from a phenomenological point of view, the crucial issue is not whether values could gain ontological creditworthiness in terms of some established scientific worldview. The crucial issue rather is in what precise sense values are involved in our everyday intentional life. In the following, I shall elaborate this issue within a Husserlian framework. Doing so my intention is to show how a phenomenological approach, by faithfully describing the relevant phenomena, can avoid both value Platonism and subjectivist brands of naturalizing evaluative experiences.

In *Husserliana* XXVIII, which comprises his lectures on ethics and value theory between 1908 and 1914, Husserl discusses a variety of issues involved in the structure of evaluative experiences. The latter fall within the scope of so-called *non-objectifying acts*. Among these are acts of feeling, wishing and wanting. With a view to values feelings are crucial. According to Husserl and other phenomenologists, it is only by means of a given variety of feelings that values are present in human life. Yet feeling acts (as well as acts of wishing or wanting) are of a non-objectifying character. They are higher-order acts whose intentional structure shows a specific complexity. Acts of this kind, by necessity, require grounding in suitable objectifying contents. In other words: understanding the peculiar complexity of non-objectifying acts is impossible unless we go back to so-called objectifying acts. The latter constitute a representational relation to objects by means of particular types of content: either mere presentations (*Vorstellungen*) or judgments (*Urteile*).[21] Hence every act of being delighted, for instance, requires an act of presentation or judgment that lies beneath it and estab-

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[21] For a detailed explanation of the concept of foundation see Rinofner-Kreidl 2013.

lishes its reference to specific objects or states of affairs. Otherwise, my delight would be an entirely indeterminate directedness towards the world. It would not be a delight about some peculiar thing, state or occurrence. In order to address an object in the specific mode of delight, a basic relation to the object or state of affairs at issue must be constituted. Given that we acknowledge this conceptual distinction between objectifying and non-objectifying acts, the next step is to ask what precisely this distinction accomplishes with a view to determining the peculiar way in which values are present in evaluative experiences. Relating to this, it is crucial to realize that objectifying acts constitute the reference to an object without, by the same token, reflecting upon this very constitution, that is, without including a simultaneously occurring reflective stance that would be directed to (*thematisieren*) the relevant constitutive achievement. Therefore Husserl says:

> *Objektivierende Akte sind, wenn auch nicht im eigentlichen, so doch in teleologischem (normativem) Sinn auf Objekte ,gerichtet'. Objekt ist Seiendes.* Gegenstand und Sachverhalt, Sein und Nicht-Sein und Wahrheit und Unwahrheit, das gehört zu den objektivierenden Akten […]. Andererseits, *wertende Akte sind nicht auf Objekte ,gerichtet', sondern auf Werte*. Wert ist nicht Seiendes, Wert ist etwas auf Sein oder Nicht-Sein Bezügliches, aber gehört in eine andere Dimension. Wertverhalte als solche sind nicht bloß Sachverhalte […]. Auch hier [ist] das Gerichtetsein ein teleologisch-normatives. Usw.
>
> Nun ist das freilich eine schlimme Rede, da wir jetzt von Werten sprechen und damit schon bekunden, daß Werte Gegenstände sind. Darauf wäre zu sagen: Werte sind etwas Objektivierbares, aber Werte als Objekte sind Objekte von gewissen objektivierenden Akten, sich in diesen auf wertende Akte sich bauenden Objektivationen konstituierend, nicht aber in den wertenden Akten selbst konstituierend. Die wertenden Akte als eigenartige Akte ,richten' sich auf etwas, aber nicht auf Objekte [sc. auf eigene, zusätzliche Wertobjekte, SR], sondern es gehört nur zu ihrem Wesen, daß diese ihre Richtung objektivierend erfaßt und dann objektivierend beurteilt und bestimmt werden kann. (Husserl 1988, p. 339 f)

In general, Husserl's phenomenological descriptions represent a specific type of conceptual analysis which inquires into the immanent structure of a variety of different types of intentional acts and, thereby, tries to gain *experientially saturated notions.* Following this project of a comprehensive and detailed description of the intentional achievements of human consciousness, it is, however, of utmost importance to take account of its methodical constraints. Before entering into the discussion of some basic issues involved in Husserl's above statement, we should therefore shortly call to mind the methodical setting. This setting is established by means of the *phenomenological reduction* which, according to Husserl in his post-*Logical Investigations* period, delimitates the proper domain of a philosophical investigation. This domain comprises the reflectively grasped intentional structures of acts so far as they exhibit pure eidetic laws, that is, the immanent rational form of consciousness rather than contingent occurrences of content or causal relations holding between any such singular items.[22] Correspondingly, a phenomenological theory of consciousness does not aim at elaborating an account of how to *explain* experiences and actions. It is not interested in answering the question why specific types of

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[22] Cf. "The *epoché* […] is meant primarily to block the impulse to explain intentionality in naturalistic terms, thereby allowing one to focus on it in its intuitive self-givenness as justifying reasons for phenomenological descriptions." (Crowell 2007, p. 143 f)

experiences or actions occur in specific situations due to causal relations. Given that we adhere to this very roughly sketched methodical approach of Husserl's investigation, how should we understand the above-cited statements? As I understand it, the above considerations imply a *two-tiered constitution of values in evaluative acts* whose description meets two seemingly irreconcilable tasks. First, it makes explicit the rational structure of the relating acts and, secondly, in doing so, it does justice to the first-person experience of evaluative acts.

Whenever acts of primordial affection, triggered by some perceived shape, smell, touch, and so on, occur, some relation to a value is constituted though in an implicit way. Afterwards, the relevant value may occasionally be addressed by means of another act, which reflects upon the intentional content of what previously has been lived-through. With a view to the original act of being affected in a certain way, the value as it turns into an explicit object of concern (due to the effectuation of a secondary, subsequent act of reflection) can be said to function as a meta-object. What does that mean? It means that we feel a more or less dim or obtrusive commitment to the value in question whenever we are engaged in encountering, for instance, a beautiful flower or an admirable example of moral courage. Yet we are not directed to the values of beauty or courage while being affected in this specific way.[23] Positing first-order objects, for instance, beautiful flowers and courageous actions, has to be distinguished from positing the corresponding values as meta-objects of a previously undergone state of being affectively touched in such-and-such way. The original (first-order) experience refers to a valuable object (*Gut*), that is, an object which is tinged with certain 'valuability' (*Werthaftigkeit*) although the latter, as long as we are engaged in the mere 'fruition' of the valuable object, remains completely unanalysed. In this vein, we should say that the original experience does not, strictly speaking, refer to the value of the intended object. It does not refer to the value in an explicit and direct way.[24] If this is a correct explanation of what Husserl's description of evaluative acts implies, namely a clear-cut distinction between my naïve experience of x, on the one hand, and my reflecting on the content of my intentional relation to x, on the other, then it is obvious that a theory of evaluative experiences or a critique thereof, which mixes up these two levels will be deficient. Any such critique infringes upon a basic methodological principle of Husserl's phenomenology which

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[23] In a similar way, Husserl explains the phenomenological approach in his *Ideas I* with a view to all possible types of acts. Phenomenological analysis is bound to a reflective stance which results in a hitherto unknown qualification of our talk about 'being'. This is due to the fact that positing natural objects is to be distinguished from positing intentional objects within the immanent sphere of pure consciousness. Cf. Husserl 1983, § 50 ("Umkehrung der Seinsrede"); Rinofner-Kreidl 2000, pp. 686–699.

[24] Taking up a suitable suggestion of an anonymous reviewer one may state the relevant distinction as follows: The first order affective experience is directed towards the individualized value (the value *qua* moment of the object), whereas the second order act tracks the value *qua* property. A two-level analysis of evaluative acts as presented above may be found in John Drummond's works too, who, among others, refers to the issue of the *particular-dependent being of a universal* (here: a universal value), according to Husserl, in order to argue in favour of the thesis that we have to distinguish the experience of the valuable particulars from the grasping of the corresponding value. Cf. Drummond 2006, p. 12.

can be designated 'prohibition of projection' (*Projektionsverbot*, cf. Rinofner-Kreidl 2009, pp. 8–10). In the present context, this failure amounts to ignoring the phenomenologically given difference between directly or indirectly referring to values and, respectively, the difference between performing experiences and reflectively analysing them. It is only due to ignoring these distinctions that it may appear as if non-objectifying acts referred to or 'contained' a value which is meant to have independent existence of its own. However, positing values as meta-objects (qua second order objectifying acts) *within the framework of a phenomenological analysis* must not be confused with a 'naïve' ontological assertion. Whether or not values 'really' exist *independent of all and every possible relation between them and human agents* cannot be decided on phenomenological grounds.

Within the framework of an intentional analysis it is crucial to state that neither the implicit (indirect) reference to values established by first-order evaluative experiences nor the explicit (direct) reference to values in case of second-order non-evaluative (objectifying) experiences can be analysed in terms of hedonistically qualified states of mind (pleasure, pain). Assuming this to be the case is a thoroughly unpromising approach because it ignores and distorts the intentionality of evaluative acts. These acts do not intend objects (first-order) as positively or negatively valuable because they are meant (or expected) to cause feelings of pleasure or pain. (I do not consider a flower to be beautiful because and only because it evokes pleasant feelings on my part. Neither do I see the flower's beautiful appearance vanish as soon as a sudden nausea or headache hinders me to enjoy these pleasant feelings.) Equally, reflecting upon values like beauty, benevolence, courage, or cruelty does not intend these values as warranting their positive or negative quality due to the fact that agents usually cannot withstand admiring beauty, feeling elated and being touched when pondering the notion of benevolence, or feeling terrified when confronted with concrete manifestations of cruelty. According to an intentional analysis, values therefore can be said to 'really' exist in terms of not being reducible to mental states of this or any other kind that occur at a certain instance of time in someone's consciousness. Values are intentional objects of specific types of acts. At this point, avowed realists usually argue that, according to a phenomenological approach, objects seem to be dependent upon those acts by means of which they are referred to. In other words: phenomenologists are accused of inevitably lapsing into subjectivism because they (allegedly) subscribe to some faulty brand of idealism. How should we respond to this objection? When describing processes and hierarchies of meaning constitution from a phenomenological point of view we do not hold that the constituted objects ontologically depend on the intentional experiences at issue. Keeping within a phenomenological framework does not invoke *subjectivism,* either in the guise of metaphysical idealism or in the guise of hedonism, though it does imply reference to the idea of *subjectivity* in terms of different modes of intentionality. A phenomenological account of values resists subjectivism in the following ways: (a) it rejects hedonistic theories of values in favour of a cognitivist approach (cf. Husserl 2004, pp. 61–102); (b) it describes different *modes of how values are present* in the intentional life of human beings, thereby arguing that

modes of presentation as well as modes of references are intersubjectively accessible characteristics of intentional acts that cannot be reduced to the real (or *reell*, as Husserl says) parts of these acts; (c) it asserts that *values, as far as they appear as intentional objects of acts of reflection*, nonetheless are not reducible to *individual* acts of reflection: I can repeatedly refer to one and the same value (e.g. when pondering the idea of trustworthiness). In general, I can share this reference with others however difficult it may be to precisely define the meaning content of the values at issue.[25] Values are independent of individual experiences and their occurrence at certain instances of time (and certain places). However, resisting subjectivism does not require stipulating values whose existence is said to be *independent of any possible human experience whatever*.[26]

A two-tiered analysis as proposed above is required not only with a view to non-objectifying acts. A similar although less complicated structure (as far as intentional complexity is concerned) holds true for objectifying acts. Both with regard to phenomena of affective intentionality and cognitive phenomena (like judging) we have to clearly distinguish the level of naïve performance and the level of reflection. The latter results from an operation which Husserl, in his *Logical Investigations*, called 'nominalization'. Referring to affective responses and higher-level experiences of different types of feelings like anger, anxiety, shame, pride or envy, I would like to advance two theses: (i) An adequate clarification of how values are present in evaluative ('value-directed') experiences requires giving due regard to the distinction of first/second-order descriptions. (ii) What is posited at the first-order level and what is posited at the second-order level is interrelated in such a way that we may designate the respective achievement of the second-order level as an activity of making explicit the impact of a specific value relation which is 'hidden' though effective at the first-order level.[27] Distinguishing first-order and second-order

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[25] The crucial point, however, is that a phenomenological analysis of value constitution leaves room for shared (social) processes of meaning interpretation. See below Sect. 14.4. For an extensive treatment of the Humpty-Dumpty objection against a phenomenological analysis of meaning see Rinofner-Kreidl 2003, pp. 68–89.

[26] Accordingly, Husserlian-style phenomenologists wholeheartedly agree with Putnam's statement that "there is no reason to suppose that one cannot be what is called a 'moral realist' in meta-ethics, that is, hold that some 'value judgments' are true as a matter of objective fact, without holding that moral facts are or can be recognition [of] transcendent facts. If something is a good solution to a problematic human situation, then part of the very notion of its being a good solution is that human beings can recognize that it is. We need not entertain the idea that something could be a good solution although human beings are *in principle unable to recognize that it is*. That sort of rampant Platonism is incoherent." (Putnam 2002, p. 108 f)

[27] The present approach does not entail the thesis (which I consider wrong) that affective responses, as well as instances of perceptual givenness, should be considered to 'truly' or 'ultimately' harbour a judgmental structure. Following Husserl, we should rather argue that it is essential for such phenomena to be *amenable to expressions* in terms of corresponding judgments. In the present context, I cannot dwell on explaining and defending *Husserl's assumption of an analogous functioning of reason* (cf. Rinofner-Kreidl 2013). Yet I take it that it is misguided to approach this assumption by maintaining that we either succeed in making plausible the thesis of an 'ultimately' judgmental

descriptions does not only meet our actual experience. It moreover, allows for making explicit and rejecting a basic and non-trivial assumption that tacitly guides Kaufmann's analysis of evaluative experiences. This analysis takes for granted that we either must assert that values are the objects of (sc. first-order) evaluative acts or deny that values could be given at all.[28] It should be clear from the above that what is missing in Kaufmann is a phenomenology of evaluative experiences. The latter is distinct from and therefore has to be distinguished from any objectivistic theory of values and concomitantly endorsed ontological arguments in favour of moral realism (cf. Crowell 2002). To be sure, holding this view does not deny that moral realism could possibly be defended by means of non-phenomenological lines of reasoning. My point here simply is that *if 'moral realism' denotes a metaphysical thesis* we cannot pretend doing so on purely phenomenological grounds.

