



Order, experience, and critique: The phenomenological method in political and legal theory

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Abstract

The paper investigates phenomenology's possibilities to describe, reflect and critically analyse political and legal orders. It presents a “toolbox” of methodological reflections, tools and topics, by relating to the classics of the tradition and to the emerging movement of “critical phenomenology,” as well as by touching upon current issues such as experiences of rightlessness, experiences in the digital lifeworld, and experiences of the public sphere. It is argued that phenomenology provides us with a dynamic methodological framework that emphasizes correlational, co-constitutive, and interrelational structures, and thus pays attention to modes of givenness, the making and unmaking of “world,” and, thereby, the inter/subjective, affective, and bodily constitution of meaning. In the case of political and legal orders, questions of power, exclusion, and normativity are central issues. By looking at “best practice” models such as Hannah Arendt's analyses, the paper points out an analytical tool and flexible framework of “spaces of meaning” that phenomenologists can use and modify as they go along. In the current debates on political and legal issues, the author sees the main task of phenomenology to reclaim experience as world-building and world-opening, also in a normative sense, and to demonstrate how structures and orders are *lived* while they condition and form spaces of meaning. If we want to understand, criticize, act, or change something, this subjective and intersubjective perspective will remain indispensable.

Keywords Phenomenology · Political theory · Legal theory · Critical theory · Normative orders

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1 Introduction

The last years have shown a significant increase in phenomenological investigations of the political. Since 2016, four collected volumes appeared that not only have “phenomenology” and “political” in their title, but also explicitly address the question of methodology.¹ This growing interest is exciting and speaks to the urgent relevance of the topic. At the same time, it is revealing and no coincidence that method is often in the center of these contributions. It points to the rather complicated relation phenomenology has with political inquiry, which seems to require an extra methodological reflection. As is well known, several representatives of the phenomenological movement have compromised themselves politically, first and foremost Martin Heidegger. But also Max Scheler’s appraisal of World War One, or Dietrich von Hildebrand’s involvement with Austrofascism, are no easy burdens.² If we move beyond authors—and despite the heated discussions on Heidegger’s *Black Notebooks*, I believe that this is what most scholars want to do—one would think: There is still the “method,” phenomenology’s core. But access and applicability are neither easy nor straightforward as far as political issues are concerned. Phenomenology has often been accused of solipsism, internalism, subjectivism, transcendentalism, essentialism—and I say “accused” because these are all labels that were definitely meant to rule out that phenomenology could say anything relevant about political or social issues. As Gayle Salamon has recently and rightly insisted again, this is of course a “caricature” of phenomenology.³ Neither is there just one rigid method, nor is there just one grand master who set the course in stone (Husserl), nor are these limited interpretations of Husserl correct, as numerous studies in the last twenty-five years have shown.⁴ If we look at the landscape right now, these productive and careful re-readings of the phenomenological tradition from the mid 1990s and early 2000s have not only opened several new interdisciplinary paths (from cognitive science up to nursing studies) but have triggered a whole wave of investigations on intersubjectivity, empathy, collective intentionality, generativity, and the like. Phenomenology has probably never been as “social” as it is now.

Still, one could object, this does not solve the issue that political inquiries have with phenomenology. I agree. To consider social relations does not yet mean that one has a sense for their political significance. Such investigations can, in fact, remain quite unpolitical and, as a consequence, remain naïve with respect to issues of exclusion, discrimination, and, most of all, the mechanisms of power that cause them. Phenomenologists interested in politics hence want to be critical of, and able to analyze and question, power-relations. This motivates new methodological inquiry, as mentioned above. On the other hand, critical theorists and politically

¹ Cf. Herrmann and Bedorf (2019), Fóti and Kontos (2017), Gurely and Pfeifer (2016), Jung and Embree (2016), also Loidolt (2017).

² Cf. Gubser (2014).

³ Salamon (2018, p. 11).

⁴ To name a few outstanding and influential books of this wave, cf. Steinbock (1995), Zahavi (1999), Crowell (2001), Heinämaa (2003).

interested scholars increasingly want to make use of phenomenological methods. This desire on both sides is not just an intellectual fashion of the day but stems from an urgent theoretical need to analyze the experiential side of politics or of societal orders in general. It has even given rise to a new brand in phenomenology, called “critical phenomenology,” which is still defining itself but seems to set out as a “crossing over” of phenomenology and critical theory, “where each lends insights to the other.”⁵ As this paper is written, the first volume of a new journal dedicated to Critical Phenomenology is published and some of the involved authors announced that they will publish a book called *Fifty Concepts for a Critical Phenomenology* soon.⁶ This, again, points us to methodological issues. The main figures that are named as patrons of Critical Phenomenology are, not surprisingly, Maurice Merleau-Ponty, Frantz Fanon, Simone de Beauvoir, Hannah Arendt, Jean-Paul Sartre, and Emmanuel Levinas. All of them have contributed to phenomenology’s methodological development and transformation by raising the issues of alterity, plurality, race, gender, embodied existence, and conflict. By making these issues central concerns, these authors have politicized phenomenology and have made it sensitive to normative issues of marginalization and hegemony, while holding on to a certain style and some main categories of phenomenological analysis.

