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Philosophical Roots of the Dialogical Concept of Law

The main task which I pose for myself is to indicate the philosophical roots of the dialogical concept of law. First and foremost, I would like to present dialogue in the context of ancient Greek philosophy and in the context of the classicists of the philosophy of dialogue. Furthermore, I seek phenomenological bases for constructing the dialogical concept of law. The phenomenological method, starting with its classical Husserlian form, has undergone many changes. Thanks to the indication of new horizons of phenomenology by Emmanuel Levinas, discovering dialogical consciousness and the subject constituted in being with the Other are possible. The reference point of reflections on the concept of law is the relationship with the Other as an ethical relationship. Philosophy of dialogue is a certain possible prism of thinking about the social, public, and institutional space. It is thinking through the prism of dialogue (speaking), but also through the third who contributes discourse relevant to what is said. Law as the third, as the mediating element, is a co-constituting element of the entire legal world.

Keywords: dialogue, philosophy of dialogue, encounter, phenomenology, the Other, existentialism, subject, ethical relationship, difference, logos

1. Dialogue in the context of ancient Greek philosophy and in the context of the classicists of the philosophy of dialogue

The term dialogue appears in philosophical literature in a narrow and in a broad meaning. In the narrow meaning it was first used by the Greeks. It meant communicating through thought and word (*Dia* – through; *logos* – thought, language, the universal mind, the mind as the ancient principle). However such a definition of the term is insufficient.

In the light of Socrates' legacy Plato had assumed dialectic as a method of conducting investigations, and philosophizing has become fundamentally associated with it. *Lógos* was meant to be the guide in reaching the truth – a world order manifesting itself in language. This led Plato to search for that which lies in words (*en lógoi*). The term dialogue in the narrow meaning is therefore very close to that of discourse and discussion, to be used interchangeably. In this sense it is used by Jürgen Habermas, Paul Lorenzen, Karl-Otto Apel. A broader meaning was lent to this word by the creators of

the philosophy of dialogue. Here dialogue becomes a metaphor for an essential bond, encounter, exchange of feelings and overall spiritual resources. It cannot, however, be forgotten that this meaning in its essence is not contradictory to the deep understanding of discourse by Socrates and Plato.

It is extremely important not to perceive the philosophy of dialogue as a certain objectively defined philosophy, therefore a philosophy which deals with the cultural phenomenon of dialogue.¹ I think that it would be more accurate to describe this stream as dialogical philosophy, for it is focused on an entirely new, dialogical thinking. The most important Copernican change delivered by the philosophy of dialogue is its conceptualization of subjectivity which differs from the one grounded in the European philosophical tradition. Such creators of the dialogical thought as Franz Rosenzweig and Martin Buber established this revolution on the grounds of ontology. Emmanuel Levinas left those grounds for ethics.

According to Buber the human life becomes real when a person builds a direct relationship with another human being (“All actual life is an encounter”²). Actual meaning is completely human, completely subjective, developing the deepest human abilities. Therefore actual life refers to the encounter of people. The philosophy of dialogue is a contemporary stream of European philosophy – an exploratory one above all, due to the fact that it assumes the other human being (You, the Other) as the starting point of contemplation. Systems philosophy in the form of realism and idealism, situated the individual in an “ontological loneliness”.³ Buber’s coining of the principle of being-there (anthropic principle) results in the discovery of two ways of being. Just like understanding is inscribed into existence, the same way dialogue is inscribed into the existence talked about by philosophers of dialogue. To exist means to discourse, or in other words to be in a connection, to be in a relation.