If we decide to elaborate a phenomenology of evaluative experiences, this project is independent of and prior to any non-phenomenological commitment to moral realism. Among the questions relevant in this context is whether or not we should consider values to be phenomenological data. As argued above, the answer depends on our notion of phenomenological data and phenomenological experience. If we decide to use these terms in a narrow sense, according to which only explicit components of intentional contents could count as 'given', then we should say that values are not to be found among phenomenological data. Yet if we refer to 'phenomenological data' and 'phenomenological experience' in a broader and more permissive sense, values, of course, are derived from the meaning of affective life itself. Bearing in mind that Husserl's, Heidegger's, Merleau-Ponty's, Schutz's and other phenomenologist's analyses heavily draw on passive, implicit, and pre-reflective components of our overall practical and theoretical achievements, I do not see any convincing reason to side with the above-mentioned narrow conception.[29] Consequently, I take it that it does make sense to hold that values, according to the above-sketched

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structure of affective responses or have to consider the analogous functioning of reason an entirely arbitrary theoretical postulate. The relevant intentional phenomena comprise active and passive, implicit and explicit, object-directed and horizontal functions of attention. Deciding the issue therefore requires taking note of the relating complexities.

[28] Hence Kaufmann's uncompromising statement to the effect that "diese Werte sind nirgends ausweisbar" (Kaufmann 1929, p. 12) is due to his failure to inquire into the variety of different modes of givenness.

[29] To be sure, Husserl is also concerned with an axiological theory (cf. Husserl 1988, pp. 70–101). Yet he does not exclude the sphere of passive intentionality which goes beyond this specific theoretical project. This is obvious especially with regard to his later lectures and research manuscripts on ethical issues. Cf. Husserl 2004. As to Husserl's and Kaufmann's axiology and their connection with normative reasons for acting, I cannot discuss any details here. Among the similarities is that both try to do justice to individual differences and do so in a generalizable mode ('disinterested observer'). In this connection, Husserl refers to so-called 'practical possibilities' (cf. Husserl 1988, p. 149). Kaufmann mentions ‚Persönlichkeitsziele', ‚Glücksziele' and ‚ästhetische Ziele' as basic types of purposes when introducing the task of an axiology as follows: it is meant to devise "ein *Schema von Wertungstypen* […], welches einerseits Grundtypen der letzten Ziele, und andererseits die Hauptlinien der empirischen Verknüpfungen von Wertungen zu enthalten hätte."(Kaufmann 1936a, p. 193)

qualifications, can be truly experienced, instead of merely occurring within theoretical contexts as some kind of postulate or, as Kaufmann maintains, as correct or incorrect value judgments. Abandoning this view would indeed be fatal to our phenomenological project as a whole. This project consists in elucidating the basic notions of our perceptual, emotional and cognitive relation to the world. Notions like *truth*, *beauty*, and *the good* certainly are among those basic notions. Given that we had to consider such notions to be merely theoretical stipulations with no foothold in our experience whatever, a Husserlian (or other) phenomenological analysis were doomed to failure.

From Kaufmann's point of view, it is clear that phenomenological data in the broad sense cannot be part of a scientific theory.[30] As explained above, this is owing to two assumptions he does not challenge: first, there is no other admissible (rational) way of dealing with issues of value than methodology. Secondly, dealing with issues of value within the framework of a general methodology of science has to be restricted to analyzing value statements. In both respects, it is a specific idea of objective validity (concerning synthetic propositions qualified as possible parts of scientific theories) that functions as the unquestioned overall framework of our attempts to 'carve out' or select the relevant phenomena.[31] Among the consequences of this peculiar approach is that all those forms and processes of social constitution that go beyond the sphere of propositionally represented references to the world are excluded from treatment. This is the sphere of pre-predicative and pre-reflective, implicit forms of (collective) intentionality phenomenologists are keen to explore. Excluding this sphere from attention due to some pre-conceived rational requirements amounts to leaving unnoticed large parts of social reality, including the whole domain of affective intentionality, emotional expression, and lived-body interactions that precede and outreach linguistic utterances. Following a narrow path of scientific investigation means to dispense with clarifying the notion of the world and to keep out of all debates associated with it.[32] It also means that there is no room for delving into the question of how different modes of evaluative experiences reflect the ontological structure of a pre-given social world. Correspondingly, there is no overall or sweeping impact of Kaufmann's analysis of value issues on the project of a social ontology. If the foregoing considerations are on the right track, it rather is misguided to look for a social ontology project in Kaufmann's work which would correspond to or anticipate recent research in analytic social philosophy (cf. e.g. Searle 2010). Kaufmann's remarkable reticence on issues concerning the 'common mind' (cf. Pettit 1993), 'group agency' (cf. List and Petit 2011), 'collective intention-

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[30] See for instance the juxtaposition of predicative and pre-predicative experience in Kaufmann 1936a, pp. 123 f where he associates this distinction with different grades of clarity and distinctness. Hence the pre-predicative sphere is said to represent "muddled (non-explicit) thought" ("verworrenes (unexpliziertes) Denken") (ibid., p. 15).

[31] See the final chapter XVII ('Summary and Conclusions') in Kaufmann 1944 where he succinctly presents his ideas on the logic of science.

[32] This seems to be the crucial issue in the discussions between Kaufmann and Schutz, culminating in the latter's objection that Kaufmann, due to his scientific 'bias', skips the whole sphere of the natural attitude. Cf. Helling 1984, pp. 149–159; Reeder 2009, pp. 97–110.

ality' (cf. Schmid and Schweikard 2009) or a 'plural subject theory' (cf. Gilbert 2000) is due to his understanding of an appropriate scientific procedure in general and with a view to social sciences in particular. There is no interest in social ontology in its own right in Kaufmann's work. Every concern for ontological questions in the realm of social reality is re-modelled upon those prevailing methodological questions that are said to define the legitimate range and rational procedure of a scientific investigation.[33] It therefore does not come as a surprise that Kaufmann's relating statements are mostly negative in terms of warding off an unwarrantedly inflated ontology. As far as he commits himself to a positive view, he does so by uncompromisingly arguing in favour of methodological individualism (cf. O'Neill 1973).

The peculiarities and tendencies just mentioned already crystallize in Kaufmann's work several years before he publishes his 'Methodenlehre'. In a very clear and succinct manner the relevant views are presented in a short essay entitled 'Soziale Kollektiva' from 1930. In this essay, which seems to have gone widely unnoticed, Kaufmann argues that it is largely due to methodological failures concerning a proper understanding of abstraction processes that one is inclined to acknowledge independent entities, so-called 'higher-order objectivities' (Kaufmann 1930, pp. 294). He exemplifies the relating misconception by referring to the notion of a juridical person. Explaining our usage of the term 'juridical person' in a correct manner we must not, according to Kaufmann, commit ourselves to any higher-order pseudo agent. We rather address individual agents under a peculiar description by referring to their modes of acting exclusively in the light of an abstract moment: we describe individual actions or modes of acting by considering them as applications of general rules or laws (e. g. as applications of the statutes of a company). Whenever an individual person acts on behalf of a juridical person (e. g. as a member of the board of directors), the former represents the latter in terms of specific functions she exercises (cf. Kaufmann 1944, pp. 162 f).[34] Though social collectives are independent in terms of the fact that the representational structure at issue is not affected by the replacement of (all of the) individual persons, the relating collectives nonetheless are not independent in terms of being irreducible to relations between individual persons. On this condition, Kaufmann argues that although higher-order 'agents' and individual agents are conceptually distinct, they do not constitute two different

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[33] The same does not hold for Husserl who never committed himself to a positivist idea of rational science. In particular, the later Husserl (after *Ideas I*) is strongly interested in the constitution of (moral) persons and of personal communities, thereby considering different forms and levels of higher-order personalities. The latter are conceived as multi-layered intentional unities whose occurrence requires lower-level intentional activities of individual agents who (tacitly or explicitly) commit themselves to some kind of shared project. See e.g. Husserl 2008, pp. 527 ff, where Husserl refers to "generative Lebensgemeinschaften als Willensgemeinschaften höherer Stufe".

[34] Given this peculiar relation of representation, it should be clear that the rights and obligations of juridical persons must not be conceived as the outcome of a process of summing up the rights and obligations of individual persons. For a more detailed and precise conceptual analysis of juridical persons see Kaufmann 1966, pp. 90–97.

types of ontological entities because there is no need to postulate the juridical person as an entity *sui generis* for explanatory reasons.[35]

Accordingly, we should say that individual agents build up societies insofar as they are part of a law-guided interpersonal understanding ("in einen Zusammenhang von Gesetzen interpersonellen Verstehens eingestellt erscheinen", Kaufmann 1930, p. 299). By way of analogy, we may add that objects, which are spatio-temporally located, build up the overall realm of nature insofar as we can describe their possible movements and modifications according to certain commonly accepted though not a priori valid laws of nature. Neither nature nor human societies represent entities *sui generis*. It is nonetheless correct to maintain that they are established by means of specifiable relations holding between co-existing individual objects. Human societies (as well as those complex webs of lawfully interconnected physical objects we describe as 'nature') do not represent independent higher-order objects. They rather represent heuristic unities that emerge on occasion of processes of knowledge which crucially involve the application of laws (cf. Kaufmann 1930, p. 306).[36] Yet these laws do not have any ontological priority over and above the individual persons or objects whose interdependencies or relations they describe.[37] In this connection, Kaufmann explicitly refers to the requirement of unmasking pseudo-problems ('Scheinprobleme') which result from misconceiving the validity of laws. The latter does not imply that the laws exist independent from those individual objects that represent the realm of its application. On the contrary, stipulating invariances does not exclude reference to varying facts; it rather requires it. Talk about an ontologically independent realm of validity, truth or objective meaning therefore, according to Kaufmann, raises a pseudo-problem. Other manifestations of pseudo-problems result from a failure to clearly distinguish between different types of priority that come into play when pondering the priority of individual agents or

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[35] In a similar vein, Kaufmann may argue that, given the above account of societies as law-guided functional wholes, we do not fall back on psychologism when endorsing anti-Platonism. We can both advocate anti-Platonism and anti-psychologism if we take the point of view of laws and abstain from interpreting invariances in terms of independent entities, "die in den Sozialwissenschaften als Mißdeutung der *Anonymität in Transpersonalität* auftritt." (Kaufmann 1930, p. 306) See also "die Unzulässigkeit der Umdeutung anonymer interindividueller Beziehungen in supraindividuelle Wesenheiten, in einen 'objektiven Geist'"(ibid.). Cf. Kaufmann 1944, p. 163. I am grateful to an anonymous reviewer whose comments helped me to realize the necessity to be more explicit on Kaufmann's refraining from a contemporary project of social ontology and on the outstanding role which applications of laws play for his understanding of social groups, institutions, and societies.

[36] Cf.: "To say that a society of a particular kind exists at a certain place and time means that there exists a field of application for a scheme of interpretation [which explains human actions in terms of presupposed motives of the actors, thereby referring to laws in light of which the prediction is warranted, SR]. It is to this scheme what an electric field is to the laws of electrodynamics. To say that a society arises or disappears is to say that such a field of application arises or disappears. The same holds of states, legal orders, languages, and institutions of all kinds." (Kaufmann 1944, pp. 161 f)

[37] "Diese Gesetze sind aber nicht etwas, was ‚über' oder ‚vor' den einzelnen Menschen wäre; sondern es sind *typische Beziehungen, die gegenüber individuellen Variationen innerhalb gewisser Grenzen invariant bleiben*." (Kaufmann 1930, p. 299)

societies: logical-ontological, methodological-heuristic, causal-genetic and axiological priority (Kaufmann 1930, pp. 299 ff, cf. 1935, pp. 81 f, 1944, pp. 158 f).

14.4   Conclusions: High-lighting Differences

Closing, I shall state some important conclusions that can be drawn from the above. These conclusions are not only relevant to current debates in social ontology and social philosophy. They also touch on issues in the fields of epistemology, metaethics and philosophy of science, for instance, with a view to specifying the relation between (different brands of) phenomenology and rational intuitionism. I shall focus on the following questions.

(A) How should we explain the linkage between an appropriately established phenomenological methodology and social reality? In particular, how can research on social reality benefit from Husserl's two-tiered analysis of value constitution and an accordingly refined notion of intuitive givenness?

(B) How should we spell out the implications of Husserl's analysis of value constitution with regard to the famous quarrel on the fact/value distinction? What do we gain thereof compared with Kaufmann's straightforward positivist reading of this distinction?

   Let us start with the first question.

(A) On how the methodology of value analysis conveys a specific understanding of social reality

   Phenomenologists are often accused of advocating a naïve and dogmatic notion of intuition (and of perception or moral perception in particular). The above-sketched two-tiered analysis of value constitution contravenes such an inadequate understanding of intuition. This holds good for both meaning constitution and value constitution. In both cases the crucial point is that though there is an undeniable impact and 'presence' of certain meanings or values at the first-order level of naïvely performing intentional acts there is no distinct and direct grasp of the meanings and values involved. Consequently, if it is true that any such distinct and direct grasp of meanings and values requires an independent and subsequent act of reflection, this gives room for specifying, mulling over and re-defining the precise content of the meanings and values at issue by means of communicative acts and other social processes as well. Although first-level intuitive givenness is irreplaceable as a starting-point and epistemic ground (cf. Rinofner-Kreidl 2014a), especially with a view to immediately shared ('felt') value commitments, we need not consider the relating givenness to be incorrigible, neither from the point of view of the individual agent nor from the point of view of social communities.[38] If we approve of the phenomenolo-

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[38] Abstaining from incorrigibility, on the one hand, parallels with abstaining from an overall (global) sceptical stance which questions all and every givenness, on the other. Of course, these tendencies are interrelated with one another.

gist's basic idea, namely that intuition (*Anschauung*) establishes the ultimate ground of our relation to the (social) world we should realize that this includes an equally basic interaction of intuition and reflection. This is owing to the fact that our primary and immediate acquaintance with meanings and values paves the way for an explicit acquisition or appropriation which is always possible though not necessarily effectuated. Acknowledging the two-stage experience of meanings and values is a viable alternative both to a dogmatic intuitionism and a dogmatic skepticism. It allows for abandoning the view that meanings and values enter human consciousness by way of a mysterious 'fiat' or a no less mysterious illusion. Notwithstanding their originally non-explicit and intuitive or, in case of values, emotionally-based 'occurrence' in human experience, meanings and values are amenable to processes of interpretation that can be socially shared. Our evidential practice operates as a social practice.

