

HUMAN NATURE – AN EMBODIED PHENOMENOLOGICAL PERSPECTIVE

Introduction

If available history of mankind be inspected, a certain existential fact will strikingly come to light – the fact that the state of being human is not any completed phenomenon, but an ongoing process. And this process of socio-psychological evolution that has continued beyond the biological evolution of humans could also be seen to be dialectical in character. Being human has always been a state attained to through the synthesis of diverging/opposing theses, and man as a social being has always been a cross product of such antagonistic existential forces.

In a sense this whole process could be viewed as varying instantiations of the “nature vs. nurture” debate. But when human nature itself has to be evolved through such dialectics, this simple view becomes problematic. To tackle this situation theoretically, we may have to invoke the grander debate of the explanatory vs. the normative.

Prior to the emergence of what we call “scientific,” the explanatory aspect of this general debate used to be some metaphysical or religious scheme, wherein the norms regulating human behaviour could easily be derived from the comparatively simpler dictates of such scheme. With science assuming the explanatory role, such simplicity of the normative aspect has been lost for ever. We now have complicated legal systems supposedly informed by relevant scientific discoveries. But the question remains- are they really so informed and updated properly?

The question posed has to be addressed with reference to the contemporary scientific understanding of human agency. Undisputedly, there is a distinction postulated between the cognitive and the bodily dimension of such agency.

In criminal jurisprudence, for instance, these dimensions are envisaged respectively in terms of the principles of “mens rea” and “actus reus.” Also, as per the prevalent scientific world view, the brain is conceived as the controlling center of both these dimensions. That being so, in adjudicative proceedings the so-called conception of the “reasonable man” is often unknowingly identified with the presumption as to the man being/having a “reasonable brain.”

Now, when we enquire, on what basis such reasonableness is assessed, we will be surprised to see that apart from the folk psychological notions that are still driving our legal institutions,

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this is done largely in functional and anatomical terms exclusively on the basis of the results from brain imaging techniques. And it is when legal practitioners enthusiastically embrace this presumption of a “reasonable brain” and on such basis make, in courtrooms, naïve scientific claims as to the issue of culpability, that intellects like Prof. Stephen J. Morse have had to intervene with extreme proclamations like: “Brains are not responsible. Acting people are.”²

But what really is the case? In order to understand what science really means by “brain,” we have to listen to some authority in the field of neuroscience. Let me quote Prof. Michael O’Shea, on the current scientific understanding of human brain:

Sensory receptor neurons feed information via sensory nerves into the nervous system, providing the brain with real-time data on both the internal state of the body and about the outside world. Furthermore, information flowing into and out of the brain is carried not only by the nerve cells. About 20 percent of the volume of the brain is occupied by blood vessels, which supply the oxygen and glucose for the brain’s exceptionally high energy demand. The blood supply provides an alternative communication channel between the body and the brain. Endocrine glands throughout the body release hormones into the blood stream. These hormones inform the brain about the state of bodily functions, whilst the brain deposits hormonal instructions into its blood supply for distribution globally to the rest of the body. So, when we say brain does x or y, the word brain is a short hand for all of the inter dependent interactive processes of a complex dynamical system consisting of the brain, the body, and the outside world.³

Now, this is rather a scientifically informed existential conception of brain/man, which renders Prof. Morse’s assertion untenable. In this sense, brains are indeed responsible- where by “brain” is not meant what in popular imagination, after the idea of the CPU of a modern digital computer, is conceived as a complex machine installed in the skull, acting as a center for issuing instructions to the rest of the body, but the existential conception emphasized in the above excerpt. And it is in this context that the question whether our legal systems are really scientifically informed becomes relevant, and that we have to think of revolutionizing the normative that has been guiding our social life.

All the same, an extreme normativist would object that any scientific discovery, however significant, doesn’t call for a revolution in the normative structure of social institutions! This stance is based on the view that norms are founded on beliefs and principles, rather than scientific know-how. But when it comes to the institution of law and justice this stance becomes problematic, especially in criminal jurisprudence which is largely founded on beliefs and principles as to human nature.

As we have noted in the beginning, human nature, if at all there is such a phenomenon, has forever been in a process of dialectical evolution as a synthesis between the explanatory and the normative. With science assuming the explanatory role, human agency has to be

² Stephen J. Morse, “Brain Overclaim Syndrome and Criminal Responsibility: A Diagnostic Note,” *Ohio State Journal of Criminal Law* vol. 3 (2006): 406.

³ Michael O’Shea, *The Brain: A Very Short Introduction* (Oxford University Press, 2005), 3.

conceived rather in its total existential situatedness – as becomes evident from the excerpt shown. Consequently, the normative that is to be formulated in legal terms has to reflect this fact. I am not saying that the present-day normative structure hasn't been scientifically informed. But the presumption in any such approach has been that human agency is by and large identical with the conscious cerebral aspect of such agency.