Critical phenomenologists today are of course not the first ones to notice this and take it up with a theory-building intent. They themselves point to their predecessors in feminist phenomenology, e.g., to figures like Iris Marion Young. What is unfortunately lesser known in the English-speaking world, because there are few translations, is the work of Bernhard Waldenfels and several of his followers. Since the late 1980s, Waldenfels has been explicitly engaging with the phenomena of order, the alien, and phenomenology as a responsive enterprise by explicitly going back to French phenomenologists Merleau-Ponty and Levinas, but also to Michel Foucault, Jacques Derrida, or Jacques Lacan.⁷ The group around him has dealt with issues in political and legal phenomenology since that time.⁸ And, certainly, other scholars are to be mentioned (Robert Bernasconi, Miguel Abensour, and others) who have long used phenomenological tools for a political and critical inquiry.

In the following, I present some of these methodological tools and topics, and also add some new ones. For this toolbox to make sense, it will be necessary, first, to clarify some general questions concerning phenomenological methodological frameworks as such and, second, to point to some methodological challenges that specifically arise with the topic in question: political and legal orders. These considerations will already contribute to the tools themselves, as a reflection that is “on the way” to its topic.

⁵ Salamon (2018, p. 15).

⁶ As the final corrections for this paper are being made, the book is announced to appear with Northwestern University Press in October 2019. The journal is called *Puncta. Journal of Critical Phenomenology*. For some examples for critical phenomenological works cf. Ahmed (2006), Günther (2013), Al-Saji (2014), Gündogdu (2015), Ortega (2016).

⁷ Waldenfels (1987, 1994, 1997).

⁸ Two exemplary works are Bedorf (2010) and Staudigl (2014), but let me also mention the names Burkhard Liebsch, Pascal Delhon, Petra Gehring and Gerhard Unterthurner for further research.

2 General questions concerning phenomenological methodology and some first methodological tools emerging from shared phenomenological convictions

I address the following remarks to a newcomer to phenomenology who is interested in working with phenomenology in the field of political and legal theory and who asks: “What methods should I use? Which authors should I turn to?” It is clear that there is not just one right answer to these questions. But it might help to reflect on some basic questions concerning phenomenological methodology to sort out the main challenges for setting the course.

2.1 How pluralistic can methods be and still belong to the same intellectual project?

This is, of course, a tricky question that directly connects to the political worry of exclusion. The challenge here is to navigate between the Scylla of a well-meaning openness that loses specificity (“a phenomenological approach can be simply anything”) and the Charybdis of a rigid orthodoxy (“only someone who uses method x and y can claim to carry out a phenomenological investigation”). Neither is it desirable, especially for critical reasons, to completely lose one’s contours as an approach, nor will a jealously defended pureness foster creativity. I would thus like to argue that we do not need an orthodoxy of methods but rather something like “best practice” models or exemplary approaches, as well as a toolbox to freely (and coherently) work with. As things stand, phenomenological methods have no manual anyway—which can be a frustrating experience for the beginner. She hears that it is a method but at the same time that the subject prescribes the method. The hints that phenomenology is about “learning to see” (Heidegger) or a certain “style” (Merleau-Ponty) appear fuzzy for a philosophy that seems to be defined so much by its method. Yet, these hints illustrate some core convictions: that phenomenology cannot be done without engaging already with the phenomenon in question and that subjectivity is nothing without the world it moves in. Although this seems to imply that there are precisely no methods for guiding one’s inquiries, the methodological lesson to be learned here is “correlation” or “relationality.” To what extent one wants to take this basic insight in a transcendental, existential, hermeneutic, etc. direction depends on the taste of the phenomenologist. What remains a shared conviction is that anything that is given requires a certain mode of givenness that is bound up with it. To inquire into these modes of givenness while givenness is happening is a phenomenological “manner or style of thinking,” to repeat Merleau-Ponty’s words, instead of applying abstractly acquired tools and frameworks to a topic and thereby adjusting (and petrifying) it.⁹ Having said that, “modes of givenness” and “correlation” certainly also give the beginning phenomenologist an open framework that she is called to adopt and develop further: that of the *what* of the given

⁹ Merleau-Ponty (2005, p. viii).