Not surprisingly, interpretation leaves ample room for disagreement. However, the crucial point is that facing disagreement we cannot (and in fact do not) dispense with the assumption that, at least within certain limits, it is possible to rationally analyze disagreement (e.g. with the aim of specifying conditions on which the occurrence of disagreement is to be expected). The mere fact that, to some extent and with regard to specific topics and fields of concern, disagreement occurs does not do to invalidate our prima facie trust in intuitive givenness. Otherwise it would even be impossible to reliably agree on the occurrence of disagreement in particular cases. In order to convey warranted doubts (instead of expressing merely whimsical ideas) each and every attempt to bring to bear a skeptical stance must ultimately be based on evidential support. On the one hand, global skepticism, as inflicted with the problem of self-defeat, does not present itself as a promising approach. On the other hand, we are obviously able and must consider ourselves able to inquire into local sceptical doubts in a rational way. Otherwise the opponents could rightly argue that there is no need to take seriously the skeptical challenge.

According to a Husserlian phenomenology, digging into life-worldly experiences in terms of intentional analyses is an essential task of phenomenology. Doing so, there is no convincing argument in favour of mistrusting the relevant experiential positings *on principle and in advance*. Since phenomenologists abstain from any metaphysical commitment while inquiring into the immanent structure of phenomena, they can take experiential evidences at face value when analyzing intentional structures. Therefore, phenomenologists are suspicious of so-called illusion theories or error theories with regard to the value commitments implied in everyday evaluative experiences. Given that error theories take for granted the ontological priority of a scientific world-view (and, presumably, the warrantability of certain brands of naturalism too), they commit themselves to presuppositions that are by no means trivial and go beyond provability. This equally holds for Kaufmann's pertaining considerations. Following a scientific procedure, according to Kaufmann, requires making explicit and rectifying the allegedly naïve ontological positings that are part of our everyday activities of evaluating and acting. It is a conspicuous outcome of Kaufmann's elaboration on values to introduce a sharp contrast between the naïve ontology of everyday agents (embedded in an equally naïve folk psychology), on the one hand, and

the far more rigid ontological settings informed by scientific analysis, on the other hand. Contrary to this, transcendental phenomenology, notwithstanding its methodology of reduction, stresses the continuity with regard to the epistemic authority of intuitively given phenomena. Both within the framework of everyday practice (*natural attitude*) and philosophical analysis (*phenomenological attitude*) the prima facie credibility of evidential (intuitive) givenness, though not infallible, represents the ultimate layer of our epistemic relation to the world. In both contexts, evidential practice operates as a social practice although this certainly allows for different modes of dealing with givenness. Moreover, it is uncontested in both contexts, though from different reasons, that evidential givenness cannot be undermined or altogether overruled by skeptical doubts. Neither can it be replaced by formal procedures that are said to warrant accuracy, logical clarity, and intersubjectivity or impartiality. Accordingly, having a stake in subjectivity, though not in the same way and with the same purposes, is inseparable from both everyday practice and phenomenological investigations. It is the distinctive mark of transcendental phenomenology to inquire into the relation holding between life-world and science and thereby making explicit the relevant interpretations of 'subjectivity' and their correlating modes of approaching and interpreting the variety of worldly givenness. Hence doing social ontology is part of the overall project of a phenomenological philosophy which is based on an intuitionist epistemology and aims at analyzing different modes of experience in different practical and theoretical contexts.

Contrary to this, Kaufmann focuses on the discontinuity between life-world practice and scientific investigations as far as the idea of reality and corresponding ontological positings are concerned. According to his approach, doing social ontology is a theoretical project that is committed to the priority of a scientific world-view. What does this mean with regard to the issue of values and the fact/value distinction in particular? As explained above, Kaufmann's relating view is as follows. Absolute values must be considered illusionary from a scientific point of view which is the authority to decide upon the true ontological structure of our social reality. Reference to relative value can be part of scientific investigations although, in this case, talk about 'value' is misleading since the relating mental states, evaluative beliefs and actions actually occur as (and are dealt with as) 'mere' facts. Consequently, *disenchanting the fact/value distinction* amounts to denying that both words have referential weight, that is, that they both refer to real things or matters of affairs. It is facts and only facts that act as reference objects of scientific investigations. In this vein, talk about the fact/value dichotomy is meant to mark off the domain of scientific investigation from both traditional and modern metaphysical idealism (value realism) and the allegedly naïve acknowledgement of values within everyday practice. Within the horizon of the modern scientific world view in the first two decades of the twentieth century, this interpretation represents the mainstream view on values. It is the view that had been figured out in Max Weber's methodology and that had been propagated by positivist circles. Later on, it reoccurred, among others, in a modified version in J. L. Mackie's rejection of value realism. This is a still wide-spread view lying beneath the fact/value distinction and

its pertaining ramifications and debates. How does a phenomenological philosophy alter this view?

(B) On how phenomenology challenges our grip on the fact/value dichotomy

Kaufmann rightly assumes that committing the philosoper's fallacy lies beneath many problems in the methodology of science (cf. Kaufmann 1940, p. 322; Reeder 1991, p. 60 f). Isn't it then near at hand to ask whether the same holds true with regard to the debate on the fact/value distinction? More specifically, might it be the case that the philosopher's fallacy lurks behind on both sides of the entanglement/disentanglement divide? Given this to be so, paying attention to the philosopher's fallacy could help to reconcile the opponents of this debate without offering a 'solution' that ignores the arguments of at least one of the parties involved. The idea, rather, would be to redefine the philosophical issue at stake and to do so from a wholly new perspective which goes beyond the opponents' restricted points of views by ascending to a meta-level consideration. If it could be shown that it is by means of an appropriate utilization of Kaufmann's methodology that this peculiar perspective emerges, this strategy would offer impressive evidence in favor of the benefits of a philosophical methodology that, to a great extent, is guided and inspired by Husserl's phenomenology (cf. Rinofner-Kreidl 2004, 2007). Kaufmann cuts the Gordian knot of the fact/value debate by denying both the opposite views. It is not true that facts and values are distinguishable if this involves an ontological commitment in terms of discerning different types of entities or occurrences. Neither is it true that facts and values are indistinguishable since it is clearly possible to distinguish value judgments from judgments on facts by referring to the relational character of correctness and, correspondingly, to specific types of rules. Following Kaufmann's methodological 'turn', which includes the components explained above (different strata of experience, the denial of the philosopher's fallacy, the semantic ascent), we are led to go beyond the usually taken for granted limits of the fact/value debate. The same holds for Husserl although from different reasons. Husserl also denies siding with either the disentanglement (distinguishability) or the entanglement (non-distinguishability) view if this meant to do so in an unrestricted or unqualified and therefore methodologically naïve sense (cf. Rinofner-Kreidl 2014b).

Among the lessons to be learned from the still spreading debate on the fact/value dichotomy is that what it means to talk about 'facts' and 'values' varies with regard to different theoretical contexts. This proves correct if we turn our attention to Husserl's logic of parts and wholes, that is, his mereology. The relating analysis allows for distinguishing descriptive and normative or evaluative components of intentional experiences. In particular, Husserl argues that it is a necessary truth that for all and every founded (complex) types of intentional acts there are some representational contents, that is, presentations (*Vorstellungen*) or judgments (*Urteile*), which are contained in them. Evaluative experiences are among those founded types of acts that in this very peculiar sense are based on 'facts'. Yet the factual ('descriptive') content at issue is a dependent moment that occurs within specific wholes of higher-order intentional act-complexities and whose existence depends on the existence of these wholes. Consequently, we should recognize that factual and evalua-

tive components are conceptually distinguishable although this does not imply their real (ontological) separability (cf. Rinofner-Kreidl 2015). Beyond that, it is plausible that what presents itself as an integrated and spontaneously grasped whole of dependent, that is, inseparable parts at the level of first-order experience, need not be indistinguishable on occasion of a second-order phenomenological analysis. Hence it is obvious that the long-standing debate on the fact/value distinction is intimately connected with the difference between performing experiences and reflecting upon experiences, on the one hand, and the distinction of different strata of experiences within varying theoretical frameworks, on the other. The most pressing issue with regard to the so-called fact/value distinction therefore is not whether we endorse or deny it but from what point of view we start talking about the whole issue in the first place. Husserl abstains from rejecting the allegedly illusory positing of absolute values. He rather embarks on a two-sided constitution analysis dealing with perceptions, evaluations, and actions that are part of our life-world, on the one hand, and all those conceptual, methodical, and theoretical activities and results thereof that build up different domains of objects, on the other. A phenomenological analysis is interested in the constitution of so-called scientific objects that are said to be value-free. Relating to this, a phenomenologist, again, goes beyond corroborating or denying the thesis of a value-free science. She rather aims at addressing those assumptions and overall epistemic projects that are acknowledged in case of either positive or negative responses to the thesis at issue (cf. Rinofner-Kreidl 2014b).

From a phenomenological point of view, the only convincing and attainable 'solution' of the fact/value debate lies in answering the following meta-questions: on what conditions and in what specific contexts does it make sense to hold that fact and value are distinct and distinguishable? Are there any suitable criteria and methods of analysis by means of which one could argue in favor of the distinguishability (disentanglement) view and do so in a promising way? Although in an altogether different sense than this was involved in previously proffered positivist demands for getting rid of 'queer' components of our naïve 'Weltanschauung', this phenomenological analysis can be dubbed 'disenchantment'. It aims at re-contextualizing and re-interpreting the fact/value distinction. Yet its addressee is not our naïve 'Weltanschauung' but our still far too naïve theoretical representation thereof. Disenchanting the fact/value distinction, according to the present approach, neither acknowledges 'values', only insofar as they are reducible to ordinary facts nor pretends to posit values as genuine entities or newly emerging facts *sui generis*. It rather focuses on making explicit the presuppositions of choosing either one or the other path.

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Chapter 15
The Actuality of States and Other Social Groups. Tomoo Otaka's Transcendental Project?

Genki Uemura and Toru Yaegashi

Abstract The aim of the present chapter is to bring to light and assess discussions of social reality proposed by a Japanese student of Husserl, Tomoo Otaka (1899–1956). What is most remarkable about Otaka in this regard is the fact that he conceives himself as a follower of Husserl's transcendental phenomenology. This makes him unique among early phenomenologists of sociality, as most of his phenomenological contemporaries dealt with so-called social ontological problems in a realist-ontological manner. Consequently, the following question guides the present paper: How and to what extent can Otaka's discussions of social reality be integrated into Husserl's project of transcendental phenomenology? Drawing mainly on his German and Japanese writings from the 1930s, we show not only that Otaka appropriates Husserl's idea of constitutive analysis but also that he attempts to expand it; he applies Husserl's scheme of constitutive analysis to actually existing *states*, such as Japan, and other social groups. At the same time, we point out that Otaka's work faces a dilemma. On the one hand, if he sticks to the project of constitutive analysis, his account of the actuality of social groups is implausible, because it relies on the problematic idea that we can have supersensible intuition of those groups. On the other hand, if he removes the implausible portion of his analysis, it would make his position non-phenomenological according to his own Husserlian standards. This dilemma, we further argue, could have been avoided, if he adopts an alternative, but still Husserlian scheme of constitutive analysis.

Keywords Tomoo Otaka • Edmund Husserl • Social groups • Transcendental phenomenology • Constitutive analysis

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15.1   Introduction

Husserl's "best Japanese student" (Husserl 1994, vol. 4, p. 30), Tomoo Otaka, has not been totally neglected in the literature on the history of phenomenology. Some works on philosophy of law and social ontology in the phenomenological tradition deal with his position.[1] For linguistic reasons, however, those works on Otaka do not include reference to his writings in Japanese. As regards Japanese Otaka scholarship to date, the phenomenological aspects of his philosophy are under appreciated. It seems fair to say that this situation is far from satisfying. The aim in the present chapter is to present a more comprehensive picture of Otaka by focusing on a social-ontological problem on which he worked intensively and in a highly original way, namely the problem of the actuality of states and other social groups.

What is most remarkable in this context is that Otaka takes Husserl's *transcendental* phenomenology as his methodological standpoint. Given the fact that most phenomenologists in Otaka's time pursue social-ontological problems in a realist-ontological manner, we may well claim that his alliance with Husserl's transcendentalism makes his position unique.[2] In what follows, we shall explicate how, and to what extent, Otaka's discussion of social reality is, or can be, integrated into Husserl's transcendental project. We attempt to argue that Otaka's account of the actuality of states and other social groups is based on an appropriation of Husserlian transcendental phenomenology, but the resultant account faces a dilemma. In our opinion, however, he could have avoided this dilemma, if he performed his constitutive analysis of social entities in an alternative, but still Husserlian, way.

15.2   Otaka's Life and Work

Since Otaka is infrequently cited in the current philosophical literature, even in his home country, we presume that the readers do not know much about him, and it is worth providing a short biography here.[3]

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[1] See Loidolt (2010, pp. 175–183) and Mulligan (2001, p. 11368).

[2] Another exceptional figure would be Gerhart Husserl, whose phenomenology of law, according to Loidoit (2010, pp. 186–187), draws on his father's notion of transcendental intersubjectivity. However, note that Otaka's evaluation of Gerhart seems indeterminate. In some writings, he conceives Gerhart's position as a variant of the study of law *à la* Reinach (see below and Otaka 1933, pp. 289–291, 295). Elsewhere, he also holds that Gerhart's position is somewhere in-between his father's transcendental phenomenology and Heidegger's "existential" phenomenology (cf. Otaka 1935, p. 195).

[3] For further information about Otaka's life and work, see Wagner 1983; Kim 2013, Ishikawa 2006, and Usui 1984. Note, however, that there are several discrepancies among these works, and it is not always easy to identify the correct information; our short biography is based on what seems most certain in those works. In addition, the description of Otaka, in languages other than Japanese, sometimes contains obvious mistakes. For example, Fred Kersten's statements, in a footnote in

Tomoo Otaka[4] was born on 28 January 1899 in Busan, the southernmost port town on the Korean Peninsula, where his family stayed until 1903. At the time, his father, Jirô Otaka, was the manager of the Busan branch of the First National Bank of Japan. Tomoo first studied law at Tokyo Imperial University, which is known today as the University of Tokyo. After graduation, he moved to Kyoto to study philosophy at the Imperial University there. The most famous among his teachers was Kitaro Nishida, the founder of what is called the Kyoto School of philosophy (cf. Davis 2010). When Otaka was a graduate student at Kyoto Imperial University, Nishida held a seminar on sociology, where they read Max Weber.

