

HUSSERL AND REINACH, THE IDEA OF PROMISE

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ABSTRACT: In this paper, I discuss the possibility of reading the description of promise presented by Reinach in *The A priori Foundations of the Civil Law* under the light of Husserl's *Ideas I*. In order to present my argument, first, I briefly present the phenomenological method proposed by Husserl in *Ideas I* highlighting *eidetic* reduction. Second, I present the Reinachian description of social acts emphasizing the act of promising. Third, and finally, I try to demonstrate that the Reinachian description of the social act of promising is the description of a universal and necessary relation, a synthetic and *a priori* statement and corresponds to the idea of promise.

Keywords: Husserl, Reinach, phenomenological method, idea, promise.

Phenomenology is a contemporary philosophical tradition launched by Edmund Husserl with the publication of *Logical Investigations* in 1900/01. *Logical Investigations* had a huge impact on a group of scholars that started a realistic phenomenological tradition, namely Johannes Daubert, Alexander Pfänder, Adolf Reinach, Max Scheler, Edith Stein and Roman Ingarden, among others. The first one to apply phenomenological thought to the law was Adolf Reinach. In 1913, the young philosopher presented his monograph on *The A priori Foundations of the Civil Law*. In the same year, Husserl published *Ideas I*. Those students considered it an idealistic turn of his thinking, remaining faithful to *Logical Investigations*. Nevertheless, Reinach was still a beloved student of Husserl and probably would have become his heir if he had not died in 1917 during the First World War.

In this paper, I would like to argue for considering that Husserl has a very clear purpose with the phenomenological method presented in *Ideas I*, that is to say, to reach and describe the idea embodied in an intentional object. Reinach with his analyses of the promise presented in *The A priori Foundations of the Civil Law* fulfils exactly this purpose. Husserl starts with the phenomenon, reflects on it, making it an

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object for a transcendental consciousness, a lived event. He has already intuited the eidos, but to describe it, first he parenthesizes the lived event and applies the phenomenological method with the clear objective of overcoming the universal eidos embodied in its particular eidos. Reinach also starts with a reflection over a phenomenon – the promise, also suspends judgment looking at the thing as such. He is in search of the eidos, but without the phenomenological method, all he has is intuition and through it manages to overcome and describe its eidos.

I believe that Reinach intended only to describe the essence of a legal promise and to make it the prime example of an a priori theory of law. However, it accomplishes more than this. In Husserlian language, Reinach describes not only the particular eidos of a legal promise, the universality of the noemata, but he reaches the very idea of promise, the universality of the noema. He describes the idea of promise, any promise, juridical, political, religious, familiar, and so on.

In order to present my argument, first, I will briefly expose the phenomenological method as proposed by Husserl in *Ideas I* emphasizing the trajectory from the phenomenon to the noema. Then, I will present Reinach's description of promise in the context of social acts. Finally, I will conclude that Reinachian description of the essence of promise fulfils the Husserlian concept of noematic core.

1. Husserl, to the idea

The phenomenological method was proposed in *Ideas I* (HUA 3/1, 93 et seq) and its main goal is to reach the universal and necessary, the *idea*. On this path, Husserl describes many steps, relations and moments, but I will highlight only the following three: *epoché*, transcendental reduction and eidetic reduction. The first moment is *epoché*, and the other two are more concurrent ones. *Epoché* is described in *Ideas I* as a phenomenological attitude of the subject before the object, which is completely different from natural attitude. Natural attitude is not appropriate behaviour in pursuit of knowledge since it is full of expectations and prejudices. It is to judge or to take a decision about an object, situation or person without much reflection, without comprehending it. It might be useful to deal with everyday life, but not to comprehend an object. The *epoché*

is the attempt to convert natural attitude into parenthesized judgment, that is to say, to suspend judgment universally with the objective of being perfectly free of convictions. In other words, the positing is put out of action, excluded or parenthesized. Therefore, the knowing subject is protected from the influence of suppositions, expectations or preconceptions, including science-related propositions. The subject looks to the object as it appears, as it shows itself. The *epoché* opens a new domain of study, by the parenthesizing method it is possible to evidence the intentional object and its relations as they are shown, as part of a lived event in transcendental consciousness, to observe its main characteristics without veiling it with our expectations or preconceptions, and to distinguish the object itself from what we would like it to be. In doing so, we also distinguish the observer from the object since it constantly frustrates our expectations, not working as we would like. However, at this point, it is not yet possible to describe the characteristics of the intentional object. At this point, all we have is eidetic intuition, a non-reflecting intuition.