(ontological regions of phenomena), correlating to the *how* of givenness (different types of acts, activity/passivity, perception, body, affectivity, etc.) and the *whom* of givenness (subjectivity, self, intersubjectivity, anonymity etc.). Furthermore, the category of *meaning* (you can also call it intentionality, transcendence, operativity), which comprises this whole relation, is a central methodological category. For the question how meaning comes about, phenomenology uses the term “constitution”—which does not yet imply the politically much criticized “sovereign subject” but can also mean passive bestowal, dynamic interrelatedness, co-constitution, ex-cendence. These are some main cornerstones that have been described in enlightening details elsewhere and that one can take up and practice—which is, as all practices, always a bit like learning to “play” an instrument and not merely “apply” it.¹⁰

But what seems to be crucial is also what one chooses as the subject of interest, what one sees or comes to see as his or her phenomenon. There are historical, political, cultural, subjective, personal relativities to this selection and visibility. None of these admitted conditions preclude scientific integrity or accurateness. Rather, they allow for different perspectives on an issue or even for the discovery of a yet unseen phenomenon. Whatever theories will be developed, they will always have to prove their claims in intersubjective critique and justification—another general conviction of phenomenology. If we look, for example, at the history of phenomenology of law, we can get an idea of how many aspects the phenomenon or field of law actually has (a challenge not only for phenomenology but philosophy of law in general) and how the choice of phenomenon relates to the method taken.¹¹

Adolf Reinach, to begin with, puts the social act of promising in the center of Civil Law which he studies with an eidetic and correlational analysis, investigating the essence of the promising act and its correlate, the appeal. The legal positivists Fritz Schreier and Paul Amselk are interested in how law is given to the legal theorist and therefore look at the correlated act-types. Gerhart Husserl locates the Being of law in its validity and hence develops a transcendental theory of intersubjective recognition and validity-constitution; later on, he becomes intrigued with the experience of law, its temporality, its givenness to judges, laymen, and professional users, and turns to a more lifeworldly and existential analysis. Alfred Schütz, influenced by the methods of Edmund Husserl, Hans Kelsen and Max Weber, sees legal theory as a science of normative ideal types that are applied to the lifeworld like abstract schemes. Simone Goyard-Fabre, by contrast, emphasizes the ambiguities of law as a lived and even incorporated category of social life on the one hand, and its abstract normative forms on the other hand, finding her resources in Merleau-Ponty’s methodological approach beyond empiricist and intellectualist preconceptions. Levinas is interested in the basis of human rights, which he methodically traces in our responsibility to alterity. Waldenfels regards the phenomenon of order as crucial and turns to a structural analysis, which shows that order essentially produces in- and exclusion

¹⁰ For a most recent introduction that develops these core ideas of phenomenology in more detail cf. Zahavi (2018).

¹¹ All of the following examples and theories are described in more detail in my introduction to the phenomenology of law (Loidolt 2010).

and thus the extra-ordinary as a surplus, to which the order in turn “responds” and by which it is constantly irritated and challenged.

Even these shorthand descriptions show that there is definitely not *one* intellectual project called “phenomenology of law” but a plurality of approaches, and that it would not make sense to lump them together under one methodological orthodoxy. The phenomenon investigated correlates with the method and, eventually, shapes the respective concept of law.¹² However, it is also possible that one has first acquired a “way of seeing” (a fair translation of the Greek word “*theoria*”) through engaging with an exemplary methodological approach that now opens up perspectives on a different subject. Phenomenological inquiry works both ways. Our short look at the history of this pluralistic branch of phenomenology gives a good example of how futile it would be to prescribe the one and only correct methodology. What we can nevertheless identify as a sort of family resemblance, is that phenomenological investigations are attentive to *modes of givenness*, and thus to *experience, subjectivity, intersubjectivity, appearance, world, and meaning*. Although these terms seem to indicate a more substantial than methodological orientation, their interconnect-edness points to the essential but dynamic methodological framework of phenomenology that is *correlational, co-constitutional, and interrelational* and that has been articulated as the triangle of “subjectivity—intersubjectivity—world.”¹³ These are methodological orientation points rather than a strict manual and they ask of the phenomenologist to be further developed as she continues her specific inquiry.

2.2 Is phenomenology descriptive, normative, or both?

One important question for normative disciplines like political or legal theory is the following: Is the method in question purely descriptive or can it be used to justify norms? Phenomenology does not fit easily into this dichotomy. To be “descriptive” is a phenomenological ethos that aims to refrain from deforming the phenomenon methodologically, as described above. This does not rule out normative inquiry at all. If the description of a phenomenon like the ethical encounter with the other, or the social act of the promise, implies ethical or even legal normativity, the phenomenologist will exactly turn to that. Waldenfels therefore described phenomenology as a “responsive” method. On the one hand, this means that it often uncovers a certain proto-normativity within certain acts or practices. For example, to be addressed puts the addressee in the position to respond. She cannot choose. Even if she does not respond, this will be a response. We can regard this as an implicit normativity that is revealed in the description of the phenomenon. Furthermore, our whole apparatus of perception, guided by habitualized expectancies, horizons etc. can be described as operating with an implicit, historically and culturally acquired normativity. To describe these workings can be a powerful tool for critical and political

¹² Again, this is not specific to phenomenology but legal theory in general, as the numerous debates on the concept of law demonstrate.

