Justice as a Matter of Thinking
A Phenomenological Approach

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Abstract

In order to make wise political decisions, we need knowledge. In this study, however, I argue that instead of taking knowledge as our starting point, we should do something different: think. In the Continental philosophical tradition, thinking is understood to differ essentially from knowing, and some topics such as time, friendship, truth, justice and ethics are understood as matters of thinking. Thus, my aim is to discuss how we could think about justice from the point of view of Edmund Husserl's phenomenology as I understand it. This means that we should take as our starting point for thinking the phenomenological act called reduction.

1. Introduction

We live in the age of information and knowledge. It seems obvious that in order to understand something we need to collect all the relevant information about it. In philosophy, this seemingly obvious choice is, however, questioned. In Plato's dialogues, Socrates did not teach people to know but, rather, he used *not* knowing and being aware of it as an example. In our time, this tradition is alive in the philosophical movement called phenomenology. It was founded by Edmund Husserl who saw *epoché* – an act whereby we distance ourselves from knowledge – as the starting point of philosophy. In this study, I will explicate how we could reach such a starting point and lay out the main characteristics of this kind of an approach. Critique of knowledge will first take us to the difference between knowing and thinking and then to the difference between objectivity and intersubjectivity. As phenomenology claims to be a concrete approach, I will conclude with an example in order to show how this method could be used in thinking about justice.

According to Husserl, phenomenology should be a *strenge Wissenschaft*, a

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rigorous method which can be used universally and which covers all topics, but it has been used relatively little in legal studies (Pallard and Hudson 1999). According to Pallard and Hudson, in the rare cases where it has been used as a method, it has been understood in many different ways. They write about phenomenological law studies:

> Each [way] latched onto a particular aspect of phenomenology while leaving its other methodological concerns aside. There is neither methodological nor doctrinal similarity in the views that phenomenologists of law have espoused. (Pallard & Hudson 1999, 645.)

I will soon come back to this view of different approaches to phenomenology, but I will first question the view according to which the phenomenological method is that rare within law studies.

Although I agree with Pallard & Hudson in that the phenomenological method has not been a mainstream approach in legal studies, some phenomenological research endeavours have, nevertheless, been undertaken within this field. To take one example, in the German-speaking world, Arthur Kaufmann, Werner Maihofer, Walter Heinemann, Marc Blessing, Alessandro Baratta, Eric Fechner and René Marcic have considered justice from the phenomenological perspective (Hirvonen 2001). And if we consider the situation from the wider perspective of what is generally referred to as Continental philosophy and include philosophers such as Michel Foucault and Jacques Derrida, there has been quite a lot of interest within the discipline of legal studies. Here I will, however, concentrate on the influence of the founder of the phenomenological movement, Edmund Husserl.

In legal studies, Husserl's phenomenological method was, at the first phase, used by Adolf Reinach and Gerhard Husserl. They both understood Husserl's method mainly as a search for essences. Husserl's writings certainly back up this kind of an approach, but we can argue that *Wesensschau*, or searching for essences, is not the most original part of Husserl's method. From this perspective, the phenomenological method can be seen as just a new form of idealism (Ricœur 1974, 9). In this study, I understand Husserl's method from the perspective of the principles that Husserl set for the phenomenological method: the principle of principles (Husserl 1950b, §24) and the first methodological principle (Husserl 1950a, §5). I will not enter into an in-depth discussion of the principles here, but the basic claim behind them is that phenomenological inquiry should be grounded in evidence that Husserl calls *adequate*. Husserl also writes about another kind of evidence: *apodictic* evidence. Apodictic evidence means that we cannot question a claim which is evident in this way, in other words, we are certain of it. The approach of Reinach and Gerhard Husserl is mainly based on this kind of evidence. Husserl himself tried for a long time to establish a link between adequate and apodictic evidence, but had to finally admit that they do not need to go hand in hand (Himanka 2005). From this follows that we can choose to concentrate either on apodictic or on adequate evidence. Reinach and Gerhard Husserl chose to follow the apodictic line whereas, in the present article, I

follow the line of adequate evidence. This is also the direction into which Heidegger took the phenomenological method: away from searching for certainty or essences and towards what he called *unconcealment*, a more openly understood truth.

