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LEGITIMACY LOST: ACCOUNTANCY'S PREDICAMENT

PIETER BUYS*

ABSTRACT. The objectives and purpose of accounting theory as being promulgated by key global accounting regulators seem to downplay accounting's stewardship function in favour of providing information to specific categories of user-groups. The Metatheoretical assumptions upon which modern-day accounting theory is based, especially seen against the ethical failures of recent corporate history and accounting's role therein, raise several philosophical questions regarding the legitimacy of 21st century accountancy. In this article I will reflect upon on four key issues in respect of accounting theory, namely i) key ethical aspects, ii) a philosophical foundation, iii) the value concept and iv) decision-usefulness, as pertaining to the legitimacy of accounting in order to re-focus the paradigm context of the accounting sciences of the modern era.

Keywords: Accounting theory, accounting philosophy, business ethics, value concept, decision-usefulness

1. Introduction

At the start of the 21st century, the accounting profession is faced with many pressures. These include corporate pressures to present the best possible operational and financial performances^{1 2}, the global convergence efforts of accounting regulations³, not to mention the high profile media exposures of recent corporate scandals and accounting's role therein⁴. A key objective of accounting is to facilitate the translation of a company's operational performances into financial reports^{5 6}. Modern companies, however, operate in an uncertain and complex business environment

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¹ IFAC, The roles and domain of the professional accountant in business, IFAC, November 2005.

² Cokins, G., Activity-based cost management: An executive's guide. New York: John Wiley, 2001, 374p.

³ IASB, A Roadmap for convergence between IFRSs and US GAAP – 2006 – 2008: Memorandum of understanding between the FASB and the IASB. February, 27. <http://www.iasb.org/NR/rdonlyres/874B63FB-56DB-4B78-B7AF-49BBA18C98D9/0/MoU.pdf>. Date of access: October 28, 2007.

⁴ Parker, L.D., Financial and external reporting research: the broadening corporate governance challenge, *Accounting and Business Research*, 37(1)/2007, pp.39-54.

⁵ Sundem, G.L., A note on the information perspective and the conceptual framework. (In Antle, R., Gjestal, F. & Liang, P.J. ed., *Essays in accounting theory in honour of Joel S. Demski*. New York: Springer Science and Business Media. 2007, pp. 285–292.).

⁶ Damant, D., Discussion of International Financial Reporting Standards (IFRS): pros and cons for investors. *Accounting and business research: International policy forum*, 2006, pp. 29–30.

where they are under constant pressure to create value, while containing their costs and at the same time also adhering to many social responsibility requirements. Furthermore, the practice-driven focus of much in accounting education, the prescriptive role of non-university institutions in the content of the accounting syllabus^{7 8}, and the somewhat dictatorial accounting regulators promulgating their version of what should pass as accounting theory, often detract from the core objective of accounting. This, in turn, often results in not only the questioning of accounting information's reliability and relevance, but also of accounting's claim as being a *scientific* discipline⁹. The philosophy of science can be defined as the investigation of questions that arise from reflection upon science and scientific practice^{10 11}. The current state of the accounting discipline however, confronts us with quite a dilemma, especially when having to judge the usefulness of a philosophical approach within the context of accountants working in the modern business environment. Accounting academics often comment that because of the pace of developments in the profession, there is just no time for reflection on accounting.

Even though accounting scholars have long been trying to make accounting more scientific, this goal may be unachievable without overcoming the parochialism that dominates it¹². This narrowness of view is clear when considering the focus on accounting *rules* and the emphasis on *profit*, which may contribute to the low grasp of its place in the social sciences.

2. Accounting context

As a point of departure, one needs to define accounting within the context of this article. As mentioned, accounting information can be seen as the financial translation of the results of the organisation's performance. To put this "translation" in perspective, *accounting* refers to the work done in keeping financial records, while *accountancy* refers to the practice or profession of an accountant¹³. Accounting, as a business application, encompasses two general branches. Firstly, *financial accounting* is the practice of preparing and reporting accounting information for parties outside the organisation. Secondly, *management accounting* has an internal user focus in support of management's task in striving for the effective use of organisational

⁷ Fellingham, J.C., Is accounting an academic discipline? *Accounting Horizons*, 21(2)/June 2007, pp. 159-163.

⁸ Demski, J.S., Is accounting an academic discipline? *Accounting Horizons*, 21(2)/June 2007, pp. 153-157.

⁹ Cluskey, G.R., Ehlen, C.R. & Rivers, R., Accounting theory: Missing in action, *Management Accounting Quarterly*, 8(2)/2008, pp. 24-31.

¹⁰ Cambridge Dictionary of Philosophy (2nd ed), Cambridge: Cambridge University Press, 2005, 1001 p.

¹¹ Oxford Dictionary of Philosophy. Oxford: Oxford University Press. 1994, 408p

¹² Mattesich, R., Accounting research and researchers of the nineteenth century and the beginning of the twentieth century: an international survey of authors, ideas and publications, *Accounting, Business and Financial History*, July 2003, pp. 125-170.

¹³ CIMA Dictionary of Finance and Accounting, London: Bloomsbury Publishing, 2003, 310 p.

resources¹⁴ ¹⁵. Furthermore, whereas the application of management accounting techniques is relatively *non-standardised*, financial accounting is subject to multiple accounting *rules* (or principles), which are encompassed in the so-called accounting standards, such as those of the IASB's IFRS Statements or the FASB's US GAAP. This article's focus is perhaps more on the *financial accounting* aspect of accounting.

3. Methodology and problem definition

Considering the above, the question of whether modern-day accounting theory is a legitimate scientific discipline with a valid role to play in the social sciences comes to mind. Following initial research (and perhaps some general perceptions), this discussion's hypothesis assumes that accounting is not a legitimate social science and as such it is likely to fail in providing valid support to the practical requirements of the modern business environment.

Some of the key Metatheoretical assumptions upon which current day accounting theory seems to be based, include the following:

- Accounting is considered a business performance measurement technique aiming to reflect some kind of reality;
- A fundamental objective of accounting is to achieve optimum utility for the users of accounting information; and
- Based on the rational behaviour of markets and individuals, financial models populated with accounting information have predictive abilities.

However, when considering these 'accounting assumptions' and the 'accounting reality', the ontological stance of this article is that there is something amiss in accounting epistemology. We therefore aim to challenge some of accounting's Metatheoretical assumptions and to re-focus the paradigm perspective of what gets promulgated as accounting theory, and therefore also the paradigm of accounting education and research, in order to better reflect the true purpose of accounting and its function in the social sciences.

In light of this lacuna between these assumptions and the reality, it becomes important to identify and reflect on certain foundational accounting issues that may serve to address the above question. The remaining discussion will therefore focus on the following four issues. Consideration is firstly given to some key ethical aspects related to the profession, secondly a philosophical foundation upon which accounting theory may be based, thirdly the concept of value in an accounting context and fourthly accounting's decision-usefulness objective as specified by global accounting regulators, after which a short concluding discussion will follow.

¹⁴ Horngren, C.T., Datar, S.M., Foster, G., Rajan, M.V. & Ittner, C., Cost accounting – a managerial emphasis (13th ed.). Upper Saddle River: Pearson/Prentice Hall, 2009, 896p.

¹⁵ Correia, C., Langfield-Smith, K., Thorne, H. & Hilton, R.W. 2008. Management accounting: Information for managing and creating value. London: McGraw-Hill, 2008, 1210 p.

4. Legitimacy aspects under consideration

4.1. Ethical accounting conduct

The first issue to be considered is that of ethical accounting conduct. The question can be asked as to what some of the key ethical considerations in accounting are, and to what extent does it impact on accountancy.

Historically, accountancy was seen as fulfilling a stewardship function and even though key global regulators' most recently stated accounting objectives seem to downplay this function, ethical conduct remains a crucial aspect of the discipline and many accounting institutes continue to require adherence to *codes of professional conduct*, which are typically based on the following pillars^{16 17}:

- **Integrity**, which requires unquestionable honesty, determination and sincerity;
- **Competency**, which requires adequate technical skills;
- **Objectivity**, which requires professional impartiality; and
- **Confidentiality**, which requires abstaining from using information obtained during the fulfilment of professional duties for personal gain.

The aim of these codes of conduct is merely the provision of a framework of ethical accounting behaviour. The reality is that in the modern secular society, personal experiences and training are often more formative in the interpretation of this framework; not so much the historical influences of family and personal belief systems any more. When considering the above pillars of professional conduct individually, only *integrity* reflects directly on the human nature. As such, it may be argued that a lack in personal integrity may be a key contributing factor to failures in the other three pillars.

The concept of business ethics refers to the ethical values that determine the interaction between a company and its stakeholders. Ethical accountancy guidelines would therefore require an accountant to refrain from dealings that may damage the profession's reputation, but also impacts on the individual accountant as well as all other related stakeholders. There are two discernable and basic ethical approaches namely formalism and consequentialism, the latter which includes utilitarianism^{18 19}. The concept of formalism is seen as the strict observance of form, or the adherence to rules and laws. In contrast, utilitarianism is a unique form

¹⁶ AICPA, Code of professional conduct. <http://www.aicpa.org/About/code/index.html>. Date of access: July 24, 2009.

¹⁷ ICAEW. ICAEW Members' handbook: Section 3: Code of ethics. http://www.icaew.com/index.cfm/route/162804/icaew_ga/Members/Member_support/Professional_conduct/Members_handbook/3_2_Members_handbook_2009/pdf. Date of access: July 25, 2009.

¹⁸ Sellers, B.G. & Arrigo, B.A., Adolescent transfer, developmental maturity, and adjudicative competence: An ethical and justice policy inquiry, *The journal of criminal law & criminology*, 99(2)/2009, pp. 435-487.

¹⁹ Shao, R., Aquino, K. & Freeman, D., Beyond moral reasoning: A review of moral identity research and its implications for business ethics, *Business ethics quarterly*, 18(4)/2008, pp. 513-540.

of consequentialism in the sense of it being altruistic and based on the belief that the overall guiding principle of behaviour should aim to achieve the greatest happiness for the majority¹⁹. Ethical accounting conduct as per the above pillars can therefore be seen as embracing both these extremes. On the one hand there are the *behavioural directives* (formalism) that is embodied in the specific rules of the conduct codes, while on the other hand there are the *behavioural commitments* (utilitarianism) that is embodied in the spirit of these conduct codes.

Therefore, in respect of the issue of ethical accounting conduct, it should be understood that basic principles, such as fairness, balance and consideration, must remain fundamental to accounting, and are essential in supporting the professional conduct requirements of integrity, competency, objectivity and confidentiality. It must also be remembered however, that even though an ethical code of conduct aims to meet the above principles, the human condition will in all likelihood always be tempted by its own weaknesses, and that no code of conduct will always be able to prevent the shortcomings in human nature.

4.2. Philosophical foundation of accounting

The second legitimacy issue to be considered is the ambiguity in grasping the primary purpose of accounting. The question can be asked whether it is possible to define a legitimate accounting philosophy.

Accounting theory is confronted with many relative values, which are to be reported in the various components of the financial statements. Financial reporting aims to provide information about an entity's financial performance^{20 21}, of which the accounting system provides a recorded history. There are two basic schools of thought in accounting theory:

- ***Value school of thought***, which is based on how well accounting approximates the value of the wealth items^{21 22}. The question remains however, as to what value actually means, let alone how to measure it.
- ***Information school of thought***, which focusses on measuring and disclosing business events and the disclosure and communication of such information²³²⁴. The multi-dimensional nature of business entities however, makes it difficult to evaluate effective information communication.

The modern business environment places big demands on accounting information to support business decision-making. Even though an important objective of accounting's conceptual framework is to guide accounting practice, it also

²⁰ Sundem, G.L.

²¹ Damant, D.

²² Schroeder, R.G., Clark, M.W. & Cathey, J.M., Financial accounting theory and analysis (8th ed). New Jersey: Wiley. 2005, 598p.

²³ Sundem, G.L.

²⁴ Schroeder, R.G., Clark, M.W. & Cathey, J.M.

became the basis upon which the regulatory accounting bodies based their versions of accounting theory. This framework is significant in accounting, since it encompasses the conventions and rules that define the acceptable accounting practices of the time²⁵, and any particular practice must have substantial authoritative support before it would be accepted as GAAP. Many scholars, however, have an issue with presenting accounting theory as a framework based on practices^{26 27}.

We argue that a proper realisation of the purpose of accounting would be in its capability to support proper conclusions regarding the company's performances. The ideal guide on which to formulate a legitimate accounting philosophy would acknowledge that accounting is a key component of all the economical aspects of a business entity and yet, while **this** entity is an integrated part of society, it remains an economic entity in its own right. In defining a fundamental accounting philosophy, there are three essential objectives to which basic accounting theory should point. Firstly, it must be acknowledge the fact that the primary purpose to be achieved by the recording and collecting of the accounting data is the reporting of the *economic events incurred* during the company's business operations; secondly, accounting must provide *useful and comparable information* about the company's economic events that would enable all the users to gauge the company's performances in order to assist in meeting their individual requirements for their own unique decision-making purposes; and finally, it should also facilitate the *understanding of the business decisions* made upon such information.

4.3. The concept of value in accounting

Building further on key aspects developed in the preceding sections, the issue of *value* comes to the fore. This third legitimacy issue delves a little deeper into the meaning of value in order to shed some light on this complex concept. Accounting is confronted with the phenomenon of relative values²⁸, and in the reality of the modern business environment with its many diverse rules and objectives, there is no clear way of knowing whose (or even what) values are reliable or what these values actually present. Even though conventional accounting and financial reporting is based on historical cost accounting, there is a global move to introduce fair value accounting^{29 30}. Under the historical cost approach, the actual historical cost incurred for an item is reported, while under the fair value approach the

²⁵ Epstein, B.J., Nach, R. & Bragg, S.M., GAAP 2006: Interpretation and application of generally accepted accounting principles. New Jersey: John Wiley and Sons. 2005, 1177 p.

²⁶ Demski, J.S.

²⁷ Fellingham, J.C.

²⁸ Mattesich, R.

²⁹ Ronen, J., To fair value or not to fair value: A broader perspective, *Abacus*, 44(2)/2008, pp. 181-208.

³⁰ Christensen, J. & Frimor, H., Fair value, accounting aggregation and multiple sources of information. (In Antle, R., Gjestal, F. & Liang, P.J. ed. *Essays in accounting theory in honour of Joel S. Demski*. New York: Springer Science and Business Media, 2007, pp. 35-51).

reported amount is approximated by some kind of financial modelling^{31 32}, thus removing the direct link between what was paid for an item and the value being attributed to such item. It was mentioned that the effectiveness of different accounting techniques is often judged on its ability to approximate the value of items and transactions. However, the problem is what does *value* mean and how should it be measured.

In reflecting on the value concept, both quantitative and qualitative value aspects should be considered.

- ***Qualitative value perspectives:*** As stated earlier, ethical accounting behaviour is more than just a mere adherence to rules and regulations. It becomes the application of ethics in a business context so that the business activities are acceptable in society. The stewardship function is a bit of a contentious issue in current-day accounting with its importance being downplayed in the latest FASB and IASB promulgated accounting objectives. The focus instead seems to be on accounting's support of the capital providers – which is just one user class in a multitude of potential user classes^{33 34}. Stewardship however, as a concept that encompasses ethical and moral values, must remain central to accountancy, because it plays an important role in not only the recording and reporting of resource consumption, but also in how created wealth gets distributed. The concept of value in accounting should therefore not only focus on resources, numbers or individual organisations, but should take on a holistic corporate *social responsibility* approach. Such a responsible stewardship approach belongs to the entire human race, and individual ownership *per se* should be subservient to the overall stewardship role.
- ***Quantitative value perspectives:*** Since a key objective of accounting is seen as the financial translation of organisational performances, the quantified accounting information should be disclosed in such a manner that the financial statements are relevant, reliable and comparable. However, *how* this information is quantified (or valued), will have an impact on this relevancy, reliability and comparability. In a basic sense, value can be seen as some kind of judgment of scarcity and desiredness. These judgments, however, can be described from various perspectives, including the purpose and process of the valuation. Even though there is a move to introduce value-

³¹ Reis, R.F. & Stocken, P.C., Strategic consequences of historical cost and fair value measurements, *Contemporary Accounting Research*, 24(2)/2007, pp. 557-584.

³² Perry, J. & Nölke, A., The political economy of international accounting standards, *Review of International Political Economy*, 13(4)/ October 2006, pp. 599-586.

³³ Young, A.A., Some limitations of the value concept, *The Quarterly Journal of Economics*, 25/May 2008, pp. 409-428.

³⁴ Williams, P., Rethinking decision usefulness. (A paper read at the 9th Interdisciplinary Perspectives on Accounting conference held in Innsbruck, Austria), 2009.

based measurement and reporting techniques, there are also concerns about the subjectivity and non-consistency inherent to such value-based techniques^{35 36 37}. Notwithstanding the debate on whether historic cost principles or value-based principles are better or not, accounting should remain focussed on the relevancy, reliability and comparability aspects of the reported accounting information. Accounting should remain true to its primary purpose of reporting business *facts*, not *fiction*.

4.4 Decision-usefulness as accounting objective

The fourth legitimacy issue to be considered is that of the decision-usefulness objective of financial statements, and then especially such usefulness for investors and credit providers as suggested by key regulators. The capital providers as a user group, are being accorded so much importance by the accounting regulators that a principal function of the financial statements has become the provision of information that is useful primarily to this user category^{38 39}. Even though the concept of decision-usefulness has been a criterion for the determination of accounting policy and defining accounting research for the past four decades or so, there has been some resistance to such a concept as a key accounting and financial reporting objective. As far back as 1964, more than 60% of respondents to the FASB's discussion memorandum on the objectives of accounting opposed adopting the provision of information for economic decision-making as an accounting objective^{40 41}. An emphasis on this pragmatic aspect for accounting requires answering *to whom* the information is to be useful for, and *for what* purpose it is suppose to be useful for. This is where the danger lies because it can become easy to get trapped into defining accounting theory and formulating its postulates and principles in terms of some special interest group.

The question is therefore whether decision-usefulness as a key accounting objective, is as straightforward and unquestionable a way to organise the intellectual and policy-making aspects of accounting as it initially seemed to be. Indistinct allusions to the *usefulness* of accounting information however, are valueless without clarity on the type of utility being sought. This discussion reflects on the relevancy of the decision-usefulness objective from two perspectives:

³⁵ Boyles, J., Fair value accounting: Are you ready? *Strategic Finance*, August 2008, pp. 29-32.

³⁶ Krumwiede, T., Why historical cost accounting makes sense, *Strategic Finance*, August 2008, pp. 33-39.

³⁷ Ryan, S.G., Accounting in and for the subprime crisis, *The Accounting Review*, 83(6)/November 2008, pp. 1605-1638.

³⁸ Williams, P.

³⁹ Young, A.A.

⁴⁰ Schuetze, W.P., Accounting developments. *Journal of Accounting, Auditing and Finance*, 6(3)/1983, pp. 254-262.

⁴¹ Armstrong, M., The politics of establishing accounting standards, *Journal of Accountancy*, 143(2)/1977, p. 76-79.

- Firstly, with specific reference to accounting's decision-usefulness, the associated concepts of *utility* and *ophelimity* are considered. Utility is seen as being able to be used for a practical purpose^{42 43}, with social utility then referring to something contributing to the development of an individual, a population group or even the entire human race. However, when considering the exclusivity of the decision-usefulness objective as it is currently being put forward, it may be argued that the regulators are not really addressing social utility, but rather individual ophelimity. In contrast to utility, ophelimity refers to subjective, individually-based and ordinal economic gratification^{44 45}. It is doubtful that neither accountants nor the regulators, possess either the linguistic or conceptual capabilities to distinguish between social welfare (utility) and individual ophelimity. It may therefore also be argued that *modern accounting theory* is founded on seemingly different concepts, claiming to promote utility, but instead striving for the ophelimity of a specific user class.
- Secondly, the quantification of accounting data and its predictive abilities are now considered. In respect of the question of the *quantification* it is argued that the accounting information presented in financial statements are not representative of an actual real quantity that exists somewhere in reality, but is rather the result of summarising and estimating techniques aiming to provide a window on a more complex qualitative situation. Accounting should therefore only be seen as a measurement activity in the sense of providing a rough estimate of the reality. In respect of its *predictive abilities*, it is unlikely to possess any real predictive ability because of two reasons. On the one hand, the many different users of the information have different objectives in mind when they use the data and do so against different backgrounds. Therefore, no single set of financial information in a specific format would be able to meet the unique individual requirements of users, even within the single group of 'capital providers'. On the other hand, the market actions that the financial statements and accounting information are supposed to help in predict, operate in such a complex and dynamic environment, with so many variables and divergent market forces, that it may very well become an impossibility to claim any kind of predictive ability.

The decision-usefulness criteria however, cannot outrightly be rejected, but we rather argue against a vacuous concept of *decision-usefulness*, devoid of

⁴² Williams, P.

⁴³ Livingstone, C., ed., Oxford mini dictionary and thesaurus, Oxford: Oxford University Press. 2008, 722 p.

⁴⁴ Sen, A.K., The possibility of social choice, *Economic Sciences*, 178-206. (Nobel lecture at Trinity College, Cambridge, CB2 1TQ, Great Britain on December 8, 1998)

⁴⁵ Cooter, R. & Rappaport, P., Were the ordinalists wrong about welfare economics? *Journal of Economic Literature*, XXII/1984, pp. 507-530.

substantive significance. It is suggested that the idea of *judgment* usefulness in respect of accounting information's support to the users thereof, should rather be presented.

5. Conclusion

Notwithstanding the searches for a true accounting theory, the debates around which accounting techniques are better, or even who the real users of the accounting information and the associated financial reports are, the overall conclusion is that accounting and the manner in which it is practiced, has a definite impact on human society. Accounting should therefore be considered as a legitimate social science, since it is based on sound scientific concepts and as such it should also be able to provide support to the practical requirements of the business environment. The hypothesis as stated earlier is therefore rejected. This rejection is based on the following arguments.

Firstly, in light of the discussed legitimacy issues, it becomes important to acknowledge the interdependency between philosophy and accounting. Accountants should not be averse to philosophise about accounting – in fact it may be better for accountants to turn to philosophy in attempting to work out the basic theories of accounting, than it would be for philosophers to turn to accounting. Learning about accounting and philosophy in tandem is better than learning about them independently⁴⁶, as accounting offers a context in which the quintessence of philosophy may be materialised. The learning of this essence forces us to ignore meaningless words by way of a reality check and stop us from becoming dilettantes taking up the profession for mere *amusement*.

Secondly, accounting can only be considered a science if it acknowledges its place in the broader scientific world, which in the first place supposes its own feasibility studies, and secondly at least obeys the rules of logic. Furthermore, being classified as a science certainly also implies that it is directed and led by a certain regulative idea about the reality. When considering the principles upon which the conceptual framework is based, and the logical and reality-based processes followed by the regulators in developing and promulgating it, flawed as some of it might be, it is clear that there is at least some scientific process and reasoning behind it.

Thirdly, accounting is in a difficult position in that the requirements of practice have a major impact on how it is taught, how its theories are formulated and also how and what is researched. However, there are fundamental assumptions in accounting, and its place in the greater socio-economical environment, that have to be considered. Accounting is more than the mere 'book-keeping' of business events, or the application of accounting standards. The profession is widely recognised as a

⁴⁶ Demski, J.S., Fellingham, J.C., Ijiri, Y. & Sunder, S., Some thoughts on the intellectual foundations of accounting, *Accounting horizons*, 16(2)/June 2002, pp.157-168.

key contributor to many aspects of the global *economy*, with many and far-reaching influences on human *society* and the global *environment*, and as such an integrated role player in the so-called *triple bottom line*. Therefore, because of this integrated nature and impact of accounting on society and the environment, one cannot deny accounting its rightful place in the social sciences.

Finally, as in any profession failures also occur in accounting. When such failures do occur, they should not be ignored. Instead they should be analyzed and corrected in an attempt to prevent it from re-occurring. In conclusion therefore, when looking back at the four key issues addressed, the following should be noted.

- Ethics and ethical behaviour, in some form or another, play a crucial role in accountancy, just like in all other scientific disciplines. Just because there are instances of ethical failures does not take away the legitimacy of accounting's scientific foundation.
- Even though many accountants and accounting academics get bogged down in the detail of accounting principles and its interpretation, and because of that they often lose perspective, does not mean that the true foundations upon which accounting is built, are any less legitimate.
- It is acknowledged that many users of accounting information often put more trust in the accounting values than what it is entitled to. However, if it is understood that these values merely serve as an indication of a complex state of affairs, and cannot claim to reflect any exact values, basic accounting theory remains legitimate.
- Finally, perhaps the biggest current argument against the legitimacy of accounting theory is its current decision-usefulness objective and its predictive abilities. There are just too many complex variables impacting on the information and the users thereof, that any claim of decision-usefulness (even for an exclusive and precisely defined user group) is nonsensical.

6. Limitations

Perhaps a key limitation of many reflective and philosophical studies is the fact that often a definite answer to a problem is not found. However, this is not *per se* the reason why such studies are undertaken. Instead it serves to place current day issues in the context of the *big picture* and to get at least some debate going, which may lead to better and more informed decisions.

A further limitation in undertaking reflective studies in a typically quantified discipline such as accounting is the fact that the objectivity of the disclosed financial numbers, the quantitative techniques and the statistical analysis are lost. In such instances, there is more room for subjectivity and bias to raise its head. Any reader of such studies should in turn take cognisance of such possibilities. Although every

effort has been made to remain as objective as possible in this article's reflections on the issues at hand, the researcher remains human. As such, personal beliefs, opinions and bias, may be present.

7. Future research

As far as future reflective research opportunities in accounting are concerned, the following may serve as a guide in formulating such research problems:

In respect of ethics in accounting, a philosophical reflection in the context of the *conflict of obligation or commitment* can be undertaken. The answer to ethical conflict situations where there is a clear right or wrong (or even a clear legal or illegal) answer, should be very easy to answer. However, in many instances there are right versus right issues where legitimate opposing sides or stakeholders are in conflict, both of which may have legitimate and ethical claims.

Furthermore, it was indicated that accounting is a very broad and diverse discipline encompassing areas such as financial accounting, management accounting, financial management as well auditing and internal control. Each of these areas in itself could warrant a reflective study aiming to individuate the deeper foundations of the each focus area's system of thought.

Finally, there is a close relationship between the *philosophical* foundations and the *historical* foundations of accounting. The age when Luca Pacioli documented the double entry booking keeping system, was also the age of many great philosophers, such as Albertus Magnus, Thomas Aquinas, Henry of Friemar, Jean Buridan and Gerald Odonis to name but a few. Historical research into the early days of not only the double entry booking system and other accounting techniques may further enhance modern day accountants' foundational knowledge and principles of their chosen vocation.

THE ETHICS OF TECHNOLOGICAL DESIGN AND PRACTICE. A POST-PHENOMENOLOGICAL AND GRAMMATICAL APPROACH

ROBERT ARNĂUTU*

ABSTRACT. The ethics of technology deals with the moral grounds of creating and using devices and technological systems. This paper deals with the ethics of technology from the point of view of postphenomenology – by analysing multistability, mediation and technological intentionality – and of Wittgenstein's fundamental grammar – by analysing technology as a rule-governed practice. Using these theoretical frameworks, this paper is able to offer a description of the way ethical values are embedded in technology and to present the foundation for a normative ethics of technology.

Keywords: technology, ethics, postphenomenology, fundamental grammar

Using tools is one of the specific characteristics of humans. In order to discuss in moral terms about technology, one must ontologically analyse what creating and using an artefact or a technological device amounts to. Using technology is a complex phenomenon that cannot be properly analysed through the subject-object dichotomy in which an active autonomous subject employs an inert isolate material object to realize his purpose. Such an analysis presents the outcomes of actions as independent of the artefacts used, as if the same relations between subjects exist in a technological society as in a pre-technological society. In addition, designing an artefact does not mean only assembling material pieces according to certain spatial dispositions but also prescribing standard uses which imply moral, social, political, and economic values. The post-phenomenological analysis of Don Ihde and Peter-Paul Verbeek emphasize three main properties of artefacts that characterize the human-technology interactions: the multistability, the mediating role and the intentionality of artefacts. These features of artefacts take into account the role of technological devices in shaping the outcomes of human actions. An artefact can be used in more than one way and it can have more than one function (multistability). In addition, the use of an artefact modifies human action according to its design (mediation). In the process of using, the artefact orients and shapes human actions and decisions (intentionality of artefacts). Furthermore, as actor-network theory shows, technology is not a matter of private human-technology interactions, of individual usages, but of technological practices in socio-technological networks. In consequence, I propose to

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analyse technology as a rule-governed practice in the framework of Wittgenstein's fundamental grammar. Based on these two theoretical frameworks, post-phenomenology and grammatical analysis, we are able to assess the moral agency of artefacts, how technological practices are morally embedded, and to propose a normative ethics of technology that takes into account artefactual agency.

1. The Multistability of Technology

When a certain device is used, there are some particular actions that can be taken, some specific functions that this device have. For example, the earliest cellular telephones were devices designed only to call a certain other telephone for having a conversation. It was not intended to be used for any other purpose. When these devices became widely available, its users developed a new and unforeseen function, namely the transmission of written short text messages. There are of course some preconditions for doing that. First, the medium of transmission has to be digital so that the text encoding to be possible. In older normal telephones, the transmission of sound is analogical and that makes text encoding almost impossible. Second, the transmission of text messages is possible only between two such digital devices, because an analogical phone cannot receive nor display texts. The moral of this example is that a certain device with well-established functions can be employed for new uses. That is what makes a device multistable: the cellular telephone is, at one moment in time, an artefact with the well-established function of calling another phone, and, at another moment, it is an artefact with a totally different but stable function of transmitting text messages.

The above-mentioned characteristic of cellular telephones is not a marginal feature but it is an ontological characteristic of the human-technology interaction, i.e. all artefacts we are using are multistable, have more than one aspect. The claim about multistability of objects is based on the philosophical analysis of human perception made by Don Ihde¹. The basic tenets of Ihde's analysis are the decentralisation and embodiment of human subjectivity and the criticism against the strict objectual character of technological artefacts. The technological device during practice, in the process of using it, is multistable. The multistability is not a feature of theoretical contemplation but of practical engagement. As Wittgenstein (Wittgenstein, 1953: Part II, section xi) and Ihde (Ihde, 2009: 12-16) show by analysing the Necker's cube, in the process of perception an object can dramatically change its characteristics and become a very different object.