On the grounds of dialogical thinking the human cannot be defined as a subject – a secluded individual, detached from others, isolated in the ontic sense. For humanity is to be grasped in a relationship. Dialogue has its own ontic state and plays an ontologizing role in relation to being in the human way. Therefore thanks to dialogue we can even start to speak of the ontological status of being human. The term dialogue, on the grounds of the philosophy of dialogue, reinforced the fundamental meaning of interpersonal relationships, which, in fact, had been noticed in earlier philosophical thought, but it was not until later that the creators of this movement started describing bond as the correlative of a subject – subject, owing to it, not understood in the traditional sense. In the new meaning the subject is identified in the process of dialogue, meaning being-in-reference-to-the-other. This new understanding of being is also a suggestion of a new ontology. The philosophy of dialogue should be known as the first philosophy, defining being human in a new way. It is not an existence of a cognitive subject – it is an existence founded by relation. The existence of the self is expressed in its responsiveness. The self responds – and this response is what shapes it. It is worth noticing that human existence is both being human and, to put it differently, being in the human way.

Thus, credit should be given to those authors dealing with the philosophy of dialogue who regard this movement as a variety of existentialism, at least in reference to its

¹ J. Filek, *Życie, etyka, inni* [Eng. *Life, Ethics and the Others*], Kraków 2010, pp. 248–253.

² M. Buber, *I and Thou*, New York 1970, p. 62.

³ J.P. Sartre, *Byt i nicłość. Zarys ontologii fenomenologicznej* [Eng. *Being and Nothingness: An Essay on Phenomenological Ontology*], Kraków 2007, p. 297.

ontological rudiments. Doubtlessly, philosophy of dialogue is existential in nature; it is an existentialism of sorts. It is especially discernible when acknowledging the fact that the common trait of all the varieties of existentialism is the intentionality of existence understood as a necessary openness of the human.⁴

2. Phenomenological bases for constructing the dialogical concept of law

The phenomenological method, starting with its classical Husserlian form, has undergone many changes. Thanks to the indication of new horizons of phenomenology by E. Levinas, discovering dialogical consciousness (in the place of intentional consciousness) and the existence of the subject constituted in being with the Other are possible.

2.1. Looking back on his own work, Levinas always emphasized the importance of his relationship with phenomenology. In general he assumed Edmund Husserl's methodology of phenomenology, that is: description as the tool of analysis, to exceed common experience, revealing deeper layers of the meaning of studied phenomena. When it comes to questioning the key elements of Husserl's method, he questioned the model of intentional consciousness as an example of conveying the most significant relationship of human with being-there as well as the thesis of necessity and possibility of transcendental reduction.

2.2. Phenomenological Existentialism. Levinas accepts certain aspects of Martin Heidegger's thought and takes them over as tools for his own analyses. He especially follows Heidegger's phenomenological analyses. But most of all, for Levinas, Heidegger was the thinker who "gave the term *existence* a deeply philosophical meaning by associating it with a verbally understood *being*, distinguished from being-there"⁵. Thanks to that procedure a relation, action, is introduced to being, and being emerges as an occurrence, which already includes a history.⁶ This will be a stronghold from which Levinas will make successful attempts to move beyond fundamental ontology towards the search for the sense of being. The ontological difference between *being-there* and *being* will hold an enormous meaning for Levinas in all stages of his work. Levinas borrowed it from Heidegger and radicalized it.

That is to say, being which uncovers itself as *Dasein*, is not any theoretical term, but a horizon, the grounds of existential processes of being occupied with the self and the world, the grounds of co-being; being can be understood through clarifying different moments of the existence of *Dasein*, and not as a result of speculative thinking.⁷ Moreover, the factuality of human existence: *Dasein*, being tossed, which Levinas calls "being welded to being" (*autre rive*) – meaning the irremovability of own factuality – is the starting point of Levinas' philosophy and leads from the encirclement of being to that which is absolutely other than the structure of existing being-there. It leads in the direction of infinity, transcendence, in the direction of ethics, which for Levinas is

⁴ W.A. Luijpen, *Fenomenologia egzystencjalna* [Eng. *Existential Phenomenology*], Warszawa 1972, p. 378.

⁵ J. Migasiński, *W stronę metafizyki. Nowe tendencje metafizyczne* [Eng. *Towards Metaphysics. New Metaphysical Tendencies*], Toruń 2014, p. 269.