As was discussed above, Pallard and Hudson mention diverse ways in which the phenomenological method is used in the field of jurisprudence. The focus of the present article, however, will be on some recent work in which the method, in my interpretation of it, has been used adequately and in accordance with the methodological guides set by Edmund Husserl. From the Husserlian point of view of adequacy, the most important research within the field of jurisprudence has been done by Hans Lindahl. In order to explicate what Husserl calls adequate evidence he uses the phrase 'something as something' (*etwas als etwas*). Something is given adequately when it is given as something, as it itself. I, however, write instead about correlation between appearance and that which appears. As we will see, both formulations are used to describe Husserl's view on truth and do fulfil that function. There is, however, a reason why I have chosen to use the correlation between appearance and that which appears. According to Husserl, his method, in the final sense, is not grounded in the view on truth or principles describing it, but on the deed he calls reduction (Husserl 1962, 192; Husserl 1971, 76; Husserl 1989; Husserl 1993, 332). The advantage of writing about correlation instead of the something-as-something structure comes from its relation to reduction. As I will explicate, Husserl's lectures on the *Idea of Phenomenology* show how the correlation between appearance and that which appears actually emerges from the act of reduction. This critique of knowledge is the first step on the way from knowledge to thinking.

2. Critique of knowledge

Our age esteems knowledge highly. We understand that knowing is a basis for reasonable decisions and wise politics. Without knowledge our actions would not be justified. In general, we human beings have achieved our position among other living beings on earth largely by creating and passing on knowledge. But what is this very usable something that we call knowledge? This is one of the major philosophical questions and it is addressed by the domain of philosophy called epistemology.

Historisches Wörterbuch der Philosophie defines epistemology (*Erkenntnislehre*) first in a wider sense that has to do with knowing in different disciplines and, secondly, in a more specific, properly philosophical sense, which deals with essences, principles, origins and limits of knowing (Gethmann, 1972). Although we can trace both themes back to Antiquity, epistemology as a specific area of study is a particularly modern phenomenon (Gethmann, 1972). At the turn of the 19th century, a concern of circularity of knowledge emerged and problems of the fundamental concepts that determine knowing – that is, subject and object – were taken up. This approach was called *Erkenntniskritik*, critique of knowledge. I will now concentrate on how Edmund Husserl treated these problems in his lecture series *The Idea of Phenomenology* held in 1907.

In the first of the five lectures, Husserl starts by clearing the difference between

natural sciences and philosophy: 'The former originates from the natural [and] the latter from the philosophical attitude of mind' (Husserl 1999, 15). In the *natural attitude*, we simply take knowledge for granted and do not pay attention to the ways in which objects are given to us. Surely, we distinguish between objects seen and heard, for example, but in both cases, we basically first receive data and then the mind and the brain process this data in order to give it status as knowledge. In Husserl's language, we relate to the world which consist of objects. We can then make judgements of these things and consider logical relations between these statements. 'Thus the various positive sciences come into being and grow.' (Husserl 1999, 16) Husserl includes also mathematics and other sciences that deal with ideal objects in these sciences. Sciences are '[c]onstanly engaged in productive activity, advancing from discovery to discovery in newly developed sciences.' (Husserl 1999, 16). In so doing, the natural attitude 'finds no occasion to raise the question of the possibility of knowledge as such.' (Husserl 1999, 16) Knowledge appears as a problem in a certain manner, but it is understood as a fact: It is a fact that there is knowledge. Knowledge is a 'natural state of affairs; it is the experience of some knowing organic being.' (Husserl 1999, 16) Taken in this manner, it is a psychological fact that can be studied, and these studies will give us results about the reliability of knowledge, for example. Husserl then turns to the *philosophical attitude* and the situation changes radically.

When Husserl turns to the philosophical attitude, 'abysmal difficulties' (Husserl 1999, 16) ensue. That which was taken for granted – knowledge – suddenly emerges as a mystery. When the natural attitude supposes that there is knowledge, it can consider what kind of knowledge we have but it does not raise the more radical question of whether we have knowledge at all. As knowledge is knowledge of objectivity and we claim to know this objectively, the approach falls into circular thinking – the *petitio principii* fallacy. To know about the objectivity of knowledge in an objective way is a problem. According to Husserl, we should ask more radical questions such as: 'How … can knowledge be sure of its agreement with the known object?' (Husserl 1999, 17) Instead of taking the possibility of knowledge for granted we should turn to transcendental attitude and ask for the conditions of possibility of knowledge.

At the end of the first lecture, Husserl strongly declares that philosophy should be kept clear of the influence of the natural attitude of the sciences. The natural attitude does not only mean our everyday understanding of the world, but it also covers the exact sciences and even mathematical or logical calculations. Husserl writes:

> If the very sense and value of positive knowledge *as such*, with *all* its methodological arrangements, with all its exact groundings, has become problematic, then this effects every principle drawn from the sphere of positive knowledge that might be taken as a point of departure as well as every ostensibly exact method of grounding. The most rigorous forms of mathematics nor mathematical natural science here have not the slightest advantage over any actual

or alleged knowledge belonging to common experience. (Husserl 1999, 21.)