¹ Don Ihde builds on the results of gestalt theory, psychology of perception and phenomenological analyses of Husserl and Merleau-Ponty. What makes his analysis post-phenomenological is the claim that the different aspects, stabilities, are not variations of the same object but totally different objects occasioned by the same multistable configuration. The other strong claim of post-phenomenology is the rejection of transcendental ego. "Multistability, in effect, replaces the notion of 'essences' in classical phenomenology, just as embodiment replaces the notion of 'subjectivity' in classical phenomenology." (Ihde, 2006: 288).

1.1. *The Necker's Cube*

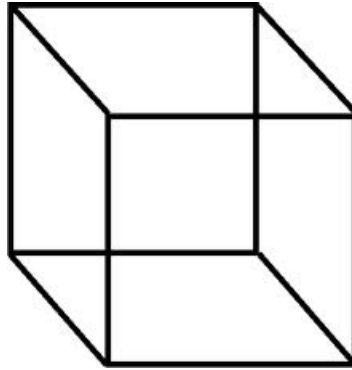


Fig. 1. Necker's cube.

The Necker's cube is the paradigmatic example of multistability:

The Necker cube is an ambiguous perceptual object, essentially bi-stable, in which (a) the uppermost part of the figure is seen as the far corner of its top face; but, through a "spontaneous" gestalt switch, (b) the uppermost part is seen as the near corner of its top face, with a second three-dimensional stability. These two variations may switch with each other in the viewer's gaze, in a set of alternations distinct from one another, exclusive but related as three-dimensional appearances of a cube. (Ihde, 1990: 145)

When one deals with such an object, he has an initial grasping of one aspect of the cube. This object is *seen as* something against a normal and stable background². One of the important points that Wittgenstein makes in *Philosophical Investigations* about the Necker's cube is that the perception of the aspect is neither an interpretation nor a representation (Wittgenstein, 1953, Part II, section xi). The object is literally *seen as* and recognized as something. In this first perceptual stage, there is a stable object that is perceived and it is not something else. Nevertheless, a spontaneous gestalt switch or a dawning of an aspect can take place such that the object is *seen as* a very different object. Moreover, because the aspect initially seen was based on a stable background or on a certain context of use then the dawning of another aspect implies a change in the initial background.

That the object has multiple aspects, that it is multistable, is a characteristic neither of the perceiver nor of the object. The gestalt switch or the dawning of the new aspect is a feature of the interaction between the object and the perceiver. As in the case of cellular telephone, the device did not have the function of sending

² For an extensive analysis of the Background, see Searle, 1995, pp. 132-137.

text messages under any normal conditions. In addition, its users did not have the intention to send text messages because to have such an intention means to have the possibility of doing so. Nevertheless, the human-technology interaction creates a new possibility of using the device. The cellular telephone became a new device and the social context for using it was changed radically by the new use.

Don Ihde takes the analysis further showing that in fact the Necker's cube may not be a cube at all. By doing so, he shows that there are always unforeseen stabilities that can become dominant in the appropriate context.

One can easily see that the Necker Cube may be seen as three-dimensional, with a “tilt” switch. ... To make this into a two-dimensional variation, a new story may be told: I tell you that this is not a cube at all but an insect in a hexagonal hole. The limits of the cube are now the outline of the hole; the central surface is the body of the insect; and the other lines are its legs. ... Return to the configuration with a new story: what was previously the insect’s body now becomes the forward-facing facet of an oddly cut gem. The various surfaces around this central facet are the other facets of this gem – and once you see this, you can immediately tell that this is again three-dimensional in appearance, but in a totally different way than previously as a cube. (Ihde, 2009: 14)

Acknowledging these possibilities means that an object is more than an inert configuration of matter with an everlasting essence. An actual object is the stable perceived aspect of a multistable configuration. The results obtained in the analysis of the Necker's cube extend to every object. According to Wittgenstein, aspect perception is a ubiquitous phenomenon because everything we perceive, we perceive in its relevant aspects. An artefact is always *seen as* what it is for us, what role it plays in our practice. A stable aspect is what is *seen* and practised, not just a conceivable possibility. A stable aspect – the *object-as* – is the object that can be used in a certain way. If one cannot *see* the cellular telephone *as* a text messages sending device then a simple theoretical acknowledgement of the fact will not change his practice. Out of the many aspects or stable *objects-as* that Ihde analyses only some are employed in practice. In Wittgenstein terms, only some aspects are familiar. The other aspects are literally not *seen*³.

2. Technological Mediation

The other important characteristic of technological devices is the mediating role that they play in human-world interactions. What instrument one uses determines what actions that person does. The instrument is not just an inert, indifferent and transparent medium of our intentions. “The central idea in this approach is that

³ Wittgenstein speaks in this context of aspect-blindness, the incapacity to see aspects. Severin Schroeder affirms that a complete aspect-blindness is in fact impossible and the incapacity to see aspects is the lack of the appropriate emotional response in certain situations.

technologies play an actively mediating role in the relations between human beings and reality.” (Verbeek, 2006: 119)

Let us suppose that Alice have the intention to kill or badly injure Bob. The actions and decisions that Alice and Bob will make are very different whether Alice possesses a gun or a knife. Alice has to know how to use her instrument, has to have certain skills. The outcome of her actions is based on what she can do with the gun or with the knife. Furthermore, the spatial distance between Alice and Bob will vary depending on the instrument. If Alice have a knife, Bob can simply run to escape, while running is not a solution if Alice has a gun. Bruno Latour (1999) analyses this situation in the framework of actor-network theory. He says that each component in the situation (Alice, Bob, gun, and knife) is an actant. Each actant possess its own program of action. Each actant possess certain characteristics (intentions and abilities for humans, functions for artefacts) that prescribe to a certain extent the course of action. When two actants come together, their respective programs of actions corroborate such that a new actant with a new structure, a new program of action appears. The gun translates Alice's program of action and, by composition, Alice with the gun became a new actant. Alice+gun is a different actant, with different possibilities, than Alice+knife. In this sense, the instrument constitutes what will happen, determining the course of action by its characteristics. The instrument is not an inert intermediary between Alice's intentions and the consequence of her actions, but an important constitutive part. The artefact reconfigures the experience of the world. It emphasizes certain aspects and renders the world familiar in certain ways.

Technology comes to mediate all our life so that one can speak of a *technological lifeworld*. Most of our actions do not even exist in an unmediated form. The person experiences and acts through his instruments as experiencing and acting through his own limbs and senses. The cellular telephone mediates the relation to other persons or to a wide range of information by presenting the persons or the information according to its design constraints. In all mediations, technology has design constraints that render them appropriate for use. Moreover, these design constraints render the artefacts appropriate for some uses and make some uses unavailable. These constraints modify the world experienced and acted upon presenting it according to certain technological patterns. The artefact's program of action, by mediating user's decisions and actions, modifies the moral framework of the situation. Therefore, the mediating role of artefacts comes to be ethically relevant.

3. Technological Intentionality

A consequence of Ihde and Latour's analysis of technological mediations is that artefacts came to be agents, i.e. they exhibit certain intentionality. For example, Alice cannot choose to stab Bob in the leg with the gun because the gun 'choice' is to shoot B. In fact, the choice is made neither by Alice nor by the gun. The choice is made by a new actant, Alice+gun, that cannot choose stabbing because the gun's

program of action. An available option of Alice+gun actant is to scare Bob by shooting in the air. Again, this option is made possible by the instrument because Alice+knife actant would not have such an option.

The agency of things consists in their ability to help shape human actions. Latour indicates this ability in terms of 'scripts'. Just like the script of a movie or a theater play tells the actors what to do at what time, material artifacts can embody implicit prescriptions for the actions of their users. (Verbeek, 2006: 118)

The intentionality of artefacts is not very appealing for the classical ontologies in which autonomous subjects are the only agents of action. However, an analysis of human-technology interactions shows that the influence of artefacts extends well beyond mere instrumentality. An artefact co-shapes and co-constitutes actions. The agency of artefacts has the same explanatory power of actions and decisions as human intentionality. The intentionality of artefacts does not consist of in the fact that the devices are able to initiate actions. Their intentionality does not have the spontaneous character of human intentionality. As well, artefacts have no capacity of choosing the course of action. In this sense, artefacts are just inert objects. However, in actual interactions the artefacts direct, actively mediate, translate, modify, and reorient human action.

To be sure, artifacts do not have intentions like human beings do, because they cannot *deliberately* do something. But their lack of consciousness does not take away the fact that artifacts can have intentions in the literal sense of the Latin word 'intendere', which means 'to direct', 'to direct one's course', 'to direct one's mind'. The intentionality of artifacts is to be found in their directing role in the actions and experiences of human beings. Technological mediation, therefore, can be seen as a specific, material form of intentionality. (Verbeek, 2008: 95)

The fact that artefacts directs actions and decisions cannot be reduced to forms of human intentionality or to artefact's program of action. During human-technology interactions, specific unforeseen possibilities arise. The course of action is equally influenced by three factors: user's intentionality, designer's intentionality, and artefact's intentionality.

In all human actions ... three forms of agency are at work: (1) the agency of the human being performing the action or making the moral decision, in interaction with the technology, and also appropriating the technological artifact in a specific way; (2) the agency of the designer who, either implicitly or in explicit delegations, gives a specific shape to the artifact used, and thus helps to shape the eventual mediating role of the artifact; and (3) the agency of the artifact mediating human actions and decisions, sometimes in unforeseen ways. (Verbeek, 2008: 100)

Technological intentionality, properly speaking is this last form of agency that modifies actions and decisions in ways irreducible to user's intentions or to the programs of action specified through design. Artefact's intentionality is the specific

outcome of intrinsic artefact's multistability. New functions and aspects can appear in the process of using the artefact. As we already shown the multistability cannot be reduced to human intentionality but it arises in the process of using. During actual use, artefacts became agents that act in certain directions. The fact that artefact's intentionality is overseen by classical ontology is a consequence of theoretical and static analysis that misses the specific elements that emerge spontaneously in actual use.

The designer's intentionality is a mild form of technological intentionality. This can be termed *derived technological intentionality*. The designer specifies the basic functions of an artefact; he prescribes what aspects are to be seen. In using the artefact, the user is directed to certain outcomes by the functions and aspects of the device explicitly or implicitly embedded by the designer. Unlike proper technological intentionality, the derived technological intentionality can be reduced to human intentionality, although it is not always determined if a certain function is an intended or an unintended feature. In the case of cellular telephones, the function of making a call was established through design, while the function of sending text messages appeared because of the joint intentionality of technological device and human agent. Properly speaking, technological intentionality is that joint intentionality that emerges during actual use and that can be analysed neither as a form of user's intentionality nor as a form of designer's intentionality. Based on this joint intentionality it is possible to consider technological mediations as ethically relevant by studying the morality of artefacts and technological practices beyond the intentions and morality of users and designers.

4. The Grammar of Technology

The three characteristics of technological devices analysed – multistability, mediation, and intentionality – show that artefacts are multistable objects that shape human actions and decisions according to proper technological possibilities. This post-phenomenological description of technology explains the possible forms of technological interactions. The possibilities revealed by the phenomenological description are constrained in the actual use by specific rules of using, functioning and development of technological devices. The technological mediated perception and practice take place in an intersubjective normative world. The technological practices, similar with language and experience, are neither isolate nor private facts but are subject to intersubjective rules (Mulhall, 2007). The intersubjective world is not composed only of humans and their interactions but also by artefacts and the interactions with them and the rules that norm these practices. According to Latour (2005), the intersubjective world is a collective of humans and non-humans organized in accord with internal rules of interactions. Post-phenomenology can accurately describe technological uses, technological interactions at individual level. Nevertheless, in order to give an account of the technological practices, uses employed over and over again, the analysis should be supplemented by taking into consideration the

intersubjective rules of practice, the basic structure of use, that constrain individual uses. Consequently, technology will be analysed as a set of rule-governed practices. The rules of technological practices constitute a fundamental grammar of technology. “Fundamental grammar as Wittgenstein analyse it does not concern only word use but also *the basic structures of use, practice*, and the role of (not only linguistic) entities in a language game.” (Glock, 1996: 154)

Technology is a 'form of life' subjected to the rules of practice. The importance of these rules is that they prescribe at a certain moment of time what aspects can be seen, how devices can be used. The grammatical rules are the background that make certain aspects available and forbid certain uses⁴. A grammatical analysis of technology constrains multistability, mediation and technological intentionality but also corroborate them into rule-governed practices.

Wittgenstein's philosophical grammar is not an analysis of true and false sentences but an analysis of meaningful practices and their rules. As such, a grammar of technology has to analyse the rules that norm technological practice. The grammar of technology is not a set of everlasting logical laws, but an open set of arbitrary rules that apply to technological practices. The rules are arbitrary in the sense that they cannot be justified. In addition, they are arbitrary in the sense that they can be changed, as in the case of the dawning of new aspects. Otherwise, these rules are necessary and provide a deterministic background against which technological practice take place. In his *Wittgenstein on the arbitrariness of grammar*, Forster synthesizes the functioning of grammatical rules:

- (1) Grammatical principles always have alternatives (the “diversity thesis”).
- (2) There is never any possibility of justifying or refuting grammatical principles (in their competition with alternatives).
- (3) Grammatical principles are neither correct nor incorrect, neither true nor false.
- (4) The factual claims that are made possible by one grammar never outdo those that are made possible by another, alternative grammar in virtue of being able to capture reality as the latter cannot, or being able to capture it more accurately than the latter.
- (65) ... According to Wittgenstein, one is normally constrained to a particular range of grammars, or even to a particular grammar, in exclusion of possible alternatives, either by one's very human nature or by one's upbringing within specific social practices and traditions, so that adopting the particular range of grammars, or grammar, in question is not a matter of choice or decision for one in any usual sense of these words. (Forster, 2004: 67)

The main aspect that I want to emphasize is the possibility of grammatical change, the change in our technological practices that is driven by grammatical rules that are in certain aspects vague or fluid. The rule of practising an artefact prescribes how an artefact must be used. Nevertheless, rules are subject to interpretation. There

⁴ Some uses, while technologically available, will never become practices, like, for example, permanent facial hair removal for men, although majority of them shave daily all their life.

are possible variations on how to apply the rule. Both rule-following and rule-change are based on the familiarity of use, on the “tacit knowledge” (Gill, 2008) one employs in using an artefact. The fact that one is familiar with the use of some object creates the possibility of aspect variation. These variations are the basis for the creation of new rules. Seeing the mobile phone as having yet another function requires new rules for using its new function. *Seeing* the cellular telephone *as* text messages sending device created an entire set of rules that governed the practice of sending short text messages. Being familiar within a grammar means also that certain unfamiliar features can be *seen*. A grammatical approach to technology also shows that while a new aspect, a new function of an artefact becomes apparent it does not necessarily become a technological practice because this would require a community of users that usually use that function. Employing a grammatical approach to technology allow us to a form of mild holism in the sense that one practice and its rules influence adjacent practices and their rules. The practice of sending text messages on cellular telephones modifies the practice of marketing and demanded the reshape of advertising content. Another important characteristic of grammatical rules is that they are embedded with ethical prescriptions of use. If a person does not respond to calls on a cellular telephone, there are some limits to the number of consecutive unanswered calls one may make because there is a record of them. For an analogical telephone, there were no such constraints because it was not possible to know whose call one missed.

5. Morality of Technological Practices

Using artefacts is a familiar activity, based on grammatical rules of practice, in which the artefacts are not mere objects but mediators and co-creators of human action. The modern ontology rejects the above-mentioned agency of artefacts. The reduction of artefacts to mere inert objects is analysed by Axel Honneth as the process of reification in which agency and morality is an exclusive property of subjects: “modern philosophy is doomed to run constantly into irresolvable antinomies, because it is rooted in reified everyday culture and thus remains entrapped within the subject-object opposition.” (Honneth, 2008: 29) The reification of artefacts, their reduction to inert instruments, is a structural mistake. “If reification constitutes neither a mere epistemic category mistake nor a form of moral misconduct, the only remaining possibility is that it be conceived as a form of praxis that is structurally false.” (Honneth, 2008: 26) This structural mistake is the fact that the mediating role of artefacts, which, as we see, shape human actions and decision, is considered morally neutral. This is one of the Heideggerian criticisms to the understating of modern technology. Heidegger, as well as contemporary philosophy of technology, shows that technology is not morally neutral. The artefacts are embedded with values and norms. The rules of practice of artefacts contain the moral standards that apply to that practice. An ethical approach to technology should recognize that using technological devices is morally embedded. The fact that technology mediates

and shapes human actions and decisions means that technology has an important ethical impact on these actions and decisions. Therefore, a new form of ethics has to be created, one that considers not only the autonomous human subjects as relevant to ethical debates, but also the technological mediations and the technological rules of practice that shape ethical actions and decisions. Based on technological intentionality, on the fact that human-technology interactions give rise to decisions and actions not reducible to the human agent, the moral agency of these technological mediated situations cannot be reduced to human morality. Consequently, one should take into consideration, in formulating an ethics of technology, the ethical implications of technological mediations, the active role that artefacts play in decision-making and acting.

Ethics appears to be at the eve of a new Copernican revolution. A few centuries ago, the Enlightenment, with Kant as its major representative, brought about a turnover hitherto unequalled by moving the source of morality from God to humans. But currently there seem to be good reasons to move the source of morality one place further. It increasingly becomes clear that we should not consider morality as a solely human affair, but also as a matter of *things*. Just like human beings, material objects appear to be able to provide answers to moral questions. The artifacts we deal with in our daily lives help to determine our actions and decisions in myriad ways. And answering the question how to act is the ethical activity *par excellence*. (Vebeek, 2006: 117)

On the one hand, the artefacts' morality arises from the multistable mediation by which technology shapes actions and decisions. On the other hand, the ethical dimension of designing and using artefacts is subject to the rules of practice that establish what is a standard use and that contain ethical prescriptions of using an artefact.

The morality of artefacts is embedded in their specific rules of use and these ethical norms are transmitted as tacit knowledge together with the skill of using that artefact. As we show, these rules change in unforeseen ways according to grammatical patterns that cannot be controlled. The grammatical rules do not seem to be subjected to rational control. That means that a grammatical approach to the ethics of technology seems to be no more than a descriptive theory that expose the rules of practices and show how they work. There are even strong claims against a normative ethical approach to grammatical rules because there are no external-to-grammar standards (ethical, epistemic, etc.) to justify, judge or regulate technological practices and grammatical rules.

In sum, it seems that none of the available strategies for justifying grammatical principles (over against alternatives) can work—not justification in terms of truth-in-virtue-of-meaning, nor justification by the facts, nor justification in terms of success in realizing purposes, nor justification by deduction from more fundamental grammatical principles. (Forster, 2004: 46)

In the same manner, post-phenomenology restricts itself to a descriptive theory of technological mediations and their moral impact. The rationale for this restriction is the fact that during human-technological interactions technology mediates in unforeseen ways actions and decisions such that one cannot a priori assess the consequences of technological mediations.

Despite these internal restrictions for justifying, judging or regulating technological mediations and rules of technological practice, a normative ethical approach to technology is possible. If there are multiple paths of technological development, some of them can be promoted and the mediating role of future possible developments can be analysed.

[A] way to augment the ethics of technology with the approach of technological mediation is to *assess* mediations, and to try to help *shape* them. Rather than working from an external standpoint *vis-à-vis* technology, aiming at rejecting or accepting new technologies, the ethics of technology should aim to *accompany* technological developments (Hottois), experimenting with mediations and finding ways to discuss and assess how one might deal with these mediations, and what kinds of living-with-technology are to be preferred. (Verbeek, 2008: 101)

In addition, the immanent morality of the rules of technological practice and the impact of rule-changes on other practices can be evaluated and the practices can be shaped. If some rules of a grammar amount to self-destruction, to bad practices, then we have to reject those rules as structurally inadequate. This kind of normative ethics will not determine what is right or wrong, what is good or bad, and what is true or false, but what is structurally adequate or not in a certain technological practice. In the light of the conceptual framework employed above – multistability, mediation, technological intentionality and rule-governed practice –, there are possible ethical prescriptions for the design and practice of technological artefacts.

An important consequence of this grammatical and post-phenomenological approach is that a normative ethics of technology cannot be an *a priori* ethics. The ethical expertise should take an internal standpoint by a continuous evaluation of technological practices and mediations and a continuous promotion of adequate practices and mediations. In addition, the standards on which the mediations and practices are evaluated and promoted are to be internal to the technological practice and to consider the entire technological context. As Albert Borgmann (1984) shows, to promote a technological practice only on the basis that it facilitates an easiest and more pleasant life seems to be inadequate. He exemplifies this with microwave oven that, while making the meal preparation easiest, it promotes junk food consumption and conduces to a bad health and standardized meals. This mild holistic approach requires designing *meaningful artefacts* and to *meaningfully appropriate* the technological practices into everyday life such that different practices do not contradict each other.

A grammatical ethics of technology aims at promoting a sustainable technological practice and the design of meaningful technological devices. The grammatical ethics of technology is not the application of classical ethics to a new domain but the creation of a new ethics that take the acts of artefacts into consideration.

Accordingly, this ethics is mainly an *a posteriori* endeavour that “*accompany technological developments*” and “*experiment with mediations*”, evaluating possible developments.

If the mediating role of technology is acknowledged, then the ethics of technology should involve in designing the material environment for moral action, i.e. the moral philosopher should become a technological designer:

When artifacts have moral relevance and embody a specific form of moral agency, ethics cannot only occupy itself with developing conceptual frameworks for moral reflection, but should also engage in the development of the material environments that helps to form moral action and decision-making. (Verbeek, 2008: 101)

This engagement in developing material environments for moral actions means that the technological design should *enhance user's responsibility* for its technological practices. The orientation towards practice means that technological practices become focal points of ethical discourse and the user of technology should be responsible for his practice. This responsibility enhancement means that artefacts should make apparent the consequences of one's technological practices as well as the possible implications for related practices. The device should be transparent in its functioning, to make apparent what it does and how it does. This transparency is not similar with Heideggerian technological transparency that meant that during practice the artefact disappeared from user's attention. On the contrary, the device should always make the user aware of its functioning and its consequences.

Along with responsibility towards technological practices, the design should also *enhance multistable practices*, i.e. the device should facilitate creative uses and various paths of action. Another requirement for a sustainable design is the *enhancement of mediation possibilities* by designing devices that can be easily integrated into human practices, devices that can be easily embodied by its users. In addition, the intentionality of artefacts, their ability to shape one's actions may be enhanced by designing not opaque material objects but partners for human actions.

BIBLIOGRAPHY

- Borgmann, Albert. 1984. *Technology and the Character of Contemporary Life: A Philosophical Inquiry*. The University of Chicago Press.
- Forster, Michael N. 2004. *Wittgenstein on the arbitrariness of grammar*. Princeton University Press.
- Gill, Satinder P. 2008. „Knowledge as Embodied Performance”, in Satinder Gill (ed.). *Cognition, Communication and Interaction: Transdisciplinary Perspectives on Interactive Technology*. Springer.
- Glock, Hans-Johann. 1996. *A Wittgenstein Dictionary*. Blackwell.

- Honneth, Axel. 2008. *Reification and Recognition: A New Look at an Old Idea*. Oxford University Press.
- Ihde, Don. 1990. *Technology and Lifeworld. From Garden to Earth*. Indiana University Press.
- Ihde, Don. 2009. *Phenomenology and Technoscience*. SUNY Press.
- Latour, Bruno. 1999. *Pandora's hope: essays on the reality of science studies*. Harvard University Press.
- Latour, Bruno. 2005. *Reassembling the Social. An Introduction to Actor-Network-Theory*. Oxford University Press.
- Mulhall, Stephen. 2007. *Wittgenstein's Private Language: Grammar, Nonsense and Imagination in Philosophical Investigations, §§243–315*. Oxford University Press.
- Schroeder, Severin. 2009. "A Tale of Two Problems: Wittgenstein's Discussion of Aspect Perception". Conference held on 24 of March 2009 at Central European University Budapest.
- Searle, John S. 1995. *The Construction of Social Reality*. Penguin Books.
- Verbeek, Peter-Paul. 2006. "The Morality of Things: A Postphenomenological Inquiry", in Selinger, Evan, *Postphenomenology: A Critical Companion to Ihde*. SUNY Press.
- Verbeek, Peter-Paul. 2008. "Morality in Design. Design Ethics and the Morality of Technological Artifacts", in Vermaas, Pieter E., Kroes, Peter, Light, Andrew, Moore, Steven A. *Philosophy and Design: From Engineering to Architecture*. Springer.
- Wittgenstein, Ludwig. 1953. *Philosophical Investigations*. Blackwell.

BENTHAMIC LIMITS UPON JUDICIAL DISCRETION – THEORY AND PRACTICE*

DIANA CONSTANTINESCU**

ABSTRACT. Jeremy Bentham is widely acknowledged rather as founder of utilitarianism than founder of a complex system incorporating contributions in ethics, social and political philosophy, economy and law. More particularly, Bentham's contributions to legal theory have been largely ignored at both international and local levels. Nowadays, one of the most popular debates within the jurisprudential discourse is that on judicial discretion in interpreting the law. In anglo-saxon jurisdictions, this debate is focused on how the judge uses this discretion, but even more, on how to limit this discretion when it has negative consequences. Within this context, this essay re-analyses later contributions of Jeremy Bentham and argues that these can offer highly relevant solutions to current problems.

In view of this aim, this essay has two main sections. The first section tries to answer from benthamic perspective to the following questions: 1) Why do judges have discretion? (causes); 2) Why is discretion mischievous? (consequences); and 3) What are the Benthamic solutions for mischievous discretion? (solutions). The outcome is a set of constraints upon judicial discretion, 'interwoven' with their utilitarian rationale. The second section of the paper assesses the practicality of the Benthamic solutions by presenting the case study of the Romanian judicial system, which features some of Bentham's proposed constraints, but fails to display the expected outcome. The analysis of these outcomes suggests that Bentham's solutions are highly useful in theory, but they need several more refinements and additions in order for their efficacy to be ensured in practice.

Keywords: judges, discretion, constraints, Jeremy Bentham

Although two centuries passed since Jeremy Bentham's influential writings on law and adjudication, the current theoretical debate between legal positivism and other orientations, seem to have not been learning too much from this great predecessor. Legal theorists are still debating on the existence of discretion itself, or on its causes – and one could expect that several more decades will pass until we get back to the practical issue of searching solutions for limiting judicial discretion in our courts.

* I am indebted to Prof Philip Schofield (Director of the Bentham Project, *University College London*) for providing precious feedback and guidance for this paper.

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The current essay aims to highlight the level of complexity which Bentham achieved in identifying and resolving the issue of judicial discretion in his later works. Perhaps this will be a reminder that we don't have to reinvent the wheel and instead use our philosophical legacy. In this sense, the essay provides an assessment of Bentham's late theory on judicial discretion, as it can be inferred from his *Constitutional Code*, with help from the *Rationale of Judicial Evidence, Principles of Judicial Procedure* and secondary literature. The concept of discretion will be defined and placed within the context of general aims of legislation.

In view of the above aim, the essay has two main sections. The first section tries to answer the following three questions: 1) Why do judges have discretion? (causes); 2) Why is discretion mischievous? (consequences); and 3) What are the Benthamic solutions for mischievous discretion? (solutions) The outcome is a set of constraints upon judicial discretion, 'interwoven' with their utilitarian rationale. The second section of the paper assesses the practicality of the Benthamic solutions. The essay presents the case study of the Romanian judicial system, which features some of Bentham's proposed constraints, but fails to display the expected outcome. The analysis of these outcomes suggests some refinements which, one hopes, might have been taken into account by Bentham in his pursuit of constructing the perfect utilitarian legal system.

PART I: Benthamic Constraints Upon Judicial Discretion

The concept of discretion must be understood in Bentham's wider account on legislation. Whilst the overarching Principle of Utility guides the formulation of law, Bentham identifies four subordinate ends of legislation – subsistence, security, abundance and equality - which act as 'deputies' of the Principle. Of these four, security is considered the most important because, although the legislator cannot evaluate all possible ways towards human happiness, even less integrate them within law, he is bound to secure each individual's search for happiness and pleasure¹.

Given these subordinate ends, law is seen as providing a social framework which permits the individual pursuit of happiness, while not interfering with the happiness of others. Law draws the limits of the individual sphere, and punishes any mischievous interference with other individual's spheres. The former function is performed by substantive law, while the latter is ensured by adjective law². The only purpose of adjective law is to maximize the execution of substantive law. In particular, the role of the judge is to ensure, by punishing the individuals who run against the general happiness (and thus, break the law), that happiness is maximized. In order to achieve this result, judges consider each case of offense and try to reach the right decision, while minimizing the collateral effects of the judicial process itself – vexation, expense or delay (ibidem).

¹ Schofield, P. "Professing liberal opinions: The Common Law, Adjudication and Security in Recent Bentham Scholarship." *The Journal of Legal History* 16.3 (1995), p. 356

² Bentham, J. *Constitutional Code, The*. Edinburgh: Tait, 1843, p.25

Bentham argues that security³ is impaired, and the overarching utility principle overridden, when judges have the discretion to decide the outcome of a suit as they please. But why do judges have discretion in the first place? Bentham identifies several **causes**. First of all, he admits that law cannot cover all cases, and therefore the judge finds himself dealing with matters of fact which have no correspondence to any matter of law⁴. Bentham dismisses as unpardonable the idea that in an advanced society, with an established corpus of positive law, there could be gaps in the law left by the legislator. Instead, he argues that the eventual gaps are created by the limited foreseeability which a legislator might have regarding cases that might arise in the future. In these cases, the judge is bound to appeal directly to the principle of utility in order to ensure a just decision.

A second cause for judicial discretion is the existence of common law as legitimate source in the English system. Common law is vehemently criticized by Bentham because it permits the judge to give a decision based on an invented law, by *pretending* to discover it:

The judge, on each occasion, pretends to find readymade, and by competent authority, endued with the force of law, (and at the same time, universally known to be so in existence, and so in force,) a proposition of a general aspect, adapted to the purpose of affording sufficient authority and warrant for the particular decision or order.⁵

Common law is ‘essentially dynamic and constantly shifting’ because it is the unwritten ‘repository of commonly shared values’⁶. Its formulation and refinement by lawyers and judges is never final. This is the aspect that gave virtually unlimited discretion to judges.