⁶ See E. Levinas, *Intervention*, in: J. Wahl, *Petite histoire de l'existentialisme, suivie de: Kafka et Kierkegaard*, Paris 1947, pp. 82–85, quoted after J. Migasiński, *W stronę metafizyki...*, p. 269.

⁷ See J. Migasiński, *W stronę metafizyki...*, p. 270.

the highest limit of metaphysics.⁸ According to Levinas, this evasion is possible by referring to Judaic sources – or perhaps to broadly defined Transcendence, as we could say. For evasion is achievable when we do not encounter a radical unfeasibility of departure from the world. Such radical unfeasibility also occurs in Heidegger, where we deal with *Dasein* as an intramundane *being-there in its being-in-the-world*. *Dasein* is being always in the world; *Being-in-the-world* is a fundamental and complete structure, which means that any characteristics of *Dasein* will be possible solely within it.⁹

2.3. Levinas' style and language remain related to the phenomenological method. Jacques Derrida compares Levinas' elaboration of thought to "waves ceaselessly washing up on the beach" – a wave comes up, then drifts away – comeback and repetition, cumulated and enhanced every time. That is why a reader of Levinas gets the impression of going over the same topics again and again, and despite that also an impression of something new, something added, differently accentuated.¹⁰ It is Levinas' phenomenological method, described graphically. Levinas uses language which gives the effect of *déjà vu* and is sometimes very difficult and full of neologisms, yet at the same time is incredibly fresh, always pertinent, revealing the deepest meanings and deepest intuitions.¹¹

2.4. Relationship with the Other as an ethical relationship. Emmanuel Levinas describes the essence of the ethical approach (and not any specific morality). After the ontological stage in his work, in the 1950s, Levinas begins constructing a new form of metaphysics as ethics. Levinas philosophizes in a clear opposition to intellectualism, thus breaking away from the theoretical aspect of thinking apparent in the tradition of the West. This is why he is often classified as a post-modernist. Levinas accuses Western philosophy of subordinating relationships among particular *Daseins* to the general structures of being. Relationship exceeds understanding, it does not begin from any general concept, but by accosting, calling another person in his or her individuality and particularity. Such a call to discourse binds a relationship. Word is the prerequisite of a relationship. The primeval fact of language is that I am speaking to the Other. I establish the bonds, not the process of understanding. This positive movement between the self and the Other is beyond understanding and beyond judgment, and beyond cognition. Levinas calls it metaphysical or ethical. **This is where existential phenomenology (hermeneutics) becomes a dialogical one.**

The other person does not fit within my projections, my freedom. Owing to this, for dialogists Heidegger is still the one who monologizes and *Dasein* monologizes. This way the other can be totally negated, killed (extreme objectification). In this sense the Levinasian face sounds metaphorical and literal at the same time: "you shall not kill". An encounter with the face is a bond. The face speaks, it is an expression of the radically other. The presence of the face, a relation, reveals the impossibility of killing. Therefore in a relation of calling and responding a truly humanly order is constituted, which is simultaneously more ontically primal than other planes of the world. It is the revelation of other sources of the sense of reality. Relationship is the final meta-level. It is about

⁸ J. Migasiński, *W stronę metafizyki...*, p. 271.

⁹ See M. Chmura, *Zanim umrze Iwan Iljicz. Perypetie podmiotu w filozofii Emmanuela Levinasa* [Eng. *Before Ivan Ilyich Dies. The Experiences of the Subject in the Philosophy of Emmanuel Levinas*], Warszawa 2007, p. 28.

¹⁰ See J. Migasiński, *W stronę metafizyki...*, p. 238.

