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EIDETICS OF LAW-MAKING ACTS: PARTS, WHOLES AND DEGREES OF EXISTENCE

abstract

In my paper I introduce the phenomenological concept of “eidetics” and its application to law. I show that, according to this approach grounded in the works of Reinach (1913/1989) and Stein (1925), the problem of the existence and validity of the law can be fruitfully analysed in terms of parts-wholes which constitute law-making acts as wholes, both as performed and fulfilled acts. I argue that the parts of law-making acts can be subject to varying degrees of constraint – necessary, possible or contingent parts – and that it is the possible part of law-making acts that makes the difference between the existence of law-making acts and their validity: between their mere existence as performed acts, and their full existence as fulfilled and valid acts. I show this in focusing on Stein’s suggestion of filling the inter-personal gap between legislator and citizens in legal provisions by introducing “integrative acts”, which facilitate the uptake and, consequently, the enforcement of legal provisions by citizens. I suggest that Stein’s work on the integrative acts of legal provisions is grounded in the eidetic claim that essential parts of a whole also include possible – and not only necessary – parts, and that these are essential relations of tendency: legal provisions tend essentially to be fulfilled and their existence acquires a full sense only when they are enforced. Finally, I deal with eidetics and the issue of degrees and quality of existence in social ontology.

keywords

eidetics, law-making acts, parts and wholes, degrees of constraint, quality of existence

1. Introduction In this paper I will argue that the problem of the relationship between the *existence* and the *validity* of the law is approached by social phenomenology in a very fruitful way that combines pragmatics and ontology and can be embodied in the concept of eidetics [*Eidetik*] of law-making acts [*Recht setzende Akte*].¹

I will focus on the eidetic approach to law, grounded in Adolf Reinach's *The Apriori Foundations of the Civil Law* [*Die apriorischen Grundlagen des bürgerlichen Rechts*] (1913/1989) and Edith Stein's *Investigation Concerning the State* [*Eine Untersuchung über den Staat*] (1925/2006). I will show that, according to this approach, the problem of the *existence* and *validity* of the law can be fruitfully analysed in terms of the problem of the relation between *performance* [*Vollziehung*] and *enforcement* [*Durchführung*] of law-making acts, and that performance and enforcement of law-making acts are distinct but connected moments of law-making acts as *wholes*: in order for law-making acts to *exist*, law-making acts must be performed; in order for law-making acts to *be valid*, law-making acts must be fulfilled; and in order for law-making acts to be fulfilled, law-making acts must have been previously performed.

Basically, this problem involves questions such as: what does the fact that law-making acts are performed really mean and, more precisely, that legal provisions [*Bestimmungen*], which are law-making acts *par excellence*, are performed? What is the role of uptake in the performance of legal provisions? What is the sense of "uptake" here? Are there specific conditions that facilitate the uptake of legal provisions on the part of citizens? Is there an ontological difference between performed and fulfilled law-making acts? I suggest that, in terms of eidetics, this is the problem of the parts, necessary and possible, which constitute law-making acts as wholes, both as performed and fulfilled acts: the *uptake* of law-making acts is a *necessary part* of law-making act as performed acts, and the *performance* of law-making acts is, in its turn, a *necessary part* of law-making acts as fulfilled acts, while the *fulfilment* of law-making acts is just a *possible or probable part* of law-making acts as performed acts. I argue that it is the possible part of law-making acts that makes the difference between the existence of law-making acts, on the one hand, and their validity, on the other hand; between their mere

¹ On the concept of "Eidetics" [*Eidetik*], see Husserl (1913/1950), and on the concept of "law-making acts" see Stein (1925) who makes the most of Reinach's account of social acts (1913/1989) in developing an eidetics of the state, the law and social acts. On the concept of "eidetics of law" see De Vecchi (2012; 2015). On Reinach's reception in Stein, see Schuhmann (1993/2005).