In 1928, as a part of the Japanese colonial project in Korea, Otaka was offered a position as an associate professor at Keijo Imperial University, which had been established in the Korean city now called Seoul in 1924.[5] Eight months after his return to the Korean Peninsula, he left for Europe to study "on behalf of the Japanese government" (Otaka 1932, p. v). He first visited the University of Vienna to study philosophy of law with Hans Kelsen. During this first stay in Vienna, he became acquainted with Alfred Schutz, Felix Kaufmann, and other students of Kelsen. They all became good friends, as they all shared a common interest in phenomenological philosophy and the belief that it could complement their teacher's pure theory of law. It was just this interest that brought Otaka to Freiburg, where Edmund Husserl was living after his retirement. In Freiburg, he and three other Japanese scholars had a biweekly private seminar with Husserl.[6] As we have already seen, Husserl's mentioning of Otaka in his correspondence with other persons demonstrates his high opinion of our philosopher of law. In addition to the letter to Cairns cited above, in a letter to his daughter Elisabeth, Husserl describes Otaka as "an extraordinarily talented philosopher of law" (Husserl 1994, vol. 9, p. 404). Otaka and his Japanese colleagues also attended Heidegger's lectures on Hegel, with the private tutorship of Eugen Fink, and read *Sein und Zeit* with Oskar Becker. After he returned to Vienna, Otaka concentrated his work on the phenomenological foundation of the theory of states and other social groups. In 1932, Springer Verlag published his first book, *Grundlegung der Lehre vom sozialen Verband*, shortly before his return to Seoul. In the preface of the book, which is dedicated to Husserl, he also thanks Schutz and Kaufmann for improving both its content and its style.

After his return to Keijo Imperial University, he became a powerful and prominent intellectual in Korean society under Japanese rule. A notable publication during this period is *Kokka-Kôzô Ron* (*Theory of the Structure of States*) in 1936, with which he received a doctorate in law from Tokyo Imperial University. During the

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Alfred Schutz's *Collected Papers IV*, that Otaka was the son of a bookseller and that he wrote the new constitution of Japan (cf. Schutz 1996, p. 203), are simply wrong.

[4] Actually, Otaka's family name ("尾高," in Kanji characters) is properly pronounced as [odaka]. In the present chapter, however, we spell his name as "Otaka," since he used this spelling when he wrote in German and when he was abroad.

[5] Korea was "annexed" by the Japanese Empire in 1910.

[6] Goichi Miyake, Jisho Usui and Shinji Ôkojima are the other three scholars. For more on their days in Freiburg, see Usui's memoir (1984).

war against China, beginning in 1937, he gradually tended toward nationalism (cf. Ishikawa 2006, pp. 201–9; Kim 2013, pp. 68–9). His political activities, especially his commitment to the cultural assimilation of Korean people into Japanese culture, may well be called his dark side. The relationship between his political and academic activities deserves to be studied in detail, but it is not our concern in the present chapter.

In 1944, Otaka moved to Tokyo to become a law professor at Tokyo Imperial University. In his first year there, the war came to an end. Changes in Japanese society, law, and politics that were due, in large part, to their defeat had extraordinary effects on his life and career. In 1947, he published a paper on Japanese sovereignty, entitled "Kokumin Shuken to Tennô-Sei" ("Popular Sovereignty and the Emperor System"), which drew him into a heated dispute with his colleague, Toshiyoshi Miyazawa. While Miyazawa claimed that the determination of popular sovereignty in the Constitution of Japan – which was enacted in 1947 – implied that Japanese sovereignty had shifted from the emperor to the people (the "August Revolution" view), Otaka, by contrast, insisted that no such shift occurred. He argued that sovereignty had always belonged to what he calls "*nomos*," namely, a conventional system of moral obligations. The point of the dispute concerns the very definition of sovereignty. While, for Miyazawa, sovereignty means nothing but the power that ultimately decides what kind of form the state takes, for Otaka, it is obligation – not power – that constitutes the essence of sovereignty. It is widely believed among Japanese constitutional scholars today that Otaka's notion of *nomos* did not play a role in the explanation of the fundamental legal and political changes in Japan in 1947.[7]

Despite being extremely busy as a professor of law and as a diplomat – he was a representative of Japan for UNESCO – Otaka managed to publish some philosophical writings after the war, which include *Jiyû Ron* (*On Liberty*) in 1952, and some non-philosophical writings, such as a high-school textbook on democracy. On 15 May 1956, however, he died suddenly of a penicillin-induced shock during a dental treatment in a hospital.

As his intellectual biography shows, Otaka's main philosophical concern was the foundation of the sciences of state, law, and society. As far as the science of state is concerned, the most significant writings on this theme are undoubtedly his first two books: *Grundlegung der Lehre vom sozialen Verband* (1932) and *Kokka-Kôzô Ron* (1936).[8] In the rest of this chapter, we reconstruct and evaluate his theory, drawing mostly on these two books.

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[7] For an overview of the dispute, see Higuchi 1990, pp. 55–6.

[8] Another important piece he publishes before World War II is *Jittei-Hô Chitsujo-Ron* (*The Theory of Positive-Legal Order*) from Iwanami Publishers in 1942.

15.3 The Problem and Its Background

15.3.1 The Problem

Otaka's major concern in social ontology is how to make sense of the twofold onto-logical status of a certain class of social groups. On the one hand, he holds that every social group is "ideal." Adopting Dilthey's nature/spirit dichotomy, he considers social groups to be in the realm of spirit [*Geist*] since they are not found in nature.[9] The ideality of social groups follows from their membership in that realm. As Otaka claims, "simply speaking, it is 'meaning' [*Sinn*] that makes spirit distinct from nature" (Otaka 1936, p. 103) and meanings are not something real in nature; they are not sensible. On the other hand, he aims to show that some social groups, for instance states such as Japan, are endowed with actuality [*Wirklichkeit*] too. Otherwise, his conception of the theory of state, as a factual (and in this sense "empirical") science, would be spoiled. According to Otaka, the theory of state is a science of the actual (cf. Otaka 1936, p. 48; see also Sect. 15.3.2.1). It has to do with *this actual* world in which we find numbers of *actual* (or actually existing) states. Otaka, then, must answer this question. What, precisely, does it mean that some social groups are *both* ideal *and* actual?

Before looking at Otaka's attempt to answer this question, it will be helpful to take a closer look at the background against which he faces the problem and comes to develop his own solution.

15.3.2 Background

His concerns surrounding the problem of states and other social groups derive from the German-Austrian tradition of *allgemeine Staatslehre* (General Theory of the State), which he studied intensively, and his solution to the problem draws heavily upon the phenomenological tradition. We will first consider the *allgemeine Staatslehre* background, and then, we will discuss the phenomenological tradition within which Otaka develops his solution.

15.3.2.1 General Theory of the State

While the problem Otaka addresses ranges over varieties of actual social groups, such as companies and churches, it is obvious that his main targets are actual *states*. Otaka's publication record in the 1930s testifies to this. In 1932 he published *Grundlegung der Lehre vom sozialen Verband*, in which he tackles the *general*

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[9] It is noteworthy that Otaka makes a short remark about the possibility of combining Husserl's phenomenology and Dilthey's discussion of *Geisteswissenschaften* (cf. Otaka 1935, p. 181).

problem of how some social groups can be actual as well as ideal. A closer look, however, reveals that Otaka's intention to apply the general theory of social groups to the theory of states was already guiding his interests. Expressing his debt to Kelsen and his students, Otaka nevertheless argues against their opinion that a state is identical to a system of law. Social groups, he writes, "especially the state should not be identified with the legal order" (Otaka 1932, p. v). His 1932 discussion of social groups continually makes reference to the problem of states, the highlight of which is a paragraph entitled "State and Law" (§25). Hence, Otaka describes *Kokka-Kôzô Ron*, which is published in Japanese in 1936, as a "companion piece" to the *Grundlegung*.[10]

General Characterizations of the Theory of State

Otaka's own theory of the state, developed in *Kokka-Kôzô Ron*, is largely modeled on, and designed to go beyond, the general theories of states established by Georg Jellinek and his prominent pupil, Kelsen.

In the first chapter of his 1936 work, Otaka characterizes the theory of state, following Jellinek, as a theoretical science. The *Staatslehre*, the theory of state, is a science "which provides *theoretical* knowledge of states as they actually exist" (Otaka 1936, 10; cf. Jellinek 1914, 9). So, it is distinct from Political Science (*Politik*) as a practical science that provides knowledge of how a state can achieve its purpose in a given situation.

Otaka further distinguishes the *theory* of state from the *philosophy* of state. The former explores the states as they *actually* are. The latter deals with an *ideal* state in the sense in which, for example, Plato envisions an ideal state in the *Republic*.

Thus, for Otaka as well as for Jellinek, the theory of state is a theoretical science that explores states as they actually are. The next thing to determine is the precise subject matter of this theoretical science; in other words, the ontological status of the actual states is at issue.

Ontological Status of the State

Otaka maintains that the general theory of state needs to be philosophically grounded by determining the ontological status of its objects. Hence, he entitles his 1932 book as a *Grundlegung*.

Commonsense tells us that states like Japan and France are something self-identical that endure through numbers of historical changes on the level of social, legal, and political facts. It is the identity of states over time that must be explicated in a philosophical grounding of the general theory of state. At the same time,

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[10] See the preface to the First Edition of *Kokka-Kôzô Ron*, which is available online from the digital archives of the National Diet Library of Japan (http://kindai.ndl.go.jp/info:ndljp/pid/1267965; last accessed on 20 April 2014). See also a note in the bibliography below.

however, a state should not be conceived as a merely factual entity in time, but also as something *ideal.* This is due to the fact that states do not belong to the realm of nature, nor are they identifiable as a set of social relations, which undergo incessant changes in time. This is exactly what Kelsen has in mind when he claims that a state is an *ideal system* which belongs to the realm of *spirit* (cf. Kelsen 1925, pp. 13–4).

While Otaka agrees with Kelsen that a state is an ideal spiritual entity, he does not endorse the identification of a state with a system of valid norms, as his teacher in Vienna insists. For Kelsen, the system of normative order is independent of, and unconstrained by, temporal, historical facts. The ideal validity of the system of norms in that sense, he claims, is nothing other than the actuality of the state. Accordingly, he rejects Jellinek's two-aspect theory according to which a state is a social group *and* a legal system at the same time, and these two aspects are conceptually independent. For Kelsen, the actuality of the state can be accommodated without referring to its aspect as a social group, since the actuality in question means nothing other than the validity of its legal system. "[The] objective existence of the state shows itself without qualification as the objective validity of the norms constituting the order of the state" (Kelsen 1925, p. 14). It is this identification on the part of Kelsen that Otaka takes to task. According to Otaka, an actually existent state is irreducible to a valid system of norms; the legal order is only *one aspect*, among many, of the state. So, the actuality of a state, as a social group, cannot be explained purely through the validity of its legal order. However, Otaka does not straightforwardly accept Jallinek's two-aspect theory. Taking seriously the difficulties that Kelsen points out, Otaka attempts to replace two-aspect theory with a *multi-aspect* account of the state. We will discuss the details of this account below in Sect. 15.5.

Here again, what does it mean that the states like Japan and France are both ideal and actual? As Otaka himself remarks, the problem at stake is not his discovery (cf. Otaka 1936, pp. 10–26). His forerunners, Jellinek and Max Weber among others, have already been aware of it. However, Otaka is not content with either of their solutions. According to Otaka, both of Jellinek and Weber understand the ideality of states in general as that of *types*. Despite the terminological difference, both conceive of types as products of our scientific manipulation. We construct a type of certain phenomena, such as states, either by finding a common feature shared by each (Jellinek's *empirical* type) or by extracting a certain remarkable feature of the chosen phenomena (Weber's *ideal* type). For Otaka, however, these types do not represent the objects of the general theory of states; they are, at best, instruments for that theory. To construct a type might aid our scientific cognition of actually existing states, but types are not the states in themselves.

According to Otaka's diagnosis, the views of Weber, Jellinek, and their followers have Neo-Kantian methodologism as their background. They commonly think that the objects of our scientific knowledge are determined, or even generated, by our method of inquiry. Such a conception of scientific knowledge, Otaka holds, makes their approach unfaithful to the actuality of the phenomenon. Otaka insists that the situation is the other way round: The method of scientific cognition is determined by its object. "Here, the object must determine the method, and not *vice versa*. A

cognition is always a cognition of the actuality which precedes it; it is not a mere *re*cognition of its products" (Otaka 1936, p. 29).

However, this idea does not lead Otaka to the other extreme position, to conceive of any kind of objects as totally independent of the capacity for knowledge. According to him, such an option is adopted in Nicolai Hartmann's "naïve" realism. Although Otaka expresses sympathy toward Hartmann's claim that objects determine methods, he regards the naïve-realist solution as overly-hasty. "Hartmann's boldly Anti-Copernican attitude ends up with entire rejection of any significance of Kant's critique of cognition; he would not be able to escape keen attacks from the critical camp. [...] It is, at least, too risky to count on Hartmann's ontologism to provide a ground for all sciences of actuality [...]" (Otaka 1936, p. 30).[11]

It is in this context that Otaka favors Husserl's transcendental phenomenology; it provides a third way between the two extremes of Neo-Kantian methodologism and Hartmann's naïve realism. In Sect. 15.4, we will see how Otaka receives his ideas from Husserlian phenomenology and applies them to the explanation of the actual being of the states in general. Before doing this, it will behoove us to take a closer look at Otaka's relationship to phenomenology.

15.3.2.2 Phenomenology

In his unfinished manuscript of a paper entitled "Genshô-gaku-ha no Hô-Tetsugaku [Philosophy of Law in the Phenomenological School]," on which he works until his sudden death in May of 1956, Otaka observes that everyone in his day, save a few specialists, has forgotten phenomenology and the works of its founder. Such a situation, he says, "is in a sense due to the fact that phenomenology was not attractive enough to keep people's attention to it for long, but also to the fact that they threw it away before they understood its true meaning, following the trend that makes wave even in the world of philosophy" (Otaka 1960, pp. 193–194). Whether or not he is correct in making those observations, it is certain that he appreciates what he takes to be the "true meaning" of phenomenology. In what follows, we briefly consider Otaka's relationship to phenomenology, focusing on his writings in the 1930s.

