

Phenomenological Attitude in Jurisdictional Provision: A Bridge between Phenomenology and Law

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How to cite this paper: Pinto, E. O. O. R., & Bussinguer, E. C. A. (2024). Phenomenological Attitude in Jurisdictional Provision: A Bridge between Phenomenology and Law. *Beijing Law Review*, 15, 690-707. <https://doi.org/10.4236/blr.2024.152042>

Received: March 19, 2024

Accepted: June 10, 2024

Published: June 13, 2024

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Abstract

The study seeks an approximation of the basic concepts of Edmund Husserl's phenomenology, his essential categories, as well as his specific method of phenomenological reduction, questioning its applicability to law, especially as an attitude in the state's jurisdictional activity, in the context of production of evidence with the implementation of the Husserlian *epoché*, suspending pre-understandings and prejudices, in search of the essence of the phenomena. The question is, therefore, how it is possible to apply Husserl's approach to law and whether it would be appropriate to carry out phenomenological reductions at the time of jurisdictional provision, to reach the essence of phenomena that involve human nature. It is concluded that Husserl's phenomenological reduction proves to be feasible within the scope of the judicial process and allows the figure of the magistrate to be assumed from the perspective of an observer and not a mere interpreter of the lived world of the subject to whom the legal norm is addressed, in order to provide greater authenticity in the knowledge of phenomena and, therefore, greater legal certainty.

Keywords

Phenomenology, Adjudication, Legal Certainty

1. Introduction

In combating the dominance of positivism and psychologism that predominated in the sciences in the 19th century, the mathematician and philosopher Edmund Husserl (1859-1938), inserted in a historical moment of hegemony of empirics, criticized the highly rationalist and objectivist sciences of the time and proposed

a new “school of philosophical thought”, which also reveals itself as a scientific method, a research attitude, that is, phenomenology, which moved away from the classical methods of seeking knowledge, that, basically, were based on inductivist or deductivists.

Phenomenology opposes the dogmatics of the possibility of current knowledge and even the belief in the existence of the world as a reality independent of subjectivity. Thus, Husserlian philosophy, by bringing thought itself into question, refutes knowledge considered “natural” and reflects the constitution of things, their essences, based on the subject-object relationship.

Concepts such as “intentionality” and “intuition of the essence of things” are primordial in phenomenology, which thus breaks with the doctrine of neutral scientific knowledge, devoid of subjectivity, which is why, for Husserl, his method is considered appropriate to the specificities of the human sciences, that must privilege reflective consciousness and, effectively, the subject of knowledge himself.

Thus, in the search for the “essence” of phenomena, Husserl’s science will be called “eidetics” (*eidōs* in Greek means essence) and is a descriptive science, not an explanatory or causal one, as it does not intend to interpret the experiences of the man-world relationship, but rather understand them. To occur this unveiling of essence, the method of “phenomenological reduction or transcendental reduction” is used, in order to allow the “return to the things themselves”, freeing ourselves from the interpretations of the world that we already carry in our consciousness and that are transmitted to us by our history, culture and experience. Through a mental process of “suspension” of everything that is not essential to the identification of the nuclear meaning of the phenomenon, of pre-understandings and prejudices, the “empirical self” is rejected, in order to arrive at the *eidōs* (essence), not immanent, nor external to the subject, in fact, constituted in the subject-object relationship.

In this context, it is noted that legal positivism has also been the subject of criticism from legal phenomenologists, due to the insufficiency of responses found within the strict limits of state, abstract and general legislation, which, not infrequently, departs from of concrete reality, of the “lived world” (also a phenomenological expression) by society, that is, it proves to be insufficient to encompass the great variety of possibilities of human experience.

Despite the existence of this method that aims to break with (pre)concepts and superficialities, it is worth asking how it is possible to apply the phenomenological approach to Law? Would it be appropriate to use the method during a hearing, to produce judicial oral evidence, in an attempt to reach the essence of the phenomena that involve human nature in its particularities?

To elucidate such questions and achieve the proposed objectives, it is essential to understand the essence of law itself. And phenomenology stands as an innovative and paradigmatic perspective, recognizing the centrality of man in the cultural processes of a society, including in law, and this bias should guide the

practical attitude of the legal practitioner.

Phenomenology really is a complex method of application, as a mental process that demands imaginary variations, in the investigation of the “original data” and suspension of its naturalized transcendents. However, as an attitude of respect for the world of life, respect for subjectivity in the formation of true knowledge, especially at the time of producing evidence, can serve as a guide for the judge open to leaving aside their pre-understandings to reach the essence of the phenomena.

This phenomenological stance begins with the judge willing to “suspend” his pre-judgments, continuing with his intention to analyze the phenomenon as it appears to the testifying subject, whether he is a witness or a party, or that is, with the “suspension” of the respective transcendences, having as a paradigm the refutation of the “natural attitude”, common sense, prejudices and the objective of unveiling the essence of the entity.