In order to highlight Bentham’s original understanding of ‘discretion’, we suggest defining it in analogy to ‘freedom’. Just as freedom is presumably good, because it allows the individual to pursue his interest in accordance to the principle of utility, so is discretion the minimal liberty which the judge must have in order to judge cases in accordance to the principle of utility, when it happens that the subordinate rule dictates otherwise. In contrast, we can easily conceive that, as freedom equally allows the individual to perform mischievous acts if he lacks aptitude, so does discretion allow the judge to arrive at mischievous decisions if he lacks aptitude⁷. This understanding of discretion entails that, unless the judge has an appropriate aptitude towards his duty, the discretion created by the flexibility of unwritten law will allow him to take any decision, including mischievous ones.

³ Security must be understood in two ways: firstly, as security of non-interference from other individuals; secondly, as foreseeability of the consequences of one’s or another’s actions within the socio-legal framework. The latter meaning (instituting what is called the ‘disappointment-preventing principle’) is involved in Bentham’s critique of the common law and of the precedent-based systems, as they fail to offer the required foreseeability of judicial outcomes when the judicial discretion is too large.

⁴ Bentham *Constitutional Code* p.26

⁵ *Idem* p.8

⁶ Schofield 1995 p.351

⁷ Concept to be discussed later.

But why would a judge take any decision mischievous to the general interest – in other words, why does judicial discretion have mischievous **consequences**? Bentham formulates a realist psychological theory which does not depict the judge as an evil genius. Instead, upon the judge, as upon every human being, there functions a principle of *self-interest* which may contingently countervene the general interest. Relative to the latter, the former becomes a “sinister interest”. The sinister interest of a regular individual should be counteracted by substantive laws. But the case becomes more complicated when officials are involved, because they have an augmented power or access to the resources:

The ruler, if left to himself, could not be expected to act otherwise than according to the self-preference principle – he would pursue his own particular and sinister interest at the expense of the general interest, the right and proper interest.⁸

In other words, judges and other officials have the power and discretion for ‘sinister sacrifice’, i.e. to sacrifice the happiness of the greatest number for the pursuit of their own. Bentham’s exemplification on how judges exercise their discretion mischievously regards the fee-system they implemented in England during his time. Because judges were imposing taxes on suitors, they were denying legal protection to those financially incapable to pay those taxes, hence causing vexation and expense⁹. While someone could argue that the lack of taxation would expose the judge to abuse from the part of suitors, Bentham objects that this can be prevented by incurring pecuniary loss ‘to the author of vexation’¹⁰

This undesired effect is further increased by two additional features of the judicial practice: firstly, the judicial power amounts to that of legislator because the judge is free to decide an outcome according to his wish¹¹. Secondly, because his decision lacks any *publicity* which could awaken popular or peer disagreement, and create moral liability for the judge – therefore ‘in the darkness of secrecy, sinister interest and evil in every shape, have full swing.’¹²

The mischievous consequences of legislation have been summarized by Bentham as ‘expense, vexation, and delay’ – and they can easily be identified as mischievous consequences of the judicial discretion as well, but only in conjugation with the judge’s sinister interest¹³. As stated earlier, discretion alone has no negative

⁸ Apud Schofield "Politics of Law Reform, The." *Utility and democracy: the political thought of Jeremy Bentham*. 1 ed. Oxford University Press, USA, 2006 p.272

⁹ Bentham *Constitutional Code* p. 75

¹⁰ Idem p. 455

¹¹ ‘Here then in the very cradle of legislative empire grew up another power, in words the instrument of the former, in reality continually its censor and not infrequently its successful rival.’ (Bentham OLG 240)

¹² Bentham *Constitutional Code* p. 493

¹³ It is important to remember that expense, vexation and delay are collateral ends which can appear irrespective of the judicial aptitude, because they are intrinsic to the judicial process itself, and must be seen as a ‘necessary evil’, never eliminable, but always prone to minimization in order to avoid unnecessary infliction of pain (Bentham CC 25).

consequences, just as the sinister interest alone creates small mischief if subjected to and limited by rules. Expense, vexation and delay are the reasons Bentham recites over and over in order to legitimize the introduction of written procedural constraints upon the activity of the judge.

The **solutions** which Bentham suggests in view to maximize right decisions and minimize collateral effects are therefore procedural constraints upon judicial discretion. His first solution regards the obliteration of sinister interest by cultivation of *aptitude*. Aptitude is a three-fold concept which characterizes the judge's ability to take a right decision, i.e. to take a decision in accordance with the positive law and, implicitly, with the overarching Principle. While proper intellectual and active aptitude are also necessary for the smooth functioning of the judicial system (hence reflected in concrete measures in the Constitutional Code), the emphasis falls on the moral aptitude, which is achieved by those who sacrifice their own-self interest yet remain happy through 'their share in the universal interest – of increasing their own happiness by promoting the greatest happiness'¹⁴.

One can imagine some benevolent means of increasing moral aptitude (e.g. education); but in his Constitutional Code, Bentham did not rely on social motives to increase the moral aptitude of judges. Instead, he focused on ways to 'smother' any room for sinister interest, by instituting direct and indirect securities¹⁵. Some examples of concrete s are: the institution of a two-level judicatory, which 'ensures appropriate aptitude in all its branches'¹⁶, but also 'a persuasion of its existence'¹⁷; the limitation of judges to one in every court, in order to reduce expense¹⁸; the subsidizing of costs for access appellate level, the organization of an Equal Justice Fund, access to an Eleemosynary Advocate – all these in view of 'guaranteeing universal access to justice'¹⁹ etc.

Another set of solutions addresses the interference of the judiciary branch with the legislative branch. Bentham's intention was to keep the flexibility of the judicial decision for hard cases (i.e. not eliminating discretion) while not allowing the judge to make the law. This was to be done through specific judicial functions which allowed the judge to play the role of a counsellor to the legislator, and not his rival²⁰. The following four functions allow the judge to exercise his discretion in order to avoid giving an unjust ruling to a case, but limit his treatment of the law to suggestions towards the legislative power for improvement of a particular statute:

¹⁴ Schofield 2006 p.274

¹⁵ Idem p. 294

¹⁶ Bentham *Constitutional Code* p.468

¹⁷ Idem p. 469

¹⁸ Idem p. 471

¹⁹ Schofield 2006 p. 310

²⁰ 'Finally, judicial lawmaking, by way of interpretation or emendation of the code, was permitted through a constitutionally defined process, which gave the legislature a veto over any interpretation of the code, and was also clearly separated from the function of adjudication.' (see Schofield 1995 p. 355 and 2006 p. 294)

1) the *contested-interpretation-reporting* function, which has the aim of ensuring ‘the uniformity of decision’ and its improvement, in both content and form²¹; 2) the *eventually-emendative* function, through which an amendment proposed by a judge *might* become part of the law, as if it was adopted by the legislature²²; 3) the *sistive* function, which enables the judge to refuse the application of a law in the case at hand, if deemed unjust²³; and 4) the *preinterpretative* function, which permits the judge to offer an interpretation of a law not necessarily connected to a suit, or suggest a more clear formulation of that law to the legislator²⁴.

One last solution constitutes the core of Bentham’s argumentation for the power of the public opinion to ensure that the governmental and judicial branches function in accordance to the public interest: publicity. As we have seen earlier, the lack of publicity allows sinister interest to take shape within judicial structures, and Bentham places great trust in the regulating power of the public opinion; as ‘where there is no publicity, there is no justice’²⁵. The judge becomes determined to make more right decisions by fear of gaining a reputation of causing vexation or delay, of being criticized by his superiors or peers who read the transcripts of his decisions but, the worst, of being voted down by the citizens who take part in the Judicial Theatre.

While all these Benthamic solutions form a coherent and intuitive set for our current issues with judicial discretion, the practical effect has never been tested. The following section attempts a summary application of these measures to see if they are sufficient.

PART II: Benthamic Measures In The Romanian Judicial System

The current essay has the modest aim to start a discussion on the practical value of Bentham’s codification, with focus on his measures on limiting judicial discretion which we arrived at earlier. This section presents a case study on the Romanian judicial system.

Most solutions exposed by Bentham in his later writings are already implemented within the Romanian judicial system. On the issue of sinister interest and corruption, the Romanian judicial system already benefits from four Benthamic types of facilities: 1) formal regulation against corruption and bribe, 2) public funding for judges’ salaries, 3) controlling mechanisms, and 4) average publicity.

Firstly, the most recent regulation against corruption and bribe are found in *Law no. 78/2000* which addresses all public functionaries including judges. Receipt of ‘undeserved funds, goods or services’ is considered a criminal offence. Judges have to declare the receipt of any direct or indirect ‘donation’, except for those with symbolical value, within 30 days (art 4.1). Any undeclared bribe, when discovered, is confiscated, and the receiver is punished by prison. Moreover, the Romanian Penal Code punishes

²¹ Bentham *Constitutional Code* pp. 502-4

²² *Idem* pp. 504-5

²³ *Idem* pp. 508-11

²⁴ *Idem* p. 511

²⁵ *Idem* p. 493

the receipt of bribe both before and after the action required by the briber is done (art 254 and 256).

Secondly, judges are paid through public funding, and this ensures that judges do not impose taxes and fees, which would be illegal. All judicial fees and taxes go directly to the state.

Thirdly, the judicial activity is controlled through: a two-level judicatory (immediate and appeal²⁶) on all matters which, according to Bentham, imposes a vertical check on both the intellectual and the moral aptitudes of the immediate judge; The Superior Council of Magistracy, which acts as a disciplinary agent²⁷; a deontological code of judges and public prosecutors, found in Decision no. 328/2005, which is very similar to Bentham's formulation of the Inaugural Declaration²⁸. Within the Romanian deontological code, it is repeatedly claimed that judges cannot influence justice, or sacrifice general interest, according to their personal interest (art 11.3, 16.2 and 23). Nor can they be influenced by external factors in their decisions (art 3.2). Moreover, concern for intellectual and moral (art 12) and active aptitude (art 16.1) is shown. Finally, concern for the minimization of delay is explicitly addressed (art 13).

Fourthly, publicity of the judicial process is ensured through constitutional measures – art 126 from the Romanian Constitutions declares that all trials are public. Additional measures include a public system of minuting, and rendering decisions available to the public; all these impose a public check on the judge's performance.

In spite of these implemented solutions, the Romanian judiciary system suffers from high levels of corruption and sinister sacrifice. The point is not that Bentham is wrong in assuming that his proposed measures resolve the problem of sinister interest; rather that this not enough, and that his measures must be constantly tested and improved according to empirical results.

For instance, Bentham would have to refine his publicity measure by ensuring not only that trials are public, but that people actually go to trials, and have an impact upon the judge's activity. His assumption that people often act out of self-interest and not out of social interest (which he projected upon functionaries²⁹) is true for the average citizen as well. His followers have thus to project a system of giving citizens the motives to participate to trials. In Romania, although trials are public, no people except for the interested parties ever go to court.

Another refinement would be avoiding to minimize the judge's wages by considerations of expense, because it has been proven that offering judges a salary high enough, one decreases cases of bribery and corruption. This wage increase, in tandem with a maximized efficiency in catching and rendering public judges who accepted the bribe³⁰, will most probably minimize the temptation to accept or require bribe.

²⁶ see *Code of civil procedure* art 1-4

²⁷ *Romanian Constitution* art 133

²⁸ Bentham *Constitutional Code* pp. 523-5

²⁹ Schofield 2006 p. 297

³⁰ This is another institutional design problem.

CONCLUSION

This essay aimed to display the complexity of Bentham's latest writings on the judicial decision-making process. It focused on the issue of *judicial discretion*, its mischievous consequences, and the proposed solutions. This issue is wholly intelligible in a wider context of Benthamic thought on legislation, and his considerations on utility. On the theoretical level, the topic offers precious insights which seem forgotten by current debates in jurisprudence.

On a practical level, the Benthamic solutions were analysed as implemented within the Romanian judicial system. While they seem to work for the minimization of sinister interest, they seem insufficient and thus in need for refinement.

BIBLIOGRAPHY

- Bentham, J. *Constitutional Code, The*. Edinburgh: Tait, 1843.
- . *An Introductory View of the Rationale of Evidence: For the Use of Non-Lawyers As Well As Lawyers*. Ed. S. J. Bowring. Edinburgh: Tait, 1843.
- . *Principles of Judicial Procedure, With the Outlines of a Procedure Code*. Ed. S. J. Bowring. Edinburgh: Tait, 1843.
- Bentham, J., P. Schofield, and J. Harris. *Legislator of the World: Writings on Codification, Law, and Education*. Oxford University Press, USA, 1998.
- Dinwiddy, J. R. "Adjudication under Bentham's Pannomion." *Utilitas* 1.02 (1989): 283-89
- Postema, G. J. "Principle of Utility and the Law of Procedure: Bentham's Theory of Adjudication, The." *Ga.L.Rev.* 11 (1976): 1393-424
- Schofield, P. "Professing liberal opinions: The Common Law, Adjudication and Security in Recent Bentham Scholarship." *The Journal of Legal History* 16.3 (1995): 350-67
- . "Jeremy Bentham: Legislator of the World." *Bentham: Moral, Political and Legal Philosophy*. Ed. G. J. Postema. Ashgate Pub Ltd, 2002.
- . "Politics of Law Reform, The." *Utility and democracy: the political thought of Jeremy Bentham*. 1 ed. Oxford University Press, USA, 2006. 304-37.
- . "Antidote to Sinister Interest: Official Aptitude, The." *Utility and democracy: the political thought of Jeremy Bentham*. 1 ed. Oxford University Press, USA, 2006. 272-304.
- Law no. 78/2000. 18-5-2000.
- Romanian Constitution. 2003.
- Romanian Penal Code. 2006.
- Romanian Code of Civil Procedure, consolidated version. 2009.

THE SOUND IN *BETWEEN*

STEPHANIE BRANDT*

ABSTRACT. Taking the interface between the common consumer behaviourism and the given representative conditions of our surroundings as a phenomenological, but, nevertheless, a key issue of both, architectural discourse and practice, this talk is trying to evaluate the position of sound within this realm.

Sound is becoming increasingly recognised and explored within theory and practice as it is, increasingly, affecting our spatial perceptions and everyday lives. This paper is an investigation into the notion of sound within the built environment, questioning the spatial attributes and implications of sound: its potential as a design tool for the shaping of architectural and urban places, but also its meaning for our personal experience of our surroundings. I would like to introduce some issues and ideas related to *soundscape*s and *aural architecture*. Initially, discussing the very particular tactics and prospects that are related to them in order to then, question their potential use as a building material - one, which is merging social and material matters.

Sound, so I believe, is offering completely new ways to reinforce the bridge between architecture and phenomenology, space and experience.

Keywords: sound, aural architecture & spatial perception.

Introduction

Evolved without earlids, hearing hardwired for fight or flight, we now live our lives largely in a learned unlistening. Where once the world spoke to us in a thousand voices full of meaning, our global megamachine now drones with scant regard for us and without purpose. We have tuned out from nature and into culture, but we don't quite have the right hardware and software for coping with what is now waste, but could be resourced.

Max Dixon, extract, *ScapeShift, Sound Escapes*, p.4

'The sound in *between*' is a compilation of initial investigations into the notion of sound within the built environment I firstly presented in form of a talk as part of the 'Space and Subjectivity' Symposium, Madrid, Spain in March 2009. It

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is the first part of an ongoing project my practice is working on under the title of *Unlocking The City*¹ #01: The Listening Project.

The Listening Project came to live and grows out of an acknowledgment of the major shift and breakthroughs that are in progression in regards to how we are [scientifically] able to understand our perception of sound, and how we experience and interact with the soundscapes of our everyday. Exploring those insights from a design point of view, the project is challenging sound as a distinct – and a *positive* matter of built design. As such, The Listening Project is investigating both, the spatial attributes of everyday sounds created by/in our cities as a design tool for the shaping of architectural and urban places, and its meaning for our personal experience of cityscapes.

Hence, this paper is a quest into the matter of sound² within the architectural realm focussing on its impact onto the occupants of built design – the users of a city, or, a house. Being particularly concerned with the creative, emotional and social aspects of sound within spatial design I am investigating these issues in the context of experience-driven and interactive design approaches.

To set the basis of discussion, I will show how *soundscapes*³ and *aural architectures*⁴ are created by both, architects [i.e. the designers of walls, volumes and spatial configurations] and occupants [- each one of us]; and how in return, sound affects our states of mind and our actions. Then, I would like to elaborate on the potential of *listening*⁵ as a concept and a design tool to investigate and to enrich our daily experiences of space.

How can we think of and utilise sound within the built design? - And how would that be beneficial for its occupants – the inhabitants of a house, or a city?

¹ *Unlocking the City* is an ongoing design and research project, developing as part of my individual and collaborative work with SPACEPILOTS. It is a pilot trying to involve young people in the making of places, aiming to engage youngsters in the future development of their environments and to excite them about their city. ‘The Listening Project’ is the first part of this project focusing in particular on explorations and utilizations of everyday sounds created by/in our cities as a design tool for the shaping of places and urban experiences. As such, The Listening Project proposing to acknowledge sound as a distinct – and a *positive* matter of built design. More details under: www.spacepilots.net/projects/the-listening-project-case-study-o2

² The word **sound** in this paper is taken to include the *positive* aspects of sound and acoustic information in opposition to notions of *noise*, or *sound pollution*.

³ **Soundscapes** are understood as the combination of **sound** + **(land)scape**; i.e.: an atmosphere or environment created by or with sound: *the raucous soundscape of a city street*. [The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2009]

⁴ The term **aural architecture** here is understood as defined by Barry Blesser and Linda-Ruth Salter, namely, as the very same combination of **sound** + **(land)scape** that also defines soundscapes. The difference between them is that with a soundscape, the sounds are important in themselves [as for example, birds singing or people talking], whereas with aural architecture, those same sounds serve only to illuminate it. Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.16

⁵ The notion of **listening** here is taken as to give attention, or, to perceive by the ear. It relates itself to the definition as given by Dictionary, LLC. Copyright © 2009: *to listen* is to give attention in order to hear and understand the meaning of a sound or sounds.

It should be said at the beginning that research into the affects of sound and the design of aural architecture is in its infancy. As a result, the basis of my argument is informed by material gathered from a cross-disciplinary investigation into art, art history, sociology, neurology, phenomenology and technology;⁶ and the points I am attempting to discuss and argue for are primary, mostly untested thoughts, and by no means manifest. Yet, I am hoping to assemble the knowledge logically and coherently, so to throw clear evidence onto the qualities and the growing importance of sound for built design and its occupants.

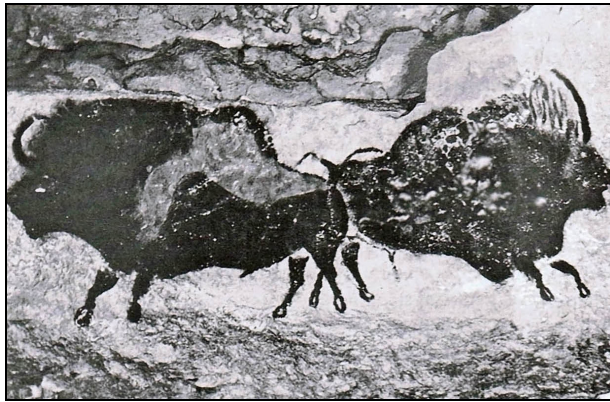


Fig. 1. Two bison in cave at Lascaux, Dordogne, France.
Courtesy of Nacq Partners, Ltd., at www.nacq.com

The first marriage of visual and auditory art occurred when Palaeolithic painters discovered that their paintings of hoofed animals were more intense if they were located in caves producing echoes.

Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, xi

Setting out to explore the aspects and the potential [user] benefits of sound within the built environment, lots and lots of information is available on *noise*, noise barriers, *acoustics* and the sensory detection of space. – Very little though seems to be known about the phenomenology of aural space and the actual impact

⁶ To my awareness, there are no actual design solutions out there yet within the built design; but within a more interdisciplinary context, some intriguing projects are ongoing that seem useful for the understanding of how to incorporate sound and sound-qualities for the creation of *Aural Architecture*.

Paul Schuetze, Janet Cardiff, Barry Blesser, Linda-Ruth Salter, Trevor Cox, Richard Gregory, Colin S. Ripley, Paul Bavister, Emily Thompson, Grant H. Kester, Kate Love, and Steven Willats are just some of those researchers, artists, thinkers.. from different fields that are covering similar ground and who I would like to acknowledge. In particular the publication of Barry Blesser and Linda-Ruth Salter, *Spaces speak, are you listening?*, The MIT Press, 2006, is providing thorough insights into the relation of sound, architecture and occupant.

sound has onto our personal lives, our behaviour and wellbeing; i.e.: *if* and *how* we encounter and *respond* to space through sound. - Yet, whereas the recognition of acoustics and the manipulation of changing sounds through different spatial arrangements undoubtedly is an important aspect of auditory spatial awareness within architecture I would like to think another [important] one relates to the very personal, intuitive and responsive encounters each one of us has within space, and which not at last seem encouraged by, or even dependent on sound.

Sound – the in between

The Matter of Sound

Sound, first of all, is a phenomenon. It is a phenomenon of *now*. That is to say: it is not the matter of the future, nor does it preserve itself in time [as most other spatial elements are, and do]. - Sound *is* today. It is [re]created *every* day within the habits of each individual one of us. And although it is a phenomenon ephemeral and erratic, it is an essential and infallible part of our daily lives. Sound can be seen as a creation *in* space that functions as a communicator of occurring events: door slamming, a car accelerating, wind building up, a dog bark...



Fig. 2. Hogarth's *Enraged Musicians*. Courtesy of Graphic Arts Collection, Department of Rare Books and Special Collections, Princeton University.

The Perception of Sound

Starting on the most basic level, we know that *sound* is caused by physical vibration: moved air comes into our ears, i.e.: we *hear* sound. [Commonly known and easiest exemplified on the principles of a tuning fork.]

We also know from science that sound has an affect on us - it influences our emotions and moods. – *Listening*,⁷ as such can therefore be understood as a continuum from the physical reality of sound to the personal relevance of that reality. As for example: listening to ‘*noise*’, [which usually is defined as ‘unwanted sound’, such as.: the sound from traffic, industries, construction, ...]- we perceive a physical reality of sound that is creating disturbance and distress within our personal life. – What the example also shows is that our perception of sound is deeply embedded and relevant in our daily lives.

- But does that make it an essential component of architecture, too? And how would this be useful for the public, the inhabitants of space?

Architecture, which has been called the “mother of all arts,” is concerned with the design, arrangements, and manipulation of the properties of a space. Unlike other art forms, architecture provides spaces for the daily activities of life; when more than simply utilitarian, it also appeals to our aesthetic sensibilities. By choosing and combining materials, colours, and shapes, architects embed their respective artistic messages in structures that we see, hear, and feel. ..

To communicate the artistic, social, emotional, and historic context of space, however, architects almost exclusively consider the visual aspects of a structure. Only rarely do they consider the acoustic aspects. The native ability of human beings to sense space by listening is rarely recognised; indeed, some people think such ability is unique to bats and dolphins. But sensing spatial attributes does not require special skills- all human beings do it: ..., the sound of footsteps hint at the location of stairs, walls, low ceilings, and open doors. ..

[And -] It is available to all of us.

Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.1

Soundscapes and Aural Architecture – Some Background Information

Aiming to evaluate the notion of sound within the context of spatial design two key terminologies - *soundscapes* and *aural architecture* - might need some explanation first: Generally speaking – *soundscapes* are understood and discussed as the combination of sound and space; and it is the very same combination that also defines *aural architecture*. As Blesser & Salter explain: the difference between them is that with a soundscape, the sounds are important in themselves [as for example, birds singing or people talking], whereas with aural architecture, those same sounds serve only to illuminate it. Following their thought we then can start to understand that in fact

⁷ The notion of **listening** here is taken as to give attention, or, to perceive by the ear. It relates itself to the definition as given by Dictionary, LLC. Copyright © 2009: *to listen* is to give attention in order to hear and understand the meaning of a sound or sounds.

we are able to hear passive objects and sense spatial geometry. As a simple illustration - consider a flat wall located at some distance; when the sound wave from a handclap is reflected from that distant wall, we hear the reflection as a discernible echo. The distance to the wall determines the delay for the arrival of the echo, the area of the wall determines the intensity, and the material of the wall's surface determines the frequency content. These physical facts relate only indirectly to perception. Our auditory cortex converts these physical attributes into perceptual cues, which we then use to synthesize an experience of the external world. On the one hand, we can simply hear the echo as an additional sound (sonic perception) in the same way that we hear the original hand clap (sonic event). On the other hand, we can interpret the echo as a wall (passive acoustic object). The echo is the aural means by which we become aware of the wall and its properties, such as size, location, and surface materials. Hence, the wall becomes audible, or rather, the wall has an audible manifestation even though it is not itself the original source of sound energy. When our ability to decode spatial attributes is sufficiently developed using a wide range of acoustic cues, we can readily visualize objects and spatial geometry: we can "see" with our ears.

A real environment, such as an urban street, a concert hall, or a dense jungle, is sonically far more complex than a single wall. The composite of numerous surfaces, objects, and geometries in a complicated environment creates an aural architecture. As we hear how sounds from multiple sources interact with the various spatial elements, we assign an identifiable personality to the aural architecture, in much the same way we interpret an echo as the aural personality of a wall.⁸

Hence, aural architecture refers to those properties of space that can be experienced by *listening*. Therefore, the aural architect is acting as both an artist and a social engineer, and as such, someone who selects specific aural attributes of a space based on what is desirable in a particular cultural framework. [In contrast, an acoustic architect is a builder, engineer, or physical scientist who implements the aural attributes previously selected by an aural architect.] So, whereas acoustic architects focus on the way spaces change the physical properties of sound waves [acoustics], aural architects focus on the way that listeners experience the space⁹.

To illustrate that we are aware of the aural affects of a space within our very everyday, try to consider displacing familiar sounds to unfamiliar environments - for example, imagine urban traffic [it's rush hour]: if we now transport the scenario into an open desert the produced [negative] sound would have a totally different aural character than in our dense city scenario. - Or, imagine it is early in the morning, it is spring, the sun is shining, we are in the bathroom, getting ready for work and [under the shower] we are embracing the day while singing our favourite song. - The pleasure we experience doing this, [even if not a great singer and although probably subconscious] is simply because we take advantage of the resonance of

⁸ Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.2

⁹ Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.5

this small shower space [with hard surfaces]. Duplicated in a large living room [with softer surfaces] we would most likely be shocked about the drastic loss of tone and quality of our performance.

What these examples try to demonstrate is that in each contrasting space, even if the sound sources were to remain unchanged, the aural architecture would change.¹⁰ It also means that every physical space also has an aural architecture. More importantly, although we may not be consciously aware that the aural architecture is itself a sensory stimulus, we do react to it: aural architecture can influence our moods and associations. - We may experience a living room as cold or warm not so much due to its actual temperature or, a train station as lonely and abandoned independent of its actual appearance, but because the acoustics of each space can produce feelings of warmth or colds, freedom or insecurity. As such, we can say that aural architecture, with its own beauty, aesthetics, and symbolism parallels visual architecture¹¹.

Proposition

Each sound environment can evoke very different reactions in each one of us depending on how we choose to interact with it¹²; and it is this inter-relationship between ‘sound, space and occupant’ that seems more and more recognized and explored, which probably is an acknowledgment and/or a direct result of the rising degree it is affecting our spatial experience and everyday lives¹³. My personal interest within this debate, and the focus of *The Listening Project*¹⁴, is to translate and adapt notions of sound into the actual making of places¹⁵, testing methods by which sound may enrich and intensify our very personal encounter with a physical surrounding rather than detract from it.

The aural architecture that we hear results from complex interactions between three social units: individuals, disciplines and the larger culture. [...] Emotions are the secret story of disciplines not found in textbooks: social considerations existing side by side with artistic and intellectual creativity.

Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.279/281

¹⁰ Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.2

¹¹ Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.3

¹² Deb Hall and Amy Irwin, *Inside the mind of a listener*, MRC Institute of Hearing Research, University of Nottingham, published as part of *Sound Escapes*, p.8

¹³ The Architectural Association, London, for example, not long ago issued a CD as part of their AA files [Nr.53, *Travelling without moving*], documenting experiments and life-recorded-debates on sound and spatial design.

¹⁴ ‘The Listening Project’ is the first part of an ongoing project entitled *Unlocking The City*, focusing in particular on explorations and utilizations of everyday sounds created by/in our cities as a design tool for the shaping of places and urban experiences. As such, The Listening Project proposing to acknowledge sound as a distinct – and a *positive* matter of built design. More details under: www.spacepilots.net/projects/the-listening-project-case-study-o2

¹⁵ the notion of *place-making* in this context is taken as to create an identity, or, to give meaning to a three-dimensional space and/or urban area; to build up a sense of place – a sense of belonging.

As investigations into sound and aural architecture are dealing with real experiences as they take place in real life it seems crucial to foreground people, the actual dwellers of space, within the design approach. Given aural architecture is referring to those properties of space that are experienced by listening^{16/17}, I am particularly interested in methods related to listening experiences that may have the capacity to evoke either very straightforward, or subconscious *affects*; that is to say: strong feelings/emotions or, subtle arousal/moods.

In 2001 social scientist Barry Truax found that researchers who have studied the soundscapes of older townships, for example have noted that particular sonic events, or *sound marks* like church bells, foghorns, railroad signals, fire sirens. ...- were the auditorial counterparts of landmarks. - It were not the city wall, a railway gate, or other physical devices, but the resulting acoustic arenas that marked the boundaries of towns and their citizens.

As this case exemplifies whereas physical boundaries are *one* means of designing space, aural arenas can shape the identity of place.