existence as performed acts, and their full existence as fulfilled and valid acts. I will develop my paper in the following way: I will briefly introduce the phenomenological concept of “eidetics” and its application to law: I will claim that even law-making acts – just as any other kind of entity – can be defined in terms of parts and wholes, and their parts can be subject to varying degrees of constraint corresponding to their being necessary, possible or contingent parts (§ 2); I will focus on Stein’s account of law-making acts and deal with the problem of the impersonal nature of legal provisions and the inter-personal gap between legislator (as organ of the state) and citizens: the problem concerns especially cases of misfire uptake (§ 3); I will dwell on Stein’s suggestion of filling the inter-personal gap in legal provisions by introducing “integrative acts”, which facilitate the uptake and, consequently, the enforcement of legal provisions on the part of citizens, and uphold the relation between legislator and citizens: in upholding the relation between the legislator and the citizens, they also uphold the law (§§ 4-5); I will argue that Stein’s work on the integrative acts of legal provisions is grounded in the eidetic claim that essential parts of a whole also include possible parts – and not only necessary parts –, and that these possible parts of legal provisions are essential relations of tendency: legal provisions tend essentially to be fulfilled and their existence acquires full sense only when they are enforced; this is a qualitative sense of “existence”; finally I will deal with eidetics (necessary parts, possible parts and essential relations of tendency) and the issues of degrees of existence and qualitative social ontology (§§ 6-8).

According to Edmund Husserl eidetics is the “science of essences” [*Wesenswissenschaft*] (Husserl, 1913/1950, Introduction) and essences are the bonds which define the possibility of co-variation of the parts constituting any entity as a whole. The fundamental idea is that such bonds can be more or less binding and that any type of entity is specifically defined by the degrees to which its parts are bound-constrained: some of its parts can be varied to the point of being suppressed, while others of these parts cannot be varied because otherwise the entity would cease to exist. In other words, there are necessary parts, which are characterized by the maximum degree of constraint and which must be necessarily bound together with other parts in order for a certain type of entity to exist, think for instance of the necessary bond between colour and extension, such that colour and extension are mutually-existentially dependent parts and both are necessary parts of any material object as whole. But there are also parts of certain types of entities which are characterized by lower degrees of constraint: they are merely possible or even contingent parts, which can be varied or even suppressed in their occurrence, as for instance in the case of wholes such as a flock of birds or a heap of stones, respectively. In these cases the bonds of possible co-variation of the parts are very loose and are subject to many possibilities of variation: for instance the number of the birds or of the stones can be varied, and the degree of constraint that must be satisfied concern merely certain forms which such wholes must assume, and can assume in several ways: all the possible forms a flock of birds and a heap of stones can assume in order for a flock of birds and a heap of stones to exist – where, of course, the flock of birds must satisfy a higher degree of constraint than the heap of stones.²

Now, to return to what I call here the “eidetics of law”, my claim is that the law (just like any other kind of entity) can be fruitfully ontologically grasped in terms of the degree of bound-

2. Eidetics

2 On the idea of bonds and degrees of constraint which bind the parts of a whole together, see Husserl (1901/1984, *Third Logical Investigation*, “Zur Lehre von den Ganzen und Teilen” [Towards a theory of Wholes and Parts]). On the essences as bonds see De Monticelli (2013a; 2013b).

constraint that defines the possible co-variation of the parts constituting the law as a whole, i.e. in terms of necessary, possible or even contingent parts of the law. Here, I limit myself to working on some elements of an eidetics of law, and more precisely I focus on some elements of an eidetics of law-making acts. I tackle this issue starting from Reinach's and in particular Stein's account of law-making acts as a specific kind of social act (Reinach, 1913/1989; Stein, 1925/2006). The fundamental and original idea of Stein's approach to law is that in order for positive law to be law in force, law-making acts must be performed by the legislator as organ of the state and must be taken up and enforced by the citizens to whom they are addressed. Translated in terms of eidetics, I argue that: the *uptake* of law-making acts is a *necessary part* of law-making acts as performed acts, and the *performance* of law-making acts is, in its turn, a *necessary part* of law-making acts as fulfilled acts; both these parts are necessarily parts of law-making acts, and cannot be varied or eliminated, otherwise the law-making acts would cease to exist. In contrast, the *fulfilment* of law-making acts is just a *possible part* of law-making acts and the existence of law-making acts as performed acts do not depend on it; but this possible part is not just a possibility among others, a contingent one; rather it is an essential possibility to which law-making acts tend essentially: according to their essence, law-making acts tend to be fulfilled, and the fulfilment of this essential tendency is itself a necessary part of the law as law in force, i.e. of the validity of the law.

I will discuss this relation between necessary and possible essential parts of law-making acts. I will do this by focusing on Stein's account of legal provisions: the impersonal moment of legal provisions and its involving uptake misfires; the introduction of other acts which, according to Stein, should and could integrate legal provisions in order for them to be taken up and enforced by citizens.