But the triad of the brain, the body and the outside world mentioned in the excerpt makes it clear that it cannot be so limited. In the context of adjudicative proceedings, schematically, the “brain” in the triad stands for the conscious cerebral agency, which not only founds the very notion of “reasonable man” but also makes possible the whole enterprise of law and justice. Consequently, this aspect has had an overshadowing effect on the concept of being human, at least in the realm of jurisprudence. Hence, scientific intervention is usually entertained with the specific aim of ascertaining whether the person in question has the cerebral capacity of a “reasonable man” by looking for possible handicap in terms of functional or anatomical anomaly reflected in behaviour.

Schematically, the other two aspects of the triad – namely “the body” and “the world” – could stand respectively for the subconscious-affective and the socio-cultural dimensions of human agency. Thus, even if we make allowances for the peculiarities of the “brain” factor, the body and its environs (i.e. the outside world- both physical and socio-cultural) remain unattended. These have not only scientific implications, but legal and political implications as well. But how can we accommodate these existential facts in the normative framework that sustains societal life?

Nothing less than a conceptual re-evaluation will do. Towards this end, we will first re-invoke the notion of “human nature” posed above and analyze it further from a socio-historic perspective. Based on this analysis we will show how flawed is the concept of “reasonable man” that's been upheld by the legal systems all over the world. In this effort, we will point out how obsolete this conception is, and how unfair has this been to the existential reality of embodied human agency. After this, we will venture on to bringing to light a different scheme of such agency available in the existential phenomenological tradition that is capable of revolutionizing the notion of “reasonable man” and thereby enlightening criminal jurisprudence. And in view of such a re-orientation of the notion of human agency, the question to be addressed lastly in the paper will be, what cause should the normative serve ultimately – retribution or reformation?

I. Human Nature as a Synthesis of the Explanatory and the Normative

We have claimed in the beginning that all through the history of mankind, the notion of human nature has had a dialectical evolution as a synthesis of the explanatory and the normative. In every society, at the base of the normative, there is always a set of current common beliefs and values. And depending on the customs and practices of each society, and the stage of socio-economic advancement that it is in, such beliefs and values vary. This has always been so right from the origin of civilization. Thus, the normative has often

remained a political choice rather than any necessity. Whereas the explanatory thesis, having its basis always in some system or other, has rather imposed itself as a necessity. And interestingly in this scheme of things, the political choice is often pre-determined by the explanatory thesis and it so remains until it develops an inner contradiction paving way for a new thesis.

Prior to Modernity, religious dogmas or metaphysical speculations used to supply the explanatory thesis. But with the emergence of modern thought, from such naivety, the explanatory scheme has evolved into a spectrum of sophisticated theories of scientific, socio-political, economic as well as psychological origin. And this sophistication has enhanced over the centuries spanning Modernity, and peaked over the last century of paradigm shifts in the natural and social sciences.

On the one hand, the emergence of Marxism, Existentialism, Psychoanalytic Theories, and the so-called post-modernist rebellion have contributed to this development. And on the other, besides the new relativistic cosmology and quantum theory, the advent of behavioural and cognitive neurosciences, evolutionary biology and advanced genetics have overhauled and revolutionized the explanatory aspect. Therefore, it is against this intellectual background that we have to take up for analysis this phenomenon of “human nature,” and thereby respond to the question raised in the beginning, viz. are our legal systems really informed and updated properly?

1. “Reasonable Man” and Human Nature

As we have already noted, the common legal criteria for ascertaining “reasonableness” has been behavioural evidence. But as is well known, such an approach is laden with the risk of a certain conceptual circularity in as much as the main symptoms of the “mental condition” so determined are often the very same behaviour. To tackle such inherent bootstrapping, with the advent of brain imaging techniques, some sophistication (purely in anatomical and functional terms) has been added to this criterion. But no socio-cultural and ecological aspects of embodied human agency underlying such “misbehaviour” have been reckoned yet. In other words, as per our above scheme, the “brain” aspect involved has been addressed to some extent, whereas the “body” aspect and the “world” aspect remain largely unattended.

When we enquire into the conceptual foundation of this approach, we can see that it is by and large intellectualist or rationalist in nature – which the above-mentioned paradigm shifts have long problematized. So, it becomes pertinent to enquire what alternatives we have in this domain that is capable accommodating the neglected aspects of embodied societal being of mankind, thereby reflecting the lived realities of such being.

In the intellectualist/rationalist approach, the only parameter determining culpability is the agent’s functioning sense of reason. Therefore, technically, the process of law only has to check whether such cognitive sense is present or not without any regard to the conative aspect of the agent. The apparently conative legal notions such as “consent” or “intentionality” are not overlooked here. They form part and parcel of the process, but what the process

neglects is their embodied and worldly dimensions in terms of inter-corporeal action against the backdrop of a certain societal setup. The process of law abstracts such elements from the material and worldly conditions of their operation and attributes them to disembodied rational agents, idealized in the concept of the “reasonable man” or the rational, reasonable and responsible subject.