¹¹ J. Migasiński, *W stronę metafizyki...*, p. 238.

reversing the rules of ontology (egology) and realizing that it is the relationship with the other that governs the understanding of being in the first place. Ethics is thus a criticism of ontology and above all it is metaphysics as the first philosophy. We are talking about the *concretum* of human life. In this argument we can find a dialogical explanation that the ethical relationship prevents objectification.¹² An ethical relationship is a relationship with a face which means there is no reserve here and no minimal safe distance, that would allow us to remain indifferent towards the other human being, is maintained.¹³

2.5. The issue of reinforcing law (justice) in an ethical relationship. Because the ethical relationship is vertical, asymmetrical, there are more obligations in it than rights. The question is: is this understanding of ethics suitable for execution in the public dimension, in institutions? No. However, it is not a specific program of institutional justice, it is a suggested take on those problems. In no way does Levinas look at ethics like a moralist. What occurs here is a symmetry of relationship thanks to the third in the relation to which I and the Other are equal. The third is a symbol of the entire humankind that is watching me, Levinas writes. Thanks to the third a metaphysical relationship can assume versatility, morphing into the reality of institution, law, and state. That is, thanks to the third conditions emerge for justice to go into effect, meaning responsibility for the other must have the character of a common cause of action.

2.6. Levinas' metaphysics is in essence the discovery of conditions for the sense of life, civilization, and at the same time it is the criticism of their current state (Migasiński's conclusion).¹⁴

2.7. The search for a new formula of subjectivity (post-anthropology). How does philosophy of dialogue change the concept of subject? It is the next, positive step after deconstruction (postmodernism criticizes and destroys) – philosophy of dialogue after the deconstruction of subject constructs and builds. In other words, the subject has the character of a trial, but is constituted definitely more intensely than in existentialism.

A peculiar depreciation of being-there (characteristic of M. Heidegger, J.P. Sartre) – emphasizes the ontological difference between being and being-there. This deviation from being-there leads us – according to Levinas – to the heart of philosophy, while allowing us to renew the ancient problem of being-there. Levinas turns to metaphysics.

What is a subject? I won't follow the modern development and magnificence of this concept. It is important to state however, that beginning with Descartes the establishment of the subject by the self as a fundamental act for all philosophical issues takes place. The self becomes recognized as an autonomous *res cogitans* (an individual subject ontically distinct), equipped with a priority skill of finding oneself and treating recognized objects as own representations. This Cartesian philosophy can be considered to be one of the paradigms of modernity. Quite significant common characteristic of postmodernism is an increased attack pointed at the philosophy of the subject (deconstruction of the subject by J. Derrida, Gilles Deleuze and Jean-François Lyotard), initiated by Michel Foucault with his famous thesis about human death (*The Order of*

¹² E. Levinas, *Inaczej niż być lub ponad istotą* [Eng. *Otherwise Than Being or Beyond Essence*], Warszawa 2000.

¹³ See S. Žižek, E.L. Santner, K. Reinhard, *Bliźni* [Eng. *The Neighbor: Three Inquiries in Political Theology*], Warszawa 2013, p. 209.

¹⁴ See J. Migasiński, *W stronę metafizyki...*, p. 318.

Things: An Archaeology of the Human Sciences). The human ceases to be a privileged focal point of philosophical reflection and as a subject loses a privileged place in reality, becoming an ordinary element of a general structure.¹⁵

It is exactly in relation to the permanent crisis of the subject that we should notice the post-anthropological value of the classical philosophy of dialogue and the philosophy of Levinas, depicting the possibility of subjectivity from a completely different vantage point than thus far – in the dialogical process (in an encounter with the absolutely other). Again it starts with Heidegger's phenomenology. The issue of the fundamental *novum* in Heidegger is that the self, which he considers an essential determiner of existence, is investigated by him in connection with the way of being of *Dasein*, which precedes the self in the ontological sense and thus conditions its emergence. *Being-in-the-world* is the existential structure of being human.