3. The interpersonal gap of law-making acts

Stein applies to positive law Reinach's relational schema of social acts, between the agent of the act and the addressee, and goes a step further. In the case of law-making acts, Stein extends the uptake moment of social acts from the mere perception [*Vernehmung*] of the act to the full understanding of the content of the act. The social act of promulgating the law [*bestimmen*] must not just be perceived, but also understood in its content and recognized by its addressee;³ otherwise the act is not performed: it misfires.⁴

All of Stein's account of the law-making acts aims to show the crucial role that the inter-subjective relation between legislator (who, as organ of the state, is the agent of the law of the state) and citizens (who are the addressees of the law and the counterpart of the legislator as organ of the state) has for the uptake and performance of law-making acts on the one hand, and for their fulfilment on the other hand. There cannot be a positive law as such, i.e. a law in force, if the citizens do not take up the acts of the legislator (see Stein, 1925/2006, I). In eidetic terms: citizens' uptake of legal provisions constitutes a necessary part of the performance of legal provisions, and, indirectly, a necessary part of their enforcement, since the performance of legal provision is a necessary condition for legal provision to be enforced.

This is the reason for which Stein develops a very fine analysis of what the legislator should do in order for citizens to perceive and recognize his laws. In particular, Stein identifies two types of problems that may obstruct the uptake of legal provisions and are grounded in the interpersonal gap that characterizes the legislator-citizen relationship:

3 Reinach uses the verb "*vernehmen*", "perceive", in particular in the sense of "hearing perception" and speaks of "*Vernehmungsbedürftigkeit*", "necessity of being perceived", as a necessary condition of social acts, see Reinach (1913/1989, § 3). On Stein's extension of the moment of the uptake, see Stein (1925, I).

4 See Reinach's example of misfires of social acts: the command that is not perceived [*vernimmt*] by its addressee (Reinach, 1913/1989, § 3).

- (i) the impersonal moment of legal provisions;
- (ii) three possible cases of infelicity of the performance of legal provisions (see Stein, 1925/2006, I, §2d).

As Reinach had already claimed, legal provisions do not have a *personal moment* in their content: they are generically addressed to citizens, and are not addressed to specific individuals (see Reinach, 1913/1989, § 3; Mulligan, 1987). Stein takes up Reinach's claim and affirms that, because of lack of the personal moment, legal provisions alone are not able to reach the range of persons to whom they are addressed – the citizens or a certain group of them. So, legal provisions risk not being taken up and recognized by their addressees, unless other acts intervene to fill the inter-personal gap between the legislator and the citizens – the agent and the addressees of legal provisions, respectively.

Stein identifies three possible cases of “infelicity” of the performance of the legal provisions, because of uptake misfire by the addressees – the citizens.⁵

- [1] A legal provision might not even “reach the ears” of all those to whom it is addressed.
- [2] Furthermore, it is possible for the provision to be perceived as to its wording but not understood as to its sense.
- [3] Finally, the provision might be understood but without the insight that a particular case is covered by it.

- [1] Es kann vorkommen, daß eine gesetzliche Bestimmung zunächst schon gar nicht „zu Ohren kommt“, an die sie adressiert ist.
- [2] Es ist ferner möglich, daß sie wohl ihren Wortlaut nach vernommen, aber nicht ihrem Sinne nach verstanden wird.
- [3] Und schließlich kann die Bestimmung verstanden sein, ohne daß im einzelnen Fall durchschaut ist, daß er unter die Bestimmung fällt (Stein, 1925/2006, I, 2d, p. 42; En. tr.: pp. 54-55, slightly modified by me.).

These are all cases in which the citizens, to whom the legal provision is addressed, do not uptake the legal provision, according to three possible senses of “uptake”:

- (i) the basic sense in which the citizens do not uptake the legal provision perceptually – the provision do not “reach the ears” of its addressees;
- (ii) the semantic sense in which the citizens do not uptake the meaning – but just the wording – of the legal provision, and do not understand the meaning of its content;
- (iii) the practical and concrete sense in which the citizens do not realize that the legal provision is actually directed at them: they do not become aware that the case presented in the provision applies specifically to them.

3.1. The impersonal moment of legal provisions

3.2. Three cases of infelicity of legal provisions and three senses of “uptake”

⁵ The idea of “infelicity” of the provision that I mean here as cases of non-performance of the provision is a variation on the theme of the infelicity of the performatives presented by Austin (1962/1980). However, it is worth noting that Reinach had already identified cases of infelicity of social acts, though he did not refer to them by the term “infelicity”, see Reinach (1913/1989, §3).