Interestingly, this particular jurisprudential stance is actually derived from a more generic epistemological stance that has had a long and venerable legacy tracing back to the ancients. The most enigmatic philosopher ever, and the first system builder in the discipline expresses his version of it in the following words: “It seems that so long as we are alive, we shall continue closest to knowledge if we avoid as much as we can, all contact and association with the body, except when they are absolutely necessary, and instead of allowing ourselves to become infected with its nature, purify ourselves from it until God himself gives us deliverance.”⁴

From the Ancients when it came to the Moderns, though the whole approach of philosophical enquiry is claimed to have undergone a revolutionary shift, in terms of method and focus, evidently it was not freed from the grip of classical thought on the matters of body and mind. We have the founding father of Modern philosophy asserting:

Simply by knowing that I exist and seeing at the same time that absolutely nothing else belongs to my nature or essence except that I am a thinking thing, I can infer correctly that my essence consists solely in the fact that I am a thinking thing. It is true that I may have a body that is very closely joined to me. But nevertheless, on the one hand I have a clear and distinct idea of myself, in so far as I am simply a thinking non-extended thing; and on the other hand, I have a distinct idea of body, in so far as this is simply an extended, non-thinking thing. And accordingly, it is certain that I am really distinct from my body, and can exist without it.⁵

Thus, as Ortega says, in *History as a System*, “the trouble with nearly all traditional account of man is the whole ‘res business’!”⁶ And in fact the jurisprudential conception of man still remains deeply rooted in such accounts!

As we have noted above, interventions in the form of neuro-scientific techniques of the recent past might have brought in some apparent improvements, but the basic conception still remains by and large Cartesian, as becomes evident from the claims of eminent jurists such as HLA Hart to the effect that justice demands the assumption of an abstract, universal, rational, and autonomous legal subject.⁷

⁴ Plato, Phaedo, 67a-b, in *The Last Days of Socrates*, trans. Hugh Tredennick (Harmondsworth, Middlesex: Penguin Classics, 1954).

⁵ Rene Descartes, *Meditations on First Philosophy with Selections from the Objections and Replies*, IV, trans. John Cottingham and Bernard Williams (Cambridge University Press, 1996), 54.

⁶ Jose Ortega Y Gasset, *History as a System and Other Essays Towards a Philosophy of History*, trans. H. Weyl, E. Clark and W. Atkinson (Norton, 1962), 190.

⁷ Herbert L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Oxford University Press, 2009).

Now, as per the changed socio-scientific paradigms, since humans are embodied social agents rather than disembodied solitary “cogitos,” such disregard of the affective-willing part is not justifiable anymore. In line with the intellectual breakthroughs of the last century it is high time that criminal jurisprudence reckoned the being of humans in its totality. And it is in this respect, that the conceptual framework needs to be revamped to include the “bodily” and “worldly” dimensions that we have acknowledged above to be forming such totality. But for the reasons stated so far this task will prove to be impossible if we stick to the traditional rationalist/intellectualist conceptions of the being of humans. Therefore in this task we have to explore the outer domains of such traditional views.

2. A “Bodily” and “Worldly” Account of Man

The current neuroscientific account of the brain, as we have seen, takes into account the bodily and the worldly dimensions of human existence, thereby giving such conception a socio-cultural connotation as well rather than confining it to a narrow scientific definition. Therefore, it would be proper to begin with a sociological notion of embodiment that reflects this inclusiveness. One such view is proposed by Elizabeth Grosz: “...the body, or rather bodies, cannot be adequately understood as ahistorical, precultural, or natural objects in any simple way; they are not only inscribed, marked, engraved, by social pressures external to them but are the products, the direct effects, of the very social constitution of nature itself.”⁸

This account of body as the “social constitution of nature itself” is what criminal jurisprudence has been overlooking in entertaining solely the naturalist neuro-scientific explanations for the aberrations from its ideal of the “reasonable man” that it comes across in court rooms. It can’t be denied that a purely scientific approach has its own merits. But it doesn’t treat embodied human agency as “social constitution of nature.” Rather we have at its base the “ghost in the machine”⁹ conception of human agency, where the “ghost” is presumed to be a rational, reasonable and responsible universal subject!

Now, this is not a problem arising solely from the normative foundations of criminal jurisprudence, rather is one that arises from a mismatch between the conceptual foundations of the normative and the scientific in general. Put briefly, the mismatch consists in the fact that while the foundations of the scientific have advanced to the post-modern levels, the foundations of the normative have remained stagnant at the level of modernity. Thus, at the present stage of the dialectical evolution of the scientific and the normative, a level playing conceptual ground for these aspects is lacking – the scientific has advanced from the Cartesian ideals, whereas the normative still remains by and large Cartesian!