Philosophy is thus critique of knowledge and as such it should not model itself following the methods of science and it should not take scientific results as its starting point. When this radical breakaway covers not only sciences but also methods of mathematics and formal logic it is difficult to see what is left. Where could one begin the investigation when these starting points that are usually seen as well-established should now be set aside? If, however, we consider Husserl's collected works, *Husserliana*, from the point of view presented in these works, we notice that these writings actually are astonishingly free from the influence of scientific results and methods. This sets Husserl's work apart from that of other thinkers. The question, then, is: How can he start from a situation which seems like an impasse?

As discussed above, the *Historisches Wörterbuch der Philosophie* points out two characteristics of the critique of knowledge. The first one is the problem of circularity of knowing that one knows. That was pointed out by Husserl in the first lecture described above. The second characteristic is the concept pair subject and object. Husserl takes this theme up in the second lecture. We will now try to see whether Husserl can live up to his tall order to do without sciences and logic.

Husserl surely understood the problems involved in an attempt to start without the aid of sciences and asks at the beginning of the second lecture: 'How can the *critique of knowledge establish* itself?' (Husserl 1999, 23.) He calls for an *epoché* – a radical rejection of existing knowledge that he described in the first lecture. He now repeats that this starting point means that we doubt all our knowledge, acknowledging that research cannot stay at such a situation of doubt. Husserl continues by describing the way forward: The method should not presuppose anything as pregiven, but it can 'begin with some knowledge that it does not take unexamined from other sources, but rather provides for itself and posits as primary.' (Husserl 1999, 23)

Husserl's view of the starting point resembles the Cartesian method of doubt and he certainly is aware of that as he soon tells us that his method is a modification of the Cartesian method. Descartes used his method of doubt for other purposes, but with the appropriate modifications the same type of method is used by Husserl as well. Husserl then introduces two concepts, *immanence* and *transcendence*. Immanence refers to the sphere of my immanent thought that I cannot meaningfully doubt. Transcendence, in turn, is the sphere of the outer world that is not immediately given and that I can doubt. When I, for example, see a tree out there (transcendent) it might be that I am only dreaming of it. My thought of that tree, however, is beyond any doubt. I have that thought of the tree whether that tree is real or not.

Husserl now elucidates his method of *epoché* further by stating that *epoché* means staying within the limits of immanence. In order to map the situation, we need to introduce three further concepts of Husserl. He uses the word '*reell*' (actual) to refer to the sphere of inner thoughts. My thoughts are now actual and they appear in inner time-consciousness but do not have place or space. In contrast to actual there is '*real*', real. The things that appear in outer time and space are real. Husserl calls the third dimension '*ideal*', ideal. Objects that appear in all time but in no place,

numbers for example, are ideal. The problem, then, is to consider how these spheres relate to each other. In this case, the main issue is to consider the relationship between my actual (*reell*) thought and the real things in the world. From the point of view of the critique of knowledge, we need to see how this relationship works in order to have knowledge at all.

Husserl first states that immanence means actual immanence (Husserl 1999, 27) and that transcendence stands against actual immanence. The situation is an impasse. In order to reach knowledge, we need to see the relationship between immanence and transcendence. There are two ways of attempting this. The first one is the philosophical approach that follows Descartes' line of thought. We limit ourselves within the immanence of our thoughts, but the problem, then, is to reach out to the object of those thoughts in the outside world. The other approach is the one used in objective sciences. In this approach, we rule out our subjective thoughts and limit ourselves to the objective world. These approaches bring out the two ends of the immanence-transcendence relationship, but, at the same time, they rule out one another. Does Husserl find his way out of this cul-de-sac?

In the next phase, which a bit later turns out to be a decisive step, Husserl separates two meanings of immanence and transcendence. He writes:

> But there is *another sense of transcendence,* whose counterpart is entirely different immanence, namely, *absolute* and *clear givenness, self-givenness in the absolute sense*. This givenness, which excludes any meaningful doubt, consists of an immediate act of seeing and apprehending the meant objectivity itself as it is. It constitutes the precise concept of evidence, understood as immediate evidence. (Husserl 1999, 27-28.)

After this analysis of the concept of immanence, Husserl again explicates the main problem of science. A scientist could claim that he or she knows *that* the world really is and that there really is no sense to doubt it. From Husserl's point of view, however, this *that* does now give us a view on *how* we reach the transcendent world. He compares this situation to a man born deaf, who tries to explain sounds (*id.* 30). The deaf person can, for example, read about and explicate music, but the person would still be lacking the 'how' of the music. In a way similar to this deaf man who cannot reach the 'how' of sounds, the scientist cannot reach the 'how' of the world.