This attitude seeks greater authenticity in the knowledge of phenomena and an also more genuine application of the norm, which, in a systemic way, generates greater legal certainty in the application of Law, a principle arising from constitutional equality, the basis of our Democratic State of Law.

Therefore, this study aims, initially, to provide a brief overview of the roots of phenomenology; next, the analysis is based on Edmund Husserl’s phenomenology. In a third moment, the Husserlian categories that are parameters for the use of phenomenology as a method are discussed. After glimpsing the theoretical frameworks of Husserl’s phenomenology, the study turns to the relationship between phenomenology and Law, using the phenomenological reduction as a bridge between these two sciences, to, in the end, analyze the phenomenological attitude in jurisdictional provision.

This study proposes an advance towards a conscious, feasible analysis between phenomenology and Law, seeking, above all, to add value to the principle of legal certainty and the construction of a society that values the Democratic Rule of Law.

2. Emergence of Phenomenology

Since always, seeking to satisfy their needs and the survival of their own species, man has acted on nature, however, human action is not only biologically determined, but occurs mainly through the incorporation of experiences and knowledge produced and transmitted from generation to generation (Andery et al., 2014a). In this sense, “science is characterized by being man’s attempt to understand and rationally explain nature, seeking to formulate laws that, ultimately, allow human action”. This process is historically conditioned, which is why scientific knowledge does not prove to be stagnant, but transforms throughout its course (Andery et al., 2014a).

The Modern Age is marked by the return to the centrality of man, of the individual as a producer of knowledge, that is, the theocentric reading of reality is

displaced, moving to the primacy of reason, the reason of the subject, reviving the knowledge of philosophy Greek and Oriental.

In this scenario of destruction of the old and the search for new certainties, experience gains a prominent place, with its great defender being the Englishman Francis Bacon (1561-1626), who proposes a new way of arriving at knowledge, “empiricism”, that is, if man really wants to know nature he has to come into contact with it, thus opposing any predetermined idea, concluding that knowledge will only come about through empirical and experimental means (Pereira, 2014). Indeed, Bacon believed, as Pereira (2014) lectures, that:

The reason for the stagnation of the sciences is the use of methods that impede their progress: they do not start from the senses or experience, but from tradition, from preconceived ideas, and are abandoned to arguments. The correct path for the advancement of science would be to carry out a large number of ordered experiments, from which axioms would be removed and, based on these, new experiments would be proposed. (p. 197)

Empiricism was the basis of theories of great thinkers of the time, such as: Thomas Hobbes (1588-1679); John Locke (1632-1704); David Hume (1711-1776). Certainly, it had a great influence on the philosophical doctrine developed by Auguste Comte (1798-1857), positivism, (Lunardi, 2020) considered the first philosopher of science, as well as the father of sociology, at a time also guided by biologism, evolutionism and psychologism, which supported several theories, even in the area of Human Sciences.

Through Positivism, the universe and society are subject to invariable, universal laws, and also order. Scientific knowledge would be based on the observation of facts and the relationships between facts that are established by reasoning. Attempts to discover the cause of phenomena are excluded, focusing on the description of the laws that govern them (Andery et al., 2014b). There was the intention of “exatifying” the human sciences, “inexact in essence”, with the idea that general laws would be allocated to the field of study, along the lines of the natural sciences (Ribeiro, 2003). It should be noted that, for the father of positivism, facts are placed externally to subjects, who assimilate them as representations in consciousness.

However, Edmund Husserl (1859-1938), who was a mathematician and philosopher born in Moravia, now the Czech Republic, although inserted in a historical moment of predominance of “empiricism”, positivism and psychologism, at the end of the 19th century, criticized highly rationalist sciences and proposed a method that refuted both the inductive method (empiricists) and the deductive method (idealists), namely phenomenology. His thinking, one could say, leads to the radicality of Cartesian thinking, as it questions, doubts the very assumptions of knowledge, with reflection being the authentic path of philosophical activity, which starts from the self and the experiences of the ego, from access to consciousness to, then, submit it to analysis (Silva, 2013).

His refutation of psychologism also focused on a generalized criticism of the

very conditions of possibility of knowledge (criticism of knowledge), as stated, which presupposed the reality of psychic facts, which did not question the bases for the formation of thought. Regarding the discussion between psychologists and logicians that also existed in the period, [Capalbo \(2008\)](#) teaches that, “in general, every object of knowledge and thought itself were reduced to facts and psychic operations, ignoring, for example, the logical infrastructure of thought”. (p. 15)

Phenomenology will criticize the fact that science produces knowledge based on unquestionable dogmas, especially positivism, which starts from the empiricist premise of the human being being like a blank sheet of paper, who, as he experiences the world, produces knowledge, or in other words, it presupposes the existence of objects alien to man as an evident fact ([Laranja, & Bussinguer, 2018](#)).