4. Filling the inter-personal gap and complying with the senses of “uptake”

Stein claims that in order for the inter-personal gap in the law to be filled, the state should undertake three tasks, which should and could help the uptake of legal provisions complying with the three different senses of “uptake”, and facilitate the performance and enforcement of legal provisions. According to Stein, these three tasks represent the answer that the state should and could give to the problem of the inter-personal gap in the law of the state, the gap between the legislator (as organ of the state) and his counterpart, the citizens.

(i) The first task is to be attained through “a certain form of proclamation of the law” [*eine bestimmte Form der Gesetzverkündigung*] that aims, at most, to “reach the ears of the citizens”. The state can arrange it through commands and provisions with this aim. This kind of command and provision is not addressed to all citizens, but just to the persons to whom the state entrusts the assignment of proclaiming the law.

(ii) The second task, to make the content of the provisions understood by the citizens, is to be realized through “continual interpretation” [*fortlaufende Interpretation*]. The state itself must carry out this interpretation. If the state left the interpretation up to private discretion, it “would risk having some other intrude between itself and its citizens”. The state can arrange for the activity of interpretation to be realized through the institution of agencies charged with interpretation. This occurs in turn through commands and provisions of the state.

(iii) The third task the state must undertake for the performance and enforcement of its provisions is “the assessment [*Beurteilung*] of discrete cases where they are to be applied by agencies set up or recognized by the state”.

To sum up:

[...] the state, when issuing provisions and commanding that they be followed, must ensure that the provisions [1] reach the ears of the citizens, [2] are understood by them, and [3] can be applied to cases in practice.

So muß der Staat, wenn er Bestimmungen erläßt und befiehlt, sie zu befolgen, dahin wirken, daß [1] sie den Staatsbürgern zu Ohren kommen, [2] von ihnen verstanden werden und [3] auf die praktische Fälle angewendet werden können (Stein, 1925/2006, I, §2d, p. 43; En. tr. p. 55).

5. Upholding the law [*Rechtspflege*]

Stein points out that the task of proclamation of the law in order to reach the ears of the citizens is a “legislation” [*Rechtsetzung*] act, while the interpretation of provisions and the theoretical decision about particular cases, which fall within the domain of the applicability of the provisions, are “jurisprudence” [*Rechtsprechung*] acts.

According to Stein, both the act pertaining to legislation and the acts pertaining to jurisprudence are acts which serve the uptake, the performance and consequently the enforcement of the provisions and, therefore, all of these acts contribute to fill the interpersonal gap between the legislator (state) and the citizens. In other words, these acts uphold the relation between the legislator and the citizens, and, in doing so, they also *uphold the law* [*Rechtspflege*].

All of these acts are personal acts. They can be either practical or theoretical personal acts. The legal act is a *practical-free act* of the legislator as organ of the state, while, both the jurisprudence acts are “*purely intellectual acts* [*rein intellektuelle Akte*] in which the sense content – according to its provisions – is fulfilled and made explicit” (Stein, 1925/2006, I, §2d, p. 43; En. tr. p. 56). So, the acts pertaining to jurisprudence are theoretical, while the acts pertaining to legislation are practical-free acts.

The theoretical acts that make up the bulk of adjudication are not spontaneous in the same sense that provisions are. What should be made into law is up to the discretion of the law-making subject; what we come upon as law is independent of our arbitrariness.

Die theoretischen Akte, die den Hauptbestand der Rechtsprechung ausmachen, sind nicht im selben Sinne spontan wie die Bestimmungen. Was als Recht gesetzt werden soll, steht im Belieben des Recht setzenden Subjekts; was wir als Recht vorfinden, ist von unserer Willkür unabhängig (Stein, 1925/2006, I, §2d, p. 44; En. tr. modified, p. 57).

More generally, according to Stein, the validity of the law depends upon the acts and actions performed by *persons*: the legislator and the state as (collective) persons, on the one hand, and the citizens as (collective) persons, on the other hand.⁶ Besides these legislative and jurisprudence acts, the validity of the law, of course, depends upon the law-making acts performed by the legislator, the uptake acts performed by the citizens and the actions performed by the citizens in order for law-making acts to be fulfilled.