Transcendental reduction leads the subject from the intentional object to the relation between the subject and the object in the way it is given. It allows the subject to realize the difference between the intentional object and the subject that is intending it. It is when the subject realizes that she is the being conducting the whole process; she is the being trying to comprehend the world we live in; her consciousness is the place where the world and its objects are constituted, and the agent that makes them evident. In this sense, Zahavi (2008) defines Husserl as a transcendental idealist: the evidence of the external world not only takes place in consciousness but the whole process of knowledge of the external world is led by consciousness.

Eidetic reduction is based on eidetic intuition. Eidetic intuition takes place when a subject, before an object, captures immediately its essence. This intuition is direct as Husserl does not admit any kind of representationalism (Zahavi, 2008). In Husserl's words,

“[i]n immediately intuitive acts we intuit an ‘it self;’ on their apprehendings no mediate apprehendings are built up at higher level; thus there is no consciousness of anything *for which* the intuited might

function as a ‘sign’ or ‘picture’. And just on that account it is said to be immediately intuited as ‘it self’”. (HUA 3/1, p. 79)

The intuition of something individual can be transmuted into *ideation*, or eidetic seeing. This is possible because, while the natural sciences apprehend the objects in their physical, space-temporal and contingent presentiveness, having a one-sided intuition or an inadequate intuition, phenomenology focus on the essence, looks for a more adequate intuition, one in a multiplicity and continuous flow of intuitions, tries to capture what remains in a lived event¹, the eidetic necessity. So the *eidōs* intuited in the lived event becomes a new object of cognition, the object of an eidetic science, phenomenology. For example, from the living event of holding a ball of wax, she can intuit its singular size, weight, color, shape, smell and texture, and, at the same time, on the same living experience, she can intuit its material characteristic and that it implies a few necessities, such as, having extension and shape, and being filled with color. These are two different types of intuition given at the same time, through the same lived event, an empirical intuition and an eidetic intuition. Thus, “*Everything belonging to the essence of the individuum another individuum can have too; and the highest eidetic universalities of the sort just indicated in our examples delimit “regions”, or “categories” of individua.*” (HUA 3/1, 9) On the other hand, each ontological region determines what applies “*a priori*” and “*synthetically*” to an object within the extension of the region (HUA 3/1, 31).

The phenomenological comprehension of the lived event allows the subject to realize that there are two inseparable dimensions, subjective and objective. The former consists of consciousness acts, acts performed by the subject of knowledge, such as thinking, remembering, judging, etc., which Husserl calls ‘noesis’. The latter

¹ TRANSLATION NOTE: In Ideas I, F. Kersten translates ‘die Erlebnisse’ to ‘mental processes’. With much respect, I do not think it is the best translation. Das Erlebnis is a remarkable event that someone has experienced, or has lived. It refers to the whole experience of living a specific event. When you translate to ‘mental processes’, it seems that the emphasis is on the consciousness acts (noese), but ‘das Erlebnis’ is not only about them, it is also about the content of these acts (noema), and more, is about the eidetic relation between them (the noetic-noematic relation). Therefore, I think the Brazilian-Portuguese translation is better; it is translated to ‘lived’ (vivido) to indicate an event experienced or lived, in short, a ‘**lived event**’ that now is under focus.

comprises the contents of those acts, the objects of consciousness acts, ‘what’ you think, ‘what’ you remember, ‘what’ you judge, etc. Husserl calls this ‘noema’. Phenomenology aims to describe everything that it is necessary about a lived event in its noetic and noematic dimensions, and in its noetic-noematic relation.

At first sight, there is the non-reflecting lived event; then there is a modification in consciousness, one becomes aware of the lived event and starts to reflect on it; lived event becomes, then, a reflected lived event. There are various reflection acts that cross a lived event, the immanent eidetic seizing, the immanent experiencing, the remembrance of something that has been perceived, or the expectation of something that will become perceived. Husserl explains:

The ray of attention presents itself as emanating from the pure Ego and terminating in that which is objective, as directed to it or being diverted from it. The ray does not become detached from the Ego; on the contrary, it is itself an Ego-ray, and remains an Ego-ray. The “Object” is struck; it is the target, it is put into a relation to the Ego (and by the Ego itself) but is not “subjective”. (HUA 3/1, 192).