Thus, in a paradigmatic change, for Husserl, it is up to the theory of science to study the representations themselves, the ideal universe, independently of the psychic process through which the apprehension of ideal objects is carried out, building a “Pure Logic”, which will, from categories and fundamental cognitive acts: perception, imagination, memory, intuition of time, turn to the constitution of these ideal objects, in particular the reassembly of their constituent flow ([Capalbo, 2008](#)).

In Husserl’s understanding, logical laws, which support the unity of all science, cannot be based on psychology, an empirical science and, as such, without the precision of the rules of logic ([Ribeiro, 2003](#)). In this new path, Husserl intended to make philosophy a theory of knowledge and a rigorous science, criticizing the positive sciences, which would have lost the meaning of life, a fact that Husserl would understand as a “crisis of sciences”. For him, there was, in the objective experience of science, a distancing from the problems of the meaning of human existence, overlapping the original world of previously given life ([Capalbo, 2008](#)). In this trajectory, the aforementioned theorist seeks to place man’s consciousness, the creator of all meanings, in a subject-object relationship, as a possible producer of genuine, effectively scientific knowledge, with the researcher being responsible for its apprehension and description.

By proposing a return to the original world, constituted by man, phenomenology will criticize the very act of philosophizing and the dogmatic belief, at the time, in the very existence of the world as the inaugural act of its thought, that is, phenomenology will question all knowledge naturalized, which occurs without being an object of reflection. Therefore, it can be said that Husserlian philosophy puts thought into question, seeking to reflect on the possibility of knowledge that finds “the thing in itself”, refuting “knowledge taken as natural”, that is, common sense, the superficiality of the entity.

In other words, when looking at an object, a scenario or a situation, the nuances present can activate pre-conceived concepts, sensations, emotions and perceptions that induce or lead to a previous interpretation. In this sense, phenomenology is an invitation to strip away such knowledge, perceptions, sensa-

tions, emotions that could influence any type of interpretation or judgment. Along these lines, it is worth alluding to the philosopher's (Husserl, 2002) question when he said, "how can knowledge be sure of its agreement with known objects, how can it go beyond itself and reach its objects reliably?" (p. 76).

Husserl, in his endeavor, was initially influenced by two teachers, Bernhard Bolzano (1741-1848), mathematician and philosopher, born in Prague, now the Czech Republic, who awakened him to the logical-objective dimension of thought, and Brentano (1838-1917), German philosopher and psychologist, from which his first ideas of intentionality came (Ribeiro, 2003). Starting from Brentano may be the key to understanding Husserlian thought, as the scholar supported the need to directly contemplate the essence of things, and psychic acts need to be described and characterized only by the intentional relationship to their object, which is the basic idea in Husserl's philosophy (Silva, 2013).

With the concepts of "intentionality" and "intuition of the essence of things", phenomenology, a philosophical theory developed by Edmund Husserl, influenced several currents of thought in the 20th and 21st centuries, opposed the objective positivist view of the world, in addition to breaking with the belief in neutral scientific knowledge, devoid of subjectivity, and intended to overcome the dichotomous relationship between the subject and the object, between reason and experience (Silva, 2013).

Concerning this, Capalbo (2008) teaches that, in phenomenology, there is no pure consciousness separated from the world, as all consciousness tends towards the world, being consciousness of something; and, furthermore, there is no object in itself, as the object exists only for a subject who gives it meaning. Thus, the Phenomenological School of Thought emerges not only as a theory, but also as a method that seeks to investigate the conditions under which something can become an object of thought and, also, the conditions of thinking about objects in general.

Such a theory and method were understood, by Husserl, as those appropriate to the human sciences and privileged reflective consciousness, the subject of knowledge, this consciousness being, unlike what metaphysics posits, not an observable fact, not a soul, an entity spiritual or a thinking substance, but rather an intentional act, whose essence is intentionality itself, whose meaning is the correlate of this intention (Silva, 2013).

3. Edmund Husserl's Phenomenology and Its Categories

The word phenomenology comes from the Greek *phainesthai*, which means "that which presents itself or shows itself", and *logos* is a suffix that means "explanation" or "study". In fact, the term did not appear with Edmund Husserl, having also been used by other thinkers. The constitution of the term is attributed to the Swiss mathematician Johann Heinrich Lambert (1728-1777), who turned to the descriptive study of the phenomenon as it presented itself to experience (Silva, 2013).

In Kant (1724-1804), the term was already used, but still with a clear distinction between phenomenon and “thing in itself”, unknowable to man. The apprehension of the phenomena would occur after “filtering”, by human knowledge, through its analytical categories (Laranja & Bussinguer, 2018).