It is not denied here that criminal jurisprudence has imbibed the liberal and humanist values that emerged over the centuries of modernity. Rather it is those values that have ironically caused the stagnation mentioned. This is because of the fact that all such values

⁸ Elizabeth Grosz, *Volatile Bodies: Toward a Corporeal Feminism* (Bloomington, IN: Indiana University Press, 1994), x.

⁹ See Gilbert Ryle, *The Concept of Mind* (Oxon: Routledge, 2009), 5.

have at their core the natural/biological order of things. And in such order human embodiment is conceived as something fixed and material which has universal properties. It is this universality and materiality of embodiment that have perpetuated the conception of a “reasonable ghost” in a “normal machine”! In other words, while we have been entertaining and exploring various psychical possibilities of human existence, we have only had a pre-given normative of the body susceptible only to naturalistic interventions that would fit into the ideal of a rational, reasonable and responsible universal subject. And any revelation as to human embodiment beyond the scope of this, like the one that we have seen in the beginning has conveniently been overlooked. Thus, in essence, criminal jurisprudence has lacked a proper theory of the body all along!

Now, this is not surprising at all, for no other realm of knowledge is an exception to this tendency. Academic interest in the peculiarities of embodied human social existence is only a recent development, and consequently the related literature is still in the toddling stage. However, if we inspect the phenomenological tradition, we can see a prominent exception to this rule. The theory of body developed by the French phenomenologist Maurice Merleau-Ponty has the potential of mitigating all conceptual injustice that’s been done to embodied human existence over the centuries. When it comes to embodiment, that phenomenological theory serves as a harmonious and synchronous synthesis of the normative and the scientific! Let us briefly explore the main features of that theory in an illustrative manner.

II. Merleau-Ponty’s Conception of Human Embodiment

In his existential phenomenological take on embodiment and perception, Merleau-Ponty actually overhauls the very idea of embodied human agency to the extent that his entire philosophical project is founded on this new insight. The hallmark of his new conception is that it treats human existence primarily as a perceptual phenomenon materialized in the real capacities of the body rather than something idealized in the normative conception of the “cogito.” Given the corporeal nature of criminal offences and the associated criminal procedure of trial and penal sanctions, this scheme assumes much significance in its implications for criminal jurisprudence as seen against the conceptual background that we have elaborated so far. Let us see briefly, what this phenomenological conception of the body consists in.

For Merleau-Ponty, the “lived body” (as phenomenologists love to term embodied human agency)¹⁰ is not just an interface between consciousness and the world, rather it shapes the primary way of “being in the world.”¹¹ For him, the former is the case only when the body

¹⁰ This notion is an original contribution by Edmund Husserl, the founder of Phenomenological movement. See Edmund Husserl, *Cartesian Meditations*, trans. Dorion Cairns (The Hague: Martinus Nijhoff, 1960). However, for his project, Merleau-Ponty has a thoroughly revised version of it.

¹¹ This notion comes from Heidegger’s thought, which Merleau-Ponty embraces whole-heartedly. See Martin Heidegger, *Being and Time*, trans. John Macquarrie and Edward Robinson (New York: Harper and Row, 1962).

is viewed from an objective perspective as a certain physio-anatomical complex formed of flesh, nerves, bones etc. so that it could be envisaged as having a merely contingent relation to one's being. Whereas in reality one's lived body is not separable even in thought from one's existence!

He proposes "lived body" as the way body appears in experience as it simultaneously structures our experience. It is the very locus of intentionality¹² and it constitutes our point of view and our point of departure. He puts this point in the essay, *The Primacy of Perception* thus: "... as embodied perceivers, we do not typically understand ourselves as pure egos standing in a merely external relation to our bodies, for example by 'having' or 'owning' them, instead the body is itself already the concrete agent of all our perceptual acts." He also proclaims there: "I am necessarily an embodied point of view."¹³

In such embodied point of view, according to him, there operates something alive and mobile which is directed towards the world.¹⁴ And that something, which is always at work in the lived body, which may be thought of as a pre-reflective kind of intelligence is what Merleau-Ponty terms as "operative intentionality." Let us see in detail what the modality of this operant reason is, and what its implications are.

1. Operative Intentionality

For Merleau-Ponty, operative intentionality is something definitional of the very way; nay the only way of the lived body's being in the world as a perceptual phenomenon. Citing the results from various empirical research projects of his time and analyzing them, he shows that explicit object-oriented intentional experience arises only against the background of this pre-cognitive "motor intentionality." It operates pre-reflectively, anonymously and passively, in tune with what he calls the "body schema" of the lived body, in the form of an interplay of "motivations" directed towards the world. And according to this scheme, human existence is established primarily as a silent, circular hermeneutics between the body and the world.

Now what kind of a phenomenology has this operant reason or bodily intentionality that is at work in our very being in the world essentially as a perceptual being? And what are these "motivations" and the "body schema" that he refers to? Just as Merleau-Ponty puts it in his magnum opus *Phenomenology of Perception*,¹⁵ since our existence is too tightly caught up in the

¹² This is a phenomenological term, which broadly means the directedness of consciousness/embodyment (depending on the context) towards an object of thought/perception. This could be thought of as the conceptual template from which all other forms of "intention" (literary, legal etc.) are drawn.