We have already seen that Otaka's early works are guided by his interest in the philosophical grounding of the theory of the state. The question he poses in this context, to reiterate, is: How can states like Japan and France be actual as well as ideal? It is such an aspiration for the philosophical foundation of sciences (in his case, a social science) that enables him to contribute to phenomenological philosophy in his own way. As Otaka points out in the early 1930s, Husserl is, at the time, careful to confine himself to the problem of the foundations of logic and mathematics and almost none of his publications attempt to expand the scope of the topic (cf. Otaka 1933, p. 267). Thus, attempting to fill a void in his master's project of the theory of science [*Wissenschaftslehre*], Otaka offers "the *application of Husserl's*

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[11] Otaka's negative attitude against Hartmann's "ontologism" is echoed in his Husserlian-flavored criticism of realist phenomenologists such as Reinach (see Sect. 15.3.2.2 below).

phenomenological critique of cognition to the sphere of objects made up by concrete-ideal spiritual formations" (Otaka 1932, p. v, our emphases). We will explicate what Otaka is aiming at here in the next section. What is important for the moment is that he attempts to work on what we would today call social ontological problems from within Husserl's *transcendental* project, or "*phenomenological critique of cognition.*" This is exactly what makes Otaka unique in the history of the phenomenological tradition (see Sect. 15.1).

Accordingly, Otaka sometimes shows a rather critical stance toward discussions of social reality amongst realist phenomenologists. According to Otaka, these philosophers, for instance Adolf Reinach, are in fact *not* phenomenological.

> […] Even though Reinach thinks that he manages to apply the phenomenological view to study of law, his *a priori* theory of law, which does not contain the method of phenomenological reduction, is a purely essential study of law rather than a phenomenology of law. (Otaka 1933, p. 294; cf. Otaka 1935, p. 194)

On this point, he behaves as a faithful follower of the transcendental Husserl.[12]

While Otaka, following Husserl again, does not deny the importance of such an essential study, or "ontology" of law, he accuses Reinach and others of missing the most important point of phenomenology. Immediately after the passage just quoted, we read:

> Since *phenomenology is an attempt to elucidate the meaning of actuality* by returning to the standpoint of transcendental subjectivity, when we apply phenomenology to jurisprudence, its results should not amount to studies of essential legal laws that have nothing to do with actuality. Rather, we should aim at considering actually existing laws, namely positive laws. (Otaka 1933, pp. 294–295, our emphasis)

Insofar as they are content with the establishment of the essential study of law, in which no reference to actuality is to be found, Otaka continues, Fritz Schreier, Gerhart Husserl, and Reinach, to name just a few, are fraught with the common defect of "stepping away from the fundamental vocation of phenomenology" (Otaka 1933, p. 295; see also pp. 289–291).

Now we are reaching the reason why Otaka conceives of transcendental phenomenology as providing a third way between Neo-Kantian methodologism and Hartmann's naïve realism in the foundation of the theory of states. As Husserl notes in his postscripts to the *Ideen I* originally published in 1930, in analyzing the *actuality* of the world, transcendental phenomenology, in a certain way, saves our realist intuition in the natural attitude (cf. Husserl 1971, pp. 152–153; the same passage is cited in Otaka 1936, p. 35n7). Even though a belief in the actual existence of the world belongs to the very definition of the natural attitude (cf. Husserl 1976a, pp. 60–61, 1983, pp. 56–57), the suspension of such an attitude by means of phenomenological or transcendental reduction is not a denial of that belief. There is a sense in which the actual world is just there for transcendental phenomenologists, under the suspension of the natural attitude. Drawing on the postscript to the *Ideen*

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[12] On Husserl's attitude against the "ontology first" approach of realist phenomenologists, see, for instance, his letter to Ingarden dated 2 December 1929 (Husserl 1994, vol. 3, p. 253).

I just cited, Otaka takes Husserl's work to be a form of *realism*: "[Husserl's] ideal-ism does not end up with a mere idealism. It has a strong tendency to start off from actuality and return back to it and thus it aims at synthesizing idealism and realism on a wider scale" (Otaka 1936, p. 32, our emphases, see also note 7 on p. 35 given to the quoted passage). With this understanding, Otaka contends, one can refute Neo-Kantianism without falling into the naïve realism of Hartmann. In this way, Otaka and *his* Husserl may be described as proponents of a *modest* version of realism.[13]

At the same time, however, it seems that Otaka does not conceive himself as a full-fledged Husserlian. He doubts whether it is possible to provide a constitutive analysis of the objective world on the basis of a solipsistic ego of transcendental subjectivity (cf. Otaka 1936, p. 33). As a student of Husserl in the early 1930s, he does not forget to mention his master's idea of transcendental *inter*subjectivity (cf. Otaka 1936, p. 36n10).[14] According to his diagnosis, however, Husserl's alleged solution to the problem of the constitution of the objective world faces a difficulty. The line of his reasoning can be summarized as follows: If transcendental intersub-jectivity or the society of (transcendental) egos is something attainable only by starting with an individual ego, the process by which one is able to step up from the latter to the former remains enigmatic; thus, a solution to the problem is only avail-able if society is to be regarded as the basis from which each individual is somehow

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[13] From a contemporary perspective, Otaka's understanding of Husserl's transcendental idealism might be classified under the methodological interpretation proposed by Carr (1999, pp. 108–111). Inspired by Henry Alison's interpretation of Kantian transcendental idealism, Carr holds that Husserl's transcendental idealism aims at explicating the conditions under which objects appear to us, rather than making first-order metaphysical claims about objects. By bracketing the existence of objects *in themselves*, by means of the phenomenological reduction, he says, "[p]henomenology is concerned with objects, but only insofar as, and with respect to how or under what conditions, they are intended." (Carr 1999, p. 109) Crowell (2001, p. 236) also subscribes to the same idea. According to the methodological interpretation, Husserl's transcendental idealism would be com-patible with the realism of the natural attitude, because it is taken to consider the *meaning* or *sense* of the object (or the object *insofar as it is intended*), leaving the existence of the object in itself solely untouched within the phenomenological investigation. It may well seem that Otaka would agree with Carr and Crowell, when he claims that phenomenology is an attempt to elucidate the *meaning* of actuality. At the same time, however, Otaka's agreement with the methodological inter-pretation would be limited because he does not refrain himself from making first-order metaphysi-cal claims when it comes to the existence of social groups *qua* spiritual formations. As we will discuss soon, his idea, in this context, is that social groups *exist as meanings* (or as meaning-like entities), which are somehow dependent on our conscious experiences. Most probably, the contem-porary proponents of the methodological interpretation would refuse any talk about the existence of meanings as the reification of conditions under which objects appear. It is not our aim here, however, to determine whether and to what extent Otaka's understanding of Husserl's transcenden-tal idealism is correct with reference to this and other competing interpretations. For, it seems obvious anyway that Otaka tries to appropriate Husserl's transcendental project in his way, and, therefore, his project is worth being called *a* Husserlian project, if not *the* Husserlian project.

[14] To Husserl's eyes, Otaka's project is an essay in the application of the intersubjective constitu-tion. See his letter to Landgrebe dated 1 May 1932 (Husserl 1994, vol. 4, p. 286).

derived; but, how can the priority of the society over individuals be philosophically justified? Otaka sees no answer to this question in Husserl.[15]

Otaka does not regard such a difficulty, which he takes to be inherent in Husserl's idea of transcendental phenomenology, as a source of trouble for his own purpose.

> As far as the establishment and actuality of states as objects of a specific type is concerned, it seems that the phenomenological principle of object-constitution happens to provide a quite appropriate elucidation to the problem. It is still undecidable for us whether purely real objects, such as things in nature, or ideal objects, such as logico-mathematical laws, are achievements of the joint-constitution of subjects, namely intersubjectivity. When it comes to socio-historical objects such as states, however, they are neither beings in themselves that are totally transcendent of subjects nor pure formations of thought that are immanent to them. Rather, they are spiritual products that are constituted on the basis of the longstanding collaboration of many subjects. Accordingly, they have a way of being in which they are actual as well as ideal. (Otaka 1936, p. 33)

In short, his idea is that Husserl's modest realist stance toward the actuality of constituted objects fits well into the ontological status of actually existing states and other similar objects, while it remains unsure whether the same idea is applicable to things in nature and logical/mathematical laws. For, it is harmless, even plausible, to say that states and other social groups are somehow dependent upon a community of subjects.

Considering the circumstances, as we have described them so far, we can pose a twofold question that will guide our discussion in what follows. *How*, and *to what extent*, does Otaka appropriate Husserl's project of transcendental phenomenology in the *Grundlegung* and *Kokka-Kôzô Ron*?

15.4 The Actuality of Social Groups in General

15.4.1 Otaka's Appropriation of Husserl's Constitutive Analysis

Being both ideal *and* actual is not a common feature of social groups *in general*. Social groups in general also include ideal but *non*-actual groups, such as utopian or dystopian states described in fictitious or philosophical writings (cf. Otaka 1936, p. 266). Therefore, the actuality of states and other social groups is something more than their being states or social groups. What, then, makes them actual?

Being a phenomenologist, Otaka attempts to answer this question by searching for subjective or experiential factors that correspond to actual states and other social groups. He writes:

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[15] Otaka suggests that a possible solution to this problem is the "logic of social being" proposed by the successor of Nishida in Kyoto, Hajime Tanabe (cf. Otaka 1936, p. 36n10). But he gives no reason for his suggestion.

The problem of "actuality" is a problem, which, by virtue of its essence, stands in correlation with the problem of "truth" and thus must be solved in close connection to the latter. For, the question whether an object is actually there, namely whether it has actuality, means nothing other than the question whether the judgement that the object at stake is actually there is true and correct. Therefore, the correlational relationship between both problem-constellations is quite clear. When someone makes a judgement including the thesis of actuality, the question whether the object, which is posited as something actual in this judgement, is actually "given" in the way in which it is conceived [*gemeint*]. In this case the problem is considered from the side of the object of the relevant judgement and thus it is presented as the problem of being or being-actual. In contrast, when someone considers the same judgement from the side of the act of judgement and asks whether the "intention" of this act is correctly referring to the corresponding object, then the problem of truth or the correctness of judgement arises. The concept of truth relates to the act of judgement, while that of actuality is related directly to the object itself. Therefore, the problem of actuality must be raised and considered together with the problem of actuality. (Otaka 1932, pp. 55–56)

It is exactly in this context that Otaka subscribes to Husserl's transcendental phenomenology. He inherits the correlation he admits between the correctness (or "truth") of an act of judgement, on the one hand, and the actuality of the object of the act on the other from the discussion of reason and actuality in the last part of the *Ideen I*. According to Husserl, something's being actual is correlated with the possibility of judging about it with evidence.[16]

We must point out here that the correlation just mentioned is not the bedrock of Husserl's discussion of the actuality of an object. Husserl further analyzes the correctness, or evidence, of a judgement in terms of the fulfillment of empty intention (or positing [*Setzung*]). An act of judging is correct if and only if it is possible for the empty intention in that act to be fulfilled in experience of a certain sort.[17] Thus, in the last part of the *Ideen I*, Husserl also discusses a more fundamental correlation from which the correlation between correctness and actuality is derived.

Of essential necessity (in the Apriori of unconditioned eidetic universality), *to every "truly existing" object* there corresponds *the idea of a possible consciousness* in which the object itself is seized upon *originally* and therefore in a *perfectly adequate* way. Conversely, if this possibility is guaranteed, then *eo ipso* the object truly exists. (Husserl 1976a, p. 329, 1983, p. 341)

Now we can summarize Husserl's idea diagrammatically (Diagram 15.1):

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[16] In his own words: "In the logical sphere, in the sphere of statement, '*being truly*' or '*actually*' and '*being something which can be shown rationally*' *are necessarily* correlated" (Husserl 1976a, p. 314, 1983, p. 282). Note that Otaka does not refer to *Ideen I* in the relevant part of the *Grundlegung*. Here, one might think that there is a difference between the two phenomenologists because Otaka does not talk about *possibility*, which is crucial for Husserl's own conception (see the next note) in the passage just quoted. In the present paper, however, we take this as a mistake on the side of Otaka.

[17] The possibility involved in the above analysis must indeed be further discussed. Unlike Husserl, who distinguishes kinds of possibility—ideal, real, motivated, practical and so on—in this context, Otaka undertakes no such discussion. It is beyond our aim here, however, to deal with this problem.
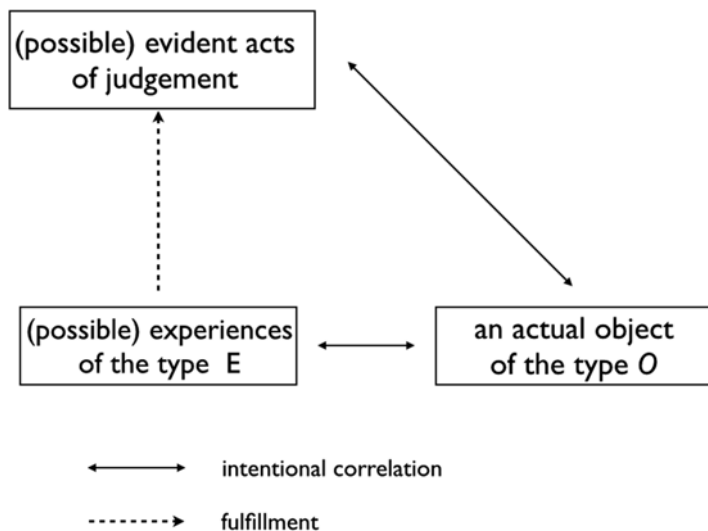
Diagram 15.1 Husserl's constitutive analysis of an actual object

The correlation between the actuality of an object *x* of the type *O* and the possibility of an evident judgement about *x* is vindicated only if we can specify the type of experience *E* such that *x* and any other object of the type *O* are correlated with the possibility of experience of the type *E*. Thus, for any type of object, we must be able to specify the type of experience with which an object of that type is correlated. This is exactly what Husserl conceives as the task of constitutive analysis (cf. Husserl 1976a, p. 344, 1983, p. 355).

15.4.2 "Meaningful Intuition" as an Originally Giving Act

Otaka's discussion of the actuality of states and other social groups is in agreement with the aforementioned Husserlian ideas. Even more remarkably, Otaka is not a mere follower of Husserl in this regard. In *Ideen I*, Husserl gives only an outline of the analysis concerning the actuality of physical things (cf. Husserl 1976a, pp. 344–353, 1983, pp. 355–364). When it comes to the constitutive analysis of other types of objects, such as "*the state, the law, custom, the church*, and so forth," he offers almost no proposals, claiming merely that they "must be described with respect to fundamental kinds and in their hierarchies just as they become given, and the *problems of constitution* set and solved for them" (Husserl 1976a, p. 354, 1983, p. 365). By contrast, Otaka's analysis in the *Grundlegung* is nothing other than an attempt to specify the type of experience that fulfills acts of judging about social groups. Drawing on Husserl's discussion of categorial intuition in the *Logische Untersuchungen*, Otaka argues for the claim that the fulfillment in question is

provided by a sort of "supersensible" intuitive experience (cf. Otaka 1932, pp. 80–83, 1933, pp. 285–288, 1936, pp. 104–105).