Husserl then introduces the main methodological step of phenomenology, now calling for a 'reduction', a phenomenological act closely related to the notion of *epoché* he had spoken of previously. As well as *epoché,* reduction means that we stay within the limits of immanence. Yet, the main question remains: 'But how is phenomenology to proceed? How is it possible?' (*id.* 36) Husserl asks whether all science leads to 'establishing an objectivity existing in itself, thus to what is transcendent.' (*id.* 36) When Husserl uses the method of *epoché*, or reduction, he should stay within the limits of immanence, and within those limits, there is no objective validity, only subjective truths (*id.* 36). There seems to be no way out of this impasse.

In the next phase, Husserl gives the solution. He writes: 'What we need here is a further step that will roll out this spurious circle for us. But we have already taken this step in principle by distinguishing the two senses of transcendence and immanence.' (*id.* 37) The solution is actually rather simple. If reduction keeps us within the limits of immanence-in-the-sense-of-'that', transcendence cannot be reached, but when we turn to Husserl's analysis of the concept of immanence earlier, there opens a new possibility that covers all that can be reached in an immanent way. This happens if we understand immanence-in-the-sense-of-'how'. Husserl now seems to think he has opened the scope of immanence enough for knowledge to be possible.

There are, however, substantial difficulties in Husserl's solution. First, reduction, or *epoché*, is supposed to be the main methodological tool in phenomenology. Here, however, it plays only a secondary role whereas the decisive step was the analysis of concepts. Second, it is not at all clear how this immanence from the point of view of 'how' is to be comprehended. Husserl continues on the grounds of this solution until the last lecture, but there the problems of the solution surface and the lecture ends up in a mess. (Himanka 1999.)

Husserl had mentioned in the first lecture that the critique of knowledge will lead to abysmal difficulties. Thereafter, it first seems that Husserl managed to deal with these difficulties although he used analysis of concepts instead of phenomenological reduction. In the last lecture, however, it turns out that the solution does not work and that Husserl himself faces these abysmal difficulties.

In the middle of the last lecture, Husserl seems to be about to declare that the aim is reached: 'Only if we construct general judgements of essence, can we attain the secure objectivity which science demands.' (*id.* 55) The next sentence, however, comes so suddenly that a softening sentence – 'But that does not matter here' – has been added to the manuscript afterwards: 'Hence we seem to get into a maelstrom.' (Himanka 1999) This maelstrom is the abysmal difficulty Husserl anticipated but thought he could pull through the lectures. But he did not manage to do that. The rest of the last lecture is a search for a way to manage the maelstrom, but the solution was not found during the lectures. What actually happened is an *epoché,* losing one's knowledge base, and in this case, Husserl lost his very starting point. In order to reach the full reduction (Husserl 1950a, 57; Husserl 1959, 165), he still needed to find a new way to start again. (Himanka 2011.)

On the same day when the last lecture was held, Husserl wrote a *train of thought* of the lectures. The text is not a summary of the actual lectures, but a reflection on how the lectures ran and, what is more important, what happened during and right after them. In the lectures, Husserl had spoken in a customary way about the differences between his own views and other points of view. In the *train of thought,* the distinction between what should be accepted and what not were set differently. Now the text can be read as if he speaks of his own earlier points of view. He writes about his earlier, naïve point of view that it has to be overcome, and he uses phrases like 'one is inclined to interpret'; 'on a closer view, however,' ; 'at first it seemed'.

In the last of the four steps of the *train of thought*, Husserl writes about his

original solution to the problem of knowledge:

> At first everything seemed quite straightforward, scarcely requiring hard work on our part. One might cast aside the prejudice of immanence as actual *[reeller*] immanence, as if it all came down to that, yet, at least in a certain sense, one remains attached to actual [*reellen*] immanence. Initially it appears that the examination of essence only has to grasp what is actually [*reell*] immanent in the *cogitationes* in their generality and to establish the relations that are grounded in essences – an apparently easy matter. (Husserl 1999, 67.)[1]

This reflects on the situation just before the maelstrom where Husserl had explained how to construct general judgements of essences, as quoted above.

Now he knows what the problem is and states that we must look closer, and this closer look gives a surprising view: 'If we look closer … the *appearance and that which appears stand over against each other*, and do so *in the midst of pure givenness*, that is, within genuine immanence, then we begin to wonder' (Husserl 1999, 67). Husserl mentions this correlation between appearance and that which appears a couple of times in the next few pages and writes about it as a new point. And indeed, it is new in comparison with the lectures where this point of view does not come up. Husserl has overcome the problem of knowledge and achieved a new point of view: the correlation between an appearance and that which appears. I will call this correlation simply truth. (Himanka 2019.)