In this regard, Ribeiro Júnior (2003) clarifies that:

It is true that Kant was already researching the “a priori” conditions of knowledge, but this “a priori” prejudged the solution of problems. Husserlian phenomenology rejects this fiction as real, hence its interrogative stimulus, which addresses all knowledge, unfolding indefinitely. (p. 5)

In the case of Hegel’s vision, the term was used in his work “Phenomenology of the Spirit”, in a broad sense, complete experience of consciousness, with the phenomenon understood as a limitation relative to an extra-phenomenal reality (the Absolute) (Ribeiro, 2003).

Despite there being these particular aspects, in all these thinkers, the meaning of phenomenon does not eliminate the separation of subject and object. Furthermore, the psychic fact is not questioned as an existing data, an understanding rejected by Husserl, defender of the relational character of phenomena (subject-object). According to Husserlian phenomenology, data are not found in consciousness, as idealists defended, nor are they outside consciousness, to be understood as external to the subject, as inductivists would defend, but they exist as phenomena that arise to consciousness, always in a interdependent noetic-noematic relationship (consciousness-object).

In this sense, its differential feature is verified in relation to the scholastic tradition, idealism, empiricism or realism, in which there is an idea of separation between subject and object, between consciousness that perceives and the object that is perceived, imposing the existence of the world only as representation (Capalbo, 2008).

The objective of Husserlian theory will be, then, to describe the phenomenal structures that manifest themselves to consciousness, in the search for their essence, which is why it can be called an “eidetic science” (*eidōs* in Greek means essence). To speak of phenomenology is to speak of descriptive science, not explanatory or causal. We do not start from the recognition of the psychic fact as truth, but we also do not seek to interpret experiences, the relationship between man and the world, the foundations of all phenomena. Describing, understanding are the keywords in phenomenology.

Phenomenology, therefore, in the words of Ribeiro Júnior (Ribeiro, 2003), “[...] teaches [...] how to achieve the experience of reality, through the description of the phenomenon that experience offers us, to get to its essence.” (p. 2)

Husserl sought a rigorous science for the field of Human Sciences, which did not mean imposing phenomenology as an exact science, along mathematical lines, as inaccuracy is at the center of human relations, making the mathematical, eidetic deductive method inadequate, for that study.

Concerning phenomenology, Merleau-Ponty (1999), in turn, clarifies that it is:

[...] *the study of essences, and all problems, according to her, come down to defining essences: the essence of perception, the essence of consciousness, for example. But phenomenology is also a philosophy that restores essences to existence, and does not think that man and the world can be understood in any other way than from their “facticity”. It is a transcendental philosophy that suspends, in order to understand them, the affirmations of the natural attitude, but it is also a philosophy for which the world is always already “there”, before reflection, as an inalienable presence, and whose every effort consists of rediscovering this naive contact with the world, to finally give it a philosophical status.* (p. 1)

In this way, phenomenology proved to be a paradigmatic change of perspective in the way of seeing the production of knowledge and science, having influenced several thinkers in the 20th and 21st centuries, especially those associated with existential thinking and the cultural and political movement that emerged after the Second World War.

From phenomenology, we begin to discuss the meaning of man, his existence, freedom and responsibility. Its importance stands out for the thought of Martin Heidegger, a student of Husserl, who influenced other very relevant thinkers in the 20th century. However, it is noted that, despite Heidegger’s use of the phenomenological method, he expanded his horizons and objected to Husserl, in the sense that he excluded man himself from the phenomenological reduction, whose essence is based on the freedom to choose foundational meanings, difficult to unveil, which often appears to be partial or even remains hidden (Laranja & Bussinguer, 2018).

For Heidegger, the fundamental characteristic of being is being-in-the-world. “World” understood as circles of interests, concerns, desires, affections, knowledge, in which man finds himself immersed. And, because man is always immersed in this “world”, that is, always placed in a situation, Heidegger calls him “being-in-situation” (“dasein”). While Husserl limited himself to cognitive activities of the mind, Heidegger focused his attention on the emotional conditions of anguish as a sign of the true situation of man-in-the-world (Ribeiro, 2003).

Despite this criticism, phenomenology had a lot of weight in the development of the existentialist philosophical current, which understands human existence as it presents itself. Since the essences reached in relational acts as data to be apprehended in a mental process of transcendental reductions, the human essence itself will thus be reached, which refutes the thesis that essence precedes existence, as for Descartes, because that will only be “grasped” by the existence, in a relational act of consciousness, of the subject and the object. Thus, for existentialists, existence precedes essence.

If the meaning of a fruitful tree is defined by the genesis of its seed, man himself defines the meaning of his existence, as a unique being who has the freedom of choice in relation to his own life.

As stated, Heidegger directly or indirectly influenced great thinkers of our

time, but the influences of phenomenology were not restricted to philosophy, including psychology, sociology, anthropology, history and Law. In Law, phenomenologists defend the existence of legal concepts that are essentially independent of any and all positive Law, existing a priori and intellectually evident.