Therefore, all intentionally lived events are composed of acts of consciousness that reach intentional objects, namely, their objective sense (HUA 3/1, 185-190). Besides, there are necessary relations between noeses and noemas, that is to say, certain consciousness acts have specific intentional objects, or certain objects can only be intended by specific consciousness acts. Acts of perceiving and evaluating have noemas with two levels of essentiality, a pure one and a particular one, the pure eidós (species) and its particularization (noemata). Acts of judging and wishing have no pure eidós, there is only the judged or willed as such (HUA 3/1, 197-206). For example, I am looking forward to a chocolate cake. I wish to eat a chocolate cake; my desire is a particular act. However, I can “struck” this intentional object with another act, an evaluation act. I would have to evaluate this specific lived event of ‘looking forward to eating a chocolate cake’, and I would have to evaluate the conflicting values considering an objective hierarchy of values (HUA 3/1, 241-245), in this case, health and pleasure.

There is a difference between particular moments and pure eidetic moments. Husserl calls these particular moments real moments composed of hyletic and noetic moments of the lived event. For example, when I perceive the color of a tree trunk, I perceive a specific color of a specific object. When I parenthesize it, I apprehend the color itself, on the same continuous unity, the noemata unity, that reveals the *eidōs* post reduction. Describing in more detail, eidetic reduction commences when, after assuming the phenomenological attitude – *epoché*, the subject varies the characteristics of an intentional object until she reaches a ‘core’ of characteristics that cannot vary anymore. The subject has to mentally ask if each of the characteristics is necessary. If the characteristic is taken away and the object becomes something else, then it is a necessary characteristic (HUA 3/1, 184). This core of characteristics is the essence of the intentional object. It is important to highlight that, in the first moment, the essence is intuited but it is not yet possible to describe it. The subject is an observer and it is important that she assumes this attitude so her expectations do not veil her observation. It is only in the second moment that the subject will be able to describe the essence of the intentional object. At this point, the subject assumes an active attitude varying the characteristics of the intentional object. The object is passive; it is manifested, originally given. It is up to the subject to assume then an active attitude, to comprehend it with all its complexity, to evidence which are its essential and accidental characteristics, to constitute the object by varying its characteristics. At this moment, the subject has reached the *eidōs* of the noemata. However, she still has to move to another level of essentiality, the *eidōs* of the noema. In other words, this is the description of essential contents of individual noemata, and phenomenology aims to describe its laws of constitution.

Thus, the phenomenological reduction will make reaching the non-real moments, the ideal moments or the noematic moments possible. In other words, the real unity of the lived event is composed of noeses, that is to say, acts of consciousness, and hyletic data, sensuous contents that present the object. This unity reveals the individual as the same, material, concrete, which allows me to say “I see the same tree”. The ideal unity is the noema which reveals the post-reduction essence (HUA 3/1, 202-205). In the example of the tree, there is the color of the tree trunk, the feeling of the color, the unity

of the real lived event, the unity that reveals the individual as the same, the unity of the hyletic and of the noese, and there is the same identical color, immutable, the color in the continuous unity of a perceptive consciousness, the unity of the noema.

Husserl's main interest in proposing the phenomenological method was to describe the noematic core, the identical, the determinable X, the *eidós*, or the *ideia*. In other words, lived events give occasion to, through phenomenological reduction, reach the pure eidetic sphere where the noematic core is. But there is a question: how to pass from the real composition of the lived event to the ideal one?

The intentional object as such appears as support to all noematic characters. Corresponding to noematic characters, also called modes of being, there are noetic characters (HUA 3/1, 214-216), for example, certainty corresponds to perceptual belief, possible to assumption, plausible to conjecture, problematic to questioning, doubtful to doubt, denial to rejection, affirmation to assent (HUA 3/1, 214-222). Aside from the modifications related to the sphere of belief, there is a consciousness mode entirely particular, neutrality (HUA 3/1, 222-228). Neutrality is a modification in the sphere of belief that does not operate, simply parenthesizes, leaves the character of position in suspense.