Husserl's phenomenology is often explained by starting with the concept of 'intentionality'. In his exposition of Lindahl's phenomenology of legality, Emilios Christodoulidis (2014) sees this approach as problematic in this context and follows Jean-Luc Marion's reading of the *Idea of Phenomenology* instead. In this reading, too, the correlation between appearing and that which appears is the key, and the whole of phenomenology is to be opened up from this correlation. Marion, however, does not focus on the act of reduction but, instead, emphasises the role of givenness. In the wider context, outside of the *Idea of Phenomenology* lectures, the correlation is described by using different concepts. Karl Mertens writes about 'the inseparable relation of *constituens* and *constitutum*' (Mertens, 2018, 485) and Dermot Moran, in turn, uses the terms *cogitationes* and *cogitata* to refer to the acts of the ego and its correlates (Moran 2000, 150). By using Husserl's later terminology, we could also speak about *noesis* (appearance) and *noema* (that which appears). What separates the interpretation presented in this study is that, following Husserl's own methodological considerations, it is the act of reduction that opens up phenomenological research and transforms us from knowing to thinking. In this case, reduction takes place in the train of thought of the *Idea of Phenomenology* lectures (Himanka 2011, 2019.).

3. Thinking and knowing

We moderns tend to consider truth as a property of knowledge. We use the word

1 Translation modified: using actual to translate 'reell' instead of real.

'thinking' both in everyday usage and in its philosophical sense. In the tradition of Continental philosophy from Hegel to Heidegger, thinking is understood as a philosophical activity, as the activity that sets philosophy apart from the disciplines of knowing. This understanding of thinking has been strongly influenced by Kant. In Kantian thought, thinking has wider possibilities than knowing and is reflective (Bormann & al. 1972). I will use an example from Lindahl (2013, 100) to illustrate this.[2] The situation is the following: hikers out in the wilderness are lost, and they have a piece of paper with lines and other cartographic symbols. After having stared blankly at the piece of paper, one of the hikers understands that it is a map and that 'we are here!' Now they can orient themselves following compass directions.

Likewise, in his 'What Does it Mean to Orient Oneself in Thinking?' Kant uses the metaphor of orienteering to explain what thinking is (Kant 1786). His point, however, is to show that, in addition to using a map and a compass, I also need 'to feel the difference in my own subject, namely the right and the left hand.' Kant calls this feeling [*Gefühl*], because this difference cannot be explained purely objectively. In *Prolegomena,* Kant challenges the reader to try to objectify the difference between right and left and continues:

> When they have in vain attempted its solution, and are free from prejudices at least for a few moments, they will suspect that the degradation of space and of time to mere forms of our sensuous intuition may perhaps be well founded. (Kant 1912, §13)

Kant claims that if we cannot solve the problem of right and left, we should also reject our normal understanding of space and time and accept his transcendental line of argumentation. Although it is generally thought that Kant's problem of right and left has been solved, in his monograph on the topic, Chris McManus had to confess that Kant's problem 'remains as alive and as confusing today as in 1768' (McManus 2004, 57). My aim here, however, is not to defend Kant's philosophical position but to explicate how we need a subjective element when we orient in the wilderness or in thinking. According to my interpretation, for Husserl, the compass to orient in thinking is the correlation between appearance and that which appears.

Truth means correlation between appearance and that which appears and in different cases of appearance the constitution is different. The correlation itself – truth – stays the very same, but it takes different forms when we deal with different kinds of activities. Husserl's basic example of truth is a number (Miller 1982). When we consider the evidence or truth of numbers, we compare them in presence and absence. There are some things on the table (number is absent) and we count them and number becomes now present. In other words, there is a correlation between appearance (counting) and that which appears (number). Husserl used this method already before the lectures, but there he managed to actually show how this point of view is achieved by accomplishing reduction. We have now left the perspective

2 Lindahl's example derives from John Perry.

of knowing behind and achieved the level considering what appears from the point of view of truth instead of knowledge. We will call this the perspective of thinking instead of knowing.

The task of phenomenology is then to explicate these differences: how correlation differs in the cases of counting a number, seeing a thing, remembering something, or considering something as beautiful or just.

When we turn from knowing to thinking, we start our consideration of truth as unconcealment (to use Heidegger's expression) instead of seeing it as a property of knowledge. Instead of considering whether different statements are really knowledge or not, whether they are right or wrong, we start from the correlation between appearance and that which appears.