Otaka's notion of supersensible intuition is supported by the idea that intuitive experience, such as perceiving, has to do with something more than sensible qualities.[18] When I am seeing, say, an apple on a white table in front of me, sensible qualities such as redness, whiteness, roundness, squareness and so on, together in a certain spatio-temporal constellation, do not exhaust what I see. The object (or content) of my seeing consists of the apple and desk in front of me, neither of which, Otaka maintains, can be reduced to a sum or bundle of sensible qualities. For, the apple and table remain self-identical while those sensible qualities may change incessantly; even if the apple's sensible qualities have undergone considerable change, we may be able to conceive of it as the same apple in an intuitive way. Since this is the case, it must be that I have an intuitive experience of something supersensible when I am seeing the apple on the table in front of me. In short, my experience is a supersensible intuition. Likewise, Otaka further proceeds to argue that the same situation, *vis-à-vis* supersensible intuition, maintains in the case of social groups. As we have already seen, Otaka conceives of social groups as something self-identical that persists through manifold changes in its members (See Sect. 15.3.2.2).

The last move in Otaka's argumentation, which may seem too quick and quite implausible, rests on the crucial assumption that something is intuitively conceived as self-identical by virtue of its "meaning" (Otaka 1948, pp. 105, 108–109). In short, the assumption at stake here is that supersensible intuition is an intuition of meaning (cf. Otaka 1932, p. 83). The ground Otaka provides for such a claim is as follows. When I am seeing an apple as self-identical, I have a supersensible intuitive experience of the meaning *apple*. It is probably in consideration of the role of meaning in supersensible intuition that Otaka coins the term "meaningful intuition [*sinnhafte Anschauung*]" for such experiences (cf. Otaka 1932, p. 83). In this way, the original givenness of the apple is understood as the givenness of the meaning *apple* in meaningful intuition. Since social groups are regarded as ideal, insofar as they belong to the realm of *spirit* as a world of meaning (see Sect. 15.3.1), it is at least tempting, if not plausible, to say that they can be given in meaningful intuition too.[19]

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[18] This point is most intensively discussed later in the second chapter of *Jiyû-Ron*, where Otaka claims: "It is a great achievement of Husserl to have shown that even the physical world, which is commonly thought to be sensibly known, is in fact endowed with structure as the 'invisible' world of meaning" (Otaka 1952, p. 59).

[19] Otaka seems to think that his idea is taken solely from Husserl; all he does is rename it as "meaningful intuition" because the object of such intuition is not exhausted by what is usually called categorial intuition (cf. Otaka 1932, p. 83, 1933, p. 288). Upon closer consideration, however, these two notions of supersensible, or non-sensible, intuition are hardly identifiable. Husserl introduces categorial intuition as an intuition of objects with a logical or syntactical structure (in his words, a categorial form) (cf. Husserl 1984, p. 664). In order for a categorially structured judgement to be fulfilled, he argues, something structurally the same must be found in the fulfilling intuition too. While Husserl would agree with Otaka that our intuitive experiences involve something more than the sensible, the notion of categorial intuition, strictly understood, would give an account to only a limited sub-set of such phenomena.

In the present chapter, we do not ask whether Otaka's case for supersensible or meaningful intuition of social groups is really plausible. As we will see soon, the most interesting point in his discussion lies elsewhere.

15.4.3   The Foundational Structure of Social Groups

15.4.3.1   Setting-Up the Problem

Following Husserl's notion of categorial intuition, Otaka holds that supersensible – or meaningful – intuition is a *founded* act. To put it in a slightly different way, meaningful intuition is a higher-order act that takes place only in the presence of a lower-order *founding* act or in the presence of a set of such acts. He consequently subscribes to his master's idea that a founded act has its counterpart, or intentional correlate, on the side of the object, which has a corresponding foundational structure too. Just as a categorial intuition is founded upon a sensible intuition, Husserl maintains, the categorially formed object, which is given in—and thus correlated with—the categorial intuition, is founded on "simple" objects as correlates of acts of sensible intuition (cf. Husserl 1984, pp. 674–5). Hence, Otaka shifts his focus away from acts of supersensible intuition and toward their intentional correlates, namely social groups endowed with actuality.[20]

It is at this point that we find Otaka's most interesting contribution to the phenomenological study of social reality. In searching for the foundation of actually existing social groups, he first generalizes the problem: What is the foundation of the actuality of social, "spiritual formations [*geistige Gebilden*]," of which social groups are one kind? He then attempts to answer this general question by focusing on other kinds of spiritual formations than social groups. The key to unlocking this account, he contends, lies in the way in which they exist *as something actual*.

15.4.3.2   Homogeneous and Heterogeneous Foundation

Otaka picks the following three examples from among the varieties of spiritual formations: *Ukiyo-e* (Japanese woodblock prints), tools, and works of music. They play different roles in introducing two kinds of foundations and their statuses in the realm of spirit.

The first example serves to clarify one of Otaka's main ideas, which may be expressed in contemporary terminology as follows (cf. Otaka 1932, pp. 87–8): Some sorts of spiritual products exist as *types*, and the actuality of those types is

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[20] Surprisingly, in this move, Otaka says almost nothing about the foundational structure of the supersensible intuition of social groups. Therefore, it is impossible to determine what he believes are the founding acts for meaningful intuition of social groups. We do not deal with this problem here because the very issue of supersensible intuition seems too difficult to deal with in a fruitful way.

founded upon their *tokens*.[21] Consider, for instance, Utamaro's *Three Beauties of the Present Day*. While none of the particular prints of one and the same set of wood-blocks are identical to the relevant work of *Ukiyo-e as a type*, the actuality of the work is founded upon the particular prints. For, if all of the prints were lost, the actuality of the *Three Beauties* would also be lost.[22] Since a similarity holds between the particular prints as tokens and the work as a type, the foundation involved in this case is characterized as *homogeneous*.

However, Otaka quickly qualifies, there is another sort of foundation, one by virtue of which a spiritual formation is endowed with actuality (cf. Otaka 1932, p. 88). In some instances of spiritual formations, founding objects and the object/s founded upon them stand in a part-whole relation rather than a relation of similarity. The foundation involved in this case is called *heterogeneous* because, in order for something to be a part of a given whole, it need not be similar to the whole. To argue for this idea, Otaka appeals to his second example, namely tools. Drawing on Heidegger's discussion in §15 of *Sein und Zeit*, he claims that a *totality* of tools is a self-identical genuine object, the actuality of which is founded upon the particular tools that make up the totality (cf. Otaka 1932, pp. 88–89, 1936, pp. 119–120).[23] In this sense, the actuality of an office as a whole, for instance, is heterogeneously founded upon a desk, a chair, shelves, and other stuff that actually exists as parts of the office.

Homogeneous and heterogeneous foundations sometimes work jointly for the actuality of spiritual products to obtain. Otaka's third example shows us how these two types of foundation hang together when a musical work is endowed with actuality (cf. Otaka 1932, pp. 90–91). On the one hand, he holds that the actuality of the musi-cal work is founded upon performances of it or, more precisely, the possibility of such

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[21] Note that "types," here, is used in a contemporary sense in which types are contrasted with tokens. Types in this sense must be distinguished from types of another sense, some varieties of which—Weber's ideal types and Jellinek's empirical types—Otaka discusses (see Sect. 15.3.2.1).

[22] One may object that the work of *Ukiyo-e* as a type would remain even in the absence of particular prints if the set of woodblocks is kept safe (and there is a printer who has the skill to make a print again). Otaka does not say anything about this, but we can reply to such an objection for him in the following way. Taken generally, this objection might indeed be correct. However, the existence of the relevant woodblocks is a sufficient but not necessary condition of the actuality of the work of *Ukiyo-e* as a type. In the case of a work with no woodblock surviving, the loss of all the particular prints is nothing other than the loss of the work as a type. In this case, the existence of at least one print is a necessary condition of the actuality of the work. Since, as a matter of fact, no woodblock of Utamaro's *Three Beauties of the Present Day* now remains, the objection in question fails in the present case. (Note that Otaka does not refer to any of Utamaro's particular works when discussing the case of *Ukiyo-e*.)

[23] While Otaka's claim itself is not implausible, it is not obvious whether his reference to Heidegger in this context is appropriate. One might claim that he is over-interpreting the following passage from *Sein und Zeit*, which he quotes directly: "Before it does so [i.e., a particular tool shows itself], *a totality* of tools has already been discovered [*Vor diesem ist je schon ein Zeugganzheit entdeckt*]" (Heidegger 2001, p. 68, Heidegger 1962, p. 98, translation modified, our emphases). Very likely, Heidegger's point here is only that we discover a particular tool always in connection with all the other relevant tools. To argue for this kind of claim, it seems, one does not have to appeal to the totality of those tools as a genuine single object.

performances. If it is impossible, at *t*, to perform the musical work – because of, say, the loss of skills needed to perform it[24] – then the musical work would no longer be actual at *t*, or any time after *t* (cf. Otaka, p. 95).[25] Hence, a homogeneous foundation holds between the musical work and a (possible) performance of it. On the other hand, when it comes to particular performances, a heterogeneous foundation appears in Otaka's argumentation. A performance of a musical work is in itself something complex. Most typically, an *actual* performance of a musical work takes place only if it consists of a bunch of particular acoustic events with different varieties of particular pitch, tone, intensity, length and so on (cf. Otaka 1932, p. 90). The actuality of the performance is founded upon those acoustic events. Here, as regards a particular performance, we find that a heterogeneous foundational relation obtains between this particular performance as a whole and the acoustic events as parts of it.[26]

15.4.3.3 Two Strata of the Spiritual Realm

An important lesson we can learn from Otaka's last example is that the actuality of a spiritual product may *not* be *immediately* founded upon a physical entity, or upon a set of such entities. While acoustic events, upon which an actually achieved performance of a musical work is heterogeneously founded, are reasonably regarded as physical events, the performance *itself*, which provides the immediate foundation of the actuality of the musical work as a type, has no place in the physical world, unless it is associated with those acoustic events. Being an object of meaningful intuition, the *actual* performance belongs to the realm of spirit, and thus it is by definition neither physical nor natural.[27] The same holds for particular woodblock prints

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[24] Even though Otaka does not deal with recordings of a particular performance in this context, we can expand his argument and additionally suppose that all the recorded performances of the work have also been lost.

[25] Here one may ask what if the lost skill will be rehabilitated at *t'*. It seems impossible to construct an answer from what Otaka says explicitly in the *Grundlegung* and other writings. The following answer would be compatible with his position: in that case, the work in question *recovers* the actuality at *t'*, which was lost since *t*.

[26] Otaka's own account is in fact in need of further elaboration. There are at least two non-equivalent formulations of his notion of a heterogeneous foundation. The first formulation: the foundational relation in question holds between the performance of a musical work and the set of *all* the atomic parts of it. The second formulation: the foundational relation holds between the performance on the one hand and a set of *some* atomic parts of it, which fulfill certain conditions, on the other. The first formulation looks too strict; an actual performance would probably not be lost if one or two atomic parts of it were absent. The second formulation may solve this problem, but it leaves the difficult task of specifying the conditions involved in it without circularity.

[27] One might complain that this idea is unintelligible. It is true that there is a sense in which the actual performance *does* have a place in nature. Insofar as it is founded upon acoustic events, it exists or takes place when and where those events occur. As we will soon see, Otaka himself holds that performances, and other entities of this type, are not numerically distinct from the relevant physical entities. There is another sense, however, in which it is intelligible to say that the actual performance has no place in nature. For, if Otaka is correct, the description of an actual performance, which must involve the *meaning* of the performance, would not be exhausted by the physi-

and other tokens of reproducible art. Those entities, upon which the actuality of the works of reproducible art are founded, also belong to the realm of spirit rather than nature.

Thus, Otaka admits that the foundational structure is found *within* the realm of spirit. He thereby expands Husserl's original conception of foundation, according to which only something physical can be the foundation of an ideal entity (cf. Otaka 1932, pp. 92–93, 84).[28] "In this way," Otaka writes, "the world of spirit, by its essence, shows a layered [*stufenmaßig gegliedert*] structure, in which a spiritual object of higher ideality is usually constituted not directly on the basis of a natural reality, but usually on the basis of a factual stratum of spirit, which is somehow based upon [*übergeordnet*] bare reality" (Otaka 1932, p. 93). Considering such a hierarchy in the realm of spirit, Otaka speaks of "the lowest stratum," or "spiritual fact/facticity [*geistige Tatsache/Faktizität*]," to which performance, woodblock prints and other entities of similar sorts belong (cf. Otaka 1932, pp. 93, 254, 1936, p. 121).

Now, Otaka is left with a problem. Since musical performances belong to the realm of spirit, he must also explicate their actuality, in addition to the actuality of musical works as a type. Otherwise, his account of the actuality of "higher" spiritual products would be uninformative.

In the *Grundlegung*, Otaka attempts to solve this problem by introducing yet another type of foundation called "meaningful foundation [*sinnhafte Fundierung*]" (cf. Otaka 1932, p. 147).[29] His contention is that something belongs to spiritual facticity only if there is a higher order spiritual product, by virtue of which it is meaningfully determined. Or, in his own words:

> [A]fter all, what determines the founding item exactly as the founding item can be nothing other than the "meaning" of the founded item itself. What turns a factually existing picture into a copy of a certain work of art is the aesthetic sense of that work of art itself; a performance of a symphony is possible in the first place only if the ideal-identical meaning of that symphony underlies the factual performance. Thus, every founding item already presupposes the founded item for the former to function as something founding the latter in the first place. (Otaka 1932, p. 94)

It is such a determination that is called "foundation." Accordingly, the two types of foundation, homogeneous and heterogeneous, are commonly called "foundation of actuality [*Wirklichkeitsfundierung*]."

Otaka's proposed solution has a significant implication for his ontology of the spiritual realm. Items at the level of spiritual facticity, which found higher-order

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cally complete description of the relevant acoustic events in nature. *Mutatis mutandis*, the same would hold for all other reproducible arts as well.