¹³ Maurice Merleau-Ponty, *The Primacy of Perception and Other Essays on Phenomenological Psychology, the Philosophy of Art, History, and Politics*, ed. James M. Edie (Northwestern University Press, 1964), 90–94, 200.

¹⁴ By "world" not only the physical aspect of it is meant, but also the socio-cultural aspects as well. Though in our illustrations that follow we will be focusing on the physical aspect, the insights that we derive from them apply equally to such other aspects as well, since our intellectual framework is that of existential phenomenology, wherein such demarcations are dissolved.

¹⁵ Maurice Merleau-Ponty, *Phenomenology of Perception*, trans. Colin Smith (London: Routledge & Degan Paul, 1962) (hereafter referred to as *PP*).

world to know itself as such,¹⁶ it would be better to try shedding some light on that “perceptual being” by way of some anomalies found in the same. So, I would take up two cases of perceptual anomaly that Merleau-Ponty discusses and try to clarify the concepts through them.

A simple and typical case that Merleau-Ponty analyses is the case of a subject whose oculo-motor muscles have been paralyzed. Normally, it is our experience that a landscape remains fixed as we move our eyes and head, looking out across it. But for such a subject, the experience is different. He sees the entire landscape shift to the left when he thinks he is turning his eyes in that direction. Analyzing this situation, Merleau-Ponty rejects both cognitivist and associationist accounts of the illusion, which are in terms of reasons and causes respectively. He comments thus: “This, classical psychology maintains, is because perception reasons: the eye is supposed to swing to the left, and since nevertheless the retinal images have not moved, the view must have slipped leftwards to have kept them in place in the eye.”¹⁷ And notices that Gestalt psychology has already disapproved of this position. On the Gestaltists’ stance, he comments approvingly: “Gestalt theory informs us that the perception of the position of objects does not pass through the detour of an express body-consciousness: at no moment do I know that the images remain stationary on the retina; I see directly the landscape move to the left.”¹⁸

However, without subscribing any further, he immediately brings out the logical flaw in their overall approach. He reminds us the fact that consciousness by its very nature is not confined to receiving in a ready-made fashion any illusory phenomenon produced outside itself by physiological causes. “For the illusion to be produced, the subject must have intended to look to the left and must have thought he moved his eye,” – he asserts.¹⁹

According to Merleau-Ponty, the movements of the body are naturally invested with a certain perceptual significance, and the body and the world form “... such a well-articulated system that external perception ‘takes account’ of the movement of the organs of perception, finding in them if not the *express explanation*, at least the *motive* for the changes brought about in the spectacle, and can thus understand them instantly.”²⁰

In the Merleau-Pontyan scheme, the “motive” is a key concept that is definitional of the modality of the operant reason. It signifies the interlinked flow of human actions ensured not by any cause and effect chain, but the existential meaningfulness of such sequence.

One phenomenon release another, not by means of some objective efficient cause, like those which link together natural events, but by the meaning which it holds out – there is a *raison d’être* for a thing which guides the flow of phenomena without being explicitly laid down in any one of them, a sort of operative reason.²¹

¹⁶ See preface to *PP*, xvi.

¹⁷ *Ibid*, 55.

¹⁸ *Ibid*.

¹⁹ *Ibid*.

²⁰ *Ibid*.

²¹ *Ibid*, 57–58.

Thus existentially, it is the flow of “motives” which constitutes the peculiar, operative reason that he refers to. And consequently, the phenomenology of this operative reason has to be sought in the manifestation of such flow of motivations. Now, this flow in turn is guided by the following principle of interplay of motivations.

To the degree that the motivated phenomenon comes into being, an internal relation to the motivating phenomenon appears; hence, instead of the one merely succeeding the other, the motivated phenomenon makes the motivating phenomenon explicit and comprehensible, and thus seems to have preexisted its own motive.²²

In the normal perceptual being, the flow of motivations remaining unobstructed, such phenomenology of operant reason may not be detectable. However, this could be brought out in the perceptual anomaly under discussion. In this case, the subject intends to look left. But owing to the paralysis of oculo-motor muscles, the landscape remains stubbornly fixed in the subject’s gaze. This situation, in fact, opens a window to the modus operandi of the operative reason. To capitalize this, we have to reckon certain existential phenomenological facts pertaining to the situation that Merleau-Ponty brings to our notice.

He points out that, when one intends to look to the left and moves her eyes accordingly, such movement of the eyes carries within it “as its natural translation an oscillation of the visual field.”²³ Of course in such normal perception the objects remain in place- but only after a moment’s fluctuation. According to him, this consequence is not learnt but is one of the natural formations of the psychosomatic subject. It is “an annex of what he conceives as one’s ‘bodily schema,’”²⁴ and the immanent meaning that “the shift of gaze” holds out according to the operant reason.