4. Objectivity and intersubjectivity

There is a problem in Husserl's approach in the *Idea of Phenomenology*. Although he managed to overcome the problem with knowledge and found thinking in the manner of searching correlations between appearance and that which appears, we could still ask on what grounds this is something more than Husserl's own point of view without objective validity. Husserl was certainly aware of this problem and he actually took it very seriously. He struggled with the problem of intersubjectivity at the same time when he held the lectures on the idea of phenomenology. He did not publish anything for a decade (1901–1911) when he was trying to solve the problem, but finally he at least believed to have solved it. He had managed to find a way from mere subjectivity to intersubjectivity.

In the *Husserliana,* Husserl's work on the problem of intersubjectivity covers three thick volumes and it is not my purpose to try to cover this struggle here. Instead, I will highlight some manuscripts from the 1930s that deal with the relationship between objectivity and intersubjectivity. In those days, Husserl was preparing the work entitled *The Crisis of European Sciences and Transcendental Phenomenology* and was concerned with how sciences were losing contact with people's lives. In that context, he tried to understand how sciences first come about. In the *Crisis*, he deals with this by considering Galileo Galilei's work, but here we are not that much interested in how sciences come about but in how research in general comes about.

In the *Crisis,* Husserl saw that the spirit of Europe was sick and he called that disease objectivism. Although science is an intellectual (*geistige*) activity and it is undertaken by subjects, its main goal is precisely the opposite: objectivity. This diagnosis cannot be reached through objective methods because objectivism is the problem. In order to understand the position of science we need to take a wider perspective and turn from knowledge to thinking. In this case it means that we need to concentrate on intersubjectivity instead of objectivity. Husserl does this by considering the origin of research in general, not only science.

In Husserl's view, research was born in ancient Greece. Before this happened, different tribes and nations had their own understanding of the world and that was not seen as a problem. One tribe can have its own kind of myth about the Sun and

the Earth, and others can have theirs. In Husserl's terms there were different home-worlds (*Heimwelte*) (cf. Lindahl 2013, 93). Then some philosophers came up with the idea that this seemed strange to begin with. Husserl even calls the one who had this idea a *Sonderling*, an eccentric man, and he obviously had Plato in mind. The idea was that there is only one world, *cosmos,* instead of the different home-worlds. In a working manuscript from the time period of the *Crisis,* Husserl writes: 'those actually are the same Sun, the same Moon, the same Earth, and the same sea that are seen by different nations and traditions in the light of different mythologies' (Husserl 1993, 388). Research was born and the culture was transferred from mere belief (*doksa*) into knowledge (*episteme*). (Cf. Miettinen 2013.)

This transition from different home-worlds to a world that is essentially the same for different cultures and traditions did not mean a transition into objectivity, which in its ideal form means that reality is not only the same for everybody but it can be thought also without anybody. Let us consider this by taking a certain exchange of views about the Sun as an example.

In the early fifties, there was a philosophical conference in Paris. In one presentation, one of the participants, Georges Bataille, told how he had entered into discussion with some other participants the night before. The discussion dealt with a simple proposition: 'There was a sun before humans.' One of the participants, A. J. Ayer, saw that sentence as unproblematic. According to Ayer, philosophy is closely connected with sciences and from that point of view it makes sense to see the sentence about the sun as reasonable. Two of the other participants, Maurice Merleau-Ponty and Bataille himself, were close to the phenomenological tradition, and the fourth one, Ambrossino, was a physicist. All others disagreed with Ayer. According to Ambrossino, there certainly was no world before humans, and, according to Bataille, the whole sentence did not make sense. According to Vrahimis, this discussion was the first public mention of a difference, or even a gulf, between two philosophical traditions: Continental and Analytic philosophy. (Vrahimis 2013). The discussion about the ontology of things before there was any consciousness still continues, but from the perspective of this article, it is important to see that the sun before human beings does not make sense from the phenomenological point of view. In doing research we try to find positions that are valid for everyone (intersubjectivity), but that does not mean they are valid for no-one (objectivism). (Vrahimis 2013; Himanka 2000)

Lindahl's phenomenological approach follows here the Continental insight: 'In contrast to science, which seeks to factor out subject-relative aspects of knowledge in its quest for objectivity, phenomenology has pointed out that the scientific endeavour presupposes and takes place on the ground of an experience of the world that is subject-relative' (263-4; cf. Christodoulidis, 945). From Lindahl's phenomenological point of view, the world is subject-relative as we 'always refer to how it appears to *us*' (Schaap 2015, 2). Miettinen articulates Husserl's point of view: '[A]ll objectivity is necessarily grounded in intersubjectivity' (Miettinen 2003, 157-158). The sun before we existed does not make sense.