Neutrality and positing are opposing attitudes, yet complementary (HUA 3/1, 223-224). They are opposing attitudes because positing is positional, evaluates with reason, and may be either correct or incorrect; neutrality or suspension is not positional, cannot be evaluated with reason, and cannot be either correct or incorrect. They are complementary because all lived events ideally correspond to a neutralization mode. Hence, in the essence of all lived events a set of potential positions of being is outlined beforehand (HUA 3/1, 228-236).

Following the examples of noeses of perception, Husserl turns his attention to noeses of feeling, of desiring, of willing (HUA 3/1, 238-245). Through these examples, Husserl passes from particular to universal, from hyletic and noetic to noematic. To these new noetic moments there is a corresponding new dimension of sense, new noematic moments: values. Values are not determining parts of things; things have no value, they support value (HUA 3/1, 239-240). That is to say, in the affective

consciousness, the higher level noema - value - is a core of sense surrounded by new posited characters. Thus, apprehensions of value relate to apprehensions of things in the same way that the new noematic characterizations (beauty and ugliness, goodness and badness) relate to modes of belief.

Through analyses of acts of will in general it is possible to see that under these positional characters lies an *archontic* positing that unifies in itself and governs all others, the supreme unity of species, the universality of essence (HUA3/1, 241-245). And despite the fact that here we are dealing with acts of will, because it is possible to “translate” an affective thesis into a doxic thesis, it is possible to reach and describe its noema (HUA 3/1, 243-244). Thus the analogy between universal logic, universal theory of value, and ethics. These lead to the constitution of universal formal parallels: formal logic, formal axiology, and theory of practice. This is how it is possible to reach the realm of essences from the phenomenon; it is an eidetic science or ontology.

2. Reinach on promise

As mentioned, after the publication of *Ideas I*, Reinach remained faithful to *Logical Investigations* and did not follow Husserl's steps. Reinach “understood phenomenology as a philosophical realism, and while Husserl was developing his transcendental phenomenology” (Crosby, 1983-A). James DuBois stresses: “[i]n Reinach's entire collected works, the words ‘epoché’ and ‘noema’ appear nowhere. He belonged to the early group of phenomenologists who believed that phenomenology was a distinctive and promising approach to philosophy, but who felt no sympathy for idealism.” (2002, p. 329)

Therefore, I fully accept that Reinach did not at all intend to attain the idea of promise. However, I believe that is what he did in analyzing it, all by intuition, without applying the phenomenological method. His aim was to describe the being of social acts, not what ought to be. He was not focused on morals or values (De Vecchi, p. 279 et seq.), but on the universal and necessary relations that make social acts possible, necessary conditions that make social acts intelligible.

In *The A priori Foundations of the Civil Law*, Reinach (1983, p. 9) presents a new category of objects that was not considered by Husserl in *Logical Investigations* (HUA 19). They are neither physical nor psychical; they could be ideal, a value, for instance, but one of the characteristics of ideal objects is timelessness, and the objects in question are temporal objects. Reinach (1983, p. 6) defines them as temporal objects of a special kind. The example given is the promise. To study this kind of object, Reinach analyses different acts performed by beings and comes up with the idea of ‘social acts’.

There are various kinds of acts, such as passive acts, e.g. listening, spontaneous acts, e.g. feeling joy, and active acts, e.g. making a decision. The difference between a spontaneous act and an active act is that in the former the subject is not the author of the act, it is an internal act but he does not control it. An example would be, for instance, when hearing a beautiful song; I cannot avoid the relief or joy that arises in me. In contrast, an active act comes from a resolution, it depends on a conscious decision of the subject; in Max Scheler’s (1960, p. 24) language, it is a free and motivated act, e.g. forgiving or commanding. In addition, there are acts that presuppose a second subject at whom the act of the first subject is aimed, e.g. envying.