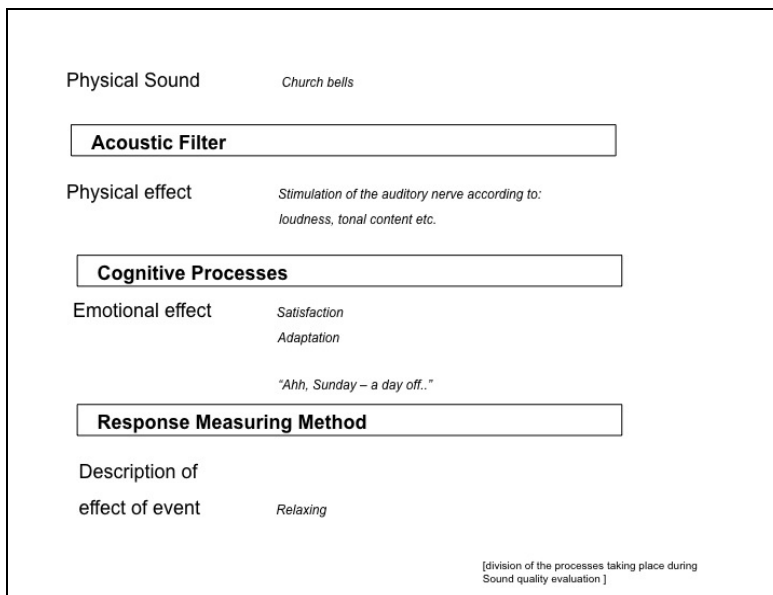


Fig. 3. Division of the processes taking place during sound quality evaluation, as explained by the University of Salford, AAV, Research Department, <http://www.acoustics.salford.ac.uk/>

¹⁶ The notion of **listening** here is taken as to give attention, or, to perceive by the ear. It relates itself to the definition as given by Dictionary, LLC. Copyright © 2009: *to listen* is to give attention in order to hear and understand the meaning of a sound or sounds.

¹⁷ As introduced in previous pages, following Blesser and Salter's definition, *soundscapes* are understood and discussed as the combination of sound and space. And it is the very same combination that also defines *aural architecture*. As Blesser & Salter explain: the difference between them is that with a soundscape, the sounds are important in themselves [as for example, birds singing or people talking], whereas with aural architecture, those same sounds serve only to illuminate it.

Sound is as spatial a medium as much as it is a temporal one. Sound is spatial in the sense Marshall McLuhan and Edward Carpenter identified, where “auditory space has no point of favoured focus. It’s a sphere without fixed boundaries, space made by the thing itself, not space containing the thing.”

[.. And] Sound is spatially in another way than that: sound provides us with a sense of place.

Peter Cusack¹⁸

Concepts & Examples

Although to my awareness there are no built examples of aural *architecture* as such, at smaller scale, there are a number of emerging works that might help to build the case:

To start with, I would like to consider Anish Kapoor’s¹⁹ *Ishi’s Light Sculpture* [thus aware it has not been exclusively intended as an aural piece by the designer himself] [fig.04]: At sculptural scale and within the confines of a museum environment *Ishi’s Light* playfully exemplifies how an aural structure is adaptive and interactive. It also demonstrates how an acoustic arena is the experience of a social spatiality: even though the physical space may be static, the aural space *is* changing dependent on one’s position – and/or the number of people in it/in inter-relation to it: This approx. 2m tall structure made out of resin and fibreglass is an interactive piece inviting people to enter and engage with its insides. It allows for approximately 1-2 persons at a time to enter and engage with it.

Those people who have been interviewed about their experience within the piece reported that talking in it, it is as if one’s voice is bouncing around. Similar to the effects of a cave its curved shell plays with your voice, creating strange echoes, playing with your senses – tempting *you* to play with *it*²⁰. - It unsettles you by playing with your audio and visual senses.²¹

What these statements hint at is that – for aural architecture – it may be crucial to understand that the concept is limited when we assume that spatial designers [i.e.: traditional architects] have the exclusive control over the aural properties of a space; as sound is an actual creation *in* space the occupant – by necessity - has to be taken an integral part within the design process: By manipulating the physical form, the aural architect influences the relationship²² among the people present in a space as well as the interaction between each individual and the space; and because

¹⁸ Peter Cusack is a London based sound artist and environmental recordist with a special interest in acoustic ecology. He has engaged in a sustained exploration of sound’s sense of place.

¹⁹ Anish Kapoor, artist, born 1954 in Bombay, India. Living and working in London, GB since the early 70’s. He himself classifies a lot of his work as *architectural* and/or *social*, <http://www.anishkapoor.com/index.htm>

²⁰ A more detailed, recorded documentation of a *listening* experience of *Ishi’s Light* is available at <http://www.tate.org.uk/modern/tours/materialslibrary/artwork03.shtm> and http://www.tate.org.uk/modern/tatetracks/rolldeep_kapoor.shtm

²¹ *Roll Deep* in an interview about *Ishi’s Light*, http://www.tate.org.uk/modern/tatetracks/rolldeep_kapoor.shtm

²² Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.25

the same people also determine the intensity of the sonic events, *spatial* attributes are only one component of an acoustic arena. - In each situation, both collectively and individually, those who occupy or live within a space manipulate the acoustic arena.



Fig. 4. Anish Kapoor, *Ishi's Light*, 2003, fibreglass, resin and lacquer, 3150 x 2500 x 2240 mm sculpture

Looking at *Ishi's Light* as a potential prototype, a sample or, 1:1 fragment of what potentially could become a larger structure, I think the piece does exemplify how an aural architecture could be designed so its acoustics at particular points or areas amplify the aurally experienced space in size and volume. – In fact, we are already well familiar with this phenomenon from musical and theatrical spaces; yet with the crucial exception that in cases of music halls and theatres the traditional architect solely creates a passive acoustic playground in a space by erecting boundaries that are sonically impenetrable. In an architectural attempt based on similar concepts as *Ishi's Light* though, the occupants of that space would create equivalent arenas to the given physical ones by asserting their social or political right to generate sonic events.²³

So, why hasn't it been done? - Attempting to translate ideas and techniques such as explored in *Ishi's Light* within the confines of an art space into the large scale of our built environments, I do think firstly requires a much better insight of

²³ Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.32

how exiting sonic elements of our urban surrounding impact on our personal and subjective perception of city environment - and our quality of life.²⁴ Understanding how these current conditions affect our use of [and interaction with] our cities will then enable us to develop new and responsive design strategies out of it.

Whereas we do know how to measure noise levels and how to control or reduce them within the built design – what isn't addressed [so far] is the issue of those sounds we *want* to hear. So far, the built environment has shown little interest in the desirable aspects of sound as investigated by numerous artists and social scientists alike.²⁵ - More crucially to me in this context is that particularly the sound that is made by *people* has overwhelmingly been considered in negative terms; very little research has been done in a direction that may be informing the design of pleasant living environments. Though, I think once we developed ways of measuring *sound quality* as well as noise– hence, once we actually understand what makes sound attractive or unattractive - we will also be able to create a positive aural environment. This way I believe we will ultimately be able to design desirable soundscapes and aural arenas in the same way that we design landscapes, buildings, or lighting effects.

Some pioneer and most encouraging sandpit projects towards this direction are developing within the EPSRC, ‘the Engineering and Physical Sciences Research Council’, GB. - As part of their research investigations they are for instance trying to find out whether it is possible to reduce the annoyance of traffic noise by masking it with agreeable components – for example the sound of a water fountain. Or, by understanding rhythms in traffic, they analyse if one can design footpath absorbers that may add to a positive sound arena. One particular emergent of EPSRC is *The Positive Soundscapes Project*. Initiated by a group of designers, social scientists, artists and engineers it examines the very nature and the *emotional* affects of sound within our living environments. First attempts and initial results have recently been exhibited and published under the title of *Sound Escapes* at the SPACE Gallery in London, August 2009.²⁶ [See Fig. 06/07]

Simon Elvins, *Silent London*, 2006, shown as part of *Sound Escapes*. “Using information the government has collected on noise levels within London, a map has been plotted of the capital’s most silent spaces. The map intends to reveal a hidden landscape of quiet spaces and shows an alternate side of the city that would normally go unnoticed.”[Simon Elvins]

²⁴ A series of current tests and initial results are developed and published by The Research Institute for the Built and Human Environment, <http://www.buhu.salford.ac.uk/>

²⁵ Especially In the 70’s there have been tremendous conceptual experiments into positive sound aspects by William Furlong and Barry Barker, Mel Gooding..

²⁶ More detailed information about the Exhibition under: www.spacestudios.org.uk/All_Content_Items/Exhibitions_Archive/Sound_Escapes/

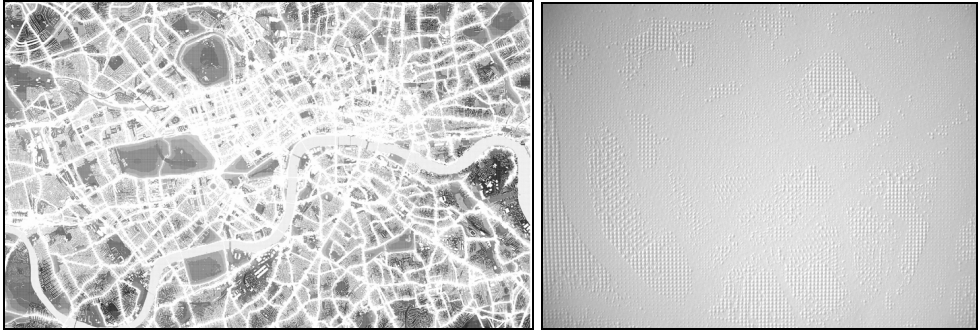


Fig. 5. & 6.

Another attempt considering the interior spaces of our built environments comes from Blesser & Salter who are considering aural *wallpapers*: As we know, commonly wallpapers are creating visual textures. Similarly, acoustic objects can create aural textures. So, as the aural analogue of wallpaper, Blesser & Salter are proposing a wall that would have for example a pattern of conch shells embedded in it - thus we would be designing a pattern of resonance at different frequencies, like variations in aural colour. Hence, such a wall would have an aural texture - and analogue to the visual pattern of a wallpaper texture, standing at the optimum distance, we would *hear*²⁷ it²⁸.

Julian Treasure - in his book on 'Sound Business' - suggests that, the right auditory environment can also impact on the profits of a company - and although that in itself isn't of direct relevance for my case, still, his work does underline my stance that the role sound plays in architecture is *huge* - and so is the impact it has on a listener:

Faster music in restaurants can speed up the flow of dinners. Slower music can lead people to spend more time in stores. - And we know about other methods: One can dump sound and change the acoustic; one can drastically engineer the sound behaviourism of something, - change the structure,- and alter the sound of a material, for example by changing the temperature, or, alter the airflow in a room. - We also know that soft materials create low notes and low acoustics and harder materials create louder notes and higher acoustics. And although we are aware of a whole range of methods to manipulate sound and material sources - the design of music halls aside - there is surprisingly little evidence that architects design these acoustic arenas intentionally when it comes to our daily environments.

²⁷ The notion of **listening** here is taken as to give attention, or, to perceive by the ear. It relates itself to the definition as given by Dictionary, LLC. Copyright © 2009: *to listen* is to give attention in order to **hear** and understand the meaning of a sound or sounds.

²⁸ Barry Blesser and Linda-Ruth Salter, *spaces speak, are you listening?*, p.59

If we may agree though that sound, on a most general level, is an element of our built environments, which can have quite reasonable impact on each individual's quality of life [- fire sirens, slamming doors, traffic noise,.. are just a few examples] then - considering our cities and the current quality of life they offer - we might also agree that so far this influence unfortunately remains mostly negative. So, if we ask ourselves: *Is sound of matter?* I think this cannot remain of question anymore.

Sound is affecting and changing the ways we experience and engage with our environments. Without aural elements and textures, every space, be it a bathroom, concert hall, military barracks, or any other space, would sound like every other space of similar size and shape; every area of our environments would be aurally indistinguishable. *Listening* simply is a part of our natural skills that we un-learned. Yet, starting to analyse and understand our personal perceptions of sounds we can re-develop our auditory spatial awareness; and the acceptance of social considerations as an integrate part of research design in this context might enable us to reshape an environment that so far is dominated by mostly negative sounds [noise] into a sound environment that benefits its occupants. Sound, I believe, is a potential means to rethink and reshape our traditionally passive acoustic playgrounds into active living spaces while incorporating and encouraging social considerations as part of built design.

OKIN'S FEMINIST CHALLENGE TO RAWLS'S THEORY OF JUSTICE. FROM THEORY TO PUBLIC ACTION

ALEXANDRA DOBRA*

ABSTRACT. The present paper aims to analyze Okin's critique of Rawls's theory of justice via a held argumentative dialogue. This critique is centred on Rawls's dichotomy between public and private sphere, and its commitment to a purely political liberalism, both hindering the application of justice within the family. Hence, gender inequality is not inhibited at its origin, at the level of the patriarchal family. In order to achieve this inhibition, Okin aspires to use Rawls's theory of justice as an epitome in a *pro modo* manner, so that the personal becomes the political. With the aim to apply justice directly within the family, this paper argues that Okin's critique emphasizes the imperative for the Rawlsian theory of justice to be reconstructed as a teleological comprehensive liberal model. The form that public action should take will be critically analyzed. It will help to sustain the need to deconstruct gender as a *nomos* inherently responsible for hierarchical relations. With this aim, this paper has developed a new feminism, the so-called "feminism of opposition". In addition, it will be evidenced that the political and the private must form a symbiosis governed by the prerequisite of "the moral point of view", enabling impartiality and autonomy.

Keywords: Theory of justice; Political liberalism; Comprehensive liberalism; Teleological comprehensive liberalism.

Introduction

"Whereas the interest of male actors in the political realm are perceived as discrete, the interest of the members of the family of each patriarch are perceived as entirely convergent with his own, and consequently women disappear from the subject of politics."

Okin

There are several critical streams – Nozick, Sandel, Cohen, Okin – of Rawls's theory of justice. This paper focuses specifically on Okin's critique, due to its concern to re-allocate family and gender equality within the realm of justice. The family is both private and public, since its members are embedded within the private sphere as well as constitutive entities of the public sphere. Furthermore, institutions of the basic structure – the family – have profound effect in shaping a person's life

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and expectations, “the effects of the basic structure on citizens are pervasive and present from the beginning of life”¹. To the extent that social structures are systematically biased against gendered preferences, Rawlsian liberalism should address this problem. Without a substantive equality between woman and man, the societal model and dynamics will be biased, since these latter will satisfy the two Rawlsian principles of justice only partially. The acquainted dialectic structure consolidates Okin’s contend that owing that Rawls accepts the family as inherently private and outside the social contract, he fails to engage gender inequality in its origin.

The present paper is inscribed within a line of publications dealing with this topic. The current literature sustains the need of transforming Rawls’s theory of justice into a comprehensive liberalism. However, this paper’s insight resides in its move beyond and argues that the former transformation is not enough and should be reconstructed into a telic comprehensive liberalism, to ensure the outcome of substantive gender equality within the private sphere. Finally, this paper will move from theory to practice and will emphasize the urgency to deconstruct gender and implement active impartiality in order to palliate to the phallocratic interventionist nature of the State and to the actual *status quo*. The political and the private sphere instead of being dichotomical must form a symbiosis governed by the prerequisite of “the moral point of view”, hence by impartiality and autonomy. In Leibniz’s terminology, the private sphere should be the anagogical induction of the public and vice-versa, thereby ensuring that both are subjected to the same imperative of gender equality. Finally, this paper has developed a new feminism, the so-called “feminism of opposition”, aiming to integrate contextualization within an oppositional epistemology.

What are the main challenging points of Okin’s critique?

“Other things may change us, but we start and end with the family.”
Anthony Brandt

Okin’s intuitive idea is derived from her statement that “how, can the development of the virtues so crucial to the stability of a just society take place only within the sphere of the political culture, which people encounter mainly as adults and , in many case, indirectly and sporadically even then?”². Because the family is a part of the basic structure and principles of justice apply to this latter subsequently these principles should apply to the family as well. According to Mill, family is the school for male despotism. In a similar way, for Okin the pervasive effect of the family and of the gender system determine differential duties within the family and different social roles in the public realm. Furthermore, inequalities in the family seep into and affect the distribution of goods in spheres subjected to principles of justice – reverse effect of Walzer’s complex equality, inequalities in a sphere permute in others. In this line, she addresses some main critical issues with

regard to the Rawlsian model of justice and defends the idea of the need to alter Rawls's theory of justice, in order to apply the two principles of justice and their consequence, effective equality, to the familial sphere.

Rawls understands the family as both a part of the basic structure, public and as an association, private. These terms of a binary opposition are a tool of domination which legitimizes women's oppression and exploitation in the private realm³. Applying this dichotomy implies to exclude the reach of the principles of justice within the familial sphere. The family is immune towards any governmental interference and to any direct application of the two principles of justice. Because Rawls puts the accent on pluralism, space is leaved for people to choose how to live hence principles do not apply directly to all societal institutions there is "room for a free and flourishing internal life"⁴. Unequal division of labor is not recognized as an issue of justice. Rawls is committed to the view that "equal citizens have different and indeed incommensurable and irreconcilable conceptions of the good" and that the state is not to favour one reasonable conception over another⁵. The conceptions of the good underlying gendered or sexist practices are part of people's comprehensive conception of the good. This immunity nurtures the inherent inequality between woman and man. Indeed, in a society where families are constructed upon a historical *alpha* male model, these families are inherently perpetuating inequalities towards women. Owing this characterization, how can a child learn a balanced understanding of justice if this is not prevalent home?

Rawls considers society as a closed system, entered by birth and exited by death. In contrast, membership in associations is fully voluntary. Since families are also characterized by a non-consensual and inescapable membership they belong to the society and differ from *lambda* associations. Rawls⁴ stipulates that society must compel the higher earner to continue, after divorce, to provide financial assistance to the former partner and child. Although the principle of difference is applied, there is still dependence and leaves potential space for coercion. While the difference principle addresses social and economic inequalities, natural inequalities remain.

In just societies, children proceed through three stages of moral development: morality of authority, of association, and of principles¹. The family plays an essential role in the first two stages. Affection and attachments prevalent in the family ingrain in the maturing children the desire to reciprocate benefits. In the third stage, the individual generalizes from the moral precepts acquired and acts from principles of justice as well as affection so that he "appreciates the ideal of human cooperation"¹. Although Rawls delineates a prominent role for families in the development of a sense of justice, he fails to question justice within families; he disregards the impact of unjust families on the global basic structure. This is epitomized in Brettschneider's idea that "although a political conception of justice requires personal moral transformation, it does not give the state license directly to coerce citizens into the process"⁶. Rawls's *a priori* assumption that the family is just contains an "internal paradox"⁷.

The family is part of the basic structure, and has an explicit role in the production and reproduction of a just society. Among its central roles, it includes the raising and the caring of children. However, because traditionally – even if unspecified by Rawls – women ensure this caretaking, Okin highlights the fact that being a primary caretaker is incompatible with many jobs as they are presently structured. Hence, female agents often do not pursue educational and other job qualifications since they are aware of being unable to use them. Rawls focuses on (male) adult public interactions, while neglecting domestic labor required in sustaining these interactions. Furthermore, women are more prone to enter marriage with an unequal income potential. This economical inequality has consequences upon the power dynamics of the family, which drives inequalities of opportunity within its own realm. The family is also a link between generations, because it is the first school of moral development. However, it constitutes an obstacle to the fair equality of opportunity, due to its pre-liberal character. In the Rousseauist terminology family is a natural institution, pre-established before the design of the just society. It is hence opaque to forcible principles of justice and corroborates the dominant male-stream thought. This is reverberated via the differing parental expectations with regard to the virtues of a good son or a good daughter.

Okin⁸ observes that “any liberal defender of the rights of groups should recognize that individuals must have realistic rights of exit” and concludes that “for girls and women especially, formal rights of exit are a less than satisfactory palliative”. A distinction between the fact of possessing a right and the fact of being able to exercise it must apply. To this end, a capabilities approach is suited. It requires the direct attention to the ability of an individual to translate resources into outcomes. Family must be reformed in order to be maximally just, thereby ensuring that its inherent inequalities no longer reach the public sphere. With this aim, the parties in the original position deliberating about principles of justice must fully integrate the family within the realm of the basic structure, so that it becomes directly subject to the two principles. In order to ensure a unanimous consensus on this issue, Okin proposes a set of technical solutions for alleviating the pervasive effects of the patriarchal familial structure and the differentialist gendered society. In the original position, the knowledge of general facts must include that women have been less advantaged during the past centuries. Seemingly, the choices behind the veil of ignorance are motivated by the desire, common to all parties, to secure the largest possible share of a set of common primary goods. So, the sex must be veiled under the original position, since it constitutes a morally arbitrary characteristic. Sex and gender must not disadvantage or compromise free and equal persons in any way⁹. Furthermore, among the essential basic liberties, specified within the liberty principle the free choice of occupation should be included. This would tend to alleviate the fixed occupational structure and the fixed share of benefits and burdens specified by our actual male-dominated social structure. In *Forty acres and a mule*¹⁰, Okin moves towards the specification of short-term and long-term solutions. On the

short-term, two types of policies being able to alleviate the inequalities between man and woman are advocated. The first type aims to reduce gender differences, by subsidizing childcare. The second type aims to compensate for gender differences with regard to social roles, by instituting an equal division of goods during and post-marriage. On the long-term, the gender must be suppressed. The gender precedes the sex and corresponds to a historical construction. As such, it entails the origin of the differential identity between woman and man. It appears, that the gender is the expression of a relation of force – *ubi maior, minor ceseat* – which ensures its own reproduction via proceeding to categorial mutations within the system that it produces and on which it is based. Hence, gender means the “deeply entrenched institutionalization of sexual differences”⁷. This institutionalization involves that under a gender system, sexual differences determine in large part the distribution of benefits and burdens. By suppressing the gender, social factors which influence the differences presently found between sexes would be replaced by genderless institutions and customs.

The former critical points are structured around the idea that the family should become a sphere where governmental institutions can legitimately intervene in order to provide gender equality, because individuals “want, and should have the right, to be treated fairly within their own culture of origin”⁸. In this line, justice must be applied to and within the family.

**Can Rawls’s theory of justice be integrative of these critical points?
(or the unsatisfactory nature of the provided response)**

“Changes occur in direct proportion of dissatisfaction, but dissatisfaction never changes.”

Doug Horton

In *Political Liberalism*⁵, Rawls stipulates that a “liberal account of equal justice for woman is viable” and focuses on the “justice of an in the family”. At prima facie, Rawls response to Okin critique is a plea of *nolo contendere*; he explicitly addresses the issue of gender injustice in the context of the family as a part of the basic structure of justice. He identifies the family as a system producing a gendered division of labour, perpetuating an historic injustice toward women, reverberated in the unequal share of task, and toward children. An unjust division of labour grounded in gender undermines the capacity of children to acquire the political views required of citizens in a viable democratic society. Hence, Rawls requirements for instituting a just family include freedom to marry; guarantees of equitable division of material assets, and equitable paternal support upon divorce; publicly provided or subsidized child care; family leave and flexible working hours; comparable worth policies; affirmative action for women; equal access to equally good jobs; a right to abortion within the first trimester; the exclusion of sex by the veil of ignorance. Owing the informative nature

of these accommodations, does this revised form of a theory of justice, offer a formal or rather a substantive equality? Furthermore, after a deeper analyze of Rawls's accommodation of the feminist critique, it appears that his theory of justice, because based on a purely political liberalism, does not effectively accommodate the feminist critique, as reverberated in the bellow raised points.

The primary subject of political justice is the basic structure of society understood as the arrangement of society's main institutions into a unified system of social cooperation¹. The two principles must apply directly to this structure, but not directly to the internal life of the different associations. This requirement is legitimized via the idea that in a pure liberal society, respectful of the many different comprehensive values and ends, the State cannot intervene into the private sphere. A classical example advanced by Rawls, is the tyrannical picture of a family inside which the State dictates what the most suited education for the children would be. Rawls two principles do not give a rule for determining how particular institutions must "adjust to the requirements that this structure imposes in order to establish background justice"⁵. "Liberal distinction between public and private does not depend on whether an activity is conducted in the presence of unrelated "other", but on whether it is the kind of activity that the civil authority may regulate"¹¹. This dichotomy between the public and the private sphere calls for a minimal justice. To this extend, "the system globally may be just even when a single institution is unjust"¹. Therefore, for Rawls, the long-term solution envisaged by Okin implies radical governmental interference in the individual liberty. Such interference could be based on the Millian private sphere defined in relation to harm principle; the State's intervention is warranted in order to prevent harm to an individual. On the feminist side, gender system is harmful and thus intervention is legitimated, however, for partisans of a pure political liberalism, this would be considered as illegitimate and an endeavour to achieve control. Trying to equalize natural assets would demand a harsh breach of personal integrity and obstruct human diversity. Political liberalism protects persons as free and equal citizens. The political values provide the background within which the comprehensive values thrive: "a political conception does not deny that there are values applying to the associational, the familial, and the personal; nor does it say that political values are entirely separate from, or unrelated to, those values"¹².

Political dignity, the recognition of worth and autonomy in the political realm expands the horizon of what is possible for those limited in their perspective. Individuals are involved in a variety of relationships within different spheres, ensuring that rights, political liberties and opportunities commutate between the spheres. Political liberalism is build around a deductive assumption that does not regard the public and the private spheres as disconnected spaces, where each is governed by its own distinct principles of justice⁴. *Quasimodo* as previously, this view is subjected to purely political liberal requisites, hence failing to address effectively the question of justice within the private sphere.

**The necessity to re-construct Rawls's theory of justice?
(or the transformation of Rawls's political liberalism into a teleological comprehensive liberalism)**

"Put it boldly, it is the attempt at a posterior reconstruction of existence by the process of conceptualization."

Albert Einstein

The conceptual character – pure political liberalism – of Rawls's theory of justice is where the shoe pinches, because it hinders an effective accommodation and applicability of Okin's critique. The major point, on which Rawls differs from Okin, is on the advocacy of an equal distribution of domestic labour. "Liberal conception of justice may have to allow for some traditional gendered division of labour within families provided it is fully voluntary and does not result from or lead to injustice" ¹³. Nonetheless, this "voluntary agreement" can be questioned. Indeed, women's choices are a large part of how gendered roles are maintained: "for the female, subordination is sexualized in the way that dominance is for the male, as pleasure as well as gender identity, as femininity" ¹⁴. Hence, women's preferences are manipulated since they have been socialized to have compliant preferences. Furthermore, women are lacking a sufficient sense of self to be able to form autonomous preferences. Preferences tend to be adaptive, shaped both by past choices and by what we consider as a set of feasible options. Jon Elster's adaptive preference formation illustrates women's position. In the fable, the fox, knowing that he cannot get the grapes, takes them to be sour and so prefers not to have any. Adaptive preferences correspond to a habituation or resignation to a restricted set of feasible options. Such preferences are a mechanism for reducing cognitive dissonance that takes the form of downgrading inaccessible options so that available options come to be preferred. In our case, many professional positions are inaccessible to women so they tend to occupy jobs on the lower social and economical scale. Feminist thinkers are aware that any gender equality limited to the public sphere will not lead to a substantive equality, due to the inherent *alpha* male structure of the family. Hence, liberal values must be extended to the private sphere. This divergence sustains the point that the Rawlsian theory of justice must be conceptually changed.

In *Political Liberalism* ⁵, Rawls advocates conceptions of what is of value in human life, of ideals of familial relationships, and other ways informing and limiting our conduct. However, this advocacy is based on a content-neutral version of autonomy applied within the public and the private sphere. This means that Rawls focuses on the processes and conditions involved in a person's choice but does not require that an autonomous course of action be chosen ¹⁵. Hence, there is no outcome of choice. Therefore, Rawls adopts a reasonable comprehensive liberalism, which does not impose a view of the *good* on people via governmental interference. A first stage in the transformative process occurred, transformation in a reasonable comprehensive liberalism. However, the extension of liberal values to

the private domain requires a dominance approach via Nagel's equality strand, aiming to change people's attitudes through institutional means and aiming to license some comprehensive values deleterious to women. An example is the advocacy for the suppression of gender (*confere ut supra* parts), which would therefore, based on Rousseau's syntax structure, take men as they should be. Therefore, I argue that Rawls needs to adopt a teleological comprehensive theory of justice, thereby ensuring the occurrence of the expected outcome, the absolute gender equality. This teleological comprehensive theory, by suppressing gender, would overcome the experiential nature of human customs and relations – hence the *tabula rasa* of historical and internally differentiated relation of gender domination would occur. “Both the concept of privacy and the existence of a personal sphere of life in which the State's authority is very limited are essential. However, such a sphere can be just and secure only if its members are equals⁹.” This has to be understood that only once the equality is secured, via *pro tempore* governmental interference, the private sphere will become immune to State's intervention. Okin's aim is to make the family maximally just and this asks for intra-familial redistribution enforceable with State power. Now, a move from theory towards public policies and State interventionism is needed, but has the State the epistemological and ontological capacity for securing gender equality?

State's neutrality as a myth and State interventionism as a phallocratic apparatus ?

“People who demand neutrality in any situation are usually not neutral but in favor of the status quo.”

Max Eastman

How can we determine when State intervention is deleterious to the private autonomy of citizens? According to Habermas¹⁷, citizens must decide in the “open and inclusive network of overlapping publics” which serves to frame political issues primordially. This view presupposes the autonomy and rational capacity of each agent. However, the specific dimension of political modernity is the dichotomy between the public and the private characterized by a gendered dimension. Three consequences of this dichotomy can be evidenced:

1. sexualized distribution of resources within the public space;
2. symbolic construction of the public space around values socially identified as “feminine” and “masculine”;
3. power relations between sexes rest on this symbolic construction and its subsequent socially embedded significations.

In order to counter this gendered dimension of the public space – understood as the discursive space within which public problems are debated – the *doxa* of feminism aims to fuse the private with the political: “the private is the political”. Nevertheless, a semantic ambiguity occurs. Does the private correspond to society or to the domestic sphere, is the political the State or the non-domestic sphere? Two interpretations ascend, one is centred on the articulations between the private and public sphere, the other supposes a more radical politicization of the private sphere, understood as a fully political space. In this latter’s light, interventionism is necessary.

According to Lehning¹⁸ the State is the Archimedean point of the Enlightenment project since it embodies the Weberian axiological neutrality. It does thus at *prima facie* qualify as an agent of intervention within the private sphere. However, the epistemological concept of objectivity and its subsumed neutrality or “view from nowhere”¹⁹ can be criticized as androcentric. The traditional notion of objectivity as being neutral on account of its abstraction from contextual and concrete aspects is to be re-assessed. Objectivity stands for *Wertneutralität*, rationality and abstraction. In spite of that, it is factually impossible to stand nowhere, to be at the Archimedean point, because objectivity is dependent on contexts. Choices, interventions, cannot operate in neutrality, but must be between people who operate together, in full knowledge of their interests and situatedness, to probe and to negotiate the terms by which they will live together imperfectly in a structure defined by their differences. The feminist critique asserts that standing nowhere is standing in the position of the powerful males, securing their interests while presenting this neutral place as disinterested and universal²⁰. The ideal of objectivity expresses a systematic distortion of the context and legitimization of inequalities, due to its incapacity to seize the psycho-social implications of cognition. Objectivity and neutrality are a “phallogocentric system of representation, concealing the male perspectives and interests and conceives them as being ontologically structured by relations of hierarchical dominance”²¹.