4. Husserlian Categories

Husserlian phenomenology develops around certain categories that are very important for its understanding, highlighting in this article: consciousness, intentionality, phenomenon, object, essence, experience, intuition and world of life.

In line with what Brentano maintained, for Husserl, consciousness is essentially defined in terms of intention aimed at an object. It is not possible to separate phenomenon from the thing itself. The phenomenon is known directly, without intermediaries, it is the object of an originally giving intuition (Capalbo, 2008).

Our consciousness is not a blank sheet of paper that receives, through the senses, external reality and interprets it through representations of consciousness. Indeed, every mental act incorporates something from outside itself. So, if I see, I see something; if I like it, I like something. Therefore, if I am conscious, I am conscious of something. The mental act is always related to something that “appears” to consciousness, a characteristic, called by Husserl, intentionality. However, the given, manifested reality of the thing, which appears to consciousness, is the phenomenon, that is neither external nor completely internal to the subject, but reveals the psychic instant in which the entity appears as intentionality referential to consciousness, that is, the perceived object appears as “interest”, direction.

The phenomenon, in the words of Ribeiro Júnior (Ribeiro, 2003):

Is, therefore, the aspect of the object immediately evident in consciousness. [...] is the apparent [...] appearance not in the sense of illusion, as opposed to reality, but in the sense of “given” to the mere presence of the mind, what Husserl calls the “pure” consciousness of something. (p. 10)

As was said, all consciousness is consciousness of something and this is one of the basic statements of Husserl’s theory, that innovates by subverting the belief in the independence between objective and subjective “realities”, recognizing, in the constitution of reality, the connection between subject and object as interdependent, relational, correlated poles in consciousness, generating the object, objective data that appears to consciousness, through the phenomenon, an act of revelation in itself (Cunha, 2015).

In this line, therefore, the object is not synonymous with thing. The object is the thing as it is present to consciousness, it is everything that constitutes the end of an act of consciousness. And the intellect intuitively has a certainty about the essence of things, which is why it can be said that phenomenology is an a priori science, as it describes essences (ideal and non-empirical objects) (Ribeiro,

2003).

The essences, the invariant core of the object, are apprehended when the subject enters into a relationship with the object, carries out the reduction process, Husserl's method for arriving at the essences, and the object is contemplated in an original way. This contemplation translates into experience, what remains for the subject (the Self) of its reduction of the object (phenomenon targeted). Hence why phenomenological analysis takes place from the point of view of someone who lives this or that concrete situation (Ribeiro, 2003).

The vision of essences appears as intuition, that is, an act of direct knowledge, through which the phenomenon appears in consciousness, which Husserl will call meaning-giving intuition. As a consequence,

The meaning that is given to the world or reality is an intentional correlate of consciousness, so there is no pure consciousness separate from the world. The world and reality exist only for one subject, for the SELF, and it is he who gives them meaning. (Silva, 2013: p. 70)

Husserl's thought underwent changes throughout his life, including due to criticism from Heidegger, culminating in the of the concept of "world of life", in his last writing, "The crisis of European humanity and philosophy", in which he began to give greater importance to the historical aspect, as a determinant factor in the formation of subjectivity. During this period, a new perspective of phenomenology emerges and the transcendental ego appears as a historical reason (Silva, 2013).

5. Methodology: Phenomenological Reduction

Through description and imaginary variation, Husserl arrives at the intuition of essences. He wants to show us what the universal source of all meaning is, what the universal structures of intentional life are. To do this, the phenomenological reduction method is used (Capalbo, 2008).

It is also called transcendental reduction, as it focuses on psychic acts of unveiling the essence of phenomena, excluding the transcendent (non-essential aspects), with the aim of arriving at the transcendental significance, essence of the being, that is, its invariance. In this capture of the essences of objects, the difficulty of an apprehension free from pre-understandings, "accidental" data from the experience of the lived world, arising from what Husserl calls "natural knowledge", from common sense, which the theorist puts in "suspension" (*epoché*), which occurs with a "parenthesis", initially, about the existence of belief in the world itself and its respective scientific theories.

It can be said that the phenomenological reduction aims to "purify" the phenomena that appear to consciousness, freeing us from our interpretations of the world that we already carry in consciousness. In this way, in another emblematic statement by Husserl, we "return to the things themselves". From then on, everything that does not prove to be essential to the identification of the nuclear meaning of the phenomenon is placed in "suspension", and the "natural know-

ledge” of the “empirical self” is also subjected to scientific “parenthesis”, in order to arrive at *eidōs* (essence) of the fact, not to an essence immanent to the subject, but rather constituted in the subject-object relationship, *noēsis-noēma* (noetic-noematic relationship). In this sense, Capalbo (2008) registers that:

[...] *this reduction should not be understood as a return to the idealist philosophy of consciousness, which understood the world as constituted by consciousness. Here the world is seen in its transparency as a noematic correlative pole of consciousness, that is, as an objective experience, as a significant object, before which the subject sees his conscious operations, his intentionality in ethics, that is, the real element of objective experience.* (p. 22-23)

When seeking to create a philosophy of rigour, *epoché* returns to the origin of all meaning. It is the task of phenomenology to explain this constitutive and founding activity of the transcendental ego and, through the constituent reduction, recognize man as responsible for the meaning of phenomena (Silva, 2013).