Therefore, in the case at hand, when the “shift of gaze” stops short of such a change – that is when the subject is conscious of moving her eyes without the view’s being affected – according to Merleau-Ponty, “the phenomenon is translated, without any express deduction, by an apparent shift of the object leftwards.”²⁵ Now, this has to be analyzed in the light of the principle of interplay of motivations that we noted above.

According to the principle, “to the degree that the motivated phenomenon comes into being, an internal relation to the motivating phenomenon appears.” Here the motivating phenomenon, viz. the shift of the eye, as we have noted above, inherently carries within it an oscillation of the visual field. In the normal course, when the motivated phenomenon is fulfilled, an internal relation to the motivating phenomenon is established and the “flow” of motivations remains uninterrupted until the motivated phenomenon, viz. the shift of the view is brought into being. Therefore, no illusions are produced.

However, in the anomalous case under consideration, though the motivating phenomenon inherently brings about an oscillation of the visual field, such oscillation doesn’t culminate

²² Ibid.

²³ Ibid, 55.

²⁴ See the next section.

²⁵ Merleau-Ponty, *Phenomenology of Perception*, 55.

in the fulfilment of the motivated phenomenon. Hence no internal relation as envisaged has been established. But the “operant reason” is at work. And it is at work in the “well-articulated system formed of the body and the world” that we have noted above, wherein external perception “takes account” of the movement of the organs of perception. And in this scheme, just as Merleau-Ponty asserts, the phenomenon of the oscillation of the visual field is translated, without any express deduction, by an apparent shift of the object leftwards – resulting in a retrospective illusion. According to him: “The gaze and the landscape remain as it were glued together, no quiver dissociates them, and the gaze, in its illusory movement, carries with it the landscape, and the latter’s sideslip is fundamentally nothing but its fixity in a gaze which we think is moving.”²⁶

It is in this existential cohesion of the body and the world, and the resultant flow of motivations that the operant reason finds its expression. But at the heart of such phenomenology, there are no reasons or causes, but “motives.”

Thus, the subject does not reason/have to reason the movement of the landscape from beliefs about the position of his eyes and the position of the landscape in relation to his eyes. Nor does the stationary retinal image cause this movement. The turning of the gaze is neither a reason nor a cause, but a “sign” that “motivates” the perceptual effect mentioned. This *raison d’être* which guides the flow of phenomena, “something between movement as a third person process and thought as a representation of movement-something which is an anticipation of, or arrival at, the objective and is ensured by the body itself as a motor power, a ‘motor project’”²⁷ – is also conceived by Merleau-Ponty as what he terms motor intentionality.

Now, this “motor power” is not anything ghostly, but an integrated set of skills self-operating in the body as a system of present positions, as well as one open to an infinite number of equivalent positions directed to other ends,²⁸ keeping the body “poised and ready to anticipate and incorporate a world prior to the application of concepts and the formation of thoughts and judgments.”²⁹ Such a schematic conception of the body as a system of present and probable positions is what Merleau-Ponty calls the “body schema.” This is an “immediately given invariant whereby the different motor tasks are instantaneously transferable” and therefore is not only an experience of one’s body, but an experience of one’s body-in-the-world.³⁰ It is as a rearrangement and renewal of such body schema, that Merleau-Ponty conceives the idea of “habit.” Before coming to that, let’s try to have a clearer understanding of what the body schema is.

²⁶ Merleau-Ponty, *Phenomenology of Perception*, 56.

²⁷ Ibid, 127.

²⁸ Ibid, 163.

²⁹ Taylor Carman, “The Body in Husserl and Merleau-Ponty,” *Philosophical Topics* 27, no. 2 (1999): 219.

³⁰ Ibid.

2. Body Schema

“The theory of the body schema is, implicitly, a theory of perception.”³¹ This assertion gives us a sense as to how important this concept is in the Merleau-Pontyan scheme of embodiment and perception.³²

He introduces the concept while describing the spatiality of the body thus: “... my whole body for me is not an assemblage of organs juxtaposed in space. I am in undivided possession of it and I know where each of my limbs is through a body image in which all are included.”³³

And immediately gives an account of the development of the idea as a scientific notion from a primary understanding as a “compendium of bodily experience.” Such a conception, he admits, had been “capable of giving a commentary and meaning to the internal impressions and the impression of possessing a body at any moment.”³⁴

Also, this was supposed to register for the subject:

- 1) the positional changes of the parts of her body for each movement of one of them,
- 2) the position of each local stimulus in the body as a whole, and
- 3) an account of the movements performed at every instant during a complex gesture.