The problem is understanding the variety of degrees of this existential dependence: the validity of the law depends necessarily upon the performance of law-making acts by the legislator, upon the uptake and enforcement of law-making by the citizens. But the validity of the law depends only as a possibility upon the integrative acts of provisions: they are not necessary acts for the enforcement of the provisions and the validity of the law; they are just a possibility. Let's focus on this crucial point.

According to Stein, the legal and jurisprudence tasks which the state should undertake, in order for the interpersonal gap in the law to be filled, are possible integrative acts of legal provisions: they are possible – and not necessary – parts of legal provisions.

The point Stein focuses on is the possibility that certain acts play the role of integrating and complementing the provisions in order for provisions to be taken up, recognized and enforced by citizens. In other terms, Stein's suggestion is that, in order for positive law to be law in force, other state acts can contribute to the uptake of legal provisions, and they are possible essential parts of legal provisions.

6. Possible essential parts of law-making acts

There are acts that are not required in every case as an integration of the provision, yet their integrative functioning is designated as possible by the character of provisions.

[Es] sind andere Akte heranzuziehen, die nicht in jedem Falle als Ergänzung der Bestimmung erforderlich sind, deren ergänzende Funktion aber durch den Charakter der Bestimmungen als möglich vorgezeichnet ist (Stein, 1925/2006, § 2d, p. 42; En. tr. p. 54, slightly modified by me).

The essential structure of the provisions implies these other acts as a possibility (and not as a necessity!), i.e. as a possible part of the provisions in order for provisions to be taken up, and consequently fulfilled: acts which are not necessarily and universally (*a priori*) required as integrations of the provisions, but whose integrative functioning is designated as possible by the *eîdos* of provisions. The possibility of such integrative acts is part of the essential structure of provisions, because:

⁶ I cannot deal here with the issue of the legislator and state as collective persons in Stein (1925), and with contemporary debate on collective subjects as for instance in Gilbert (2013). See De Vecchi (2015).

Legal provisions are there to be followed. That is how their sense is fulfilled.

Bestimmungen sind dazu da, befolgt zu werden. Darin erfüllt sich ihr Sinn (Stein, 1925/2006, § 2d, p. 42; En. tr. p. 54).

The sense [*Sinn*] of legal provisions is fulfilled [*erfüllt*] in their being followed: if they are followed, i.e. enforced, their sense is fulfilled.⁷

Stein here adopts Husserl's relation between the sense of an expression [*Ausdruck*] and its fulfilment by an act of intuition (the Husserlian pairing of «sense» [*Sinn*] and «fulfilment» [*Erfüllung*], i.e. of «sense-giving acts» or «meaning-conferring acts» [*sinnverleihende Akte*] and «meaning-fulfilling acts» [*erfüllende Akte*], presented and discussed by Husserl in the *Logical Investigations*) as a paradigmatic relation to explain the relation between the sense of the provision (the sense of the provision which is also an expression: a proposition, a sentence) and its fulfilment by the actions which enforce the content of the provision.⁸

I argue that this relation is just a *probable relation*, and never a necessary relation. In other words, in the essential structure of legal provisions there is the expectation, the *tendency*, but not the necessity, to be fulfilled (as, for instance in the sense of the expression “dog”, there is an expectation, and not a necessity, of fulfilment through the intuition, for instance the perception of the dog in flesh and blood).

I claim that in saying that the sense of the provisions lies in their being enforced, Stein introduces a qualitative sense of the “existence” of legal provisions: legal provisions exist in a full sense of “existence” if they are enforced. The idea is that legal provisions may exist at a minimal level, when they are simply performed acts, and may also exist in a full and complete way, when they are enforced acts. This is the issue of different degrees of existence and of the quality of existence of legal provisions – and more generally of social entities.

7. Essential relations of tendency

In this ontological framework characterizing the essential structure of the provision, Stein identifies some acts which can contribute to the fulfilment of the legal provision: precisely because the legal provision tends essentially to be fulfilled, there may be some acts that can contribute to the realization of this tendency.

Such acts belong to the essential structure of the legal provision as *possible or probable parts* and not as necessary parts: this is an essential relation of tendency, which concerns the fulfilment of the provision, and not an essential relation of necessity. Nothing is necessary between the legal provision and its fulfilment: the legal provisions do not necessarily have to be fulfilled, they just have the essential tendency to be fulfilled. On the contrary, everything is necessary between, for instance, the legal provision and the legislator who is the bearer of the legal provision: without the legislator, there is no legal provision.