[28] Here, Otaka seems to underestimate Husserl's notion of foundation. Husserl holds that the foundational relation is not limited to being between ideal and physical entities when, for example, he conceives of communities as founded upon humans *qua* mental realities in §152 of the *Ideen I* (cf. Husserl 1976a, p. 354). The authors wish to thank the anonymous reviewer of the present chapter for pointing this out.

[29] In *Kokka-Kôzô Ron*, Otaka uses "meaningful *constraint* [*Imi-teki na seiyaku*]" instead of "foundation of meaningfulness" (cf. Otaka 1936, p. 268).

spiritual products, are *not numerically distinct* from their relevant physical entities. A performance of a musical work, for instance, is distinguished from a complex of acoustic events only insofar as the former *is* the latter *plus* a meaning of a certain sort. In short, the performance *is* the complex of acoustic events *qua being endowed with meaning*. Probably against such a situation, he characterizes spiritual facticity as "the sphere of spiritual ideality that stands most closely to natural reality" (Otaka 1932, p. 83).

15.4.3.4 The Actuality of Social Groups

Given the preceding considerations, we may more easily understand Otaka's account of the actuality of social groups. His basic claim is that the actuality of a social group is founded upon "social relations [*soziale Beziehungen*]" on the level of social facticity as the lowest stratum of the spiritual realm. So, the remaining problem is only to explicate Otaka's account of social relations.

Otaka holds that a social relation, like a performance of a musical work, is what it is only by virtue of the meaning or determination given by the relevant higher-order spiritual formation, namely the social group. A good starting point of our discussion is his most general definition of social group as a "totality formed in-between humans [*zwischenmenschlich gebildete Ganzheit*]" (Otaka 1932, pp. 51, 100, 120, 130–131, 155, 156, 160, 197, 263, 265, 276). Any social relation must reflect such a definition because it is meaningfully determined by a social group. Thus, Otaka characterizes a social relation as follows:

> A social relation is a structurally connected complex of those social actions which, in accordance with the subjective meaning conceived by the agents, are directed to each other and, through this, connected to each other. (Otaka 1932, p. 121)

The foundation of the actuality of a social group, therefore, is a manifold of social actions that jointly make up the relevant social relation.

We must quickly point out that, despite its determination as a complex of social *actions*, Otaka locates social relations on the side of *objects*, rather than on the "subjective" side of *acts*. He maintains that every human action is a bodily movement *plus* its meaning as a human action (cf. Otaka 1932, p. 101).[30] In this sense, human actions are on the same footing as woodblock prints within the realm of spirit. It is probably because of this that Otaka, unlike Husserl,[31] does not hesitate to regard the

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[30] In *Kokka-Kôzô Ron*, social relations are taken to be connections of "subjective spirits" insofar as their components are connected by means of expressions and understanding (Otaka, 1936, p. 277). But, this must be regarded as a slip. Even in 1936, Otaka characterizes expressions as a kind *objective* sprit (Otaka 1936, pp. 277–278). In addition, while he thinks that social relations are objects of the social sciences, he denies that subjective spirits cannot be studied by those sciences (Otaka 1936, pp. 113–117). All those passages strongly suggest that social relations are rightly considered to be on the side of *objects*.

[31] The situation is far more complicated in the case of Husserl. In the second volume of the *Ideen*, he basically regards the realm of spirit as the uppermost stratum of *constituted* objects. In the end

spiritual realm, of which social facticity is the lowest stratum, as a part of the objective or intersubjective world.

There is, of course, another sense in which human actions are quite different from woodblock prints. Unlike the latter, the former involve an experiential dimension of their subjects or agents. To express the difference concisely, *human actions are accessible from within*, at least in most typical cases. Thus, Otaka claims that, in order to found the actuality of a group, a social relation – namely a complex of social actions – "must be determined by the *consciousness* of acting subjects' common 'membership [*Zugehörigkeit*]' in the relevant group" (Otaka 1932, p. 120, our emphasis). This point will be crucial for our discussion in Sect. 15.6.

Now, an important question still remains: In what does the sociality of social relations consist? According to Otaka, a social relation is possible only if an *interaction* with more than one human subject is established by virtue of mutual understanding. In analyzing the nature of mutual understanding, Otaka draws on Reinach's analysis of *social acts*, namely acts that are addressed to, and thus need to be received by [*vernehmungsbedürftig*], others.[32] Mutual understanding is characterized by means of social acts and their expression.[33] We can reformulate Otaka's schematic analysis of the simplest case of two human subjects, *A* and *B*, as follows (cf. Otaka 1932, p. 121):

A mutual understanding is established between *A* and *B* if and only if

[1] *A* addresses a social act, s_1, to *B* &
[2] *A* gives an expression, e_1, to s_1 &
[3] *B* (receives and) understands s_1 through e_1 &
[4] *B* responds to *A* by addressing a social act, s_2, to *A* &
[5] *B* gives an expression, e_2, to s_2 &
[6] *A* (receives and) understands s_2 through e_2

Diagrammatically (Diagram 15.2):

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of his discussion of spirit in that book, however, he suddenly starts talking about the priority of spirit over nature, putting the latter on the *constituting* side of the correlation (cf. Husserl 1952, pp. 297–302). If such a twist, as it were, in Husserl's argumentation in the second volume of the *Ideen* is not due to Edith Stein's editorial work, that would probably be closely related to the so-called paradox of subjectivity, which we will briefly mention in the end of the present chapter.

[32] Cf. Reinach 1913, §3. What is puzzling here is that, while Otaka, albeit passingly, cites Reinach's *apriorische Grundlagen des bürgerlichen Rechtes* when he deals with the problem of mutual understanding in the *Kokka-Kozo Ron* (cf. Otaka 1936, p. 283n2), the name of the phenomenologist is totally missing in the *Grundlegung*, in which Otaka tackles the very same problem. It must also be pointed out that Otaka's reference to Reinach in the 1936 book is deeply problematic, at least by today's standards. He mentions Reinach's account of procuration [*Vertretung*] alone, while remaining silent about his debt to Reinach concerning the very idea of social acts. Note also that social acts are distinguished from social actions in Otaka's framework. Being components of social relations, the latter are located on the object side of the spiritual realm, whereas the former are on the side of acts.

[33] It is not obvious whether expressions here include non-linguistic ones.
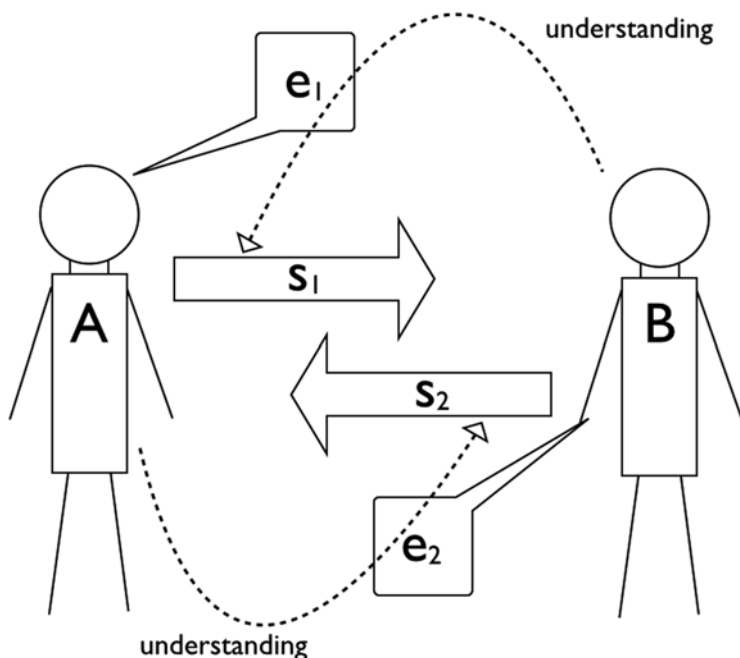
Diagram 15.2   Mutual understanding

15.5   The Actuality and Historicity of States

We have interpreted and evaluated Otaka's explanation of the actuality of social groups. As noted above, Otaka's ultimate aim is to propose a theory of states as they actually exist. Since a state is a sort of social group, every general feature of the latter holds for the former. However, states must possess some characteristic features that cannot be ascribed to all social groups. In this section, we discuss the features found only in actually existing states.

   We will first clarify how Otaka characterizes the structure of states in general, regardless of whether they are actual. We will then address some issues that pertain to the foundation of the actuality of states. According to Otaka, actually existent states are *historical* entities insofar as they are diachronically identical despite changes in their membership (society), legal systems, and policies. In concluding, we will consider issues surrounding the identity conditions of states.

15.5.1   Multi-Sidedness of States as Spiritual Entities

According to Otaka, a social group is a spiritual entity which has a unity by virtue of its meaningfulness, the actuality of which is grounded in factual social relations. What makes a state a peculiar kind of social group is its *complexity*, or *multi-sidedness*. In

Kokka-Kôzô Ron, Otaka criticizes the simple, one-sided view of some traditional theories of states. "The theorists of states so far tried to explain the complex nature of the state by reducing it to as simple a concept as possible, only to, generally speaking, grasp one side of the state and to miss the other sides" (Otaka 1936, p. 38). Because a state is, as it were, a "multi-dimensional object" (ibid.), a theory of states should deploy several different perspectives in order to conceptualize it.

Otaka insists that a state is a three-sided spiritual entity, comprising *social, legal*, and *political* aspects. First, the state is a *social* group consisting of a number of people. Second, it has its own *legal* system. Third, it has its own practical aim or purpose that it tries to achieve, sometimes going beyond its own laws. It is such super-legal, or extra-legal, activity of the state and its members that Otaka calls *politics*. For him, it is necessary to comprehend these three aspects in order to comprehend the state as a whole.

This three-sided view of the state is peculiar to Otaka's 1936 book. No similar discussion is found in his preceding work, *Grundlegung*. In the *Grundlegung*, he follows Jellinek's two-sided view, according to which the state is both a social group and a legal institution at the same time (cf. Otaka 1932, pp. 236–7; Jellinek 1914, p. 11). Otaka is not explicit about what motivates his shift to the three-sided view, but the politically-oriented theorists of constitutional law, such as Otto Koellreutter (1933) and Carl Schmitt (1928) seem to have been influences. Otaka takes their criticisms of Kelsen's purely legal theory of the state seriously (cf. Otaka 1936, p. 63). They complain that Kelsen's abstraction of the political aspect of the state is an expression of a liberal-democratic policy, which, to their eyes, has already lost its vitality. This objection could be equally directed toward Jellinek's two-sided view of the state.

It must be emphasized, however, that Koellreutter and Schmitt's objections against Kelsen must be understood from within the situation in Germany at that time and their cooperation with the National Socialists, temporary though it was. Otaka's sympathy with them in *Kokka-Kôzô Ron* gives us a glimpse of, to say the least, a potentially dangerous aspect of his theory of states. Considering this matter, we have to deal carefully with both his three-sided view of the state and his characterization of politics as a super-legal activity.[34] It is nevertheless possible to ignore here, as far as his explanation of the actuality and historicity of the state is concerned, what he says about the political aspect of the state. What we should bear in mind is his conviction that the state is a *multi*-sided (at least two-sided) spiritual entity, namely a social group governed by its own legal system.

15.5.2   The Actuality Foundation of States

We now turn our attention to the actuality of states. No matter how many aspects they may have, it is certain, for Otaka, that states are complex spiritual entities. As a kind of social group, the actuality of a state is founded by the social relations of its members (see Sect. 15.4.3.4).

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[34] In order to discuss this issue, we would have to take into consideration the dark side of Otaka we mentioned in Sect. 15.2.

One characteristic feature of an actual state, which is not found in other kinds of actual social groups, is that it has its own *nation* and *territory*. The nation and the territory belong to the actuality-foundation of the state. However, they are conditioned by the meaning that the state necessarily has as a spiritual entity. The nationality and the territoriality only make sense if they are *of* a particular state. In this way, both the foundation of actuality and the meaningful foundation are at work jointly in the case of actual states, as we distinguished above.

However, that is still not enough for a state to be actual. Being a social group, the state must also be grounded in some of the social relations of its members. It must be noted here that there are varieties of social relations just as there are varieties of social groups. According to Otaka, some social groups, a company for instance, can be actualized only by *rational* relations (*Vergesellschaftungen*) between their members.[35] By contrast, the state can only be actual if it is grounded in some *irrational* social relations (*Vergemeinschaftung*), which Otaka also describes as the "basic society [*kiban shakai*]" underlying states. Otaka writes, "What we call 'the basic society' is that native society which lies under all kinds of our purposeful, rational activities and which maintains an intimate, irrational tie between us" (Otaka 1936, p. 311). Otaka's contention may be described as follows: That an actual state is necessarily grounded by its basic society means that the state is a more comprehensive *kind* of social group than the company; it is more deeply rooted in our everyday social relations. We are not, say, mere *homo oeconomicus*, but are living in a given land, with family and neighbors, which we did not rationally choose. Our social life has, therefore, a dimension over which we lack rational control. The meaning of the state in which we live penetrates into this irrational part of our lives.

15.5.3   Historicity of States

Let us now turn to the historicity of a state. According to Otaka, "the actuality of the state is nothing but the historicity of the state" (Otaka 1936, 271). Why does he hold such a view?

First of all, any actual social group has its own history because its actuality-foundation changes as time passes. Our factual social relations do not have a static, unchangeable structure. Not only are the particular behaviors of particular human agents changing, but also the forms and types of our social behaviors are in constant flux. Changes in social interactions necessarily accompany changes in the social spiritual entity that is founded in the former. In this sense, Otaka says, the social spiritual entity is essentially historical (cf. Otaka 1936, p. 127). The historicity of social spiritual entities is a distinctive feature, one that *material*, spiritual entities –

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[35] The terminology of *Vergesellschaftung*, as well as *Vergemeinschaftung* below, derives from Tönnies (1926), as is easily noticed. However, Otaka notes that this distinction concerns the forms of social *relations*, rather than the forms of social *groups*. He accuses Tönnies of confusing the two dimensions in his discussion of *Gemeinschaft* and *Gesellschaft* (Otaka 1932, p. 167, 1936, p. 294).

such as a hammer, a sculpture, a church, or a temple – do not share (cf. Otaka 1936, p. 126). They are called *material* spiritual entities because their foundations of actuality are material objects. These entities are not entirely unchangeable, but they are stable to a considerable extent. A desk, as an actual spiritual entity, for instance, would lose its actuality if it were physically destroyed, but otherwise it would remain actual. The only possible change for a material spiritual entity is to cease to be actual. This is what Otaka calls the "quasi-eternalness" of material spiritual entities (cf. Otaka 1932, p. 107). Actual social entities, on the other hand, may change without losing their actuality.