MacKinnon, for instance, considers that the First Amendment of U.S. Constitution under its apparent neutrality marks a masculinist bias. More specifically, laws supporting freedom of expression, when applied to materials depicting women in harmful ways, are not neutral. Seemingly, the Welfare State is mere the embodiment of a set of sexist assumptions about women expressed in its ideology and manifested in its practices²². Furthermore, State policies centred on the “care” project have proven that State interventionism is not necessarily favourable to a democratization of gender relations. For example, measures including a maternal salary do reinforce female assignment to the private sphere. The conception of the School of Public Choice of the State is the anagogical conception for the feminist critique. The State is the expression of a coalition of private interests – in occurrence phallogocrate interest – and State interventionism provides less good decisions than the optimum, on account of the ignorance and rational indifference of the agent – here, the woman’s prospective and context are not considered as variables.

Henceforth, one main concern turns around the efficacy and aftermaths of State interventionism within the domestic sphere. The challenge is to execute public policies within a democratic privatized sphere. The normative content of State interventionism affecting gender relations is undetermined *a priori*; these interventions can either sustain the hierarchized connections of genders or promote equality. In order to get a clearer picture of the harm that State interventionism implies, the case of domestic violence and how it became criminalised will be examined. Hence, what is the appropriate role of the State in preventing violence against women? According to Mills²³ the detriments caused by mandated justice interventions are examples of violence against victims by mainstream feminists who use the State as a proxy to exert power over women because they have not processed the violence in their own lives. Mills bases herself on the premise that the intimate and individualized nature of domestic issues – here violence – makes punitive State interventions unviable. State interventionism does undermine and disempower women’s agency, and does cluster violence to a stereotyped conception of the victim as helpless and dependent. As a consequence, it does perpetrate the ingrained hierarchical dispositions between genders. Furthermore, laws are serving a purpose only if their subject, women, are the active agents of their rights. Laws should recognize the specificity of gender-based violence and should identify the preventive, punitive and protective duties of the State. Succinctly, State interventionism recovers a *façade* neutrality, accentuates the *status quo* and does thus nurture the inherently socially constructed hierarchy between genders. In order for public policies to be effective, an integral gender approach is required.

Fusing the private and the political: the need for citizenship and active impartiality

“Impartiality is the life of justice, as justice is of all good government”

Goethe

Okin considers that the private sphere is permeable to the dynamics of power, usually considered as a characteristic of politics⁹. Power is ubiquitous and the frontiers between the public and private sphere are alterable and constantly in motion. Nevertheless, Okin remains ambivalent with regard to the need for State intervention. It appears that “the private is the political” must be a cognitive device acting as a vector for individual awareness with regard to the structural character of power relations. State intervention must be limited to introduce conditions favouring a democratization of relations, however, this democratization can only arise from individuals themselves. On this basis, the private and political sphere must be governed by a common principle of autonomy and self-determination, thereby making both spheres ruled by the axiom of embedded autonomy.

Individual agency and choice are the pillars of empowerment and thus intervention from the State must be assessed by whether they respect women's choice and ameliorate suffering. Interventionism should combine individual empowerment with system change. The program "Safety and justice for all"²⁴, for instance, considers that the State must be held accountable for protecting women via law enforcement, but should also rely on advocacy and activism. Programs for intervention within the private realm should "assure broader responsibility and accountability for guaranteeing the basic human, economic, civil, political and cultural rights"²⁴. The State must devise tangible programs able to respond to the structural dimension of women's oppression in personal life. Victim-centred legal reforms should be implemented so that "the law should be re-configured to put the victim's experience and the victim's need for protection at the centre of the law, transforming social ideas about victims for the assaults they suffer"²⁵. Amnesty International proposed to use the different legal regimes at the village level in order to use restorative justice approaches. In a village in Senegal, for example, a participatory model involving the entire community, where villagers were taught about their human rights and were engaged in problem-solving discussions about their respective needs, has been implemented. In order to implement gender equality, restorative justice is required, so that all stakeholders are involved and that the traditional relationship between the private – communities – and the political – the State – in responding to crime are reconfigured. In a similar line of thought, Mills has developed the "Survivor-centered model"²³. This approach assumes that the victim of domestic violence is searching for a path towards healing. State actors should help facilitate the victim's psychological health as well as her physical safety. In order to counteract the victim's relationship to the oppressor, eight targets should be attained: (i) acceptance; (ii) respect; (iii) reassurance; (iv) engagement; (v) resocialization; (vi) empowerment; (vii) emotional responsiveness; (viii) liberation.

Under the actual paradigmatic modernity of politics, we are actors and agents of a process of stigmatization and societal polarization – between a male *ubi maior* and a female *minor cesseat* – constructed upon the sexual identity of an individual. In order to understand the origin of this process, a distinction between *sex per se* and gender must be made. Even if both are connected, the latter is mere the extension of the former, dictated by a social structuration of the *alter*. Indeed, if sex is a natural data, a biological category, the gender is linked to an identity socially constructed. Gender is a *nomos* that each individual does interiorize through the different communitarian and institutional instances. In more plastic terms, it is not the phallus *per se* which determines the masculine identity and its attributes. Rather the masculine gender defines the masculine substantiality. Hence, gender has to be deconstructed. A new feminism must emerge, it is what I will call the "feminism of opposition", which has to act as an intellectual agent and as a figure of refuse. Feminism implies a conscient awareness of the structural power dynamics. Henceforth, feminism should become a movement with a universalizing, participatory and contextual aesthetic. Indeed, by founding the feminism of opposition on universal Human foundations, by making the effort to compensate for the different

exigencies conditioned by the context, this epistemological feminism will put in direct relation its ethic and message with reality²⁶. On this account, the feminism of opposition will be achievement-oriented since its message will be function of the context of emergence. By covering a form of opposition and once the construction of a universal feminism achieved, the promotion of male-female equity can be realized via a process of intrinsic democratization, led under the State guardianship, but different from the positive discrimination practices putted in place until now. Indeed until now the Wollstonecraft dilemma around feminism has arisen since two ways for achieving citizenship and autonomy for women were envisaged:

1. citizenship is understood as a claim for neutral politics in terms of gender;
2. citizenship is defined on the basis of the differences between man and woman.

The feminism of opposition must not be a *sui generis* etiology. Indeed, if “the private is the political”, then this interventionism must promote the universalism lying behind the notion of “woman”. This new feminism would objectify a new developmental stage aiming to break the sexist barriers at the micro- and macro-level. The feminism of opposition is to be found on the primacy of equality and on the models of “social arrangement” and “emancipation”. This conjunction confers the feminism of opposition the capacity of “being formal and real: driven for concrete aims, such as the place within the social scale and the degree of autonomy”²⁷. Equality between sexes is thought as an exigency to be met, a democratic horizon to conquest. The differences between man and woman are not natural but contractual and can therefore be reversed. The sexed order has no substantial legitimacy. Any intervention must evidence the mythical dimension of the principle of complementarity between genders, which is the basis of the representation of differences between man-woman.

As seen *ut supra*, State intervention in the private realm is deleterious unless auto-determination and autonomy is instituted so that: (i) women can fully participate into social life; (ii) are conferred an effective right to political participation. Habermas defines autonomy as a principle “according to which persons act as free subjects to the extent that they follow those laws which they have given themselves, in accordance with intersubjectively ascertained insights”¹⁷. These laws are *gleichursprünglich*, hence the rights delineating a sphere of private autonomy and those delineating a sphere of political autonomy are not normatively ordered, so that neither set may instrumentalize the other. Furthermore, “the unequal distribution of basic goods diminishes the rationality of collective decisions. Thus a policy of compensation for the unequal distribution of available social goods can be justified as measures enabling citizenship”¹⁷. This account of achieved citizenship poses the comparative advantage of being more flexible than Okin’s one and more egalitarian than Rawls’s one. Habermas does focus his attention on all these conditions that disable citizens from exercising their political liberties and provides a viable solution for eradicating gender inequality.

The Rawlsian forum of public reason can be used to understand the place of the “moral point of view”. This “moral point of view” must be defined as neither exogenous nor transcendental to the political context, in order not to destroy citizen’s autonomy. The “moral point of view” requires Scanlonian impartiality among the citizens²⁸. This latter is active and corresponds to the effort each individual does for adopting the *alter*’s point of view, in order to operate to a reversibility of judgement and to systematize our sense of justice. Scanlonian impartiality presupposes situatedness which corresponds to a pluralistic and dynamic partiality allowing the agent to be endowed with a multi-perspectivity guaranteeing non-hierarchical order between genders. At the level of gender inequalities, Fox Keller provides the so-called “dynamic objectivity”²⁹, based on a psychological approach of sympathy. This approach allows the research-subject to adopt a both gender-sensitive and non-distorting attitude towards the research-object. Applied to interventionism, the research-subject is the political/the State and the research-object is the private/the domestic. Such a concept of empathic fluidness is also echoed by the model of equivalence, which considers equality “to be realized between two systems of values and uniquely in the world of values”²⁷. This model renders the asymmetry of sexes inoperative in creating a hierarchical relation between genders. The principal of equivalence between genders is founded on the transversality of genders: the feminine and masculine do penetrate the barriers of sex since they are present in every Human being. Succinctly, State interventionism must be restricted to impose a cognate autonomy within the public and private sphere. In order to ensure this embedded autonomy – on account of the permeability of the private and public sphere –, genders must be impartial, and substantive citizenship must be achieved.

Conclusion

“On ne naît pas femme, on le devient.”

de Beauvoir

Okin’s critique of Rawls’s theory of justice highlights some main points which have to be revised in order to ensure a substantive gender equality within the infra-familial sphere, in order to achieve *the personal is the political*. Due to a lack of resources, this requires a conceptual transformative process of the theory of justice. This is illustrated via the adoption of a reasonable comprehensive liberalism in the works written *a posteriori* by Rawls. However, this transformative process must go further and move towards a teleological comprehensive liberalism, legitimizing – at least *pro tempore* – the governmental intervention into the private sphere. This prerequisite of *res, non verba* enables justice to be applied and to work effectively. Nonetheless, “if the state is strong, it crushes us. If it is weak, we perish.”¹⁶, hence a proportionate balance of powers must be found.

REFERENCES

- ¹ John Rawls, *A theory of justice*, Oxford, Oxford University Press, 1971
- ² Susan Moller Okin, *Is multiculturalism bad for women?* New Jersey, Princeton University Press, 1994
- ³ Benhabib, Seyla, "The Liberal Imagination and the Four Dogmas of Multiculturalism" *The Yale Journal of Criticism*, 2 (2), 401-413, 1998
- ⁴ John Rawls, and Jürgen Habermas, *Débat sur la justice politique*, translated by Catherine Audard and Rainer Rochlitz, Paris, Editions du Cerf, 1997
- ⁵ John Rawls, *Political liberalism*, New-York, Columbia University Press, 1993
- ⁶ Marla Brettschneider, *Democratic theorizing from the margins*, Philadelphia, Temple University Press, 2007
- ⁷ Susan Moller Okin, *The subjection of women*, Cambridge, Hackett Pub Co Inc, 1989
- ⁸ Susan Moller Okin, "Mistresses of their own destiny: group rights, gender, and realistic rights of exit", *Ethics*, II (112), 205-230, 2002
- ⁹ Susan Moller Okin, *Justice, gender and the family*, New-York, Basic Books, 1991
- ¹⁰ Susan Moller Okin "Forty acres and a mule for women: Rawls and feminism" *Politics, Philosophy & Economics*, 4 (2), 233-248, 2005
- ¹¹ Donald, J., *Constructing community: moral pluralism and tragic conflicts*, New Jersey, Princeton University Press, 1995
- ¹² John Rawls, *Justice as fairness: a restatement*, Cambridge, Harvard University Press, 2001
- ¹³ John Rawls and Samuel Freeman, *Collected papers*, Cambridge, Harvard University Press, 1999
- ¹⁴ Catherine, A., MacKinnon, *Towards a feminist theory of the state*, Cambridge, Harvard University Press, 1989
- ¹⁵ Ruth Abbey, "Back toward a comprehensive liberalism?" *Political Theory*, 35 (1), 5-28, 2007
- ¹⁶ Paul Valéry, *Les Principes d'anarchie pure et appliquée*, Paris, Editions de Minuit, 1984
- ¹⁷ Jürgen Habermas, *De l'éthique de la discussion*, Paris, Cerf, 1992
- ¹⁸ Percy, B., Lehning Liberalism and capabilities: Theories of justice and the neutral state. *Social Justice Research*, 4: 187-213, 1990
- ¹⁹ Thomas Nagel, *The View from Nowhere*, Oxford, Oxford University Press, 1986
- ²⁰ Jane Flax, *Thinking fragments: psychoanalysis, feminism and postmodernism in the contemporary West*, Berkeley, University of California Press, 1990
- ²¹ Jacques Derrida, *Writing and Difference*, University of Chicago Press, Chicago, 1978
- ²² Elizabeth Wilson, *Women and the Welfare State*, Tavistock, New York: Routledge, 1977
- ²³ Linda; G., Mills, *Insult to Injury: Rethinking our Responses to Intimate Abuse*, Princeton, NJ, Princeton University Press, 2003
- ²⁴ Das Dasgupta, *Safety and justice for all*, New York, Ms. Foundation for Women, 2003
- ²⁵ Amnesty International, <http://www.amnesty.org.uk/content.asp?CategoryID=10010>, 2004
- ²⁶ Alexandra Dobra, *Is the Human distinguishable from the animal by being a rational animal? In Principles of Nature and Grace, by W. G. Leibniz*, E-Logos Electronic Journal for Philosophy, 15, 2009
- ²⁷ Christine Delphy, *L'ennemi principal, tome 2: Penser le genre*, Paris, Editions Syllepse
- ²⁸ Thomas, M., Scanlon, Contractualism and utilitarianism. In *Utilitarianism and Beyond*, Cambridge University Press, Amartya Sen and Bernard Williams, (eds.). Cambridge University Press, 1982
- ²⁹ Evelyn Fox Keller, *Reflections on Gender and Science*. Yale University Press, 1985

L'ÊTRE ET L'ESSENCE. QUELQUES OBSERVATIONS SUR LE VOCABULAIRE DE L'ONTOLOGIE THOMISTE

GABRIEL CHINDEA *

ABSTRACT. *On Being and Essence. Some observations regarding the vocabulary of Thomistic ontology.* This paper examines the way in which some Greek philosophical ideas have been interpreted in the Middle Ages and analyses the equivocal historical heritage of the most important concepts of the Thomas Aquinas's theory on being and essence. The author begins by presenting a short history of this theory, especially of the relation between the Thomistic and the late Greek Platonist philosophical terminology. Then, he discusses the relation between form and act of being to Thomas Aquinas and the difference between these Thomistic ideas and the apparently similar concepts that can be found in the classical Aristotelian tradition.

Keywords: Aristotelianism, Thomism, Platonism, Essence, Being

Il est connu, le monde médiéval était fondé sur l'idée d'autorité: autorité dans la famille, dans le métier, dans la société; autorité en théologie ou en philosophie. C'est la raison pour laquelle, pendant des siècles, la pensée latine médiévale a essayé d'avoir une liaison étroite avec ses sources fondamentales: tant la Bible ou les textes dogmatiques chrétiens de la fin de l'Antiquité, que la logique ou la science grecques. Sources qui lui étaient étrangères comme langue et culture et qu'elle se forçait à traduire et assimiler, en dépit du fait que, le plus souvent, les significations originelles qu'elle voulait conserver se trouvaient de la sorte profondément transformées.

D'autre part, ces transformations – linguistiques et conceptuelles à la fois – sont devenues l'objet préféré des recherches historiques contemporaines. Et cela même si les racines d'une telle attitude circonspecte envers la prétendue fidélité culturelle du Moyen Age à son propre passé sont plus anciennes, notamment en puisant dans le monde germanique. Quant à notre article, il se propose de s'inscrire dans la même direction, en discutant quelques éléments qui contribuent à l'équivoque historique de la théorie de l'être et l'essence chez Thomas d'Aquin. Plus précisément, nous commencerons par esquisser une courte histoire de cette théorie concernant notamment la relation entre la terminologie thomiste et celle du platonisme grec de la fin de l'Antiquité. Ensuite, nous analyserons le rapport entre forme et acte d'être chez Thomas d'Aquin et la difficile intégration de ces concepts thomistes dans la tradition aristotélicienne plus ancienne.

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I. L'équivoque de la traduction de l' *être* et de l' *essence*

1. L'équivoque de l' *être*: τὸ ὄν ou ἡ οὐσία?

Tout d'abord, il faut commencer par souligner l'équivoque de la traduction et de la compréhension de l' *être* et de l' *essence* non seulement dans le vocabulaire philosophique médiéval, mais aussi moderne, y compris, bien évidemment, français. Car, dans les plus importantes langues européennes, l' *être* est exprimé par un infinitif substantivé: *das Sein* en allemand, *l'essere* en italien, etc., si bien que c'est seulement le géronde anglais *the being* qui semble reproduire fidèlement ce que les Grecs avaient nommé τὸ ὄν.

D'autre part, la traduction de τὸ ὄν est d'autant plus importante que le mot est déjà présent chez Parménide¹, l'initiateur de l'hénologie, mais aussi de l'ontologie grecque, pour ne plus parler de Platon, où il désigne soit l'un des plus importants genres de la réalité (μέγιστα τῶν γενῶν)², soit surtout – par une expression pléonastique et donc plus difficile à traduire (τὸ ὄντως ὄν)³ – la part de la réalité qui possède une existence véritable et qui fait l'objet principal des préoccupations philosophiques. Enfin, τὸ ὄν est aussi l'un des concepts préférés de la philosophie aristotélicienne, malgré les difficultés bien connues que le Stagirite essaye de surmonter dans l'édification d'une ontologie unitaire, portant sur l' *être* en tant qu' *être* (τὸ ὄν ἢ ὄν). Difficultés qui découlent du fait que l' *être* se dit de plusieurs façons (τὸ ὄν λέγεται πολλαχῶς)⁴ et qu'il n'y a pas de genre commun pour ses diverses significations⁵. Car l' *être* peut s'affirmer différemment selon chaque catégorie particulière (κατὰ τὰ σχήματα τῆς κατηγορίας)⁶, ou encore dans la mesure où il exprime une chose en acte (ἐντελεχεία), ou en puissance (δυνάμει)⁷, vraie (ἀληθής), ou fautive (τὸ ψεῦδος)⁸, accidentelle (κατὰ συμβεβηκός), ou existant en soi (καθ' αὐτό)⁹. Ce qui empêche donc une totale convergence de ses significations (συνωνύμως), ainsi que sa compréhension comme objet d'une science bien déterminée, malgré le fait que sa situation ne relève pas non plus d'une complète homonymie (ὁμωνύμως).

D'autre part, pour revenir au problème de la traduction de τὸ ὄν, la situation est plus compliquée encore, étant donné que l' *être* est appelé souvent en français à exprimer aussi le grec οὐσία. Un mot qui signifie "fortune" et qui pourrait donc être

¹ Plus précisément, dans une forme dialectale dorienne (τὸ ἐόν), de même que sa négation (τὸ μὴ ἐόν). Voir Parménide, fr. B, 2, 4 et 13, Diels-Kranz.

² Platon, *Sophiste*, 254d 4.

³ *Ibidem*, 240b 3 sqq.

⁴ Aristote, *Métaphysique*, VII, 1, 1028a 10.

⁵ Cf. Porphyre, *Isagoge*, 6, 6: οὐ γὰρ ἐστι κοινὸν ἐν γένος πάντων τὸ ὄν.

⁶ Aristote, *Métaphysique*, V, 7, 1017, a 23 sqq.

⁷ *Ibidem*, 1017b 1.

⁸ *Ibidem*, 1017a 31-32.

⁹ *Ibidem*, 1017a 7.

traduit aussi par “richesse” si la racine hellène du terme n’était pas ainsi complètement occultée. Car οὐσία dérive d’οὔσα, le participe féminin du verbe εἶναι. Ce qui explique pourquoi les Latins, par exemple, l’ont traduit au début par *entia*¹⁰, c’est-à-dire toujours par un dérivé du participe actif d’*esse*. Et cela même si cette solution ne pouvait guère être satisfaisante, car *entia* était en même temps le pluriel d’*ens* et donc aussi un correspondant du grec τὰ ὄντα: mot qu’on pourrait traduire par “ceux qui sont” ou par “les êtres” et qui se trouvait, à son tour, assez souvent dans les textes philosophiques pour interférer avec οὐσία et générer des confusions dans les traductions latines.

Ce qui explique, d’ailleurs, pourquoi les Latins ont choisi finalement de traduire οὐσία soit par *essentia*¹¹ – toujours un dérivé de l’*esse*, mais de l’infinitif, et non du participe –, soit par *substantia*¹². Deux solutions concurrentes, qui se sont néanmoins imposées, y compris dans la terminologie philosophique française.

Pourtant, ni *substantia* et, par conséquent, ni *substance* ne sont des équivalents tout à fait adéquats pour οὐσία. Car, étymologiquement, elles correspondent plutôt au grec ὑπόστασις. Or, pour les Grecs, ὑπόστασις n’était absolument pas un synonyme d’οὐσία. Comme on le voit, par exemple, dans la formule trinitaire orthodoxe, où Dieu est défini comme μία οὐσία ἐν τρισὶ ὑποστάσει¹³. Une expression que les Latins étaient alors tentés de la traduire par *una substantia in tribus substantiis*¹⁴ et de la trouver absurde précisément à cause de cette imparfaite traduction.

2. L'équivoque de l'essence: ἡ οὐσία οὐ τὸ τί ἐστι?

Dans ces conditions, traduire οὐσία par *essentia* et donc aussi par *essence* semble une meilleure solution. D’autant plus que l’adoption exclusive de cette variante résoudrait aussi l’équivoque du français *être*, dont l’utilisation serait alors limitée seulement à l’expression de τὸ ὄν.

¹⁰ Voir le témoignage de Quintilien, *De institutione oratoria*, II, 14, 2. Cf. aussi l’importante note philologique d’Etienne Gilson en appendice à *L’être et l’essence*, Vrin, Paris, 1994, pp. 335-349.

¹¹ Voir Quintilien, *ibidem*; de même que III, 6. Cf. aussi Sénèque, *Ad Lucilium*, 58; Boèce, *De persona et duabus naturis*, chap. III, PL 64, 1344CD.

¹² Voir Augustin, *De moribus Manichaeorum*, II, 2, 2.

¹³ Cf. *La lettre synodale de Constantinople adressée au pape Damasus* [de l’année 382], chap. 11, dans *Die griechischen christlichen Schriftsteller*, 44, Akademie Verlag, Berlin, 1954, pp. 289-294.

¹⁴ Voir par exemple l’observation de Thomas d’Aquin, *Contra errores Graecorum*, prologue: « Dicitur enim apud Graecos recte et catholice, quod Pater et Filius et Spiritus Sanctus sunt tres hypostases; apud Latinos autem non recte sonat, si quis dicat quod sunt tres substantiae, licet hypostasis idem sit apud Graecos quod substantia apud Latinos secundum proprietatem vocabuli. Nam apud Latinos substantia usitatus pro essentia accipi solet, quam tam nos quam Graeci unam in divinis confitemur ».

Toutefois, équivaloir οὐσία par *essentia* ou *essence* n'est pas non plus à l'abri des malentendus, étant donné que non seulement *l'essence*, mais aussi *essentia* ont fini par avoir un sens plus restreint par rapport à οὐσία. Car, en français, aussi bien qu'en latin, ces mots traduisent le plus souvent ce que les Médiévaux ont choisi d'exprimer aussi par *quidditas*: c'est-à-dire la nature ou la totalité des caractéristiques à la base d'une chose.

Il est vrai, à l'origine de cette signification particulière se trouvent toujours les Grecs, plus précisément Aristote. Celui qui, dans la *Métaphysique*, dresse une liste de plusieurs significations philosophiques d'οὐσία: d'une part, la matière d'une chose (ἡ ὕλη), d'autre part, sa forme (ἡ μορφή), ou même le composé des deux (τὸ ἐκ τούτων)¹⁵; et encore, aussi bien le substrat (τὸ ὑποκείμενον), que l'universel (τὸ Καθόλου), ou le genre (τὸ γένος), et, surtout, ce que c'est une certaine chose (τὸ τί ἦν εἶναι)¹⁶, donc précisément ce qu'on entend par *essence*.

Toutefois, même si *essence* et *essentia* semblent correspondre au plus important sens d'οὐσία – le τὸ τί ἐστὶ –, il est évident qu'elles ne conservent pas toute la signification de ce mot grec. Et cela tandis que le terme *être*, qu'on aurait voulu utiliser seulement pour τὸ ὄν, pourrait mieux le faire, étant donné qu'il peut signifier aussi bien une chose – donc un *être* concret –, que la nature pérenne ou essentielle, à savoir *l'être* de celle-ci.

Ensuite, la traduction d'οὐσία par *être* s'impose avec plus de force si on passe au-delà des textes aristotéliens vers Platon et, en général, vers le platonisme grec. Car une affirmation comme celle de la *République*, selon laquelle le Bien serait ἐπέκεινα τῆς οὐσίας, ne semble pouvoir être traduite que par “au-delà de *l'être*”¹⁷. Et c'est la même situation pour le *Sophiste*, quand il est dit que les incorporels seraient τῆν ἀληθινὴν οὐσίαν, c'est-à-dire “le vrai *être*” que les philosophes cherchent à connaître¹⁸.

3. Encore une fois sur l'équivoque de *l'être*: τὸ ὄν ou τὸ εἶναι?

D'autre part, utiliser *l'être* tant pour la traduction de l'οὐσία, que pour celle du τὸ ὄν ne représente pas non plus une solution. Car on pourrait accepter l'équivalence entre οὐσία et *être* seulement si on trouvait une autre possibilité pour exprimer le τὸ ὄν.

D'ailleurs, les premiers qui se sont confrontés au problème de la traduction de τὸ ὄν ont été toujours les Latins, qui ont choisi au début de l'équivaloir par *ens*¹⁹. Ce qui aurait pu être une solution convenable – parce qu'elle ne chevauchait

¹⁵ Aristote, *Métaphysique*, VII, 3, 1029a 2-3.

¹⁶ *Ibidem*, 1028b 34-36.

¹⁷ Platon, *République*, 509b 9.

¹⁸ Platon, *Sophiste*, 246b 8.

¹⁹ Cf. Priscien, *Institutiones grammaticae*, XVIII, 8, 75; Quintilien, *De institutione oratoria*, VIII, 3, 33.

pas sur la traduction d'οὐσία et correspondait en même temps grammaticalement à l'original grec – si *ens* n'avait pas été pourtant un artifice savant, difficile à imposer dans la langue. Car *esse* n'avait pas de participe, ou plutôt l'avait perdu²⁰, ce qui faisait d'*ens* un terme complètement inventé.

C'est la raison pour laquelle, dans les premiers textes de philosophie latine, on a essayé aussi de traduire τὸ ὄν par *id quod est*²¹. Ce qui était une variante, elle aussi, peu inspirée, puisqu'il y avait le risque de ne plus y sous-entendre le τὸ ὄν, mais le τὸ τί ἐστι, en transformant ainsi l'expression *id quod est* dans un synonyme pour *quidditas* et même pour *essentia*.

Enfin, une dernière possibilité était la traduction du τὸ ὄν par *esse*, c'est-à-dire par l'infinitif du verbe *être*, ainsi qu'il se passera plus tard dans les langues modernes, y compris le français. Mais un tel usage d'*esse* aurait été lui aussi équivoque, car le même *esse* devait être employé pour traduire également le τὸ εἶναι. Et cela d'autant plus que, quoique moins important que τὸ ὄν²², τὸ εἶναι arrivera néanmoins à posséder une signification très spéciale vers la fin de l'Antiquité.

4. Conclusion et tableau général

A la suite des analyses précédentes, il est facile donc de voir que des termes comme *essence* et *être* sont pleins d'ambiguïtés lorsqu'on passe du vocabulaire de l'ontologie grecque à celui de l'ontologie latine et ensuite moderne.

Ainsi, on a vu que le mot français *être* peut traduire non seulement τὸ ὄν, mais aussi οὐσία et τὸ εἶναι, tandis que l'*essence* est, à son tour, l'équivalent soit d'οὐσία, soit de τὸ τί ἐστι. De plus, la même situation équivoque se retrouve dans la traduction de ces termes grecs en langue latine, où les seules transitions directes sont de τὸ εἶναι à *esse* et de τὸ τί ἐστι à *id quod est* et, ensuite, à *quidditas*. Et cela tandis que τὸ ὄν a été traduit, en revanche, tant par *id quod est*, que par *ens* – pour éviter la polysémie de *id quod est*, qui était aussi l'équivalent de τὸ τί ἐστι. De même qu'οὐσία a été traduite aussi bien par *essentia*, que par *substantia* – pour corriger la limitation d'*essentia* à *id quod est* et donc à *quidditas*, même si par une forme étymologiquement incorrecte et capable de générer des confusions, comme dans l'interprétation latine du dogme trinitaire grec.

Ce qui pourrait se résumer finalement sous la forme du tableau suivant:

²⁰ Le vrai participe de l'*esse* avait été *sens*, conservé seulement dans les verbes composés avec *esse*, par exemple *prae-esse* (*prae-sens*), ou *ab-esse* (*ab-sens*). Cf. A. Ernout & A. Meillet, *Dictionnaire étymologique de la langue latine*, Klincksieck, Paris, 1939, p. 302.

²¹ Cf. Sénèque, *Ad Lucilium*, 58. Le plus intéressant est cependant Boèce, qui traduit τὸ ὄν soit par *id quod est* (dans *Consolatio philosophiae* ou dans les traités théologiques), soit par *ens* (dans les commentaires sur Porphyre). Cf. aussi E. Gilson, *op. cit.*, pp. 337-338.