¹³ Cf. Zahavi (2001).

inquiry by tracing the inscriptions of power into our very basic modes of bodily being and perception.

On the other hand, the responsiveness of the phenomenological method turns on the method itself. Hence it is the method itself which is questioned by the encounter with the phenomenon, and which is called to answer by transforming its tools and becoming sensitive, for example, to issues of alterity. This is most famously done in Levinas' phenomenology of alterity which transforms phenomenology into an ethics as "first philosophy," thereby turning around important methodological notions like intentionality (into "counter-intentionality") and shifting the theoretical interrelatedness between subjectivity, intersubjectivity, and world to an ethical structure of responsibility entailing the disrupted self, the other, and the third. Phenomenology thereby doesn't present itself as a neutral method but lets itself be questioned and disturbed: The appeal to responsibility as well as the "cry for justice" are now, as it were, not a duty imposed on phenomenology from outside, but something that springs from the very description of the phenomenon itself.¹⁴ Hence, the critical work that phenomenology can do concerning, for example, issues of equality and emancipation, is not to take them as abstract normative concepts (which might motivate a certain critique from outside), but to demonstrate and analyze their basic meaning on an experiential, sometimes proto-normative level.¹⁵

But does this normatively engaged view not interfere with what Husserl and Fink called a purely describing and "disengaged transcendental viewer"? Before one accuses Husserl of a disengaged view, one should keep in mind that, first, his ethical and normative considerations are primarily conducted in the "personalistic" and not the "transcendental" attitude (Husserl is actually quite a good example of a phenomenologist who explicitly shifts attitudes with the subject *because* the matter requires it); and that, second, even transcendental phenomenology itself is a deeply critical project, namely that of criticizing the objectivism and reductionism of modernity, as Husserl extensively argues in the *Crisis*.¹⁶ This brings me to my third basic question.

2.3 What is the relation of our contemporary investigations to the phenomenological tradition or "classical phenomenology"?

The fact that many of the later phenomenological approaches (roughly since the 1970s) use the prefix "post" in order to characterize their endeavor, seems to express a desire to relate to phenomenological thought on the one hand, but to take a distance from "classical phenomenology" and its "transcendental subject-philosophy" or "metaphysics of presence" on the other hand.¹⁷ Ironically, this seems to be the movement of phenomenology itself, no matter if "classical" or "post." Since 1913 (the publication date of Husserl's *Ideas I*), it has been a cherished phenomenological

¹⁴ Levinas (1991, p. 185).

¹⁵ Cf. Loidolt (2018b).

¹⁶ Husserl (1970).

¹⁷ This applies to authors and projects as different as Jacques Derrida's deconstruction and Don Ihde's techno-phenomenology, and is also continued in critical phenomenology.

tradition to distance oneself from Husserl and his transcendental project but nevertheless to refer to him, and modify his approach, *in the name of the phenomenon*. The “early phenomenologists” were the first ones to do so—Heidegger followed in his own way, and so on. The dialectical antithesis in this dynamic movement is that there are so many misunderstandings in the interpretation of Husserl’s works and, additionally, a whole universe of unpublished manuscripts that have revealed several different and still coherent “Husserls” so far, that defenses of Husserl could also always go beyond the official doctrine and creatively present a new side of phenomenology—Fink was the first one, Merleau-Ponty followed, and so on.

What to do with these scholarly debates? My advice for political and legal issues is a pragmatic one: to work productively with the tradition without getting caught in specialists’ disputes, but also without just superficially repeating prejudices and producing caricatures one does not even want to take the time to account for. A second piece of advice would be not to straightforwardly see a teleology in the phenomenological tradition. Political and critical thinkers should be especially aware of this point: A later approach that criticizes an earlier one opens up new perspectives, but to equate this with “progress” that makes the earlier perspective simply obsolete seems philosophically naïve and gives up on a plural-perspective view.

Let me add one comment on the disputed methodological approach of “transcendental phenomenology” here: Dan Zahavi argues in this special issue that it is “safe to ignore the epoché” in applied phenomenology.¹⁸ I think this can safely be extended also to political and legal issues—even if they are not “applied phenomenology” at all but pursue a deeply philosophical project. The reason is not because I simply agree with the often quoted and seldomly demonstrated statement by Merleau-Ponty about the “impossibility of a complete reduction.”¹⁹ Rather, the project of a reconstruction of world-constitution through transcendental intersubjectivity from its basic passive and genetic grounds is such a multi-layered, complex endeavor that Husserl himself, when thinking about norms, law, personal interrelations, group persons, the state, etc. very often just omits it and directly turns to the personalistic attitude—a part of the natural attitude—and eidetic analysis.²⁰ This does not mean that he wouldn’t claim that everything finally must have its place in the big transcendental project. But the most interesting things he and other phenomenologists have to say about ethical, political, and legal issues actually arise from a direct engagement with the phenomena that does not worry too much about the transcendental

¹⁸ Zahavi (2019).