Among these acts, there are important differences. Some acts have to be manifested externally, e.g. crying or laughing. Some acts have to be manifested externally and must be perceived as such, e.g. commanding and begging. Commanding and begging are necessarily different, but both have to be perceived as such, especially when the sentence is the same, e.g. ‘Don’t’. If I say it to my daughter with a low tone of voice she will understand it as a command; if I say it, crying, to a thug, it will be a plea. Some acts have to be manifested externally, must be perceived as such and await feedback, e.g. proclaiming or asking a question. Asking is only complete if an answer is received; otherwise, the person who asked the question will be waiting for it indefinitely. All acts that have to be manifested externally and presuppose a second subject at whom the act of the first subject is aimed are ‘social acts’. The most significant example of a social act given by Reinach is promising.

Promise has a specific inner structure which can be presented like this: “one who makes a promise incurs an obligation; one who receives a promise bears a claim; such claims are extinguished when the promise is fulfilled, or in the case that the recipient of the promise waives his claim; and so forth.” (Dubois, 1995, p. 135) In other words, promise gives rise to claims and obligations. Claims and obligations also have their own characteristics, such as: claim and obligation necessarily involve a bearer and a content, every obligation refers to a future action of its bearer, and there is a peculiar kind of correlativity between them (Reinach, 1983, p.12).

The description of states of affairs that ground acts of promising is not only a description of a particular legal entity, and its predication does not refer to a specific species of promise – legal promises, but to any promise, it refers to the genus promise. It means that its “predication is valid for absolutely everything which is of this kind, and that it necessarily belongs to every such thing, and that it could not fail, not even once, to hold for any particular case.” (Reinach, 1973, p. 5) The description of promise essence is not only valid for legal promises; its essence is necessary and universal, an *a priori* statement valid for legal entities and for all other species of promises.

What Reinach describes are not only objects of *a priori* theory of right. He recognizes necessary and universal states of affairs that ground any promise, obligation or claim. “That a claim lapses through being waived, is grounded in the essence of a claim as such and holds therefore necessarily and universally.” (Reinach, 1983, p.5) This characteristic does not apply only to legal promises, obligations or claims, but to all of them, promises, obligations or claims of any kind.

In this sense, Reinach affirms “Let us recall the relation between promises on the one hand and claims and obligations on the other: this was bound to remain uncertain and doubtful as long as one retained the unclear concept of declaration of intention and failed to work one’s way to a clear conception of the nature of promising and of the social acts in general. Ultimate intuitions of essence, too, have to be worked out. And it is only purely phenomenological analysis which can give us that insight into essential relations which is evident and unburdened by any further doubt; this insight

cannot be replaced by appealing to that which makes these essential relations “possible at all’.” (Reinach, 1983, p.132)

Reinach reaches this point assuming the phenomenological attitude, keeping his consciousness committed to the real in the way it is given, returning to the things themselves. From the phenomenon of legal promise, through eidetic intuition, he describes necessary relations that are essential to any species of promise. In other words, the phenomenon of legal promise gives him occasion to reach and describe the universal and necessary relations of promise, its *eidōs*.

Therefore, I defend the proposition that in describing the structure and the characteristics of promise, Reinach reached the realm of essences, universal and necessary states of affairs that are ground to any act of promising, synthetic and *a priori* laws that refer to any individual entity under them. His intention was to present an ontology of civil law, but he achieved much more than this. Reinach described the idea of promise.

3. The idea of promise

To read the Reinachian description of promise under the light of Husserlian *Ideas*, it is important to highlight that Husserl proposes a distinction between the real unity of the lived event composed by noetic and hyletic elements, and the ideal unity of it composed by the noema, and this distinction cannot be found in Reinach.

The main objective of the phenomenological method is to describe the *eidōs*, the idea, or the noematic core of a lived event. In Husserl’s words, “the “matter”, which is, in the particular case, the “what” which receives the posited characteristic, the “quality”, corresponds to the “noematic core” (HUA 3/1, 268). In more detail, “We can say then: several act-noemata have here, throughout, *different cores*, yet in such a manner that, in spite of this, they are *joined together to make a unity of identity*, to make unity in which the “something,” the determinable which inheres in each core, is intended to as an identical “something”.” (HUA 3/1, 271).