Otaka further claims that "history" only makes sense if there is an identical *bearer* or *substratum* of changes. For, if there are nothing but temporal processes of change, we cannot say that something has a history. Furthermore, he claims that the bearer of history must be *actual*. A purely ideal object cannot have a history because it cannot change. Therefore, only social spiritual entities can have a history.

This is a substantial claim about the concept of history because it opposes any theory that explains historical change in terms of ideal entities. Otaka ascribes this theory to the Baden Neo-Kantians, Wilhelm Windelband and Heinrich Rickert in particular. They reject a naïve historicism that admits only temporal entities and insist on the existence of a super-temporal dimension of values. On their account, only objective values make temporal events intelligible. Thus, a super-temporal dimension of values is the condition of possibility of the historical sciences. However, as Otaka objects, there must be something *actual* that endures temporal processes, if we are to speak of history in the first place. The Baden Neo-Kantians cannot accommodate this because they conceive of values as *merely* ideal entities, lacking actuality in the required sense.

Historicity is not a matter of states in particular but of social groups in general. For Otaka, however, states are historical in a unique sense because they are, as explicated above, complex social entities comprised of more than one aspect. The state has at least two essential aspects because it is a *social* group organized by its *legal* system. Each aspect of the state may experience historical change. However, even if, for example, the legal system of a state radically changes (as Japan experienced after World War II), the identity of the state *may* be uninterrupted. That is why such a change in a legal system can be described as a historical change *of one and the same state*, not as a transformation of a state into another. (This observation seems to be one of the motivations for Otaka to oppose Kelsen's identification of the state with the law. See Sect. 15.3.2.1.) This means that a state is not only an identical bearer of changes on the level of factual social relations, but also a bearer of changes of higher-order spiritual entities like legal systems. In this regard, Otaka says that, of all spiritual entities, "the state is a historical entity in the most conspicuous way" (Otaka 1936, p. 273).

15.5.4   The Identity of Actual States

As social relations and legal systems change, the content of a state as a spiritual entity itself changes. This may be regarded as a historical change of a single state insofar as the identity of the state is meaningfully sustained. The identity of the state is the identity of its meaning. "It is the meaning of the group entity […] that constitutes the core of the state as a spiritual entity" (Otaka 1936, p. 372). If a state changes its core meaning, then it becomes another state.

Then, what is the core meaning of the state? Otaka gives no direct answer to this question. He only offers insufficient characterizations of the meaning of spiritual entities in general: The meaning of a complex spiritual entity as a whole is irreducible to the sum of the meanings of its parts (cf. Otaka 1936, pp. 121–2), and it is given to us "through meaningful intuition" (Otaka 1936, p. 105).

Otaka's characterization of states as complex spiritual entities implies that the core meaning of a given state is always complex. He would probably say that the meaning of a particular state is so complex that it cannot be described linguistically. It can only be grasped by "intuition." If this is true, we can hardly argue about the identity condition of states in a fruitful way. How can we settle a disagreement, if two persons disagree with each other on whether a given state remains one and the same after a certain drastic change in its legal or political system? We do not find a clear answer to this question in Otaka's writings, and this seems to be a serious shortcoming. Otaka himself is aware of this. He writes in a footnote, "the description of historical changes of states I have given in this section (Otaka 1936, 374–9) is very sketchy and deficient. I must reserve the detail for *Theory of the Function of States* (*Kokka-Kinô Ron*)" (Otaka 1936, p. 379n1). Here, he mentions the work to follow his 1936 book, which he never wrote. In any event, our observation that there is an explanatory gap in his account of the identity of actual states results in a dilemma. This dilemma is the final topic of the present chapter.

15.6   A Dilemma in Otaka's Account and a Potential Way Out

So far, we have focused on the overall structure of Otaka's account of how social groups, especially states, can be actual as well as ideal. In this section, we shall critically evaluate his account. In our view, Otaka's explication of the actuality of states and other social groups, probably unknowingly, faces a dilemma. He has either to adopt an implausible idea or to make his account non-phenomenological (by his standards). After showing how this dilemma arises out of what Otaka says explicitly about his account, we will propose a potential way out.

As we pointed out above, in Sect. 15.3.2.2, Otaka's position is unique in the discussions of social reality among phenomenologists because it allies with Husserl's transcendental phenomenology. Otaka provides the constitutive analysis of states and other social groups in a fairly Husserlian manner. He thereby introduces the notion of supersensible or meaningful intuition in which states and other social groups are constituted or originally given. His idea is this: The actuality of a social group is correlated with the correctness of an act of judgement about the social group; the act of judgement is correct if it is (or can be) fulfilled by an act of meaningfully intuiting the core meaning of the social group in question.

The problem, then, is that the very idea of supersensible or meaningful intuition is not as plausible as Otaka takes it to be. As we have just pointed out in Sect. 15.5.4, supersensible or meaningful intuition does not seem to help us clarify the core meaning of a state. In addition, the idea of supersensible or meaningful intuition does not seem well grounded in the first place. Otaka argues for his idea on the basis of the observation that perceptual experience is something more than merely receiving sensible qualities (see Sect. 15.4.2). According to him, when I am seeing, say, an apple in front of me, the meaning *apple*, as well as redness, roundness, and so on, in a certain spatio-temporal constellation, is given to me in my perceptual experience. This might be true. However, even if it is, it seems that Otaka overestimates the implications of what he has shown. Does the givenness of meaning in perceptual experience warrant belief in the supersensible intuition of meanings (or meaning-like entities) in a broader sense, including states and other social groups? Here, we find a crucial gap in Otaka's argumentation. Given the absence of more detailed discussion of supersensible or meaningful intuition in his writings, we can judge that his account rests on a *prima facie* implausible and poorly grounded idea. It might be the case that Otaka's notion of supersensible or meaningful intuition is in fact more plausible, but, to show this, one must at least offer an argument that gets rid of the *prima facie* implausibility.

What is notable here is that the observed flaw in the discussion of supersensible or meaningful intuition does not immediately spoil the most interesting part of Otaka's account. As we have seen in Sects. 15.4.3.3 and 15.4.3.4, according to Otaka, a social group is actual only if there are social relations that underlie the social group in an appropriate way; this is further explicated in terms of the foundations of actuality and meaningfulness. Since he locates social relations and their components (namely, social actions) in the realm of spirit as an *objective* or intersubjective realm, his account by means of the two types of foundation is detachable from his discussion of supersensible or meaningful intuition. In other words, one can ignore the constitutive-analytical part of Otaka's account, which is less than plausible, and convert it into a variant of the realist ontology of social entities *à la* Reinach and others. This is, however, obviously *not* a solution available for Otaka. For him, as well as for his master, ontology must be grounded in the phenomenological analysis of constitution (see Sect. 15.3.2.2). Remember, Otaka claims that Reinach and others fail to be phenomenological because they ignore the importance of constitutive analysis.

In this way, Otaka faces a dilemma. On the one hand, if he sticks to the project of constitutive analysis, his account of the actuality of social groups is implausible. On the other hand, if he were to adopt a solely ontological account by extricating the implausible portion of his analysis, it would make his position *non*-phenomenological by his own Husserlian standards. Whether or not he is well aware of this dilemma, we do not find any solution to it in his writings.

In light of today's Husserlian scholarship, however, we can suggest a fitting way out of the dilemma for Otaka. There is an aspect of Husserl's project of constitutive analysis that Otaka seems to fail to recognize. While Otaka takes his project, inherited from his master, to be solely *epistemological*, Husserl himself does not always confine himself to the problem of knowledge or the correctness of judgement when discussing the constitution of varieties of objects. In dealing with practical and axiological reason in the *Ideen I*, he talks about evidence in volitional and emotional experiences, which is somewhat parallel to evidence in theoretical or doxastic experience (cf. Husserl 1976a, p. 323; see also pp. 278–281 [Husserl 1983, pp. 335, 288–290] and Husserl 1987, p. 48). On this idea, the actuality of a *practical* object, for instance of an action [*Handlung*], would be correlated with a volitional experience called acting [*Handeln*] that fulfills the empty volitional intention involved in a (possible) prior decision to perform the action.[36] In addition, Husserl would likely hold that the actuality of states is to be analyzed in a way that is similar to his analysis of the actuality of actions as practical objects. When he talks about the task of analyzing how states and other objects of a similar sort are constituted, he counts them as value objects, practical objects or concrete cultural formations [*Kulturgebilde*] (cf. Husserl 1976a, p. 354, Husserl 1983, p. 365).

With this understanding in mind, we may now propose an alternative constitutive analysis of social groups, one which is free from the aforementioned dilemma. According to Otaka, social actions, which comprise social relations, have their own experiential dimension (see Sect. 15.4.3.4). At least typically, they involve the relevant subjects' conscious experiences. If Otaka were to admit that such an experience plays the role of an originally giving act for social actions, and thus for the social relation as a complex of such actions, he would be able to provide something similar to Husserl's constitutive analysis of actions without appealing to the implausible notion of supersensible or meaningful intuition. The alternative analysis may be illustrated as follows (Diagram 15.3).

It seems possible to understand the relation between the act of meaning-building and the experience involved in social action (or *social experience*) as a variant of the previously mentioned fulfilling relation in the Husserlian sense. For, there is a sense in which an empty intention in the act of meaning-building is fulfilled by a social

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[36] Husserl's most extensive analyses of the correlation between action and acting are found in his research manuscripts to which Otaka, almost certainly, had no access. (It might be the case that he heard something about the topic personally from Husserl, but there is not even the slightest textual support for such a speculation.) Probably, this is one of the reasons why Otaka fails to pay attention to short and passing remarks on the topic in the *Ideen I*. For more on Husserl's discussion in those manuscripts (to be collected in the third volume of the *Studien zur Struktur des Bewusstseins* from *Husserliana*), see Melle (1997) and Uemura (2015, pp. 123–127).
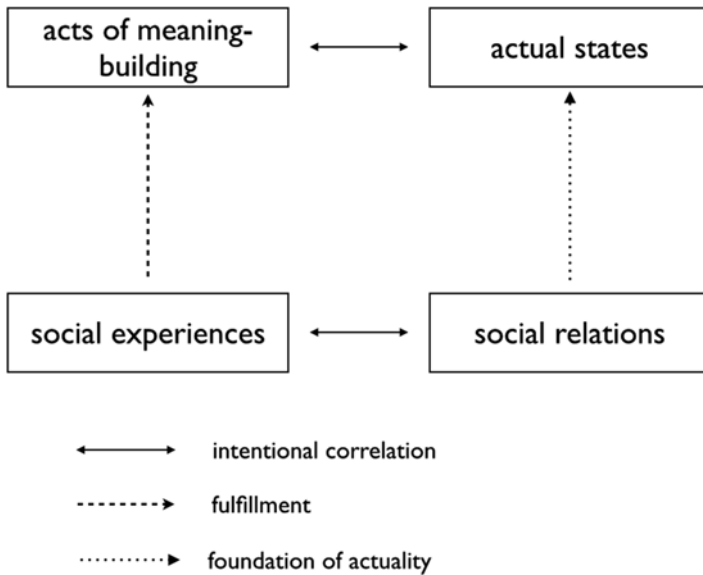
Diagram 15.3 The alternative analysis of actual states

experience. Thus, according to the above scheme, the actuality of a social group is constituted in a manifold of social experiences which, perhaps collectively, fulfill the acts of meaning-building that create or have created the social group *qua* its ideality. Understood in this way, the condition under which we judge something about a social group with evidence is no longer at stake. Instead of inquiring after such *epistemological* conditions, we have now to ask after the *social-practical* conditions under which a social group gains and/or maintains its actuality.

15.7 Concluding Remarks

Since, to reiterate, Otaka is most likely unaware of the dilemma his account faces, it is a task for future research to further elaborate the analysis of social groups according to the alternative scheme that we just introduced, albeit in a very crude way. Pursuing such a project in detail is, needless to say, far beyond our aim here. In closing this chapter, therefore, we shall briefly make three points, the first two regard future tasks for this project, and the third concerns a problem that the project will certainly encounter.

First, in order to cash out the project, we must provide an appropriate analysis of acts of meaning-building. As we have already pointed out, there must be various types of such acts. The question, then, is this: Which types of acts are correlated with social groups *qua* being ideal? What are the characteristics of that type of meaning-building? A taxonomy of meaning-building appears necessary in order to answer these questions.

Second, the project calls for us to provide detailed analyses of social experiences and their correlation with social actions/relations. On the one hand, we must describe and classify social experiences from a phenomenological point of view. There must be various kinds of social experience that correlate with the different varieties of social relations, and each is in need of phenomenological description. For this part of the task, Otaka leaves a clue for us to follow. In discussing social experience, he cites works of Scheler (1923), Pfänder (1922) and Walther (1923) respectively (cf. Otaka 1932, pp. 143–144). Marshalling phenomenological descriptions of social experiences in those works will, therefore, be the first task toward elaborating the proposed alternative scheme. On the other hand, the nature of the "correlation" here must be pinned down because the correlative structure at work here is, perhaps, quite different from the one between perceptual experiences and physical things. In the former, unlike cases of the latter, there is a sense in which Otaka is correct in claiming that social experiences (in his words, "we-experiences [*Wir-Erlebnisse*]" or "consciousness of membership") are "objectified" in social relations (cf. Otaka 1932, p. 143). Unfortunately, however, he does not explain what such an objectification amounts to. Perhaps Reinach's theory of social acts and social formations as their products, on which we observed Otaka's account implicitly rests, will be the starting point for this task.

Third, adopting the alternative scheme would lead to a difficult problem concerning the status and role of the realm of spirit [*Geist*]. As we have pointed out, Otaka does not hesitate to characterize the spiritual realm as part of the objective, or inter-subjective, world. Spirit is, according to him, definitely something *constituted*. But, if we are to admit that social experiences, namely experiences involved in social actions/relations, play a role as *constituting* experiences, then we would have to locate them in the *opposite* side of the realm. This is just to say that they are located on the constituting, not the constituted, side of consciousness. Not every aspect of the spiritual realm would then be objective in the intended sense. What does it mean, however, that one and the same realm of spirit has two totally different and seemingly incompatible roles, that it is both constituted and constituting? Here we find a problem that stands in close relation to Husserl's *paradox of subjectivity* that "human beings are subjects for the world […] and at the same time are objects in this world" (Husserl 1976b, 184). Indeed, one may well think that such a consequence is a good sign because it shows how the project in question coincides with Husserl's. Apart from that, however, the problem presents a heavy burden for future scholarship.

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