¹⁹ Merleau-Ponty (2005, p. xv). For a recent and typical example cf. Ferrari et al. (2018, 4) who simply refer to it as a “given” insight. This would certainly need more detailed argumentation leading directly into quite theoretical Husserl-disputes (which I want to avoid here). But my view is that Husserl insists on the relatedness of subjectivity to world while strictly maintaining its ontological difference—which Merleau-Ponty blurs. His rejection of the “complete reduction,” in my reading, rests on a certain misunderstanding of transcendental subjectivity, as if it would then “incorporate” the whole world or be able to distance itself from it in an intellectualist way and stay somehow detached and clean. However, for Husserl the point is not intellectualist distance but ontological distinction.

²⁰ I have tried to demonstrate this in more detail in my chapter on Husserl’s approach to phenomenology of law (Loidolt 2010, pp. 53–75). Saying that the personalistic attitude belongs to the natural attitude of course puts it in sharp contrast to the *naturalistic* attitude.

reduction. Furthermore, I think it makes sense to keep the specific operation of the transcendental (=phenomenological) reduction clear: It is a “bracketing” not just of anything or everything, but very explicitly only of the “general thesis of the natural attitude.”²¹ And this means that the only thing that is “bracketed”—in the sense of not actively affirmed but just “viewed as such” without “joining in”—is the passive ongoing *judgment* concerning the independent existence of everything I perceive, and thus the world. (So, again, it is importantly the *judgment of existence* that is bracketed and *not* the world itself). The term “bracketing” is often used in so many confusing ways that it loses its methodological sharpness. If it means that the “world” is bracketed, it is far from Husserl’s project and indeed internalist and introspectionist. If it just means that I focus on this and that or that I try to get rid of my preconceptions and prejudices, I do not think that it merits the very precise methodological term “phenomenological reduction.” Rather, this is simply what everyone should try to reflect on when investigating an issue philosophically.

Finally, what I advocate is to use the term “transcendental” in a broader sense, namely in the correlational and inter-relational sense I have pointed out above, and to replace the talk of “phenomenological reduction” with “transcendental reflection” (which can have a much broader meaning).²² Heidegger, Sartre, Merleau-Ponty, Levinas and many other phenomenologists who are not under suspicion of defending a “sovereign subject” have done so.²³ Furthermore, the term today rather signals an anti-naturalist position claiming “only” that inter/subjectivity, embodiment, historicity, and language are intrinsically and irreducibly involved in the production of meaning. This is a position most phenomenologists can agree on. In political matters, it still seems to be a sensitive issue to appeal to “the transcendental,” since many still hear a rigid Kantian tone in it, implying a constructivist “transcendental politics” far from worldly interrelatedness.²⁴ But also in these matters, it is important to insist how different the notion of “the transcendental” or “transcendental life” in phenomenology is in comparison to a Kantian, conceptually based notion. I would, therefore, welcome further elaborations on the specific historicist, genetic, and generative aspects of transcendentalism in phenomenology.²⁵ These continue the project of deconstructing a Cartesian or Hobbesian “sovereign” subject-conception while, at the same time, maintaining a strong anti-naturalist position. No one is nailed down to a strictly Husserlian project by the term “transcendental.” And yet,

²¹ Husserl (1982, §§30–32).

²² In her article, Salamon (2018, p. 11) seems to go exactly in the other direction. While she rather discards the notion of the transcendental by appeal to the critiques of Butler and Foucault, she defends, by invoking Merleau-Ponty, a notion of “the reduction” (in one instance also called “the phenomenological reduction”) as an operation that allows one to see the world “springing forth” in meaning constitution. I would, however, insist, that this precisely is a step into the phenomenological-transcendental dimension. The phenomenological reduction is always a transcendental reduction. But “the reduction” is the much more specific term (with much more burden on its completeness or incompleteness etc. and with much more obligation to really engage with Husserl’s project) than “transcendental reflection,” which is why I see more openness in the latter.

²³ Levinas (1969, p. 25).

²⁴ Cf. Salamon (2018, pp. 10, 13, and 15).

²⁵ Cf. Merleau-Ponty (2005), Steinbock (1995), and Crowell (2001).

using it enables one to relate, also critically, to the tradition of Husserl's criticism of objectivism in the *Crisis*. A relation to the phenomenological tradition can thus be as fluid and dynamic as phenomenological analyses themselves.

3 Methodological challenges for phenomenology in the domain of normative orders and further tools to tackle them

The second part of my considerations now speaks to fellow researchers who share my interest in developing methodical guidelines and tools in order to tackle the broadly framed field "order, experience, and critique." I try to identify what I take to be the most important methodological challenges, give some concrete examples, and propose a phenomenological framework at the end of this section that I hope can be useful for further analyses. But let me also be clear that I do not think that phenomenology is a universal method to explain everything. Some issues—for example, complex and abstract institutional systems (think of European law or globalized capitalism)—are better explained by other approaches. I believe that it is very important to reflect on what phenomenology can do and what it cannot do—and also does not have to do. Having said that, I am convinced that in the current theoretical landscape a methodically grounded and differentiated approach to the experiential dimension of normative orders is urgently needed. Phenomenology has its strengths here and should positively face the challenges that other approaches—and their difficulties—have confronted us with.