²² Certes, il y a aussi des exceptions. Voir par exemple la célèbre affirmation de Parménide, selon qui τὸ γὰρ αὐτὸ νοεῖν ἐστὶν τε καὶ εἶναι (fr. B, 3, Diels-Kranz).

français	grec	latin	
être	τὸ εἶναι	<i>esse</i>	
	τὸ ὄν	<i>id quod est</i> <i>ens</i>	aussi <i>quidditas</i> (sens équivoque)
	οὐσία	<i>essentia</i> <i>substantia</i>	aussi <i>quidditas</i> (sens limité) aussi pour ὑπόστασις (sens équivoque)
essence	οὐσία		
	τὸ τί ἐστι	<i>id quod est</i>	aussi <i>quidditas</i> et <i>essentia</i> (sens limité)

II. L'origine grecque de la distinction entre être et essence et ses métamorphoses latines

1. Porphyre ou l'origine équivoque de la différence entre *être* et *essence*

Revenons maintenant à notre sujet. Car le but de ces observations philologiques est de nous rapprocher de la théorie thomiste de la différence entre l'être et l'essence, en nous permettant d'expliquer les équivoques apparues au cours de la récupération thomiste de certains concepts philosophiques plus anciens. Or, l'origine de cette doctrine semble monter jusqu'à l'Antiquité grecque et, notamment, jusqu'à Porphyre. C'est là qu'on trouve pour la première fois une réflexion philosophique sur *l'être* au sens d'εἶναι, qui conduit ensuite à une distinction linguistique et conceptuelle entre τὸ εἶναι et τὸ ὄν, c'est-à-dire entre *le fait d'être* et l'être en tant que *ce qui est*, en tant qu'existant.

Certes, ce n'est pas le moment d'entrer maintenant dans la présentation détaillée des raisons qui se trouvent derrière cette distinction, ni chez Thomas, ni chez Porphyre. Disons seulement que, chez le dernier, cette différence n'avait pas le sens qu'elle a reçu plus tard et n'était pas non plus en accord avec tous les principes de base de la philosophie néoplatonicienne.

En effet, bien qu'il admette – en accord avec les autres néoplatoniciens et précisément avec Plotin – que le principe suprême, c'est-à-dire l'un (τὸ ἓν), est au-delà de l'être (οὐσία) et n'est pas un existant (ὄν), Porphyre affirme que ce principe ne doit pas être pourtant compris comme absolument étranger à l'être, mais plutôt comme pur *être* (εἶναι) et comme une sorte de *forme de ce qui est* (ἰδέα τοῦ ὄντος)²³. Et cela parce que le premier principe confère l'être (εἶναι) à tout ce qui existe, représentant, par conséquent, un fait d'être auquel participent les choses existantes (ὄντα), même s'il n'est pas lui-même un existant effectif (ὄν), étant antérieur par rapport à tout ce qui

²³ <Porphyrius>, *In Parmenidem*, XII, 32-33, éd. Kroll.

est (αὐτὸ τὸ εἶναι τὸ πρὸ τοῦ ὄντος)²⁴. D'où aussi la distinction qui s'imposerait entre *ce qui est* (ὄν) et *l'être* (τὸ εἶναι), comme différence ontologique entre les choses proprement dites et leur principe transcendant.

2. *Esse et essentia* chez Boèce et Thomas. L'équivoque de *id quod est*

Or, par la reprise de tous ces termes en langue latine, l'idée porphyrienne d'une distinction entre *ce qui est* et *le fait d'être* arrivera parfois à être interprétée dans un sens complètement différent; plus précisément, comme différence entre *l'être* et *l'essence*.

Certes, pour arriver là, il fallait passer de la signification du concept grec de ὄν à celle du concept latin d'*essentia*. Ce qui n'aurait pas été probablement possible sans l'équivoque contenue dans l'expression *quod est*, dont nous avons déjà discuté.

En effet, ainsi que nous l'avons vu, le grec ὄν pouvait et même avait été traduit en latin aussi bien par *ens*, que par *id quod est*. Et cela tandis que *quod est* pouvait également signifier *quidditas*, et donc *essentia*. De cette façon, *id quod est* arrivera à désigner également une chose *qui est* et *ce que c'est* une chose, devenant donc un correspondant aussi bien pour τὸ ὄν, que pour τὸ τί ἐστίν, à savoir un synonyme pour *essentia*. C'est donc l'explication du contresens dans lequel certains textes et affirmations philosophiques latins plus anciens arrivent à être interprétés par Thomas d'Aquin, comme on le voit, par exemple, dans les commentaires thomistes des sentences de Boèce, le philosophe chrétien du VI-e siècle auquel il y avait encore des échos vivants de la pensée grecque ancienne.

Ainsi, dans l'introduction de l'un de ses traités théologiques, Boèce fait les affirmations suivantes: « *L'être* est différent de *ce qui est* (*diversum est esse et id quod est*); car *l'être* même n'est pas encore (*ipsum enim esse nondum est*), tandis que *ce qui est* est et subsiste en recevant la forme d'être (*at vero quod est accepta essendi forma est atque constitit*) ». Ou: « Tout *ce qui est* participe à *l'être* pour être (*omne quod est participat eo quod est esse ut sit*) ». Et il conclut: « Pour tout ce qui est simple, son être et *ce qui est* sont la même chose (*omne simplex esse suum et id quod est unum habet*). Pour tout composé, *l'être* et lui-même sont différents (*omni composito aliud est esse, aliud ipsum est*) »²⁵.

Or, il est bien connu que Boèce était fortement influencé par le néoplatonisme et particulièrement par la philosophie de Porphyre²⁶. Voilà pourquoi la signification du texte est relativement claire, en nous parlant de la différence entre le fait d'être

²⁴ *Ibidem*, XII, 26-27.

²⁵ Boèce, *De hebdomadibus*, PL 64, 1311B.

²⁶ Voir en ce sens P. Hadot, *La distinction de l'être et de l'étant dans le « De hebdomadibus » de Boèce*, dans *Miscellanea Mediaevalia II: Die Metaphysik im Mittelalter*, W. de Gruyter, Berlin, 1963, pp. 147-153, de même que P. Hadot, "Forma essendi". *Interprétation philologique et interprétation philosophique d'une formule de Boèce*, « Les études classiques », 38, 1970, pp. 143-156.

et ce qui est d'une manière très proche de Porphyre. Autrement dit, *quod est* désigne la chose concrète, ayant le sens de *ce qui est*, de même que cet *esse* qui "n'est pas encore" rappelle *l'être antérieur par rapport à tout ce qui est* (τὸ εἶναι τὸ πρὸ τοῦ ὄντος) dont nous venons de discuter.

En revanche, pour Thomas, les affirmations de Boèce possèdent parfois une toute autre interprétation. Et cela même s'il n'ignore pas tout simplement les significations des sentences de Boèce, pour lequel *id quod est* était un synonyme d'*ens* et nullement son essence. C'est pourquoi, dans les *Quaestiones disputatae de anima*, on peut lire les affirmations suivantes: « S'il y a quelque chose qui soit son fait d'être (*suum esse*) – c'est le propre de Dieu –, là, il n'y a pas puissance et acte, mais acte pur. De là vient que Boèce dans le *De hebdomadibus* dit <lui aussi> que dans les choses qui sont autres que Dieu, diffèrent l'être (*esse*) et le ce qui est (*quod est*), ou, comme disent certains, le ce qui est et le ce par quoi c'est (*quod est et quo est*). Car le fait même d'être est ce par quoi quelque chose est (*ipsum esse est quo aliquid est*), comme la course (*cursus*) est ce par quoi quelqu'un court (*quo aliquid currit*) »²⁷.

Il est évident donc que la référence à Boèce et à ses distinctions n'est pas très éloignée maintenant de la signification qu'il y avait au VI-e siècle. Et dans le même sens on peut également citer d'autres passages thomistes²⁸. Cependant, l'ambiguïté de l'expression *id quod est* ne pouvait ne pas pousser Thomas plus loin, si bien que *quod est* prenne aussi le sens d'essence.

En fait, la circonstance et le prétexte pour une telle interprétation se trouvaient dans la situation ontologique particulière des réalités immatérielles. Réalités qui, bien que non composées de matière et de forme, devaient néanmoins être composées d'être et d'essence pour se différencier de Dieu, le seul absolument simple. Ce qui présupposait que chaque réalité immatérielle soit un *ens* formé d'*essentia* et d'*esse*.

Toutefois, quand on lit les passages thomistes qui exposent effectivement cette situation, on constate assez souvent une inconséquence. Car, à la place d'un *ens* composé d'*esse* et d'*essentia*, on trouve plutôt un *ens* identifié à *essentia* et, par conséquent, une *essentia* transformée elle-même en *ens*, pris ensemble comme différents de l'*esse*. Et cela même si la raison d'un tel rapprochement abusif entre *ens* et *essentia* est facile à comprendre. Car il permet à Thomas de présenter Boèce comme l'ancêtre de la distinction entre l'être et l'essence qu'il voulait maintenant imposer.

Ainsi, dans le traité *De ente et essentia*, on peut lire que, « parce que la quiddité (*quidditas*) de l'intelligence <immatérielle> est l'intelligence même, sa quiddité ou essence est cela même qu'elle est (*quidditas vel essentia eius est ipsum quod est ipsa*),

²⁷ Thomas d'Aquin, *Quaestiones disputatae de anima*, q. 6.

²⁸ Cf. Thomas d'Aquin, *Quaestiones de quolibet*, II, q. 2, a. 1: « (...) et, de ce fait, dans toute créature, la créature qui possède l'être (*creatura quae habet esse*) est différente (*aliud*) de son fait même d'être (*esse eius*). C'est ce qu'affirme Boèce (...), à savoir que dans tout ce qui vient après le Premier (*in omni eo quod est citra Primum*), l'être et le ce qui est sont différents (*aliud est esse et quod est*). » Cf. aussi *ibidem*, III, q. 8, a. 1; *De veritate*, q. 27, a. 1, ad 8.

alors que son acte d'être (*esse suum*), reçu de Dieu, est celui par lequel elle subsiste dans la nature; et voilà la raison pour laquelle ces substances ont été dites, par certains, composées de "ce par quoi est" et "ce qui est", ou de "ce qui est" et "être" (*componi ex "quo est" et "quod est", vel ex "quod est" et "esse"*), comme dit Boèce »²⁹.

Or, de cette façon, le passage de l'existant à son essence, ou d'*ens* à *essentia* est accompli. Un passage qui, d'autre part, n'aurait pas été possible sans l'équivoque de *id quod est*, ainsi que nous venons de le dire. Comme on le voit, d'ailleurs, aussi dans *Summa contra Gentiles*³⁰, où il y a un glissement analogue, permis, cette fois, par l'ambiguïté d'un autre terme, celui de *substantia*. Mot qui peut signifier aussi bien une chose, que son essence. Ce qui rend finalement possible la consécration de Boèce en tant qu'autorité latine soutenant l'idée thomiste de différence entre essence et être, et cela notamment dans le cas des réalités immatérielles, conçoit jusqu'alors plutôt comme simples et non composées.

Enfin, cette équivoque sémantique rend ensuite acceptable un autre glissement. Car la séparation entre *id quod est* et *ens* permet, d'autre part, le rapprochement entre *ens* et *esse*. D'où alors l'interprétation de l'*esse* même comme *ens*, plus précisément comme *ens in quantum ens*, qui élimine complètement l'élément originel, le τὸ εἶναι porphyrien, qui se trouvait derrière l'infinitif *esse*, au profit de la référence aristotélicienne plus classique et plus commode à τὸ ὄν ἢ ὅν. Car, même si, pour Thomas, l'*esse* n'est pas automatiquement un *ens*, étant donné qu'il peut entrer, comme une sorte de partie,

²⁹ Thomas d'Aquin, *De ente et essentia*, chap. V. Cf. aussi: « Ce qui est (*quod est*) représente ce qui possède l'être en subsistant (*quod est est id quod subsistit in esse*), et pour les substances corporelles cela représente le composé même de matière et de forme, tandis que pour les substances non corporelles, cela représente une forme simple (*ipsa forma simplex*), en même temps que ce par quoi est (*quo est*) représente l'être participé même (*ipsum esse participatum*), parce que toute chose existe dans la mesure où participe au fait même d'être. Voilà la raison pour laquelle Boèce emploie lui aussi ces termes dans le *De hebdomadibus*, affirmant qu'à l'exception du premier <principe>, ce qui est et l'être ne sont pas identiques (*non idem est quod est et esse*) » (*De spiritualibus creaturis*, a. 1, ad 8). Cf. aussi *In librum Boethii De hebdomadibus expositio*, lectio 2.

³⁰ *Summa contra Gentiles*, II, c. 52: « (...) en ceux dont le fait d'être n'est pas subsistant (...), ce qui appartient au sujet en plus de son fait être lui est assurément uni (*est unum subiectum habens esse et id quod est praeter esse*); ainsi voit-on qu'en Socrate, en plus de son fait d'être substantiel (*suum esse substantiale*), il y a le blanc, qui est certes divers de ce fait d'être substantiel, car ce n'est pas la même chose d'être Socrate et d'être blanc, autrement que par accident. (...). Le fait d'être lui-même appartient à l'agent premier <c'est-à-dire à Dieu> selon sa propre nature (*secundum propriam naturam*), car le fait d'être de Dieu est sa substance (*esse Dei est eius substantia*) (...). Or, ce qui convient à une chose selon sa propre nature ne convient aux autres que par manière de participation: comme la chaleur aux autres corps que le feu. Par conséquent, le fait d'être (*esse*) convient à toutes choses par participation au premier agent. Or, ce qui convient à une chose par participation n'est pas sa substance (*substantia*). Il est donc impossible que la substance d'un autre existant (*substantia alterius entis*) que l'agent premier soit le fait d'être lui-même (*ipsum esse*) ».

dans la composition de celui-ci, et qu'il constitue alors ce fait d'être qui n'existe pas effectivement (*ipsum esse nondum est*), dont avait parlé Boèce, cependant, une fois pris seul, comme principe premier, *esse* même est conçu comme un *ens*. Un *ens* qui est seulement *esse*, et, de cette manière, un *ens* absolu; c'est-à-dire exactement le contraire de ce qu'il était dans le néoplatonisme.

III. La distinction et la composition entre *esse* et *essentia*. Thomas et Aristote

Enfin, avec la transformation du premier principe en *ens*, le rapprochement de l'aristotélisme, par lequel l'élément originel de la théorie néoplatonicienne de l'*esse* se conserve d'une manière si équivoque, ne rend pas moins équivoque la récupération de l'aristotélisme lui-même. Ce qui nous impose de faire aussi quelques observations.

1. Les Médiévaux *versus* Aristote

Certes, se rapprocher de l'idée aristotélicienne d'être (ὄν) semblait, à première vue, mieux correspondre à certaines aspirations philosophiques de la théologie chrétienne. Une théologie tentée – tant par sa propre tradition juive, que par le modèle musulman rival – d'accentuer le caractère d'existant (*ens*) de Dieu³¹, de même que l'idée d'une création du monde à partir de rien³². Un monde qui, bien qu'existant en acte, restait néanmoins conçu en permanent changement, plus encore, dans la proximité de la disparition, étant donné qu'il y avait eu un temps où il n'avait pas existé.

De là venait donc aussi l'impulsion presque naturelle de cette théologie de penser le fait d'être (*esse*) comme une qualité en soi, que les choses créées (*res*) reçoivent complètement de l'extérieur. Une qualité qui n'appartient donc pas à la réalité inhérente (*realitas*) ou à l'essence (*essentia*) de celles-ci, mais vient seulement accompagner (*accidens*) leur nature³³, conformément à une idée qui se prolongera, d'ailleurs, dans la métaphysique occidentale jusqu'à Kant, selon lequel l'être n'est pas un prédicat réel (*Sein ist kein reales Prädikat*)³⁴. Et cela, évidemment, même si le rapport d'une chose (*res*) au fait d'être (*esse*) ne pouvait être seulement extérieur, une fois que la chose arrive à exister (*res existens*), et son être à lui appartenir effectivement.

³¹ Cf. le célèbre ἐγώ εἰμι ὁ ὄν (en traduction latine, *ego sum qui sum* (*Vulgata*, Exod. 3, 14)). Cf. aussi Thomas d'Aquin, *Summa Theologica*, I, q. 2, a. 3

³² L'expression ἐξ οὐκ ὄντων (le correspondant grec de *ex nihilo*) appartient, d'ailleurs, à l'époque tardive et héliénistique de l'Ancien Testament (voir le second *Livre des Maccabées*, 7, 28).

³³ « En général, *accident* s'appelle tout ce qui n'appartient pas à l'essence d'une chose; comme, par exemple, le fait d'être dans les choses créées (*accidens dicitur large omne quod non est pars essentiae; et sic est esse in rebus creatis*). » (Thomas d'Aquin, *Quaestiones quodlibetales*, XII, q. 5, a. 4)

³⁴ I. Kant, *Kritik der reinen Vernunft*, Felix Meiner Verlag, Hamburg, p. 673.

De telle sorte que finalement il ne s'agira pas seulement d'une distinction (*distinctio*), mais aussi d'une composition (*compositio*) entre l'être (*esse*) et l'essence (*essentia*) de la chose créée.

Or, dès qu'il devait rendre compte de l'*esse*, ce rapprochement d'Aristote, que le concept d'*ens* semblait faciliter, devenait plus qu'équivoque. Car, à la différence de ὄν, l'importance philosophique de εἶναι avait été plutôt insignifiante chez le Stagirite. Et cela non seulement à cause de l'absence d'une identité entre *ens* et *esse*, comme celle attribuée plus tard au premier principe, mais aussi parce que, chez Aristote, la composition d'une chose n'avait jamais engagé parmi ses éléments le fait même d'être. Ce qui pouvait donc soulever des sérieux problèmes une fois qu'une telle présence constitutive de l'être aurait dû être exprimée et expliquée dans les termes de référence de l'ontologie aristotélicienne.

Certes, l'idée d'une composition des choses n'était pas étrangère à l'aristotélisme. Plus encore, la manière dont cette idée avait été articulée chez Aristote deviendra un modèle conceptuel pour les Médiévaux, y compris pour Thomas. Cependant, la composition (σύνθεσις) dont le Stagirite s'était principalement occupé concernait la matière et la forme, et différait donc de la composition d'être et essence proposée maintenant. Voilà donc pourquoi l'accord entre ces deux types de composition n'était pas facile à atteindre. Et si, finalement, il sera toutefois réalisé, cela se passera seulement à la suite d'une interprétation assez infidèle de l'aristotélisme.

2. La mésinterprétation de l'aristotélisme: la forme et l'acte d'être. Quelques problèmes

Quant à Thomas, le premier pas fait vers ce rapprochement de l'aristotélisme a été d'assimiler l'essence avec la forme. Une chose facile et relativement légitime, étant donné qu'elle avait été faite aussi par Aristote lui-même dans la *Métaphysique*, lorsqu'il avait identifié οὐσία et μορφή³⁵. En revanche, l'inclusion de l'être (*esse*) dans le paradigme aristotélicien n'était pas seulement plus difficile à faire, mais elle demandait en même temps de reconsidérer la nature et le rôle que la matière et la forme avaient joué chez le Stagirite. Ce qui générera des importantes difficultés conceptuelles.

En effet, la manière aristotélicienne de composition des choses présuppose une réunion de deux termes ou éléments distincts, dont l'un est l'acte, et l'autre la puissance. Voilà pourquoi, quand il s'agit seulement de matière et de forme, la fonction de chacune d'entre elles dans le processus de composition est facile à définir, l'une étant nécessairement un acte, et l'autre une puissance. En revanche, l'apparition d'un troisième terme – l'être entendu comme fait d'être (*esse*) – complique la situation. Car le rôle que celui-ci jouera à l'intérieur de ce champs conceptuel n'est plus clair, pour ne plus parler du résultat final. Un résultat qui pourrait signifier aussi bien deux actes et une puissance, que deux puissances et un acte, ou un acte, une puissance, et une sorte d'intermédiaire entre eux.

³⁵ Aristote, *Métaphysique*, VII, 3, 1029a 3.

Plus encore, si la forme était et restait un acte, comme chez Aristote, l'être devrait lui être subordonné. Ou, à tout le moins, c'est ce qu'il devrait se passer dans une interprétation thomiste fidèle à l'aristotélisme. Car, dans l'ontologie aristotélicienne, la forme constitue le but proprement dit (τέλος) de la génération (γένεσις) d'une chose matérielle. Voilà pourquoi l'existence des choses est vue seulement comme une conséquence implicite du processus mis en mouvement par la forme, et nullement comme la fin ultime et déterminante de la génération. Ce qui explique d'ailleurs la raison pour laquelle Aristote a pu très bien se dispenser d'une réflexion approfondie de l'être au sens de εἶναι. Car l'acte de configuration des choses dépassait à ses yeux leur processus de création, la forme conférant immédiatement aussi bien figure qu'être, c'est-à-dire existence complète, à la chose matérielle. Ce qui faisait de l'ontologie aristotélicienne une ontologie de la forme, plus précisément de l'être-forme, et non pas de l'être purement et simplement; chose valable d'ailleurs non seulement pour l'aristotélisme, mais aussi pour le platonisme ou le néoplatonisme.

Or, une telle subordination de l'être à la forme était impossible à conserver dans le contexte thomiste. Car cela aurait signifié que la forme – et ensuite l'essence, dont on a vu qu'elle pouvait lui être assimilée – pouvait disposer par elle-même – donc intrinsèquement – d'être. Etre qui, en termes thomistes, n'aurait plus été extérieur à l'essence pour se composer avec elle. Ce qui aurait transformé la chose matérielle dans un existant nécessaire par nature et donc égal à Dieu, le seul où l'être et l'essence coïncident.

Le problème était donc redoutable, étant donné qu'il s'agissait d'admettre un fait d'être qui aurait précédé la forme, même si la forme devait rester un acte (pour respecter les affirmations d'Aristote³⁶) et donc un principe antérieur par rapport aux autres éléments participants à la composition d'une chose.

D'autre part, tant qu'il s'agissait seulement de réalités matérielles, la situation n'était pas encore complètement insoluble. Et cela pour deux raisons: d'une part, parce que le sujet potentiel de l'être (*esse*) n'est pas seulement la forme, mais aussi la matière, et d'autre part, parce que, même si l'acte proprement dit du sujet matériel est l'être, la matière ne peut pourtant arriver directement et immédiatement à l'être, mais seulement par l'intermédiaire d'une forme. Car la matière dépourvue de forme n'est pas effectivement un existant (*ens*), de même que tout existant doit avoir une forme³⁷. Ce qui transforme la forme en acte et condition d'être pour la matière, comme on le voit dans les affirmations thomistes selon lesquelles, « dans les substances composées de matière et de forme, il y a trois principes: la matière, la forme, et le fait d'être lui-même (*ipsam esse*), dont le principe est, en réalité, la forme (*cuius quidem principium est forma*). Car la matière participe à l'être de ce qu'elle reçoit la forme. Ainsi donc le fait d'être suit la forme même (*consequitur ipsam formam*) »³⁸.

³⁶ Voir *ibidem*, IX, 8. Cf. aussi *Physique*, II, 1, 193a 29-b 21.

³⁷ Cf. aussi Thomas d'Aquin, *De ente et essentia*, chap. 3.

³⁸ Thomas d'Aquin, *Quaestiones disputatae de anima*, q. 6. Cf. *ibidem*, q. 9.

De cette façon, la forme reste à contribuer à l'être, et l'être à être conditionné par la forme (*consequitur formam*), même si, d'autre part, on est déjà loin d'Aristote. Car la manière dont la forme est comprise maintenant en tant que condition de l'être ne correspond plus au modèle aristotélicien, quoiqu'elle semble très proche aux présuppositions originelles du Stagirite, pour lequel c'est la forme qui fait d'une chose un existant proprement dit (ὄν). Tandis que, selon Thomas, la forme n'est pourtant pas la source de l'être, mais seulement un intermédiaire dont la matière a besoin pour recevoir un acte d'être distinct de la forme et supérieur à celle-ci.

Enfin, la situation de la forme et son rapport avec le fait d'être se complique encore avec le passage des réalités matérielles aux réalités immatérielles. Car c'est là que l'absence de matière – seule à laquelle la forme pourrait servir d'acte – rend la forme une simple puissance de l'être, en contredisant clairement les affirmations d'Aristote concernant le caractère actif de l'essence ou de la substance (οὐσία) des réalités immatérielles³⁹. Car, en effet, « rien n'empêche, selon Thomas, qu'il y ait une forme séparée de la matière qui possède l'être, ni que dans une telle forme soit l'être ». Mais seulement parce que « l'essence même de la forme se rapporte au fait d'être comme une puissance à son acte propre. Et ainsi, dans les formes subsistant par soi, se rencontre et la puissance et l'acte pour autant que le fait d'être lui-même est l'acte de la forme subsistante, laquelle n'est pas son propre fait d'être »⁴⁰.

Or, dans ces conditions, il semble naturel de se demander quel est l'élément qui pourrait garantir à ces réalités immatérielles – et, par conséquent, aussi à leur essence ou forme – une nature active intrinsèque. Une nature active qui leur assurerait une certaine liaison avec la représentation aristotélicienne originelle qu'on avait sur elles. Et cela d'autant plus que leur essence devrait être plus noble que celle des réalités matérielles⁴¹, où la forme avait pu encore jouer, ainsi qu'on l'a vu, un certain rôle actif.

Certes, on pourrait répondre – ainsi que le suggère d'ailleurs Thomas lui-même – que la supériorité et, par conséquent, l'actualité de ces formes est donnée par leur nature de subsistance⁴². Mais une telle assertion offrait à tout sujet ontologique la possibilité de recevoir la même reconnaissance de caractère actif, c'est-à-dire à la matière aussi qui est le principe de la subsistance des réalités matérielles et à laquelle, au contraire, on a toujours attribué une nature potentielle.

³⁹ Cf. Aristote, *Métaphysique*, XII, 1071 b 20-21.

⁴⁰ Thomas d'Aquin, *Quaestiones disputatae de anima*, q. 6.

⁴¹ La noblesse des réalités immatérielles vient, d'autre part, aussi de leur essence simple et non composée, différente de l'essence des choses matérielles. Sur la différence entre ces deux types d'essence et sur la composition de matière et de forme de l'essence des choses matérielles, voir Thomas d'Aquin, *De ente et essentia*, chap. 2.

⁴² « En effet, la forme en tant que forme n'est pas dépendante de la matière; mais s'il se trouve des formes qui ne peuvent exister sans être incarnées dans la matière, c'est là une conséquence de la distance où elles sont du premier principe qui est acte premier et pur. De là suit que les formes les plus proches du premier principe sont des formes subsistantes par elles-mêmes sans matière (*formae per se sine materia subsistentes*) (...). » (*Ibidem*, chap. 5)

Enfin, une autre manifestation de la nature active de la forme séparée pourrait se voir dans le fait que la forme détermine elle aussi l'acte d'être qu'elle reçoit pour exister. Car « le fait d'être <des réalités immatérielles> n'est pas absolu (*esse earum non est absolutum*), mais reçu (*receptum*); c'est pourquoi il est limité et déterminé à la capacité de la nature réceptrice, tandis que leur nature ou quiddité est absolue et non reçue dans une matière »⁴³. Ce qui explique aussi la nature de ce que Thomas appelle *modus essendi*⁴⁴, comme résultat de cette détermination formelle de l'être.

Toutefois, cet effet déterminant de la forme sur l'être ne semble pas non plus lui confirmer son actualité, parce que la forme détermine l'acte d'être seulement en tant que récepteur, en lui conférant certains traits particuliers d'une manière semblable à celle dont la forme elle-même est individualisée à un niveau ontologique inférieur par la matière. Ce qui correspond donc plutôt au mode "d'action" d'une puissance, et non d'un acte.

Or, en réalité, le problème est insoluble. Il expose, encore une fois, le degré d'infidélité atteint parfois dans la récupération thomiste des concepts grecs, y compris quand il s'agit de l'être, de l'essence et de leur rapport réciproque. Quant au vrai problème – auquel les observations développées dans cette étude ne peuvent servir que d'introduction – il est plus ample et regarde même le déroulement historique de la philosophie européenne. Car, bien que la croyance souvent partagée au Moyen Âge d'une continuité conceptuelle et terminologique avec la philosophie grecque se révèle une illusion, cependant, il est clair que, sans les Grecs, rien de ce que les Latins ont pensé ou écrit n'eût été possible. Comme c'est aussi le cas également si l'on passe des Médiévaux aux Modernes. De là vient donc la difficulté de décrire et d'interpréter jusqu'à la fin ce phénomène de *translatio studiorum*, où ni l'hypothèse de l'absolue univocité, ni celle de la complète équivoque historique ne peuvent être soutenues sans réserve. Car une perspective monadologique sur l'histoire de la philosophie – comme succession de mondes conceptuels clos et plutôt autistes – est aussi exagérée que son opposé.

Au contraire, ainsi qu'on a eu l'occasion de le constater, ces mondes communiquent. Et ils ne le font pas seulement d'une manière implicite, comme il arrive le plus souvent en histoire, mais d'une manière ouverte, consciente, même si elle est nourrie en même temps par toutes sortes d'ambiguïtés, offrant, assez souvent, au passé une continuation d'autant plus éclatante qu'elle est nourrie par des malentendus et des contresens. Voilà pourquoi le problème de l'histoire de notre culture et de notre philosophie n'est nullement facile à trancher. Car, quoi qu'il en soit, sans toutes ces équivoques, il ne serait jamais rien passé.

⁴³ *Ibidem*, chap. 6.

⁴⁴ Cf. Thomas d'Aquin, *De veritate*, q. 22, a. 11, réponse au IV-e contre-argument.

THE LEGITIMATE CAUSES OF VIOLENCE IN THOMAS AQUINAS' POLITICAL PHILOSOPHY¹

MIHAI MAGA*

ABSTRACT. In this article we propose a division of legitimate causes of violence in Aquinas' philosophy. There are four actors which can be subject to violence when acting against rightful principles: the persons, the rulers, the laws and the other states. Lawful violence against individuals is carried through coercion. A bad ruler is a tyrant and should be overthrown. Inadequate laws, if not changed, oblige to disobedience. Evil governing entities demand a violent response by war. The basis of consenting to violence is the fact that the evil doer requires it, for himself and for restoring the order and peace. Aquinas' texts do not incite to violence, but describe the consequences of evil acts. Their purpose is to frighten and to compel in acting rightfully.

Keywords: medieval political philosophy, Thomas Aquinas, violence, coercion, just war, legitimate power

When violence is taken into account in a cultural, moral, political or philosophical discussion, there is always a point of debate. Though violence is regarded as a negative act, causing pain and destruction, there were always certain forms of violence endorsed by an authority. If pursuing one's happiness is regarded as a good act, inflicting pain and suffering through violence withdraw the conditions of happiness and is mostly regarded as an evil act. If an authority must lead towards a better condition, how can it make use of evil acts?