The being of the Levinasian subject is an encounter and in order to become completely mature, ethically mature, it must meet that which is radically other from it. The tribulations of the Levinasian subject are possible, especially because of the fact that Levinas is a successor of Husserl, for the subject's development happens on the grounds of phenomenology. This area undoubtedly situates itself between philosophy and the Bible. Investigating the progress of Levinas' subject, we will find ourselves outside or beyond ontology (*Otherwise Than Being or Beyond Essence*). Of course, as I have already mentioned, Levinas' phenomenology would not exist today without Heidegger's significant interventions in the phenomenological matter. But Levinas' subject will go even further. It will reach a point that could by no means be reached by *Dasein*. Nevertheless, it was Heidegger who asked about the meaning of being.

2.8. So what is this encounter with the absolutely other? It is definitely not a conceptual relationship with the same. It is not a limitation. I and the Other cannot be merged. It is an *actual* encounter. The only departure, the only way to be outside oneself. There is no philosophical terminology for this encounter. In consequence, such a question leads to yet another question: why is ethics metaphysics? European philosophy makes the mistake – according to Levinas – of searching for the unity of being-there and the unity of thinking, the reduction of the different to the identical. The most provocative example of this difference is the juxtaposition of I with the Other. Therefore Difference and Infinity are against Unity and Totality. Where *the same* prevails there is no space for *the different*. An ethical act is not an intentional act, because it does not fit into the noetic-noematic structure. The intention of transcendence requires a dialogical structure.

Philosophy of dialogue and analogously Karl Jaspers' existential communication converge, as shown by Michael Theunissen in his *Der Andere*.¹⁶ The subject is materialized, constituted in dialogue.

3. Dialogical thinking. Levinas and the classics

The dialogical structure of conscience/intentional structure of conscience. Relations defined by the principle of I-It reduce the approach of human to the world to an epistemological contact of subject with subject according to the *cogito* structure. Thinking by dialogue is

¹⁵ See M. Foucault, *Słowa i rzeczy. Archeologia nauk humanistycznych* [Eng. *The Order of Things: An Archaeology of the Human Sciences*], Gdańsk 2006, pp. 306–307.

¹⁶ M. Theunissen, *Der Andere* [Eng. *The Other*], Berlin–New York 1977.

not only a form of thinking (Socrates, Plato), but an actual way of such thinking. This new thinking – as stated by Józef Tischner – connects two dimensions: it is thinking with someone (dialogical dimension) and thinking about something (intentional dimension). The new thinking concerns the sense of “about”, the sense given by dialogicality. Dialogue is not a means of expression of prepared thought; “it indicates the area of thought creation, gives new quality to thinking, it is philosophy in action”.¹⁷ It is always an open form. Who we think with determines how we think in the world of objects.¹⁸ Dialogue keeps indicating that people never start from the beginning, that reality is always in the form of a partner of dialogue.¹⁹

Dialogue is born out of conflict and difference. Dialogue requires the acknowledgment of difference. As opposed to the communication stream, language is not just a tool of communication and a carrier of meaning. It is a new kind of reality, new metaphysics, a speech-created world between the one who speaks and the listener. Of course this relationship is differently depicted by the dialogists. The metaphysics of such *Dia-logos* is a dialogical movement: the addressing is reciprocal. It is not a collective, “dialogized” exploration of the essence of being-there, truth and ethics.²⁰ Neither is dialogue a form of response to the answers of value, reality, etc. It does not serve the purpose of convincing, overcoming or common exploration, but rather is an ethical stance. Assuming the difference (*dia*), it postulates unity (*logos*). In a pluralistic and diverse world, hermeneutics is a stream whose wisdom is revealed in exposing the fragmentariness of truth, while striving for a more complete truth. In this regard there is a connection between the dialogical and hermeneutic area of study. If one wants to recognize the semantic field of hermeneutics through referring to the Greek etymology: *hermeneia* (to make understandable) and through pointing to the figure of Hermes explaining the will of the gods, then it is important to notice that Hermes – which should be especially interesting for us – represents exceedance, transition, contacts between foreign elements in the human world.²¹ He shows us that we can enter the process of understanding and communication with worlds different from ours, with people who have differing views and attitudes towards reality. Symbolizing fragility and volatility of experience “it becomes the carrier of a salient metaphysical idea, philosophically expressed by the anti-Eleatic model”.²²

In Buber we deal with overcoming intentionality for the first time in Husserl’s understanding. According to Theunissen, Buber seeks dialogicality in the structure of consciousness itself (anthropic principle). Dialogicality is more primeval than intentionality. Dialogicality occurs between listening and speaking. A dialogical relationship engages.