In short, this idea of body image amounted only to “a continual translation into visual language of the kinesthetic and articular impressions of the moment.”³⁵ And the same was supposed by the neuroscientists of his time, gradually to show itself through childhood in proportion as the tactile, kinesthetic and articular contents were associated among themselves or with visual contents.³⁶

This associationist conception of body image, however proved itself to be inadequate when put to use by psychology. So, the psychologists had to adopt it as a *de jure* concept, so that it is not confined to contents actually and fortuitously associated in the course of the subject’s experience – rather “it is in some way anterior to them and makes their association possible.”³⁷

³¹ Merleau-Ponty, *Phenomenology of Perception*, 239.

³² *Schéma corporel* is the terminology used by Merleau-Ponty. It must be noted here that apart from this one exception quoted, elsewhere in the work, the translator has used the term “body image” to stand for this concept. Unfortunately, this has been highly misleading a usage, for both in philosophic and neuro-physiological literature, these two terms usually refer to different concepts that have different implications. Ample literature has ensued too, on these lines. See for instance Shaun Gallagher, “Body Image and Body Schema: A Conceptual Clarification,” *The Journal of Mind and Behavior* 7, no. 4 (Autumn 1986): 541–54; Frederique de Vignemont, “Body Schema and Body Image – Pros and Cons,” *Neuropsychologia* 48, no. 3 (2010): 669–80. However, duly recognizing such differences, Merleau-Ponty has had a unique conceptualization of this notion. This is firmly founded on the existentialist ideal of “being in the world.” We will stick to this in our exposition, using the two terms interchangeably to denote the same concept as has been developed by him.

³³ Merleau-Ponty, *Phenomenology of Perception*, 113.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*, 114.

He takes into account the Gestalt Psychologists' view that the body image/schema could no longer be seen as "the straightforward result of associations established during experience," but only as a total awareness of the subject's posture in the inter-sensory world – a "form."³⁸ However, for Merleau-Ponty, even such a conception is not adequate. He points out the conceptual inconsistency therein: "It is inadequate to say that my body is a form, that is to say a phenomenon in which the totality takes precedence over the parts. How is such a phenomenon possible? Because a form, compared to the mosaic of a physico-chemical body or to that of "cenesthesis," is a new type of existence."³⁹

He also reckons the psychologists' point that the body schema is dynamic. But rejects their explanation of the same in terms of the active integration of the parts of the body only in proportion to their value to the organism's projects. As we will see below, he too accounts for the dynamic recalibration of the body schema. However, "dynamicity" for him means something very different from what it means for the psychologists. "Brought down to a precise sense, this term means that my body appears to me as an attitude directed towards a certain existing or possible task," – he observes.⁴⁰

Now this stance is obvious in the light of the existential supplementarity and the hermeneutical circularity between the body and the world that we have stressed so far in the Merleau-Pontyan scheme. Also, as we have seen, both of these attributes of human existence are founded on the spatiality of the world and human embodiment. So, the "body schema" at work in this existential dialectic too derives from the foundational spatial aspect of embodiment. However, such spatiality is different from the ordinary conception of the same. Body's spatiality "is not, like that of external objects or like that of 'spatial sensations,' a *spatiality of position*, but a *spatiality of situation*."⁴¹ It is based on this "spatiality of situation," that Merleau-Ponty develops his own version of the concept of body schema.

"Being in the world" itself is the primordial situation that Merleau-Ponty envisages. And such being, true to its Heideggerian legacy, is accomplished through the various projects and tasks that the body intends in the world. In such engagement, however, the spatial situatedness of the body is uniquely characterized: "The word 'here' applied to my body does not refer to a determinate position in relation to other positions or to external coordinates, but the laying down of the first co-ordinates, the anchoring of the active body in an object, the situation of the body in face of its tasks."⁴²

Now this laying down of the first co-ordinates and the anchorage of the active body in the world, viewed from the bodily space amounts to laying down a certain schema of spatial orientation. This is what Merleau-Ponty calls body schema/image. However, such a schema for him is not anything objective or biological. It is essentially existential and hermeneutical and therefore dynamical – which fact he has asserted and upheld all through his career.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid, 114–15.

⁴² Ibid, 115.

The body schema is a lexicon of corporeality in general, a system of equivalences between the inside and the outside which prescribes from one to the other its fulfilment in the other.⁴³

So, unlike the traditional conceptions of the body schema, or even the later scientific appropriations of the same, for him, this is necessarily a consequence of the existential circularity between the body and the world. It is by way of such a unique conception, that he successfully explains the “phantom limb” phenomenon – which has accrued around it much neuroscientific and psychological literature spun about the idea of body image/schema, though without any success in a valid explanation.⁴⁴

The existential and hermeneutical thrust of the concept we have already demonstrated above while dealing with the allied key concept of operative intentionality. We have seen there, how external perception “takes account” of the movement of the organs of perception and carries out, without any express deduction, the necessary hermeneutics according to the existential situation. It remains to be demonstrated how the body schema works as a spatial anchoring of the active body in an object.