The same question arises when discussing about justifying violence in the Middle Ages. The particular problem comes from the fact that the accepted violence integrates some forms which we regard as separate: religious violence, state violence and legal violence. In the context of the representation of the universe as a hierarchy, a principle regarded in itself as good can be cancelled by another one, standing above the first. The higher principle must be enforced despite lower individual principles. Therefore, if any of these types of violence stands above the principle of individual happiness, it is possible to admit it as being part of the natural order. Yet violence still causes distress and is, in itself, evil, that is why medieval thinkers have tried to give it a rational justification.

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Saint Thomas Aquinas is confronted with this issue several times in his effort to give a theological and philosophical account on every aspect of existence². At this point, I will propose a structure that will ease the understanding of this problem in Aquinas.

There are four causes of violence, each implying a certain part of the political interaction and each coming from the disrespect of a duty or principle. We can distinguish four parts that are involved in the politics: first, the people, made up of individuals, second, the ruling part, which is a monarch in Tomas' option, third, the system of laws and, beside these proper three parts, fourth, the other peoples which are outside of the state. If an individual does not obey the principles, the first form of authorized violence will be enforced: the coercion. If the monarch disregards the principles, he will be overthrown, causing the second form of violence. If the laws do not concord with the principles, they will be disobeyed and the people may rebel against them, making it the third form of violence. At last, when another people or state disregards the principles, a just war may be waged against them, in the fourth form of allowed violence.

We must note that there is not a common principle that leads to these forms of violence, but rather a structure that leads to abstract principles. Therefore, we should discuss each form separately and, finally, analyze the joint causes and implications.

The Coercion

For Aquinas, like for other medieval thinkers, coercion is that thing which enforces the law. For an admonition to be lawful, it must have a coercive power or virtue: „*non habent vim coactivam, quam debet habere lex*”³. However, it is not by itself lawful, but needs promulgation⁴. That doesn't mean that coercion should be administered just to prove the power of law, but the mere presence of it in the law compels the subjects through fear: „*Id autem per quod inducit lex ad hoc quod sibi obediatur, est timor poenae, et quantum ad hoc, ponitur legis effectus punire.*”⁵

To see what is punishable by law we must first see what the law is. Here we must be more specific, because, in Aquinas' acception, there are four kinds of law⁶. The natural law is derived through participation from the eternal law, identical with God's reason that governs the universe. Human law is derived from natural law through determination and inference. Divine law is derived in part from the eternal law, in part of natural law. Hence the concept of law that we accept today as concerning justice among humans corresponds to Aquinas' human law. It stands underneath all other categories of law and therefore its principles must obey the eternal law, the divine law and the natural one.

² The main places that deserve our attention are in *Summa Theologica*, Ia IIae, q. 87 (The debt of punishment), Ia IIae, q. 92 (On effects of law), Ia IIae q. 97 (Change in laws), IIa IIae, q. 33 (Fraternal correction), IIa IIae, q. 40 (On war) and in *De Regno*, I, 12 (What punishments are in store for a tyrant).

³ Thomas Aquinas, *Summa Theologica*, Ia IIae, q. 90, a. 3.

⁴ *ibid.*, a. 4.

⁵ *op. cit.*, Ia IIae, q. 92, a. 2, co.

⁶ *op. cit.*, IIa IIae, q. 91, a. 1-4.

As a result, the human law doesn't punish only the facts concerning the human material existence, but also that which pertain to the spiritual life. Nevertheless, human law can only punish humans in their mortal life: "*Praecepta autem legis sunt de actibus humanis, in quibus lex dirigit, ut supra dictum est.*"⁷ The acts of law are resumed to "command, prohibition, permission and punishment"⁸. In the eyes of the law, human acts may be in one of the following three situations: good, evil or indifferent. Regarding the evil ones, Thomas explains: "*Quidam vero sunt actus mali ex genere, sicut actus vitiosi, et respectu horum, lex habet prohibere.*"⁹ We see here that he puts the law in charge of the vices. But, when discussing vices, Aquinas says that they are contrary to nature¹⁰. Therefore we see that human law punishes also the infringements of natural law. Furthermore, law must also punish sins:

Respondeo dicendum quod ex rebus naturalibus ad res humanas derivatur ut id quod contra aliquid insurgit, ab eo detrimentum patiat. Videmus enim in rebus naturalibus quod unum contrarium vehementius agit, altero contrario superveniente, propter quod aquae calefactae magis congelantur, ut dicitur in I Meteor. Unde in hominibus hoc ex naturali inclinatione invenitur, ut unusquisque deprimat eum qui contra ipsum insurgit. Manifestum est autem quod quaecumque continentur sub aliquo ordine, sunt quodammodo unum in ordine ad principium ordinis. Unde quicquid contra ordinem aliquem insurgit, consequens est ut ab ipso ordine, vel principe ordinis, deprimatur. Cum autem peccatum sit actus inordinatus, manifestum est quod quicumque peccat, contra aliquem ordinem agit. Et ideo ab ipso ordine consequens est quod deprimatur. Quae quidem depressio poena est. Unde secundum tres ordines quibus subditur humana voluntas, triplici poena potest homo puniri. Primo quidem enim subditur humana natura ordini propriae rationis; secundo, ordini exterioris hominis gubernantis vel spiritualiter vel temporaliter, politice seu oeconomice; tertio, subditur universali ordini divini regiminis. Quilibet autem horum ordinum per peccatum pervertitur, dum ille qui peccat, agit et contra rationem, et contra legem humanam, et contra legem divinam. Unde triplicem poenam incurrit, unam quidem a seipso, quae est conscientiae remorsus, aliam vero ab homine, tertiam vero a Deo.¹¹

This is because the human law comprises the precepts transmitted from the divine law, that is contained in the Decalogue¹².

At the end of his response to this question (*Whether the debt of punishment is an effect of sin?*), Thomas puts together the three types of punishment: "*Wherefore he incurs a threefold punishment; one, inflicted by himself, viz. remorse of conscience; another, inflicted by man; and a third, inflicted by God.*"¹³ Consequently, that which law punishes the deeds that offend against the order of humans, but does not exclude the other punishments.

⁷ *op. cit.*, Ia IIae, q. 92, a. 2, co.

⁸ *ibid.*, arg. 1: "*imperare, vetare, permittere et punire*".

⁹ *ibid.*, co.

¹⁰ *op. cit.*, Ia IIae, q. 71, a. 2.

¹¹ *op. cit.*, Ia IIae, q. 87, a. 1, co.

¹² James V. Schall, S.J., *The Uniqueness of the Political Philosophy of Thomas Aquinas*, in *Perspectives in Political Science*, 26 (Spring, 1997), 85-91.

¹³ St. Thomas Aquinas, *The Summa Theologica*, Benziger Bros. Edition, 1947, p. 1442.

Aquinas does not discuss precisely how these corrections are applied. He agrees with Augustine in that the punishment must be proportionate with the severity of the act. Giving an example, he says: “*sicut cum latro suspenditur, non ut ipse emendetur, sed propter alios, ut saltem metu poenae peccare desistant*”¹⁴. He also says that capital sins must be infinitely punished¹⁵. Aquinas is an obvious supporter of the capital punishment, but he is very careful in exposing the reasons. If a smaller punishment can correct someone’s attitude, death has no use for the subject, as he is already dead inside by his sin.

It seems that, when an individual infringes an order, he infringes the Order. That is why we said in the beginning that the violence integrates the religious, legal and political violence. One who is guilty becomes guilty in all senses, even if his guilt pertains firstly to a certain order: that of the religion, that of the other humans, that of the state or that of nature.

There is another principle that explains why any guilt should be handled by law. There is a strong belief that man is himself good¹⁶. Therefore the propagation of unlawful acts may corrupt others:

Ad primum ergo dicendum quod quandoque actus hominis boni vel mali, etsi non ordinantur ad bonum vel malum alterius singularis personae, tamen ordinantur ad bonum vel ad malum alterius quod est ipsa communitas.¹⁷

As we can see from here, the act of rejecting evil is necessary. But the act of punishment induces an evil state in the subject of punishment. For Aquinas, as for other thinkers, it is the infringement of the law and not the punishment that induces, indirectly, an evil state in the subject: “*unde ipsa poena non est effectus peccati directe, sed solum dispositive*”¹⁸. Hence the men must be saved from sin, not from punishment.

This is indeed the purpose of the law, to compel men in being good. It is not the near presence of coercion, but its possibility that leads towards observing the law by refraining from evil: “*„necessarium fuit ut per vim et metum cohiberentur a malo, [...], et sic fierent virtuosi*”¹⁹. Furthermore, even if law is applied to all, it sanctions individual deeds, as each human is independently responsible for his facts.

The Response to Tyranny

In defining the tyranny, Aquinas quotes from Aristotle and his versions of evil constitutions²⁰. Tyranny is defined as worst regime²¹, seen as opposed to monarchy.

¹⁴ Thomas Aquinas, *Summa Theologica*, Ia IIae, q. 87, a. 3, ad 2.

¹⁵ Thomas Aquinas, *Summa Theologica*, Ia IIae, q. 87, a. 4.

¹⁶ *op. cit.*, Ia IIae, q. 18 etc.

¹⁷ *op. cit.*, Ia IIae, q. 21, a. 3, ad 1.

¹⁸ *op. cit.*, Ia IIae, q. 87, a. 1, ad 2.

¹⁹ *op. cit.*, Ia IIae, q. 92, a. 1, co.

²⁰ Thomas Aquinas, *De Regno*, I, 4; Aristotle, *Politics*, III, 7, 1279 b 11 – 1280 a 6.

²¹ Thomas Aquinas, *loc. cit.*

Pursuing its own interest, the tyranny deprives its subjects of their corporal possessions and spiritual freedom, causing violence and even murder. The tyranny is itself violent, but should it be punished with violence?

Their guilt is not only pertaining to their own person, but is related with inducing others into sin. Most often, the birth of a tyrant is caused by corruption.

Aquinas gives much credit for the monarchy, as he believes it to be the best regime. A good ruler, he says, must rule his people in the same way God rules the world²². God rules the world firstly because of mercy, secondly because of the reason of justice and thirdly because of the duty towards his creation.²³ The good ruler governs his people because of his duty towards God who has given him the gift of reason to practice politics²⁴ and because of his love towards his people.

The tyrant misses all these reasons and, by doing it, he is contrary to nature and God. His ruling is short because such a contrariety cannot be maintained longer. His punishment will be the worse: "*Privatur insuper tyrannus excellentissima beatitudine, quae regibus debetur pro praemio, et, quod est gravius, maximum tormentum sibi acquirit in poenis.*"²⁵

Just as God punishes him, the human punishment must be equivalent to his sins. But a tyrant "who on all sides robs everybody, works against the common liberty of all, and kills whom he will at his merest whim"²⁶ and the punishment for a murder is death. Hence human punishment does not suffice, but he is nevertheless put to death for his deeds. He says:

Et si sit intolerabilis excessus tyrannidis, quibusdam visum fuit ut ad fortium virorum virtutem pertineat tyrannus interimere, seque pro liberatione multitudinis exponere periculis mortis [...]²⁷

We see that the revolt is allowed if it is for a just cause, but even if the cause is just, the rebellion is still a violent event because its success depends on killing the evil king. *Interimere* is the verb used in legal circumstances for killing or destroying. We understand from here that the audacious act committed by strong men that kill the tyrant is good, regarding its end.

There is, of course, a proper reason why Aquinas discusses tyranny. It is because he pleads for a temperate monarchy in which the king is seen as an intermediary between the will of God and the will of people. A tyrant acts according to his own will, as said before, but a good king acts in the divine goodness and in the benefit of his subjects. A king who reads *De Regno* (and it is directly addressed to one, namely the king of Cyprus) must be frightened of what a bad king will undergo.

²² *op. cit.*, II, 3.

²³ Thomas Aquinas, *Summa Theologica*, Ia, q. 21, a. 4.

²⁴ *op. cit.*, Ia, q. 96, a. 4.

²⁵ *op. cit.*, I, 12.

²⁶ St. Thomas Aquinas, *On Kingship*, Pontifical Institute for Mediaeval Studies, 1949, I, 12.

²⁷ Thomas Aquinas, *De regno*, I, 7.

Disobedience to the Law

The word *law* is taken by Aquinas, as we said before, in four senses: eternal law, natural law, divine law and human law. There is no question to debate about the eternal, the natural and the divine law because they are universal and necessary, and thus good. The human law, however, is the result of human reason and is expressed in rules and these rules must efficiently and effectively lead towards a goal that is worth pursuing²⁸. What if the law does not reach its purpose?

As Aquinas states, human law is a dictate of reason²⁹. Therefore, law may be changed for two causes that change: because of the reason and because of men. First, the human reason is imperfect, but it advances towards perfection. Consequently, when men discover something useful, they must make use of it. Thus law can be changed when a better alternative is found. Second, the condition of men may change through time and old laws may be inadequate. Thomas reminds that the rectitude of men may change³⁰ and thus it is necessary to change the law for restoring the good state.

Nevertheless, Aquinas maintains that laws should not be changed at any time³¹. That is because the traditions and the stability of law are affected at any change. The change is by itself a prejudice to the legal system, thus the advantage of changing must be greater than this prejudice. The stability of the law makes it observable for all.

But there is an exception, namely the ruler. Because his task is above all human duties, he may be dispensed and this allows him to change the law if necessary³². This exception has, of course, its reverse: tyrants may dispense it for their own good.

But the proper human law must be derived from the other categories of law. It is not the usefulness of it that makes it good, but the accordance with divine will. Law is defined as evil when it fails to derive from God's will³³.

Law may fail to derive from God for two reasons: either because the authority that imposes it is corrupt or because the use of it is unworthy³⁴. We already discussed the situation of the tyrant that imposes his own will and causes malice and violence. Obviously he should be defied, and his laws should not be obeyed.

When a law becomes unworthy, it is the duty of the ruler to straighten it. That is why the prince is not bound by human law and here we meet the principle of *salus reipublicae suprema lex*, which is connected to the state security³⁵. Therefore, if the law is inadequate, but the ruler is good, the change in law happens peacefully.

²⁸ Kenneth W. Kemp, *St. Thomas on the Origins of Moral Rules: Medieval Answers to Modern Questions*, JSCOPE '94, 1994, p. 3.

²⁹ Thomas Aquinas, *Summa Theologica*, q. 97, a. 1, co.

³⁰ *ibid.*, ad 3.

³¹ *op. cit.*, q. 97, a. 2, co.

³² *op. cit.*, q. 97, a. 4, co.

³³ *op. cit.*, q. 95, a. 3.

³⁴ N. P. Swartz, *Thomas Aquinas: On Law, Tyranny and Resistance*, in *Acta Theologica*, 30 (1) / 2010, pp. 147.

³⁵ *ibid.*, p. 148.

Beside that, we must note that Aquinas considers that by law the ruler does not create rights and obligations by itself, but it is required to confirm the existing ones: “*Unde quantum ad Dei iudicium, princeps non est solutus a lege, quantum ad vim directivam eius; sed debet voluntarius, non coactus, legem implere.*”³⁶

Aquinas is very attached to the principle of just law that acts for the common good. Therefore he maintains that the observation of a law that is hurtful to general welfare is not required. The conflict and violence may arise when an authority enforces a law does not accept the change. There are two ways by which good men may oppose: through peaceful resistance, like the martyrs, and through riot, by which the corrupt authorities may be overthrown.

The Just War

One of the frequently mentioned³⁷ answers to the question of just war is in the works of Thomas Aquinas, *Summa Theologica, Secunda secundae, Quaestio 40*: war must be ordered by an authority, it must have a just cause and must be won without disproportionate violence³⁸. These principles are generally valid even today³⁹. Although this “canon” of Thomistic just war is presented in a Christian philosophical and theological context and its argument is rather theological, he passed into secular disputes concerning military intervention. We note that, although religiously endorsed, the “canon” is expressed in a simple and abstract form which makes it applicable to any type of war.

First, we should note that not the idea of just war, but the most common form of expression cited belongs to Thomas Aquinas. In fact, one of the first theoreticians of this idea is Cicero who thought that just war theory should be part of natural law. For Cicero, the main cause of a just war is “*ut sine iniuria in pace vivatur*”⁴⁰ (“to live in peace, without injustice”).

The one that brings this concept in the Christian of tradition thought is St. Augustine. In *De Civitate Dei*, Augustine supports the thesis that just war has to be waged as a divine instrument for the correction of corrupted morals⁴¹. Consequently, the war is justified only when it has the purpose to restore the order of the world, and what matters more is achieving the goal more and less the losses. However, the war should be avoided when not needed⁴².

³⁶ Thomas Aquinas, *Summa Theologica*, Ia IIae, q. 96, a. 5, ad 3.

³⁷ See for example the works of Charles Malik, active member of the commission that drafted the *Universal Declaration of Human Rights* (1947-1948), and who introduced Aquinas' ideas to nowadays debates: Charles H. Malik, *War and Peace*, Overbrook Press, Stamford, 1949; C. H. Malik, *Christ and Chrisis*, Eedermans, Grand Rapids, 1962; C. H. Malik, *Man in the Struggle for Peace*, Harper & Row, New York, 1963 etc.

³⁸ Thomas Aquinas, *Summa Theologica*, IIa IIae, q. 40, a. 1., co. 1-3.

³⁹ Vincent Ferraro, *Principles of Just War*, in *World Politics (Politics 116)*, 2008 < <http://www.mtholyoke.edu/acad/intrel/pol116/justwar.htm> > accessed November 15, 2010.

⁴⁰ Cicero, *De Officiis*, I, 11, 35.

⁴¹ Augustine, *De civitate Dei*, I, 1.

⁴² *op. cit.*, XIX, 9.

Thomas Aquinas, an experienced reader of the Augustine's texts, resumes the just war arguments directly quoting from Augustine. It may even be noticed that in each response to *Quaestio* 40, *articulus* I of the *Summa Theologica*, IIa IIae, there is a quote from Augustine. Emphasis is nevertheless not on waging the war, but on the possibility of it to be justified. In other words, Augustine stressed the fatality, Thomas relies on rationality. But let us see his arguments.

The first is that war must be ordered by the authority of a prince. Private persons can not engage in war because they are under an authority that can judge that case and may determine a verdict. We understand from this that war is imminent only between two parties who are not or do not recognize any authority above them other than their own authority.

The second is the necessity for a just cause that comes from the fact that the other party deserves the war because of a certain guilt. Quoting from Augustine⁴³, Aquinas resumes the idea that a just war is to punish injustice. As we have seen, this idea is also found in Cicero.

The third is the intention with which a war is waged: not for the sake of war, but to promote good or to avoid evil. Quotations from Augustine repeat the thesis of the righteous peacekeeper war in contrast to the wild and cruel motivation of the other party.

There is, obviously, as we have mentioned before, a contradiction between waging war and the state of peace. To see how Aquinas solves this contradiction, let us see how he answers to the contrary arguments.

The first two opposed arguments come directly from the text of the *New Testament*, the last two, from the precepts and practices of the Church.

The first⁴⁴ one is a direct reference to the Bible when Jesus is caught: "*Put up again thy sword into his place, for all they that take the sword shall perish with the sword.*"⁴⁵ It is a common place to reject violence on the basis of reciprocity. The response also refers to Augustine to nuance the situation: the act of drawing the sword is of an individual and not of an authority. Here Thomas returns counterargument in favor of the first condition of his response (that the war must be fought with authority). Only those who use the sword in the intent of a sin shall perish by their own sword in the sense that, if they will not repent, the act committed by the sword will be punished in eternity.

The second⁴⁶ counterargument is that the war would be contrary to the divine precepts. There are two passages quoted from the *New Testament* that demand from Christians not to oppose their enemies, but to wait for divine justice⁴⁷. The answer makes the difference between a state of mind and a need to act. The need to

⁴³ Augustine, *Quaestiones in Heptateuchum*, lib. VI, q. 10.

⁴⁴ Thomas Aquinas, *loc. cit.*, arg. 1 and ad. 1.

⁴⁵ *The Holy Bible*, Matthew, 26, 52 (KJ21).

⁴⁶ Thomas Aquinas, *loc. cit.*, arg. 2 and ad. 2.

⁴⁷ Matthew, 5, 39; Romans, 12, 19.

act so comes from the idea of common good (*propter commune bonum*), and even for the benefit of those against whom the fight is carried. Again, a quote from Augustine enhances the idea of the good done by force, because “nothing is more miserable than the happiness of sinners”⁴⁸.

The third counterargument is the opposition between war and peace. Everything that is the opposite of virtue is a sin. This counterargument seems obvious enough to Thomas to no longer document it. His response is as short: those who do wage a just war are doing it for peace. By this they do not oppose peace, but an evil peace. Although rarely is commented upon this dichotomy, we note that peace is not an absolutely pure principle, because peace can be mean, like the war that led to that peace. Contradictory expressions related to the initial paradox that we mentioned before are taken from Augustine⁴⁹: “*war is fought to achieve peace*”, “*be peaceful when you fight in the war*”, “*bring them [the ones who you fight against] to benefit peace by defeating them*”.

The fourth⁵⁰ and last counterargument is that war exercises, tournaments, are condemned by the church. The answer is that not all war exercises are condemned, but only those that are “*disordered and dangerous*”. To these illegal exercises Thomas opposes the allowed exercises which, he said, were worn in the past. In support, a letter of St. Jerome is mentioned (otherwise a wrong mention⁵¹).

In the other articles of *Quaestio* 40, Aquinas replies that it is not lawful for priests to fight a war, that is not legitimate to lay ambushes (because even in war there are certain rights) and that it is legitimate to fight on holidays when needed.

Here we see that, in this matter, the Thomistic argument has exclusively Christian sources. He does not try to justify the war by something outside his own Christian camp. He answers equally to this question: How can Christians bear a war without sin?

In Aquinas, as in Augustine, we understand that morality is suspended during the war because the enemy is not attacked for being capable of war in turn, but for his guilt of denial and refraining to practice Christian principles. Not only is the governing or active part of the enemy targeted, but the entire population: “[...] *si gens vel civitas plectenda est*”⁵². For this reason, the noncombatants are equally enemies like the other combatant party. Mercy and forgiveness can only come after victory. Precisely this it is the just cause about which St. Thomas talks: “*ut scilicet illi qui impugnantur propter aliquam culpam impugnationem mereantur*”⁵³.

⁴⁸ Augustine, *Letter CXXXVIII ad Marcellinum*, 14.

⁴⁹ Augustine, *Letter CLXXXIX ad Bonifacium*, 6.

⁵⁰ Thomas Aquinas, *loc. cit.*, arg. 4 and ad. 4.

⁵¹ The correct reference is Vegetius, *Epitoma rei militaris*, I, I sqq. (cf. St. Thomas Aquinas, *Summa Theologica*, Benzinger Bros., 1947, footnote to Ila Ilae, q. 40, a. 1, ad. 4)

⁵² Thomas Aquinas, *loc. cit.*, co. 2.

⁵³ *idem* („namely that those who are attacked, should be attacked because they deserve it on account of some fault”, St. Thomas Aquinas, *The Summa Theologica*, Benzinger Bros. Edition, 1947, p. 2006)

Therefore, violence in war is seen as a necessity, at least because of the original sin for which men are imperfect⁵⁴. Moreover, for St. Thomas the war is waged not only to defend Christianity, but to impose Christian values. In opposition with Augustine, who lived in a time of struggle and downfall, Aquinas lives the times of the Christian conquests and crusades and he is not concerned so much about the dangers of being conquered, but about the ways by which the Christianity can be put into effect for all mankind.

Conclusion

We analyzed the four causes of legitimate violence in Aquinas' work, but we still need to find what is common for all of them.

We noticed that all of them are reported to a greater good. That is because they all come from human actions, and human actions are subject to world and divine rules. The welfare of men is a rightful purpose of action, but when the welfare originates in a wrong state of facts, it is allowed to fight that state. The act of rightful violence suspends for a moment the common precepts of good and evil in the person that performs the violent act because the act does not come from his own decision and interest, but it is in the interest of restoring the well being. Accordingly, Aquinas revises the causality of violence by attributing it to the wrong doer: he is the one that deserves it, and his action made punishment necessary.

We can also note that the only category that is not properly subject to violence is the people. The men are treated as individuals, but the whole body is sacred, because it is Christian, it is God's flock. As we seen, coercion is applied to someone as a person, not as a part of the community. The ruler is nevertheless bad as a person, not as a proper ruler.

Thomas Aquinas expresses only the principles of rightful violence, and, even if we searched for more details about how this violent acts should be carried, there is not much in his texts. Aquinas' texts don't provoke violence directly, neither they insist too much on it. A book should not incite to violence, but teach us something good. But there are passages about killing or punishing somebody. Their suitable purpose is to frighten. Fear indeed can be transmitted through a book, and it's probably Aquinas' hope that they will refrain from doing the acts that are paid back by violence. Therefore, the fearful readers of his books will be strengthened in their belief, the hesitating ones will be convinced to follow the good rules and the stubborn ones will be terrified of the consequences of unjust acts.

⁵⁴ Anna Lindh, *Thomas Aquinas and the Just War - a text for our times?*, The Anna Lindh Lecture, 17 October 2006, Lord Chris Patten, p. 8.

BIBLIOGRAPHY

- Sancti Thomae de Aquino *Summa theologiae*, Textum Leoninum Romae 1895 editum;
St. Thomas Aquinas, *Summa theologica*, Benzinger Bros. Edition, 1947;
St. Thomas Aquinas, *On Kingship*, Pontifical Institute for Mediaeval Studies, 1949;
N.P. Swartz, *Thomas Aquinas: On Law, Tyranny and Resistance*, in *Acta Theologica*, 30 (1) / 2010, pp. 145-157;
James V. Schall, S.J., *The Uniqueness of the Political Philosophy of Thomas Aquinas*, in *Perspectives in Political Science*, 26 (Spring, 1997), 85-91.
Shirley Robin Letwin, *On the History of the Idea of Law*, Cambridge University Press, 2005, pp. 69-87;
Kenneth W. Kemp, *St. Thomas on the Origins of Moral Rules: Medieval Answers to Modern Questions*, JSCOPE '94, 1994;
Anna Lindh, *Thomas Aquinas and the Just War - a text for our times?*, The Anna Lindh Lecture, 17 October 2006, Lord Chris Patten;
Vincent Ferraro, *Principles of Just War*, in *World Politics (Politics 116)*, 2008 < <http://www.mtholyoke.edu/acad/intrel/pol116/justwar.htm> >;

KANN DIE POESIE DIE WELT VERÄNDERN? ÜBER HEIDEGGERS AUSEINANDERSETZUNG MIT MARX UND DIE ROLLE DER DICHTUNG IM TECHNISCHEN ZEITALTER

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ABSTRACT. *Can Poetry Change the World? On Heidegger's Confrontation with Marx and the Role of Poetry in the Technical Era.* From the 1970es onwards, it becomes a characteristic trait of the Italian reception of Heidegger's thinking to establish a link between Heidegger and Marx. A systematic reference to Marx is absent from Heidegger's writing. However, Heidegger refers to Marx in a number of contexts and interprets several of the most prominent traits of Marx's teaching. The present article establishes a connection between Heidegger and Marx mediated by the concept of alienation. In contrast to Marx, Heidegger sees a possibility to overcome alienation not by means of a political praxis, but through the capacity of poetry to see and to express the Being as a whole.

Keywords: Heidegger, Marx, Phänomenologie, Praxis, Dichtung.

Seit dem Anfang der 70er Jahre ist ein wichtiger Aspekt der italienischen Philosophie die Rezeption des Heidegger'schen Denkens im Rahmen einer Auseinandersetzung mit dem Marxismus². Ein Grund dafür war Heideggers Auffassung der Technik und der damit verbundenen Kritik der Moderne. Anlass zu dieser Interpretation waren die in dem Brief *Über den Humanismus* enthaltenen Behauptungen Heideggers über Marx und den Marxismus. Während Heidegger einerseits Marx' humanistische Auffassung des Menschen kritisiert, sieht er andererseits in der Marx'schen Erfahrung der Entfremdung die Möglichkeit eines «produktiven Gespräches mit dem Marxismus»³.

In seinem *Über den Humanismus* zitiert Heidegger Marx an drei Stellen: bei der Thematisierung des Wesens des Menschen und seiner Humanismuskritik⁴ (bei dieser Gelegenheit behauptet Heidegger, dass Marx das Wesen des Menschen als Humanismus bezeichnet); bei der Thematisierung des Seinswesens und seiner metaphysischen Entfaltungsweise⁵ (dabei unterstreicht er, wie Marx zusammen mit

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² Vgl. A.P. Ruoppo, *Heidegger in Italien: ein fruchtbarer Dialog*, in «Heidegger-Jahrbuch», Bd. I, Freiburg, 2004, 391-398.

³ M. Heidegger, *Über den Humanismus*, Frankfurt a. M., 1991⁹, 30.

⁴ *Ibid.*, 11-13.

⁵ *Ibid.*, 26.

Nietzsche die Umkehrung der absoluten Metaphysik Hegels vollzogen habe); bei der Thematisierung der Seinsvergessenheit, die mit den Worten von Hölderlin als „Heimatlosigkeit“ verstanden wird⁶ (in diesem Kontext sieht Heidegger die Möglichkeit eines produktiven Gespräches mit dem Marxismus in der Entfremdung und bezeichnet die Frage nach der Technik als den Horizont dieses Gespräches. Die in diesem Zusammenhang vertretene These ist, dass der Kommunismus keineswegs eine politische Partei oder eine Weltanschauung ist, sondern ein Moment der Geschichte der Metaphysik). In Auseinandersetzung mit Marx' Denken entwickelt Heidegger zwei These. Zum einen glaubt Heidegger, dass Marx' Denken innerhalb der Geschichte der Metaphysik zu verstehen sei. Zweitens bezeichnet er die Entfremdung als jene wesentliche Dimension der Geschichte, die den Boden für ein produktives Gespräch mit den Marxismus bereite.