4. Conclusions

The philosophy of dialogue is a certain possible prism of thinking about the social, public, and institutional space. It is thinking through the prism of dialogue (speaking), but also through the third who contributes discourse relevant to what is said.

¹⁷ M. Szulakiewicz, *Dialog i metafizyka. W poszukiwaniu nowej filozofii pierwszej* [Eng. *The Dialogue and Metaphysics. In the Search of a New First Philosophy*], Toruń 2006, p. 80. For more discussion see M. Siemek, *Logos jako dialogos. Greckie źródła intersubiektywnej racjonalności* [Eng. *Logos as dialogos. The Greek Foundations of Intersubjective Rationality*], Principia 2000, vol. XXVII-XXVIII, pp. 75–98.

¹⁸ J. Tischner, *Kryzys myślenia* [Eng. *The Crisis of Thinking*], in: K. Michalski (ed.), *O kryzysie. Rozmowy w Castel Gandolfo* [Eng. *On Crisis. Conversations in Castel Gandolfo*], Warszawa 1990, p. 88.

¹⁹ See M. Szulakiewicz, *Dialog...*, p. 82.

²⁰ M. Szulakiewicz, *Dialog...*, p. 87.

²¹ M. Szulakiewicz, *Dialog...*, p. 111.

²² M. Szulakiewicz, *Dialog...*, p. 112.

4.1. Law as the third, as the mediating element, is not a phenomenological residuum constituting the entire legal world, but a co-constituting element. Therefore it doesn't exist without a relation. Being the Third, the law changes the ethical state of a relation to the state of being a co-created relation, which Levinas calls justice.

4.2. The responsibility of the self towards the Other is infinite on the ethical level. But the responsibility of the self towards the Other becomes problematic when the Third appears. Because for Levinas ethicality has an intimate dimension, the Third disrupts this dimension and faces become only phenomena. While the ethical level is beyond *logos*, beyond being and beyond essence, here the I returns to the element of *logos* and starts to rationalize, judge and cognize. The Third does not enter the relationship of the I and the Other suddenly – he or she is always in it. In the human world there is always someone other than the other next to the other. In this human world of relationships appear *logos*, justice, symmetry. It does not mean that the Third's entrance is an empirical fact. As Levinas writes, relationship with the third party is an incessant correction of the asymmetry of proximity in which the face is ef-faced (*se de-visage*).

It means that the face loses its non-phenomenal nature and becomes a representation. In that sense, it ceases to be a face. It is a situation which requires justice (equality), balance, thinking and objectification. It is a transformation of an incomparable subject to a member of society.

4.3. The law contains something (specific justification) that comes from the ethical relationship level, from closeness. The responding I is the first builder of law. The contemporaneity of the multitude (many people) is organized around the *diachronic* of two: "justice remains justice only in a society where there is no distinction between those close and those far off, but in which there also remains the impossibility of passing by the closest".²³ The Other who revealed himself or herself to us through his or her face. The I becomes the same as the Others, being a different person to the others, being entitled to the same rights as the others. It is therefore not meaningless whether the state and law that administer justice are the result of a war of all against all or the irreducible responsibility for the other human being. To some extent justice is the wisdom of responsibility.

Emmanuel Levinas challenges the Hobbesian starting point to the investigation of state and law – war and the rule which governs it: "man is wolf to man". If this was the case – he writes in *Otherwise Than Being or Beyond Essence* – communication would be impossible. "Human is for human" – such a rule is reflected by the original, dialogical structure of our subjectivity. It enables us to speak, listen and respond.

²³ E. Levinas, *Inaczej...*, p. 267.

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