The non-essentiality, the “accidents” in relation to the phenomenon are revealed by what is called “imaginary or eidetic variation”, at which point the phenomena will be analyzed, based on their essential structures or variants, these being non-essential.

As for the essence, Dartigues (1973) reports that it:

[...] *it will then be defined as a “consciousness of impossibility”, that is, as that which is impossible for consciousness to think otherwise. [...] The process by which we can reach this consciousness consists of imagining, with regard to an object taken as a model, all the variations that it is likely to undergo. “It is revealed, then, that freedom could not be absolute, and that there are conditions without which the ‘variants’ would no longer be variants of this model, ‘examples’ of the same species. This ‘invariant’ identified through differences precisely defines the essence of objects of this species” [...].* (p. 35)

It can be seen that the phenomenological reduction, on the one hand, does not deny the real world, which surrounds us, in sophistic molds, in which the sense of relativity is in everything, including “truth”. However, on the other hand, it does not subject us to the doubt of its existence, as skeptics do, but suspends its judgment on it, being an intuitive reflection on the object, which allows us to move from the object to its essence (Ribeiro, 2003).

It is worth mentioning that the phenomenological method is sometimes criticized for the high level of subjectivity that composes it. In this line, Silva (2013) alludes that, although phenomenology does not generalize the apprehension of phenomena, as it considers it unique for a specific subject, being anti-inductivist, in this aspect, one really should not lose sight of the fact that each subject has an ideological burden, a worldview, which can impede the reach of the pure essence of things. Thus, analyzing the contradictory aspects of a phenomenon, its his-

torical process, is fundamental to understanding them.

Despite the difficulties of the phenomenological method, it may very well be more widespread as a movement, an attitude to, in Bussinguer's (2012) words, guarantee the authenticity of knowledge, but what is sought is not to see an object, to analyze it, classifying it, quantifying it, we aim to see things as they are, what is shown to consciousness for each person in a particular way.

The data that appears to consciousness must be the object of description, in order to find its invariant core, that is, its essence, its transcendental, which, in Husserl, is the domain of constituent subjectivity, as a radical source of any foundation, because it is the only one that makes all inquiry about what it is possible (Guimarães, 2013).

6. Phenomenology and Law

In the context, it is noted that the influence of legal positivism in various areas of Law has also been the subject of reflection, given its limiting bias, basically arising from the idea that Law and legislation become synonymous, this Law will be reproduced in codes to be taught in school benches and interpreted exclusively within the possibilities of the legal statement, which, not infrequently, suffer from vagueness and ambiguity.

For these critics, positive Law got lost in abstract and general rules and forgot about the lived world, the role of law in a concrete society. This reality reveals that "Law has stopped looking at the men for whom it exists, who give it meaning and who, therefore, must be at the center of its attention and major recipients of its practice" (Bussinguer, 2012: p. 67).

This criticism is, in fact, part of the line defended by Warat (1982), in a panorama of epistemological displacement, in which the explanation of the force relations that form the domains of knowledge is required, since the epistemological orthodoxy of Law confines scientific knowledge, which becomes uncritical, as it "objectifies" social relations and conceives them in a naive state. And only the loss of this naivety will allow the formation of a history of truths, moving away from what the author calls "theoretical common sense of jurists".

Along these lines, studies of phenomenology, particularly legal phenomenology, can collaborate in suspending this naive knowledge, as they seek the essence of law, opening up space to question the foundations of the legal order, to understand it beyond the rules only, since they have man as their ultimate end and only the legal text proves to be insufficient to exhaust human experiences, despite all the relevance, which cannot be denied, of the positive norm, which seeks legal certainty, so dear in our complex society.

In this way, Guimarães (2013) clarifies:

[...] The phenomenological method would be a new path of investigation, permeated by the illuminating and discovering intention of the meanings of history that was constructed throughout our civilizational process. A new way of seeing, a new philosophical perspective on the world; a new path

open to the spirit and its inquiring desire. Phenomenology postulates the foundations of knowledge. (p. 7)

Thus, phenomenology, particularly its intentionality category and phenomenological suspension, will allow the understanding of legal phenomena in their interiorities and not just in appearance, that is, they will enable the reach of the very essences of these entities. However, in addition to the importance of investigating the essence of Law and the foundations of the phenomenon of Law, finding them still proves difficult, as the interpreter is based on a belief in dogmas, which appear to be external to the phenomenon, generally widely accepted, even though the essential meanings of a norm can be reached from the facts to which it addresses, its application must be based on the relations of beings-in-the-world, not in a way limited to the literality of the law or the subjectivity of the legislator or law enforcer.