In the foregoing, I have summarized the main elements of phenomenological inquiry. Instead of knowledge, a phenomenologist searches for truth and understands it as a correlation between appearance and that which appears, or, unconcealment. A phenomenologist searches for truth by thinking, not by means of science, and this is nonetheless research. As research it is not restricted to the thoughts of an individual but is intersubjective. It is thinking rather than knowing. In order to see how we can study justice following these guidelines, I add one more consideration. According to Husserl, phenomenology does not engage in theory but is concrete research (Husserl 1999, 43). In order to proceed in a concrete way, we need to have concrete cases. In what follows next, I will take up one concrete example in order to exemplify how phenomenological research could proceed in jurisprudence. The example comes from Alexandre Kojève (Kojève 2000).

5. Equitable dinner

In the background of Kojève's example, as it is given in his *Outline of a Phenomenology of Right*, is the way he describes a plan of a universal and homogenous state. This state would cover all of humanity and it would be achieved through legal integration between states. In order to reach this goal, Kojève thinks that it is necessary to understand what justice means. He writes: 'Unfortunately, the phenomenon of *Droit* has still not found universally accepted and truly satisfying definition.' (Kojève 2000, 29, cf. G. Husserl 1937) This is a philosophical way to start a study: to admit that we do not know what something is. This also resembles Husserl's method of *epoché*.

Kojève continues by pointing out that he will not try to give a complete definition of justice and he then explains further what kind of a definition he would be satisfied with:

> But I will limit myself here to describing the 'superficial' aspect of *Droit*, to analysing it as 'phenomenon' given to the immediate consciousness of man, who 'knows' what *Droit* is and distinguishes it from other things, while not being able to describe correctly this 'immediate knowledge' – that is, to give a phenomenological definition of *Droit*. (Kojève 2000, 33.)

Kojève gives the definition in the first chapter and it is introduced by explaining the relations between A, B and C.[3] A and B are human beings engaged in interaction, and C is an impartial and disinterested third who intervenes in this interaction. The study does not begin from, for example, an analysis of rights and duties of A and B. Instead, it concentrates on the actual happening of justice, on how it appears when the third, the C, intervenes. I will not enter into Kojève's actual definition here, but, from our point of view, it is important to notice that he does not start by analysing what we know about justice but concentrates on the actual appearance of that which appears phenomenologically.

3 Gerhard Husserl, Edmund Husserl's son and a professor of law, uses a rather similar approach in his 'Justice' (Husserl G., 1937) when he also uses A, B and C in order to explain basic elements of justice. He also understood equality to be the basic factor in this but does not separate equivalence from equality.

In the second part of the book, Kojève gives an example (*id.* 254). There are two people sharing food for dinner.[4] These two people have a different situation: A has eaten lunch and B has not. The question for the impartial and disinterested C is: how should the food be apportioned? Should B get more food than A? Justice can appear in two ways in this occasion. C could say that all are equal and both parties should have an equal portion. Or C could base his judgement on equivalence. We need to consider that B has not eaten lunch and therefore he should get more. Thus, we have two ways of understanding justice. Kojève calls the first one aristocratic (equality) concept and the second one bourgeois (equivalence) concept of justice. Kojève finds the origins of these two concepts in Hegel's dialectics of Master and Slave, but I will now continue to phenomenological perspectives of truth.

Is Kojève's view true from the phenomenological point of view? Is there a correlation between appearance and that which appears in Kojève's argument? When asking whether it is right to give this or that amount of food to a person, we are dealing with justice. Justice appears when something is judged to be just. In some cases, justice is absent and, in some others, it is present. The problem in this case, however, is that the result is arbitrary, it depends on whether C happens to be bourgeois or aristocratic. As justice should not be arbitrary, it is not present but absent in this case.

From the point of view of intersubjectivity we have now two views on the same thing, just like the tribes having different mythologies about the Sun. How could we solve the situation? We are tempted to search for a scientific or an objective solution. We might, for example, take a utilitarian point of view and try to calculate which will be the most beneficial from the point of view of society. When we take an intersubjective possibility, we try to find a common feature behind these two concepts of justice. This is indeed what Kojève did.

Kojève's aim is to acknowledge both principles at the same time without contradicting himself (*id.* 263-264). He returns to the example of a dinner:

> The principle of equality will require a share of equal portions between those having *droit*, and it will no longer be concerned about anything else. But the principle of equivalence will ask if the equal portions are really equivalent. If one observes that some are hungrier than others, one will see [to it] that this is not so. One will then share the food differently, making the portions proportional to the hunger of each one. The principle thus being satisfied, one will leave matters there. (*Id.* 269.)

The problem here is that the first principle of equality will be offended as the portions now are not equal. There is, however, a possibility to eliminate this difference:

> One will … ask why some are hungrier than others. And if one observes that this difference results from the fact that some have had lunch and others not, one will see to it such that from now on all might have lunch. (*Id.* 269.)