Zur Unterstützung der ersten These bringt Heidegger verschiedene Argumente. Marx' Denken bewege sich innerhalb der Metaphysik aufgrund seiner metaphysischen Bestimmung des Menschenwesens; aufgrund seiner Umkehrung der Hegel'schen absoluten Metaphysik; und schließlich aufgrund seines Materialismus, in welchem sich – Heideggers Meinung nach – das Wesen der Technik entfalte, die ein Moment der Seinsgeschichte sei. Insofern könne der als humanistisch, als Umkehrung der absoluten Metaphysik und als Entfaltung des Wesens der Technik verstandene Kommunismus als ein Moment der Geschichte der Metaphysik verstanden werden, und nicht als Partei oder als einfache Weltanschauung. So Heidegger: «Das Wesen des Materialismus verbirgt sich im Wesen der Technik, über die zwar viel geschrieben, aber wenig gedacht wird. Die Technik ist in ihrem Wesen ein seinsgeschichtliches Geschick der in der Vergessenheit ruhenden Wahrheit des Seins»⁷. Und weiter: «Man mag zu den Lehren des Kommunismus und zu deren Begründung in verschiedener Weise Stellung nehmen, seinsgeschichtlich steht fest, dass sich in ihm eine elementare Erfahrung dessen ausspricht, was weltgeschichtlich ist. Wer den „Kommunismus“ nur als „Partei“ oder als „Weltanschauung“ nimmt, denkt in der gleichen Weise zu kurz wie diejenigen, die bei dem Titel „Amerikanismus“ nur und dazu noch abschätzig einen besonderen Lebensstil meinen»⁸.

Das Gespräch mit dem Marxismus ist also auf der metaphysischen und nicht auf der politischen Ebene zu suchen. Deshalb besteht für Heidegger die Gefahr des Kommunismus nicht so sehr in den wirtschaftlichen oder gesellschaftlichen Folgen, sondern vielmehr darin, «das sein *geistiges Wesen*, sein Wesen als Geist nicht erkannt und die Auseinandersetzung aus eine Ebene gelegt wird, die vollends seine Vormacht und Unwiderstehlichkeit sichert»⁹. Aus dem Bewusstsein dieses geistigen

⁶ *Ibid.*, 30-31.

⁷ *Ibid.*, 31.

⁸ *Ibid.*

⁹ M. Heidegger, *Koinon. Aus der Geschichte des Seins (1939/40)*, in *Gesamtausgabe*, vol. 69, Peter Trawny (Hrg.), Frankfurt a. M., 1998, 204.

Wesens und zwar aus dem Zugehörigkeit zu der Seinsgeschichte entsteht für Heidegger, dass die Überwindung des Kommunismus, nicht durch bürgerliche Zustände, sondern nur wenn wir klar sind, dass «der Kommunismus keine bloße Staatform, auch nicht nur eine Art des politischen Weltanschauung, sondern die *metaphysische* Verfassung [ist] in der sich das neuzeitliche Menschentum befindet, sobald die Vollendung der Neuzeit ihren letzten Abschnitt beginnt»¹⁰.

Aus der Gleichsetzung des Wesens des Materialismus mit dem Geist und aus der Verschiebung des Marxschen Denkens auf die Ebene der Seinsverborgenheit entsteht sogar die Möglichkeit der Identifizierung der als Wesen der Technik verstandenen Maschinerie mit der Maschine, die von Marx als diejenige Einrichtung aufgefasst wird, die in der äußersten Phase des Kapitalismus den Arbeiter bestimmt. Das aber bedeutet, dass die Gleichsetzung von Technik und Materialismus Heidegger zu einer Art Paradoxon führt, nach dem der Marxismus, anstatt die reale Bewegung, die den aktuellen Status der Dinge überholt zu sein, als ein Moment des im Betriebseins der Technik, und zwar als eine Bestellung und eine sich durch das „Getriebe des Betriebes“ durchdrängenden Bedrohung verstanden wird.

Was Heidegger in allgemeiner Weise “Zwängen” nennt, zu denen das heutige Zeitalter uns zwingt, und was für Marx den spezifischen Charakter des Diebstahls an fremder Arbeit, wird bei Heidegger in der Perspektive der Entfaltung des *Ge-Stell*, bei Marx in jener der Entfaltung des Kapitals interpretiert. In der Perspektive Heideggers aber ist das Kapital selbst ein Moment des Seinsgeschickes und hat deshalb eine metaphysische Dimension.

Diese metaphysische Dimension geht in besonders klarer Weise aus dem *Zähringen*¹¹ Seminar hervor, in dem Heidegger Marx' Denken als eine seiner eigenen entgegen gesetzte Stellungnahme zum Problem der Beziehung zwischen Sein und Menschen anspricht. Während sein eigenes Denken von der Thematisierung des Seins seinen Ausgang nehme, setzte Marx den Akzent auf die Frage nach dem Menschen. Insofern sieht Heidegger den Kern des Marxismus in Marx' Aussage „Radikal-sein ist die Sache an der Wurzel fassen. Die Wurzel für den Menschen ist aber der Mensch selbst“. «Auf dieser These - erläutert Heidegger - berührt der gesamte Marxismus. Der Marxismus denkt nämlich von der Produktion aus: gesellschaftliche Produktion der Gesellschaft (die Gesellschaft produziert sich selbst) und Selbstproduktion der Menschen als soziales Wesen. Indem er so denkt, ist der Marxismus eben das Denken von heute, wo schlechthin die Selbstherhellung des Menschen und der Gesellschaft herrscht»¹². Daher entsteht, dass der Marxismus als Selbstproduktion des Menschen, eine Gefahr ist. Heidegger denkt solche Gefahr aus einem ontologischen Gesichtspunkt, indem er sie mit dem *Ge-Stell* gleichsetzt. In den *Seminare* lesen wir: «Heidegger nennt das Gemeinsames der Zwänge in dem Wort Ge-stell. Das Ge-stell ist die

¹⁰ *Ibid.*, 206.

¹¹ M. Heidegger, *Zähringen 1973*, in Id., *Vier Seminare*, Frankfurt a. M., 1977, 110-138.

¹² *Zähringen 1973*, 125.

Versammlung, die Gesamtheit aller Weisen des Stellens, die sich dem Menschenwesen in dem Masse auserlegen, in dem es gegenwärtig ek-sistiert. Somit ist das Ge-stell keineswegs das Produkt menschlicher Macherschaft; es ist im Gegenteil die äußerte Gestalt der Geschichte des Seins. In diesem Geschick ist der Mensch aus der Epoche der Gegenständlichkeit in die Bestellbarkeit übergegangen: in dieser unserer künftige Epoche ist alles und jenes mittels der Berechnung in der Bestellung beständig verfügbar. Streng ausgedrückt gibt es keine Gegenstände mehr, sondern nur Verbrauchsgüter zur Verfügung eines jeden Verbrauchers, der selber in den Betrieb von Produktion und Verbrauch eingestellt ist»¹³. Heidegger fragt sich, ob der Mensch imstande sei, sich aus solchen Zwänge zu befreien. Die Überwindung der Bedrohungen erscheint möglich durch die Versammlung in den neuen Bereich des Seins. Diese Versammlung wiederum wird ermöglicht durch das Denken, sie ist aber nicht durch dieses bestellt oder herausgefördert. Das Denken kann nur die Bedingungen solcher Versammlung vorbereiten. Mehr jedoch als das Denken ist das Dichten diejenige Tätigkeit, die solche Bedingungen vorbereiten kann. Bevor wir uns aber auf die Rolle der Dichtung konzentrieren, müssen wir noch auf stringente Weise sehen, wie Heidegger sich ein produktives Gespräch mit dem Marxismus vorstellt.

Entfremdung und Heimatlosigkeit

Die *Zähringeren* Seminarmitschrift enthält eine Einladung, die Kehre durch das Denken zu erreichen und macht deutlich, dass es die metaphysische und nicht etwa die politische Ebene ist, auf der sich die Auseinandersetzung mit dem Marxismus zu vollziehen hat. Um die Perspektive dieser Auseinandersetzung zu verstehen, müssen wir jedoch zunächst zurück zum Brief *Über den „Humanismus“*, insbesondere zu der Behauptung, dass die Entfremdung den Boden für ein mögliches Gespräch mit dem Marxismus bereitet. Heidegger behauptet, dass Marx, indem er die Entfremdung erfährt, in eine wesentliche Dimension der Geschichte hineinreicht, und dass die Entfremdung in der Heimatlosigkeit des Menschen wurzelt. So Heidegger: «Die Heimatlosigkeit wird ein Weltchicksal. Darum ist es nötig, dieses Geschick seinsgeschichtlich zu denken. Was Marx in einem wesentlichen und bedeutenden Sinne von Hegel her als die Entfremdung des Menschen erkannt hat, reicht mit seiner Wurzeln in die Heimatlosigkeit des neuzeitlichen Menschen zurück. Diese wird, und zwar aus dem Geschick des Seins in der Gestalt der Metaphysik hervorgerufen, durch sie verfestigt und zugleich von ihr als Heimatlosigkeit verdeckt. Weil Marx, indem er die Entfremdung erfährt, in eine wesentliche Dimension der Geschichte hineinreicht, deshalb ist die marxistische Anschauung von der Geschichte der übrigen Historie überlegen. Weil aber weder Husserl noch, soweit ich bisher sehe, Sartre die Wesentlichkeit des Geschichtlichen im Sein

¹³ *Ibid.*, 126.

erkennen, deshalb kommt weder die Phänomenologie, noch der Existentialismus in diejenige Dimension, innerhalb deren erst ein produktives Gespräch mit dem Marxismus möglich wird»¹⁴. Ausgehend von den zwei hier vertretenen Thesen wird im folgenden die Frage nach der Möglichkeit und der Weise eines solchen Dialoges gestellt. Hierbei wird sich zeigen, dass im Horizont des Heideggerschen Denkens eine fruchtbare Antwort auf die Frage der Entfremdung die Dichtung ist.

Um den Rahmen dieses Gespräches zu klären, möchte ich noch stärker Heideggers Perspektive unterstreichen. Auch in Heideggers Denken können wir eine Figur der Entfremdung finden. Diese ist eine *formale Figur*, die verschiedene Inhalte in verschiedenen Phasen von Heideggers Denken aufnimmt. Sie betrifft das Verständnis des Ganzen und seiner internen Artikulation und also das je in verschiedenen Kontexten entstandene Verhältnis zwischen Teilen und Ganzem, und sie ist eine Konstante im Denken Heideggers seit dessen erster programmatischer Formulierung.

In der ersten Bestimmung seines Denkens nimmt Heidegger sich vor, das Leben in seiner Komplexität, in seiner Ganzheit und als Bewegung zu verstehen, ohne es zum Objekt zu machen. In einer Vorlesung der 20er Jahre beschreibt er dieses Programm als ein Zurückkommen aus der Entäußerung. In polemischer Konfrontation mit den Neukantianismus behauptet Heidegger: «Es steht ein anderes auf dem Spiel, nämlich die Philosophie zu sich selbst aus der Entäußerung zurückzuführen»¹⁵. Um das zu verstehen, was hier Heidegger als Entäußerung qua Objektivierung des Lebens durch die Philosophie meint, muss man von seiner Unterscheidung zwischen *Gegenstand* und *Objekt* ausgehen. Heidegger behauptet: «*Objekt* und *Gegenstand* sind nicht dasselbe. Alle *Objekte* sind *Gegenstände*, nicht alle *Gegenstände* sind *Objekte*»¹⁶. Jede objektive Erkenntnis ist immer Erkenntnis von etwas, was außer mir und mir gegenüber steht, aber nicht alles, was mir gegenüber steht, muss objektiv verstanden werden. Was Heidegger mit Objektivierung meint ist sichtbar in Hinblick auf das Leben und seine interne Artikulierung.

Heidegger versteht das Leben als bedeutsame Ganzheit in Bewegung. Das Leben wird zu einem Objekt reduziert, indem es festgestellt, blockiert und aus seinen Bedeutungszusammenhängen herausgelöst wird. Als Objekt ist das Leben zerschlagen, es ist zu einem Haufen von Dingen reduziert. Die Objektivierung entsteht in einem Prozess der Herausdestillierung der Welt, in dem der Bedeutungszusammenhang ausgelöscht ist. Durch die Objektivierung ist das Leben ent-lebt, ent-deutet, ent-geschichtlich. Als objektives ist das Leben zerstückelt. Mit dieser Beschreibung zielt Heidegger nicht auf eine Überwindung der Objektivierung ab, sondern möchte

¹⁴ *Ibid.*, 30.

¹⁵ M. Heidegger, *Phänomenologie der Anschauung und des Ausdrucks. Theorie der philosophischen Begriffsbildung (SS 1920)*, in *Gesamtausgabe vol. 59*, C. Strube (Hrg.), Frankfurt a. M., 1993, 29.

¹⁶ Id., *Phänomenologie des religiösen Lebens*, in *Gesamtausgabe vol. 60*, M. Jung-T. Regehly-C. Strube (Hrgs.), Frankfurt a. M., 1995, 55.

unterstreichen, wie eine solche aus dem Leben als Bedeutungszusammenhang heraus verstanden werden soll. Die Objektivierung soll ausgehend aus diesem Bedeutungszusammenhang verstanden werden und hört auf, eine Ent-lebung zu sein, wenn ihre Genese und Verwurzelung im Leben verstanden wird. Die Objektivierung ist ein derivativer Modus, und zwar ein Modus, der aus der Komplexität des Lebens entsteht, wenn ein Teil dieser Komplexität herausgenommen und blockiert wird, indem die Aufmerksamkeit nur darauf gerichtet wird, ohne das der Kontext wahrgenommen wird. Das Leben soll in seiner Objektivierung ausgehend von den Bedeutungszusammenhängen verstanden werden, als ein Teil eines Ganzen und nicht als ein isoliertes Stück. Durch diese Beschreibung beabsichtigt Heidegger aber keineswegs eine Überwindung der Objektivierung *tout court*; vielmehr versucht er, diese Objektivierung im Zusammenhang einer Bedeutungsganzheit zu deuten.

Ein Hinweis darauf, dass die Interpretation der Technik und die Auseinandersetzung mit dem Marxismus schon in Heideggers Verständnis des Lebens als Haufen von Dingen und Stücken impliziert ist und dass sich also diesbezüglich ein roter Faden durch Heideggers Denken des Verständnisses des Ganzen und seiner Artikulierung zieht, bietet uns ein aus einer Vorlesung der 20er Jahre entnommenes Zitat, in dem das Zusammenfallen des Lebens und seines Bedeutungszusammenhang als „Sozialisierung“ oder „Kommunisierung“ gelesen wird. So Heidegger: «In der Modifikation des faktischen Lebens, die wir als Kenntnisnahme bezeichnen, waren wir, in radikaler Fortführung, gerichtet auf die Bestimmung eines Zusammenhangs, der ganz losgelöst ist vom Zusammenhang der faktischen Erfahrung. Die Tendenz des Lebens und die Tendenz auf Kenntnisnahme besteht fort, es wird noch immer Wirklichkeit erfasst, aber der spezifische Sinn der Erfahrungswirklichkeit ist verloren. Die Bedeutsamkeitsstücke sind ihres Bedeutsamkeitskreises beraubt; sie sind „sozialisiert“ oder „kommuniziert“, d.h. alle auf eine Ebene gestellt»¹⁷. Indem die Einheit des Bedeutungszusammenhangs gebrochen ist, wird das Leben als ein Objekt verstanden, und zwar als ein ersetzbares, auf eine Ebene gestelltes, sozialisiertes, kommuniziertes Stück. Diese Behauptungen implizieren die Grundkritik, die Heidegger, ausgehend von der Gleichsetzung mit dem Wesen der Technik, gegen den Kommunismus üben wird. Auch die Technik macht das Seiende zum Haufen ersetzbarer Stücke.

Im Fazit ist somit die Kritik der Objektivität diejenige eines Verständnisses des Lebens, das einen Teil des letzteren blockiert und es so zu einem aus dem Bedeutungszusammenhang gerissenen Stück reduziert. Wenn wir nur die formale Figur in Betracht ziehen, impliziert die Kritik der Objektivierung die Ablehnung des Verständnisses eines aus dem Ganzen getrennten Teiles, in dem die Artikulierung zwischen Teilen und Ganzem nicht wahrgenommen und nicht thematisiert wird.

¹⁷ M. Heidegger, *Grundprobleme der Phänomenologie (WS 1919-1920)*, in *Gesamtausgabe vol 58*, H.-H. Gander (Hrg.), Frankfurt a. M., 1992, 223.

Auch in der Existentialanalytik können wir die gleiche Figur in der Dynamik zwischen eigentlicher und uneigentlicher Existenz finden. Das „Man“ ist die alltägliche Seinsweise und stellt die Verstellung der ursprünglichen Wahrheit des Daseins dar. Es ist die Verschleierung der Erschlossenheit des Daseins und besteht in der Einbildung, das Ganze zu sein. Solche Einbildung macht es zum Gefangenen seiner Selbst und seiner Uneigentlichkeit. Die Verfallenheit ist nicht nur die Verstellung der Wahrheit des Daseins (als Ganzes), sondern auch die Vergessenheit eben dieser Verstellung, die in der Einbildung, das Ganze zu sein, besteht. Diese Einbildung schließt das Dasein in sich selbst und bringt es in den Wirbel der Uneigentlichkeit. Die Überwindung dieser Uneigentlichkeit ist möglich durch ein Ganzes-sein-können des Daseins. Auch in diesem Fall haben wir mit einer Dynamik zwischen Teilen und Ganzem zu tun: dem uneigentlichen Dasein, das sich mit der Welt identifiziert und die Verstellung seiner ursprünglichen Erschlossenheit ist, und dem Ganzen, zwar der Welt.

In der unter der Bezeichnung Natorp-Bericht berühmt gewordenen programmatischen Skizze benutzt Heidegger noch einmal den Terminus Entfremdung; dieses Mal um die Verfallenheit zu bestimmen. Die Tendenz zur Verfallenheit wird als entfremdend bezeichnet, da das faktische Leben sich mit der Welt, identifiziert und dadurch sich selbst immer fremder wird, die Bewegtheit und die Ganzheit aus den Augen verliert und *das ganze* Leben zu sein glaubt. Heidegger behauptet: «Als beruhigend ist die Versuchung ausbildende Verfallenstendenz *entfremdend*, das heißt, das faktische Leben wird im Aufgehen in seiner besorgten Welt sich selbst mehr und mehr fremd, und die sich selbst überlassene und sich *das* Leben vorkommende Sorgensbewegtheit nimmt ihm mehr und mehr die faktische Möglichkeit, in der Bekümmernis sich selbst in den Blick und damit als Ziel des aneignenden Rückgangs zu nehmen»¹⁸.

Die Tendenz zur Verfallenheit ist entfremdend, indem sie die Identifizierung mit der Welt als dem Ganzen der Bewegtheit des Lebens nimmt. Die Verfallenheit oder – in der Wortwahl des Natorp-Berichtes – die Entfremdung, ist eine Grundbewegtheit des Lebens, die nur dadurch überwunden werden kann, dass das Leben als ein-Ganzes-sein verstanden ist.

Die gleiche Dynamik und die gleiche Grundfigur kann man auch in der Analyse der Geschichte der Metaphysik finden. Das Entziehen eines Teils des Ganzen ist das Wesen des Seins, das sich in Epochen gibt, die aus der Geschichte der Seinsschickung verstanden werden sollen. Auch die Technik wird von Heidegger als eine Gefahr verstanden, nicht als ein in falscher Weise benutztes Mittel, sondern weil sie eine Weise des Seins ist, die als die einzige Weise verstanden wird, indem jede andere Weise in der Vergessenheit nachgestellt wird. D.h. sie ist nur eine Epoche der Schickung des Seins, und nicht die einzige Epoche oder die einzige Weise.

¹⁸ *Natorp-Bericht*, 20.

Die Technik ist die Gefahr als das Sein «insofern es der Wahrheit seines Wesens mit der Vergessenheit dieses Wesens nachstellt»¹⁹. Auch wenn Heidegger hier nicht mehr von “Objektivierung”, “Uneigentlichkeit” oder “Entfremdung” spricht, sondern von “Gefahr” (andernorts wird er von “Heimatlosigkeit” oder “Nihilismus” sprechen) haben wir mit demselben Problem zu tun, und zwar mit dem Verständnis des Ganzen und seiner Artikulierung, seiner Weise sich zu geben, und mit der Möglichkeit seines Verständnisses und Ausdrucks durch die Sprache.

Wenn die Dimension für ein produktives Gespräch mit dem Marxismus diejenige der Entfremdung ist, und wenn die Entfremdung in der Epoche der Technik als Gefahr und als Heimatlosigkeit da ist, und wenn zudem der Marxismus ausgehend aus der Technik verstanden werden soll, dann besteht die Möglichkeit einer Auseinandersetzung in der Weise wie Heidegger die Kehre und die Überwindung dieser dürftigen Zeit versteht.

Eine wichtige Rolle in dieser Hinsicht spielt die Dichtung. Es sind, für Heidegger, die Dichter, die den Weg für die Wiederkehr der Götter in unserer dürftigen Zeit vorbereiten können. Sie denken in der Ortschaft der sich vollendeten abendländischen Metaphysik und sind diejenigen «Sterblichen, die mit Ernst den Weingott singend, die Spur der entflohenen Götter spüren, auf deren Spur bleiben und so den verwandten Sterblichen den Weg spüren zu Wende»²⁰. Das Wozu der Dichter in der dürftigen Zeit zeigt auf exemplarische Weise die Dichtung Rilkes. In der Vollendung der Metaphysik erfährt er die Unverborgenheit des Seins dichterisch, denn seine Dichtung zeigt das Seiende als solches im Ganzen.

Zum Leitfaden seiner Interpretation dient Heidegger ein Gedicht, das Rilke ohne Titel dem 1934 erschienenen Band „Gesammelte Gedichte“ beifügt. Es handelt sich um einige improvisierte Verse, die uns die Sicht öffnen, die Dichtung Rilkes deutlich zu denken. Das Gedicht thematisiert eine Unterscheidung zwischen Menschen und Tieren bezüglich Ihres Verhältnisses zu dem Grund (der Natur, dem Sein). Die Natur wird als Wagnis vorgestellt. Das Verhältnis des gründenden Seins zum gegründeten Seienden ist bei Menschen, Pflanzen und Tieren dasselbe und besteht darin, dass das Sein jeweils das Seiende dem Wagnis überlässt. Das Sein zieht das Seiende stets an sich und auf sich zu als die Mitte und hält alles Seiende als das Gewagte in diesem Bezug. In diesem Bezug sind die Menschen diejenigen, die wagender und schutzlos sind. Heidegger unterstreicht, wie nach dem Gedicht Rilkes «die Natur als das Wagnis zu denken» ist. Das Wagnis aber nenne zugleich den wagenden Grund und das Gewagte im Ganzen. Jedes Seiende ist je nach der Anziehung, durch die es im Zug des ganzen Bezuges einbehalten wird. Die Art der Anziehung innerhalb des Bezuges ist die Weise des Verhältnisses zur Mitte und

¹⁹ M. Heidegger, *Einblick in das was ist*, in *Gesamtausgabe vol 79*, Petra Jaeger (Hrg.), Frankfurt a. M., 1994, 62.

²⁰ M. Heidegger, *Wozu Dichter?*, in *Holzwege*, Frankfurt a. M., 1950, 272.

wird als Schwerkraft verstanden. Die Natur kommt zur Darstellung, wenn gesagt wird, wie das Gewagte jeweils in den Zug zur Mitte gezogen ist. Rilke nennt diesen Bezug auch das Offene. Das Offene bedeutet «sowohl das Ganze der entschränkten Bezüge des reinen Bezuges, als auch die Offenheit im Sinne der überall waltenden Entschränkung»²¹. In dem Offenen liegt die Möglichkeit der Gegenständlichung oder, so Heidegger, «insofern das Offene von Rilke als das Ungegenständliche der vollen Natur erfahren ist, muss sich ihm dagegen und in der entsprechenden Weise die Welt des wollenden Menschen als das Gegenständliche abheben. Umgekehrt empfängt ein auf das heile Ganze des Seienden ausschauernder Blick aus den Erscheinungen der heraufkommenden Technik einen Wink in die Bereiche, aus denen vielleicht eine ursprünglicher bildende Überwindung des Technischen kommen könnte»²². Indem der Mensch die Welt technisch als Gegenstand aufbaut, verbaut er sich den Weg in das Offene. Der Mensch des Weltalters der Technik steht sogar in einem Ab-scheid gegen das Offene. Heidegger weiß aber mit Hölderlin, dass „Wo aber die Gefahr ist, wächst Das Rettende auch“. Mit dem Gesehenhaben der Gefahr müssen wir die Umkehrung der Abkehr gegen das Offene vollzogen haben. Das heißt, das Offene muss sich in einer Weise zugekehrt haben. In diesem Zusammenhang ist der Dichter derjenige, der das Seiende im Ganzen nennen kann. Auch Rilke spricht von der „Kugel des Seins“, wo das „Gesetzt uns anrührt“, die uns in Bewegung bringen kann.

Nicht durch eine Ethik also, die uns sagt, wie wir uns verhalten sollen, noch durch das Handeln der Menschen, kann die dürftige Zeit überwunden werden; vielmehr ist es die Dichtung, die Heidegger zufolge hier einen Beitrag leisten kann. Durch die Dichtung kann aber man sicher nicht die Welt verändern. Man kann vielleicht das Ganze des Seins nennen oder das Unausgesprochene im Hinterkopf behalten. Dies sind die einzigen Grenzen aber, innerhalb derer das Gespräch mit Marx vollzogen werden kann. Und es ist sicher wahr, dass Heidegger, indem er es als ein Moment der Entfaltung des Seins versteht, genau das Proprium des Denkens Marx´ verfehlt, nämlich seine wissenschaftliche Fähigkeit, den Status der Dinge durch die Revolution umzukehren. Aber genau so wahr ist es, dass man von Heidegger nicht fordern kann, die Frage nach der Möglichkeit einer politischen Veränderung der Welt zu beantworten. Eine Überwindung der technischen Zwänge kann in erster Linie durch die Hilfe der Dichter vorbereitet werden, aber das geschieht weder in Marxscher Perspektive noch Absicht.

²¹ *Ibid.*, 285.

²² *Ibid.*, 290.

RECENZII – BOOK REVIEWS

Palade, Tereza-Brîndușa (2010). *Castelul libertății interioare* [*The Castle of Inner Freedom*], Tg. Lăpuș: Galaxia Guttenberg, 176 pp.

The most recent book of Brîndușa Palade is to be seen as a continuation of her efforts to bring the ideas and thoughts of a rather unknown author – Edith Stein – into the neoteric philosophical and phenomenological debates. Although the complete edition of Edith Stein’s Works has already been integrally published by the prestigious *Herder Verlag*, and notwithstanding the fact that some of her most relevant writings have already been – or are about to be – translated in many European languages, Edith Stein’s philosophical ideas remain under the same quiet shade which concealed and haloed her thinking from the very beginning.

Undertaking the task of changing this reluctant attitude – which characterizes almost entirely the academical philosophical field – towards the work of an author who has been canonized, and proclaimed one of the patron saints of Europe, Brîndușa Palade tries to outline the most important and innovative characteristics of Stein’s view on the concept of human person. She begins by evoking the well-known metaphor of the «inner castle», which gives the title of St. Teresa of Avila’s mystical writing *Las Moradas del Castillo Interior*, that was also highly appreciated by Edith Stein. Following closely the path of Edith Stein’s thinking, Brîndușa Palade discusses the problem of personal freedom and the relation of the latter with that enthralling Augustinian love, the question of grace and the openness towards it, the need of regaining your own self as the one and only way to a thorough and authentic understanding of the soul.

Among the difficult questions considered by B.P. is the issue of the relationship between philosophy and theology, and the question

related to the possibility of a “theological phenomenology. This question has a major importance since Edith Stein’s approach is both phenomenological and theological, and her perspective on human person tries to bring together two of the most dissimilar perspectives on this subject, namely the Thomistic and the Husserlian perspective. Although this problem has been put forward many times since, and the problem of the meaning and possibility of a phenomenological analysis in the light of revelation received multiple different solutions, Stein’s answer remains, according to B.P.’s estimation, a very significant one. Stein argues that the prayer is not the sole way to enter into the innermost side of your soul, and to “recover” yourself from that “*defluxus in multum*” (to use an Augustinian term) – though it might be a most privileged one; furthermore, she argues that “a phenomenological investigation of the soul” (p. 81) may have the same existential and cognitive value. One may, of course, question oneself what kind of “phenomenological ground” can be found for such an investigation and in what way does Edith Stein part with the Husserlian understanding of phenomenology, but this is a question too broad to be answered here, though it must be said that Brîndușa Palade argues that Edith Stein’s approach is indebted to the metaphysical tradition in a larger measure than to phenomenology.

This fact becomes clear when B. Palade stresses that Edith Stein cannot yield the temptation of the system, being, in a very strict sense, the heiress of the metaphysical Thomistic legacy. However, B. Palade argues that the Thomistic metaphysical system is radically different from the Hegelian system, for example, because of the fact that the former

is by no means the result of a “subjective or arbitrary order”, but the emanation of a “divine wisdom” (p. 60). This assertion is actually rather problematic, and the line between these two supposedly different systems much harder to make, especially because the Hegelian system can be by no means regarded as the result of a “subjective order”, but rather of an absolute one.¹

Another relevant aspect in the context of human freedom is the question about the metaphysical status of evil. According to B. Palade, Edith Stein’s point of view is in the strictest sense a Thomistic one, the evil is understood as an “inversion of the creaturely will” (p. 88), as the refusal of divine love and personal freedom. However, by stressing the importance of the will for an adequate understanding of this phenomenon, Stein’s concept of evil seems to part, in a sense, with that traditional understanding of evil as *privatio boni*, coming closer to the stand point of German Idealism in general, and to that of W. F. Schelling in particular. Schelling’s understanding of evil as the “will of the

individual [who] seeks to turn the whole to its own advantage, to make of the whole a pliant servant”¹, as a “positive disharmony” and not just as a mere negation or absence of good – and not even as something that Leibniz called “*malum metaphysicum*” – conflicts radically with the whole theological tradition, so that Edith Stein seems to find herself confronted with the impossibility of reconciling these two perspectives. Can evil be thought at the same time as the absence or privation of good and as the “inversion of the creaturely will”? This question is indirectly raised by B. Palade, although the answer – if there can be one – is nowhere to be found.

Brîndușa Palade’s book, *The castle of inner freedom* should be regarded as an insightful introduction to Edith Stein’s work and as an attempt to prove the relevance of Stein’s thinking for the current philosophical debates.

Paul-Gabriel SANDU

¹ Schelling, W. F. (2006) *Philosophical Investigations into the Essence of Human Freedom*, (J. Love, J. Schmidt, Trans.). Albany: New York Press (Original work published in 1809).