Finding the foundation of things requires reflection on the connections between appearance and essence, it presupposes the adoption of an attitude that questions all naturalized knowledge, which must be put in suspension, in order to highlight the essences and their true meanings, which are not pre-existent to the phenomena themselves, but come from the world of life.

In this sense, the essence of the Law, that is, to “be-with” others is recognized. The framework of coexistence is not an accidental character that can be suppressed, because, in any manifestation of our lives, we are with others, and the Law is established as an element of ordering human coexistence, demanding its implementation not only normative positivity, but also its founding axiological recognition (Cunha, 2008).

Along these lines, with regard to Law, Guimarães (2013) reveals that it is in the comprehensive and non-explanatory attitude that the soul of Law resides. Because Law speaks of subjectivity, this privileged place of its creation. It says about the State’s intention aimed at modeling intersubjective relationships, in order to maintain social peace. Finally, recognizing, in the essence of Law, the founding basis of the possibility of human coexistence, is extremely relevant, since it makes us place man back at the centrality of legal operationalization, moves us away from generalizing abstraction, bringing us closer to the subjectivity that translates the world of life as it is and to which the norm is directed, that is, to whom it is effectively intended.

Phenomenological Attitude in Jurisdictional Provision

Given the characteristics that phenomenology brings to science, how can the phenomenological method be applied to Law? Would it be possible to carry out phenomenological reductions in repeated processes, at the time of judicial provision, in the search to reach the foundations of phenomena that involve human nature?

It is noteworthy, in a pragmatic way, with the number of facts that are piling up in the Judiciary, that such an attempt is impossible, as there would be a need

to look into each case in search of this type of methodological construction, which would require time that the magistrate does not have access to, as there are targets imposed by the National Council of Justice (CNJ), which need to be met.

According to the Association of Brazilian Magistrates - AMB, in an analysis of the “Justice in Numbers 2022” Report (Andrade, 2022), from the CNJ, each Brazilian magistrate ruled, in 2021, on average, 6.3 cases per business day, totaling 1,588 cases downloaded per year. In Brazil, the Judiciary has a ratio of 8.5 magistrates per one hundred thousand inhabitants, practically half the number of judges per inhabitants than in European countries, as data from “Justice in Numbers 2022” also show. Furthermore, the workload of magistrates tends to grow annually, recording that there was an increase, in 2021, of 11.6%, in the average volume of cases under the management of each judge, compared to 2020.

Therefore, given this fact, rather than applying the phenomenological method in a purist way, its use is defended in terms of directional movement, that is, it supports the possibility of applying phenomenology in jurisdictional provision as an attitude in the description of phenomena intersubjective in themselves, in the pursuit of their possible understanding. Such perception must be an a priori to the application of the legal norm.

It is essential, in the application of Law, to implement a teleology that has the human being at its center, to whom the Law is intended, as the ultimate end, imposing, this time, a view of the applicator that is not restricted to legal positivity, but that replaces human experience as a producer of phenomena to be analyzed in conjunction with legal norms. Furthermore, such an “attitude”, a phenomenological, non-naive attitude, requires a suspension of the judge’s pre-understandings in the analysis of phenomena, with a “return to the things themselves”, when it comes to the facts to be verified in the process, of so that, in particular, instructive reflection must turn not to a subjectivist interpretation of the facts, but to the contemplation of what is essential and authentic for the living subject in relation to them.

Phenomenology suggests that the inner world shapes the outside, thus, through the analysis of subjective processes (personal or cultural) external phenomena are shaped (Ribeiro, 2003). Therefore, the old jurisdictional maxim, “give me the facts and I will give you the law”, must be reinterpreted, reinforcing the importance of perceiving the “facts in themselves”, since, based on them, the Law will be applied.

Finally, even if, within the dynamism of the judicial process, the phenomenological method cannot be applied to all successive acts in the operation of judicial provision, its use is plausible at least as a philosophical attitude, especially when the magistrate is faced with the production of evidence, of factual matter, particularly oral evidence, in which the unveiling of authentic human experience from the subject’s perspective proves to be the appropriate way to substantiate

sylogistic reasoning that results from the apprehension of “minor premises”, the “lived world”.

In this attempt, phenomenology, which focuses on an effectively reflective look at phenomena, initially demands “suspension”, *epoché*, in relation to previous understandings, the judge’s prejudices, before the production of the aforementioned evidence. It is necessary to recognize that the phenomena that appear to consciousness are riddled with “natural knowledge”, which must be set aside, this is a primordial step. It is also important to highlight the need to make imaginary/eidetic variations on the deponent’s speech, at the time of the hearing, so that the court can grasp the true essence of the phenomenon under analysis, from the perspective of the subject speaking, getting closer to “the truth of the facts”.