4 Kojève wrote the book in Marseille in summer 1943 where there was a shortage of food at that time.

Now, when all have had a chance to have lunch, equality and equivalence coincide with each other, equivalence is equality. This is not always as easy to turn into practice as it was in the example of the dinner. Only women can give birth, for example, and the situation is impossible to change, but in principle the idea is clear: 'the justice of equity will only be satisfied when the greatest possible *equality* reigns.' (*id.* 270). In the case of women and men, Kojève writes about equivalence between 'maternity and military service' (*id.* 270) which now may not seem to be the best way to increase equity, but it is clear that equity can be improved also in the cases where inequality cannot be abolished.

In the case of sharing food when there is a shortage of it and people are not equally hungry, there are, at the outset, two possible ways to see how justice is fulfilled: equity and equivalence. By searching for an intersubjective view of the situation, we can see how these two views could be merged together to one concept of justice. Kojève's idea is then to remove differences between justice systems so that all humans would be judged by the same idea of justice.

The way in which Kojève overcomes the conflict between the different concepts of justice in his dinner example brings us back to Husserl's introduction of the notion of intersubjectivity in his *Crisis of the European Sciences*. From Husserl's perspective, a good European is not someone who has achieved a superior understanding of reality, i.e. objectivity, but instead, someone who aims at the intersubjective perspective that is valid for everyone. The difference between objectivity and intersubjectivity is crucial. From this perspective, the other is an essential element of justice. It follows that justice should not be studied objectively but intersubjectively. Justice will never appear in a study of the outside world, but in an intersubjective exchange of views. In other words, by way of thinking about others' thoughts, and thus finding out what is perhaps not right in one's own thinking.

6. Conclusion

Let us conclude by first giving a brief summary of the foregoing. Phenomenological inquiry in the Husserlian sense starts from the critique of knowledge. It begins from the act he called *epoché* or reduction. The radicality of this approach lies in that it does not take some forms of knowledge – for example formal logic or exact sciences – for granted and then starts to consider how far does knowledge extend and how certain it is. This does not cover only scientific results but also the method by which these results are reached. The question in this study was: On what grounds can we do research when the way in which science is grounded needs to be abandoned?

In his lectures on *The Idea of Phenomenology,* Husserl accomplished what he called reduction, and ended up with the correlation between appearance and that which appears. However, when we start from this instead of knowledge, we face an obvious problem. The correlation between appearance and that which appears is not an objective standpoint and it seems that by following it I will only explicate my own subjective views. That might be a good method when writing a novel, but it does not seem to fulfil the expectations of research. The phenomenological approach,

however, does not aim at objectivity but intersubjectivity. It aims at thinking instead of knowing. It is grounded in the idea that thinking and truth are more than my subjective notions in contrast to objective facts. The question, then, is: How is this done in practice?

Turning to Kojève, we may consider that one way to do phenomenology in practice may be seen in his attempt to find one and unified concept of justice. In order to achieve this, he did not start studying empirically what kind of concepts are to be found. Instead, he turned to Hegel's *Phenomenology of Spirit* and its dialectics of Master and Slave. The two main ways to understand justice – the aristocratic and bourgeois ideal of justice – were found from there. In order to see how these can be unified, he considered the example of sharing food at dinner. From the Husserlian point of view, we may say that considering the just way of food-sharing, we are also considering the correlation between that which appears (justice) and how it takes place in the particular case, its appearing. Indeed, Kojève's approach did not aim at giving us objective certainty: he did not measure, calculate or rely on scientific results. Instead, the aim was to achieve intersubjective validity.

In this study, I have laid out some elements that characterize the phenomenological method in comparison to the scientific method and showed, by way of example, how this could operate in practice. Let me conclude the discussion by referring to another phenomenological dinner-example, one by Hans Lindahl. At the beginning of his *Fault Line of Globalization,* Lindahl tells us a story about him and his partner having dinner in a restaurant, where a vagrant suddenly came in and demanded a dinner. It was clear that he would not pay for the meal. In Kojève's terms, the waiter chose to follow the bourgeois understanding of justice and showed him to a table next to Lindahl's. The crucial turn in Lindahl's story, however, came when the vagrant asked the waiter to join him. Panu Minkkinen ends his review of Hans Lindahl's *Fault Lines of Globalization* by pointing at the example of a vagrant disturbing a dinner in a restaurant (Minkkinen 2016). Minkkinen compares this episode to Heidegger's views on how we are interrupted when something unexpected happens. Husserl's reduction is also something that interrupts our normal order and makes us think instead of knowing. In that sense, Lindahl's unexpected intrusion is akin to Husserl's reduction, they both open up the possibilities of thinking.

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