Reinach, too, deals with this fine ontological point on the variety of essential relations – necessary, possible and even contingent–, and does it very clearly: on the one hand there is the essential and necessary relation between, for instance, the command and the obligation

7 I do not deal here with the fact that law does not include only regulative norms, which need to be enforced, but also constitutive norms, which do not need any enforcement; Stein neglects this fact and considers the law just as regulative law (Stein, 1925, I). On the distinction between regulative and constitutive norms and on the concept of constitutive rules, see Conte (1988) and Searle (1964).

8 On Husserl's meaning-conferring acts and meaning-fulfilling acts, see Husserl (1901/1984), in particular the “First Logical Investigation”. Stein adopts the sense-fulfilling paradigm also in other works of her: see for instance Stein (1941). It is worth noticing that Husserl uses “*Sinn*” and “*Bedeutung*” as synonymous, see Husserl (1901/1984, “First Logical Investigation”).

produced by the command, or the promise and the claim and the obligation generated by the promise; on the other hand, there is the essential relation of tendency, for instance, between the promise and the realization of its content, i.e. its fulfilment: “promising tends towards the realization of its content by the promisor” (Reinach, 1913/1989, p. 172-173; En. tr. p. 32).⁹ Eidetic analysis of social entities such as law-making acts (or, more generally, social acts, in Reinach’s examples) provides us with essential connections, which are neither necessary nor universal: essential connections which correspond to a tendency – and not to a necessity – inscribed in the *eidos* of an entity. These essential connections are only probable, and are characterized by a degree of constraint midway between the strongest degree of constraint given by the necessity connection and the zero degree of constraint given by the contingent relation. Reinach and Stein seem to me to share the idea that the social ontological region is specifically characterized by essential connections of tendency: unlike natural and ideal entities, social entities are wholes which are in particular constituted by parts which are also possible or probable parts.¹⁰ This specificity of social ontology is grounded in the specific ontological status of social entities: social ontology is indeed an ontological region whose entities are ontologically dependent upon individuals’ intentionality, and especially, upon personal acts – as Stein herself claims about the law: its existence, its upholding and validity depend upon acts and actions of persons.

I argue that essential connections of tendency, i.e. the essential possible parts of a whole, show that eidetics can provide meaningful insights into the existential quality issue in social ontology – an issue that is often neglected in the contemporary social ontological debate.¹¹ I suggest that the concept of “existence” itself is here revised: on the one hand, law-making acts exist as such as performed acts, but, on the other hand, they actually and fully exist only when they are enforced, and the law itself exists in a full way, as a valid law – a law in force – only if its legal provisions are not merely performed by the legislator and taken up by the citizens but also enforced by the citizens.

Stein’s focus on the integrative acts of social provisions (the acts which should and could fill the inter-personal gap between the legislator, as organ of the state, and the citizens, as his counterpart and addressees of his law-making acts) puts forward very clearly the relation between the essential connection of tendency account and the ontological qualitative issue. All of the integrative acts of legal provisions Stein deals with are «acts belonging to the life of the state» [*zum Leben des Staates gehörigen Akte*] and are acts Stein focuses on in order to identify the parts which are either necessary parts or possible (probable) parts for the good functioning of the relation between the legislator as organ of state and its citizens in regard to the law. This relation, and above all the quality of this relation, is what lies principally at the heart of Stein’s idea of the law of the state. If this relation succeeds, then the positive law of the state is a law in force: the legal provisions promulgated by the legislator are recognized by the citizens and, through such recognition, they are performed (they exist) and may also be enforced (they are valid).

8. The ontological quality issue

9 On the relation of tendency in Reinach, see Di Lucia (2015) and De Vecchi (2016b).

10 On the topic of the essential connection of tendency in social ontology, see: Spiegelberg (1960, p. 205), who speaks of the fact that social entities are in certain cases characterized by “a law of essential tendencies rather than one of essential necessities”; Di Lucia (2015), on “conditioned a priori”; Smith (1990, § 7 “A priori Structures”), who discusses the case of “laws of a priori tendency”. I identified another example of relation of tendency as essential relation in the relation between values and law (e.g. the rational contract) in the phenomenology of law of Wilhelm Schapp (Schapp, 1930; De Vecchi, 2016a).

11 I dealt with this issue in De Vecchi (2016b), where I worked on Reinach’s qualitative social ontology and mentioned his extremely acute remark on the quality of the existence of claim and obligation, see Reinach (1913/1989, p. 173; En. tr. p. 32).

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