Take, as an example, a routine case in the social security scope of the Common Federal Court, which is proof of a civil partnership, not official marriage, for the purposes of death pension. Usually, the partner claims “public, continuous and lasting coexistence and established with the objective of establishing a family”, according to article 1.723 of the Civil Code. The judge’s realization of the *epoché*, this reflective stop that will prevent him or her from registering the act in tune with predispositions in one direction or another prior to the deponent’s actual report, proves to be essential as a second stage. Then, the hearing follows, also in a reflective way, seeking the central core of the civil partnership phenomenon for the interested party, the invariance of the data that appears to the other’s consciousness, the perception of the essence of the entity for the being. From this unveiling, it will be possible to apply regulations with the achievement of their effective meaning.

Therefore, the phenomenological attitude proves to be a complex act in this sense, as it is present in the judge, willing to carry out the suspension of his pre-judgment, extending in his intention to analyze the phenomenon as it presents itself to the subject heard, with the “suspension” of their respective transcendences, in an overlapping of their own and others’ “parenthesis”, having as a paradigm the refutation of the “natural attitude”, common sense, prejudices and the objective of unveiling the essence of the being.

To understand the *telos*, purpose, of a family coexistence or not is to grasp the fundamental core of this phenomenon, which, in fact, reveals itself to be subjective, without being subjectivist, that can be, through subjectivity, understood in its objectivity, regardless of any moral bias not essential to the phenomenon that arises in the judge’s consciousness.

Such an attitude is extremely important, especially when issues placed under the scrutiny of the Judiciary turn out to be cases without express normative provisions and that involve customs, “difficult cases”, which can lead to the application of the norm due to a personal moral bias of the judge, such as issues of gender, race, sexual orientation, age, among others.

Another example, provided in the Protocol for Judgment with a Gender Pers-

pective 2021, of the National Council of Justice (Brazil, 2021), CNJ, in which the phenomenological reduction, suspension of previous judgments, proves to be very appropriate, is the analysis of female rural work for the purposes of social security benefits, noting that naturalized knowledge departs from the paradigm of male work to attribute value to female work, regardless of the number of hours worked and the arduous nature of their tasks. As a general rule, its proof depends on a qualified evidentiary effort, as it conflicts with common sense, that the man is the provider and the woman's work has an auxiliary function.

In this way, the defended attitude, a phenomenological stance that was presented, if used as a practice by the judges, in the analyzes of the experiences that impact on the outcome of the cases to be judged, in addition to generating greater conviction about the perception of the phenomena themselves, treated on a case-by-case basis, on a broader level, would translate into greater legal certainty, avoiding conflicting decisions on similar phenomenal panoramas, on the one hand; but, on the other hand, ensuring the necessary distinction when relevant, in compliance with the principle of equality in its full effectiveness.

7. Final Considerations

In Husserlian phenomenology, the aim is to return to the "world of life", "to the things themselves", and it is up to philosophers and scientists to think in a new way about their worldview, including the very conditions of possibility of knowledge. As a first step, in the search for the "original data", consciousness is recognized as intentionality, eliminating the subject-object dichotomy, as the meaning of the world is revealed through the vision of consciousness, also refuting the scientific neutrality so defended by positivism.

In the legal sphere, the legal operator must do the opposite of the overvaluation of abstract and general laws, that is, he must replace man and his lived world as central in the application of law, especially in our current complex society. It must give prominent place to the subjectivity of phenomena. To this end, the adoption of a radical attitude is required that puts this operator's pre-understandings of the world in suspension, allowing the evidence of essences to guide the process of jurisdictional provision and normative application in its genuine sense, which the phenomenon experienced gives meaning to the general norm and not the other way around.

Thus, phenomenology reveals itself to be possible within the scope of law, and particularly in the judicial evidence production phase, as an extremely important stance of the judge, who recognizes the "natural attitude" of his knowledge, loaded with pre-understandings and he is willing to suspend them, to really grasp the phenomenon, as shown, not to himself, but to the consciousness of the effective subject of the production of evidence.

In light of the discussion presented here, it is argued that the phenomenological attitude can generate a closer knowledge of the essence of the phenomena and an application of the norm with greater authenticity, which, in a systemic

way, generates greater legal certainty.

Finally, one can reflect, even beyond law, in times of so much polarization, opposition, labels, that a “suspension” of man’s preconceptions and prejudices in his relationships in society is necessary, imposing, in the search for maintaining the possibilities of coexistence, a “phenomenological reduction” of humanity itself, as a way of rediscovering the essence of what makes us human, lost in such artificial and superficial times. Such an attitude is free, you just have to choose it.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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