To explain it, Husserl makes a turn in his theory of sense [*Sinn*] and meaning [*Bedeutung*] from *Logical Investigations* (1900) to *Vorlesungen über*

Bedeutungslehre (1908) and *Idea I* (1913). In his words, “In the *Logische Untersuchungen* they [posited moments] were (under the title “quality”) taken into the concept of sense (of significationnal essence) and therefore in this unity the two concepts, “matter” (sense, in the present conception) and quality, were distinguished. But it seems more suitable to define the term “sense” as merely that “matter” and then to designate the unity of sense and posited characteristic as “positum”. [...] The concept of the positum is accordingly indeed extraordinarily and perhaps surprisingly broadened, but nevertheless within the bounds of an important essential unity. [...] these concepts designate an abstract stratum belonging to the full web of all noemata.” (HUA 3/1, 274) So now the full noematic core – idea – is clearly understood as the unity of sense in the mode belonging to its fullness (§132).

The question is how to apply the phenomenological method of description of essences to Reinachian new objects, social acts? In *The A priori Foundations of the Civil Law*, Reinach presents a new kind of objects to be studied by phenomenology, social acts, and promise is a social act. To take promise as an intentional object and apply over it the phenomenological method to see if Reinach’s description of its essence can be understood as a noematic core, first it is important to highlight two distinctions. First, we are not investigating the content of the act of promising, that is, we are not investigating ‘what one promises’, the content of a promise cannot be confused with the act of promising. Second, we are not investigating the mental act, in Husserl’s language, we are not investigating the noesis, the consciousness act. We are investigating a state of affairs, a social act, the act of promising and all its necessary relations. This difference is also highlighted by Mulligan, *in verbis*: “Reinach at any rate saw very clearly that social acts are not any sort of description of or statement about mental acts.” (Mulligan, 1987, p.38)

Having that said, we are investigating ‘the act of promising’, which is a species of social act, and, therefore, implies a certain state of affairs. We are in search of its noematic core.

So, what is the noematic core of the act of promising? That is precisely what Reinach describes. Being a social act, promise has to be manifested externally, must

be perceived as such and await feedback, this is, promise has to be manifested externally and presupposes a second subject at whom the act of the first subject is aimed. That is the new region presented by Reinach, composed of objects that are neither physical nor psychical, and they are not ideal since they are temporal. Thus, social acts are temporal object of a special kind. They are actions placed under investigation, not consciousness acts, social acts; the intentional object is an action which implies several necessary relations. Among social acts, Reinach presents the description of promise. Being an action, its noematic core is not “matter” in the conventional way, its noematic core is its necessary relation.

Keeping in mind that we are investigating a new species of object, social actions, to look for the noematic core of it is entirely different from looking for the noematic core of a real, ideal or formal object. In the acts of perceiving, evaluating, or operating, all consciousness acts, noeses, there is a clear intentional object, a concrete object, a value, or a number, hyletic elements that under the phenomenological method will lead to the noematic core. However, when the intentional object is a social action, promising, it is entirely different. The content of the act of promising does not matter, is not what is under investigation. It is the act of promising itself.

In Kantian language, his description is a synthetic *a priori* statement about the social action to promise. That ‘whoever makes a promise incurs an obligation; one who receives a promise bears a claim’ is a synthetic statement because, as Kant [KrV, B7-B19] explains, the concept expressed by the predicate of the proposition is not contained in the concept expressed by its subject, and it is *a priori* because it is universal and necessary. Husserl also uses this reasoning on his classical example of the color. The same way there is a necessary and universal relation between color and extension, and the concept of color does not contain the concept of extension, both being entirely different and yet correlated; there is a necessary and universal relation between promise, obligation and claim. Their concepts are not mutually contained, yet they are correlated. These are synthetical *a priori* statements about color (Husserl) and promise (Reinach). In this sense, we have the understanding of De Vecchi (2012, p. 39): “Reinach extends the

synthetic a priori defined by Edmund Husserl in Logical Research (1900/1901) to the sphere of social and juridical.”

In Husserlian language, what Reinach describes is its noematic core. He is describing the nucleus of promising, its necessary inner structure, the *idea* of promise. ‘Whoever makes a promise incurs an obligation; one who receives a promise bears a claim’ is the *idea* of promise, is what makes the act of promising intelligible. It is not valid only for legal promises, but for any promise in any sphere of human life – religious, moral, cultural, political and so on. Therefore, I believe that, in describing promise, Reinach has given one of the most significant examples of *idea* realizing the Husserl’s purpose in *Ideias I*.

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