3.1 Constitution—sub-ject—structures

Power and institutions produce subject-positions and possibilities of action, but they also manifest themselves in the lived experiences of these subjects—and, eventually, they can only be changed by them. The challenge of theory building at this point of intersection is to integrate these different insights also methodically. For phenomenologists this requires an extra methodological reflection, since their core notions of experience and subjectivity have been criticized heavily in this context. Even if the theories of Habermas, Foucault, and Luhmann do not have much in common, in all of them experience is ascribed only a minor role and even regarded with suspicion.²⁶ Rational discourse, as found in Habermas or Apel, aims at justifications that are often brought about by formal procedures; discourse, as conceived by Foucault, produces and forms subject-positions and subjects' corresponding experiences; while Luhmann's systems theory, per se, prioritizes systemic structures over experiences. All of these general theoretical assumptions result in specific conceptions of normative orders and the (non-existent or unimportant) place of experience in it. Foucault's argument, which regards experience as a "discursive effect," has been especially scrutinized by feminists who endeavored to counter essentialist accounts or

²⁶ Cf. Habermas (1984), Foucault (1981), and Luhmann (1995).

claims that there was something untouched and untouchable “outside” discourse.²⁷ While these important criticisms from the 1970s to the 1990s have been tackled at a general level and have given rise to a renaissance of refined phenomenological approaches towards experience, the specific issue of societal structures and normative orders is still dominated by theories that tend to reduce experience to discursive constellations.²⁸

Phenomenology could therefore make a much-needed contribution to these debates by focusing on the experiential dimension in a way that incorporates and even deepens these insights. Let us take the example of law. Influential post-structuralist critiques of the last decades²⁹ have helped us to understand how law “produces” subjectivities and expresses power formations. Yet, a positive articulation of what “being through law” amounts to is still missing: the importance of legal frameworks for being a self, for being with others, and for being in a political community.³⁰ A phenomenological thesis could be that law is not just an instrument or tool by which we realize our intentions. It expresses and mediates our individuality in modern society where human actions are to a large extent realized through formalized legal categories. Such legally formalized actions are in no way existentially trivial. On the contrary, they are in many ways the kind of actions through which we come to express who we are. Furthermore, there is “something it is like” to act within these structures, meaning that this yields specific experiences of ourselves, the world, and others. By paying heed to the ontological and existential dimensions of law we come to recognize that a formal system of law always also expresses and mediates—or fails to express and mediate—our individuality in a common world.

Important studies of the last years that have already explored this terrain have very often started with negative, privative experiences—a lesson that is to be learned, for example, from the “classic” Hannah Arendt who famously stated, in her analysis of the condition of refugees and stateless persons, that a deprivation of rights manifests itself “first and above all in the deprivation of a place in the world which makes opinions significant and actions effective.”³¹ The existential significance of realizing oneself through the medium of law is hence revealed most clearly in its absence in zones of legal transition where people’s legal status is negotiated and changed. Concrete experiences of the loss of rights are often expressed in existential terms: not just as a loss of access to basic necessities, but as a loss of belonging which Arendt called “worldlessness.” I take Arendt as an example of a “best practice” model and a provider of important concepts here. But one could also think of other phenomenological authors. What is crucial is that a phenomenological framework allows one to conceive the workings of structures, orders, procedures, etc. as a “*making and*

²⁷ Butler (1990) and Scott (1991).

²⁸ See Young (1980), Zahavi (1996), Heinämaa (2003), and Oksala (2016).

²⁹ See Menke (2015), Butler (2004), and Agamben (1998).

³⁰ The expression “being through law” derives from a collaborative work with Emily Hartz and refers also to the work of Ari Hirvonen.

³¹ Arendt (1973, p. 296). For the mentioned studies see Gündogdu (2015), Borren (2014), and Ahmed (2006).

unmaking of world” for the concerned subjects.³² To describe this process by drawing, on the one hand, on existing empirical documentation of the lived experience of the loss of rights, and, on the other hand, on the rich phenomenological framework and tools available for description and analysis, is one important way of doing phenomenology in these current debates.

Another field where an investigation of experiences within pre-given socio-technological structures and orders is definitely a desideratum, is our online behavior in the so-called “digital lifeworld”—from communicating in social networks, to presenting oneself on a homepage, up to being shamefully exposed on the net. To understand how these practices and experiences constitute whole “worlds” and spaces of meaning in which we move on an everyday basis, a phenomenological investigation is needed.³³ Perhaps not surprisingly, sociologists Nick Couldry, Aristeia Fotopoulou, and Luke Dickens have, therefore, recently called for a “phenomenology of the digital world.”³⁴ This “novel approach” promises to provide “research that recognizes people’s ongoing reflexivity about their conditions of entanglement with digital infrastructures.”³⁵ Furthermore, it renders insights into how deeply digital infrastructures now impact a “sense of self from the image of our self that others reflect back to us in interaction” and thus on technological conditions “through which social actors [...], increasingly, com[e] to know themselves.”³⁶ A phenomenological method in these new contexts will have to consider the multi-conditionality of experience and has the task of making the world- and meaning-structures graspable that emerge from the respective experiences and practices.

3.2 Experience and normativity

Another methodological challenge that relates to one of my “basic questions” in the first part is to clarify the relation between experience and normativity. Phenomenology, I contend, has the potential to elucidate this relation as a dynamic and reciprocal one. Dominant approaches in the field of social and political theory have either maintained an empiricist dichotomy between “is” and “ought,” where experience is a psychological datum or episode; or, as mentioned above, they have viewed experiences as products of power structures. In both cases, the relation between experience and normativity is somehow external or even disconnected, which manifests itself also in methodological difficulties.

Let us take the example of the public sphere, whose “structural transformation” through mass media and now the internet continues to be discussed in political and critical theory. In the last few decades, experience in the context of the public sphere has increasingly been addressed by social psychology and other empirical research.

³² Cf. Scarry (1985), Günther (2013), and Ferrari et al. (2018, p. 6f.).

³³ For an explorative phenomenological article on experiences of feeling togetherness online, cf. Osler (2019).

³⁴ Couldry et al. (2016).

³⁵ Couldry et al. (2016, p. 124).

³⁶ Couldry et al. (2016, p. 120f.).

But as Habermas has already critically argued, it is the social-psychological conceptualization and vocabulary itself that, in a positivistic fashion, levels down “the public” to “social groups,” and “public opinion” to “expression of an attitude,” thereby losing grip on the politically crucial and demanding concept of a public sphere.³⁷ The public is not just a “group” and the opinions formed in public discourse are not just mere “attitudes” or “beliefs.” Hence, while a normative concept of the public sphere looms large in the principles of our democracies, at least as a “constitutional fiction,” the dominant discourse obviously lacks an understanding of how to scientifically describe politically relevant and normatively significant lifeworld experiences.

This problem is continued in today’s analyses of “net behavior” where social psychology and game theory have helped us to understand how informational cascades, boom-thinking, bubbles, bystander- and bandwagon-effects can emerge out of and are increased by the technologies of algorithmic selection.³⁸ But there is still a deep theoretical unclarity as to how these structural patterns produce experiences and spaces of meaning, and how these experiences relate to the inherent normativity in the concept of the public sphere. Take the discussion of how algorithmic pre-selection encloses us in “bubbles”: It is based on the implicit assumption that there are *certain types of experiences that integrate or disintegrate us with what is taken to be a functioning public sphere*. Openness, plurality, and confrontation with dissent seem to be crucial features here. But contemporary socio-psychological or informational theories cannot cash out these normative expectations, since they do not possess an account of how experiences constitute public spheres in the first place.

The socio-psychological approach alone hence cannot answer the question of *what an experience of the public sphere is supposed to be* and whether there is *any inherently normative potential to it*. Answering this question, however, is the precondition for understanding how in/exclusions as well as democratic potentials show themselves on the basic level of human interaction. And this is where phenomenology can play its part. The methodological framework I propose in the final step shall serve as a means to elucidate and explain how societal structures and norms both condition our experiences and are conditioned by them and how this brings forth a “world,” into which we can integrate or from which we are excluded.

3.3 A methodological framework for analyzing spaces of meaning

The phenomenological approach has plenty of resources to tackle both challenges mentioned above, starting with the rich methodological resources of classic phenomenology, such as the eidetic analyses and correlation analyses of constitution theory (Husserl, Scheler, Stein) up to the hermeneutic analysis of existence and being-in-the-world, of bodily being, and intersubjectivity (Heidegger, Merleau-Ponty, Sartre).

“Experience” is thereby understood as a rich and complex term. The basic understanding is that *experience is the medium that opens up a “world” to us*, in which

³⁷ Habermas (1991, Sect. 24).

³⁸ Hendricks and Hansen (2014).

we live on an everyday basis and develop *understandings* of ourselves, others, and the world. As far as the relation between experience and normativity is concerned, the key idea is that norms are embedded in contexts where they make sense and that sense-making and contextualization take place at the experiential level, where we are engaged in situations that matter to us in one way or another. Hence, these experiences and practices are not merely readymade for empirical registration within already established conceptual grids. In fact, they occur in spaces where the social, the political, the economic, the public, and the private etc. are blurred and overlap with each other. Here we can describe meaning and normativity, as Merleau-Ponty says, “*in statu nascendi*.” Furthermore, experiences do not simply occur in an isolated mind/brain but involve the body and intersubjective relations, thereby forming a world which is to be described in its temporality, its spatiality, its affectivity, and its overall orientation.

Now, in order to specifically grasp the constitution of normatively loaded “spaces of meaning” such as politicized or racialized or economized spaces with their different conditioning aspects, I would like to propose a methodological framework, distilled from some basic phenomenological insights and the work of political theorist Hannah Arendt, that aims at systematically expanding phenomenological analyses to the field of the political.³⁹

How is this done and what is a “space of meaning”? Also, how does this align with the analysis of experiences and practices and their relation to normativity? To briefly illustrate, let’s take the simple example of making music, which allows us to highlight some basic processes of meaning. Making music requires a space where acoustic sound waves can be heard (*conditional space*); it is an *activity* with which we make an *experience*: It orients a space with respect to where sounds can be heard better or worse; it orients time with respect to the duration or interference of tones. Thus, an inner logic of combination, rhythm, harmony and disharmony, volume, sound level and intensity etc. unfolds. Although this example is non-political (for a more political example, one could think of Iris Marion Young’s paper “Throwing like a Girl” from 1980, relating to the case of gendered embodiment), it demonstrates that there is an inherent normativity in the structure of the related moments of *conditional space*, *activity*, *experience of this activity*, and *emergence of a space of meaning*. This inherent hermeneutic and normative framework of our activities is normally not explicitly noticed by us while we are engaged in a certain activity. Rather, it remains tacit but *can be made explicit*, which is the task of thought. By making use of this model, we can analyze different kinds of experiences and practices (“activities”) and can see which “world” or, more specifically, which space of meaning concomitantly unfolds. To conclude by giving some insight into the toolbox that comes with this framework, let me summarize the main working theses of this theory of “spaces of meaning”⁴⁰:

³⁹ I have developed this approach in more detail in recent publications (Loidolt 2017, 2018a).

⁴⁰ Cf. also Loidolt (2017, pp. 126–133).

- A *space of meaning* is an oriented world with a certain temporality, spatiality, a certain form of intersubjectivity, a certain inner organization of sequence, rhythm, combination, and modality. These descriptive tools can be used to analyze experiences and practices.
- Spaces of meaning are basic forms of how lived space and time can be structured. Arendt addresses these forms by seeking out certain *types* of experiences (like producing a work, laboring, or acting together) and paying attention to our *visibility* to others (public/private spaces of meaning). These categories are, for example, vital in analyzing the experiences of the public realm.
- Because spaces of meaning are oriented spaces, they possess an inherent normativity in the sense that they allow for something to unfold in a better or worse or simply different way, depending on how the activity fits into the particular context. This is relevant, since pre-orientation tends to prompt certain activities and deter others.
- At the same time, spaces of meaning are always conditioned. This allows us, for example, to inquire into technological and socio-economic conditions that, thereby, indirectly shape experiences.
- We always operate in spaces of meaning; there is no experience “outside” of such spaces. This amounts to the phenomenological insight that to be conscious/to be in-the-world is to find oneself in the midst and the medium of meaning, rather than to find oneself an element in a blind causal chain. This characterizes the rich notion of experience that is used in phenomenology, which is conceived as “world-opening.”
- This description of a space of meaning or a “world” does not refer to an “internal” state of mind (as opposed to an outside world) or mere “behavior.” Instead, it looks at processes that make (or fail to make) certain “behaviors” possible. Arendt explicitly criticizes most of her contemporaries’ approaches for being concerned with “only a possible change in the psychology of human beings—their so-called behavior patterns—not a change of the world they move in.”⁴¹ For Arendt, it is this psychological interpretation of human existence, on which the social sciences are based which passes over the basic phenomenon of being-in-the-world: the phenomenon of meaningful orientedness in a structured space.
- Finally, what is also crucial about the emphasis on “spaces” is that, through a certain structuring, a certain “in-between” is created—like lines on a piece of paper shaping the arrangement of the blank spaces in-between, or like pieces of furniture shaping a room. This requires further reflections on *conditions of appearance* and possible *forms of intersubjectivity*. Intersubjectivity, i.e. the social world, hence plays an important role in actualizing, maintaining and altering spaces of meaning.

⁴¹ Cf. Arendt (1998, p. 49).

4 Conclusion

As stated in the beginning, there is not one way of doing phenomenology. What I have tried to do is point out some cornerstones, some tools and main guidelines and, finally, a flexible framework that phenomenologists can use and modify as they go along. The phenomenological method today has all the resources and best practice models it needs to inspire investigations connected to “order, experience, and critique”—most of all, the phenomena themselves, calling for a careful description and analysis. In the current debates on political and legal issues, I see the main task of phenomenology to be reclaiming experience as world-building and world-opening, also in a normative sense, and demonstrating how structures and orders are *lived* while they condition and form spaces of meaning. If we want to understand, criticize, act, or change something, this subjective and intersubjective perspective will remain indispensable.

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