This aspect again can be best clarified by way of another perceptual anomaly, first pointed out by Aristotle, which has thence become well known after his name. Aristotle observed that if one forcibly crossed one’s fingers around a small marble, he would seem to feel two marbles instead of one. Referring to the long tradition of attempts at resolving this paradox in terms of the unaccustomed position of the fingers, Merleau-Ponty points out that it is not owing to such statistical rarity, such an illusion is evoked. Rather it is the lived body’s phenomenological attempt at resolving the peculiar perceptual situation which is in fact beyond the motor possibilities of it. He further notices: “In reality, the perceptions of the two fingers are not only disjointed, they are inverted: the subject attributes to the index what is touched by the middle finger and vice versa, as can be shown by applying two distinct stimuli to the fingers, a point and a ball, for example.”⁴⁵

What, in fact, is the existential situation? Merleau-Ponty’s response is uniquely insightful. At the base of this again is his core thesis: “External perception and the perception of one’s own body vary in conjunction because they are the two facets of one and the same act.”⁴⁶ As per the lived body’s schema of present and probable positions, the right face of the middle finger and the left face of the index cannot combine in a joint exploration of the object. The crossing of the fingers is a movement which has to be imposed on them. Therefore, it lies outside the motor possibilities of the fingers themselves and cannot be aimed at in a project towards movement.⁴⁷ Then how to effect the perceptual synthesis? According to Merleau-Ponty, the perceptual synthesis is effected by the lived body, through its own synthesis!

⁴³ Maurice Merleau-Ponty *Themes from the Lectures at the College de France 1952–1960*, trans. John O’Neill (Evanston: Northwestern University Press, 1970), 129.

⁴⁴ See Merleau-Ponty, *Phenomenology of Perception*, 87–100.

⁴⁵ *Ibid.*, 238.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

The synthesis of the object is here effected, then, through the synthesis of one's own body, it is the reply or correlative to it, and it is literally the same thing to perceive one single marble, and to use two fingers as one single organ.⁴⁸

Put logically, a perceptual situation contra-positive to what is proposed above (in terms of the use of two fingers as a single organ) is what evokes the illusion of two marbles. In their imposed position, the two fingers are rendered incapable of operating as a single organ, and hence the situation is phenomenologically resolved in terms of the existence of two different objects. Such a peculiar perceptual resolution has been possible in virtue of the body schema. The first co-ordinates being laid down by the body schema, the living body finds its anchorage in the object and the world at large with reference to the same. However, the crossed position of the fingers is an anomaly in this otherwise normal existential situation. And a schematic resolution of the same as mentioned above leads to the illusory experience.

Now, instances where such a key existential feature of human embodiment as the "body schema" invoking peculiar, perceptual resolutions leading to illusory experiences are only exceptions. In the normal course, it is this same feature that facilitates what we called earlier the silent, circular hermeneutics between the body and the world. Also, the same is at work, in the acquisition of skills. This latter aspect is what Merleau-Ponty points out through the idea of "habits." Let us now turn to the same. An explication of this idea is also going to demonstrate what Merleau-Ponty means by dynamicity of the body schema.

3. *Habits*

Merleau-Ponty conceives the acquisition of habit as "a rearrangement and renewal of the corporeal schema."⁴⁹ For him, to get used to a hat, a car or a stick is to be transplanted into them as a lived body, or conversely, to incorporate them into the lived body. Thus habit, according to him, "expresses our power of dilating our being-in-the-world, or changing our existence by appropriating fresh instruments."⁵⁰ Such appropriation is carried out by way of a rearrangement and renewal of the corporeal schema. This is how the body "understands" in the acquisition of habit. Merleau-Ponty clarifies that such "understanding" doesn't consist in subsuming a sense-datum under an idea, as when the body is viewed as an object. To understand here means "to experience the harmony between what we aim at and what is given, between the intention and the performance."⁵¹

As we have seen, this kind of an understanding is already present in the lived body as its own corporeal schema. That is why when one is ordered to touch any of one's organs, one moves his hand to it by the shortest route, without having to think of the initial position of one's hand, or that of the organ, or the path between them. In the acquisition of habits, such a schema is extended to incorporate the instrument involved. Merleau-Ponty demonstrates

⁴⁸ Ibid.

⁴⁹ Ibid, 165.

⁵⁰ Ibid, 166.

⁵¹ Ibid, 167.

these phenomenological facts by way of analyzing the acquisition of various common skills. The skill of typewriting is a typical case that he analyses.

He observes that it is possible to know how to type without being able to say where the letters which make the words are to be found on the banks of keys. And therefore, reasons that to know how to type obviously is not to know the place of each letter among the keys, nor even to have acquired a conditioned reflex for each one, which is set in motion by the letter as it comes before our eye. Then,

It is knowledge in the hands, which is forthcoming only when bodily effort is made, and cannot be formulated in detachment from that effort. The subject knows where the letters are on the typewriter as we know where one of our limbs is, through a knowledge bred of familiarity which does not give us a position in objective space. The movement of her fingers is not presented to the typist as a path through space which can be described, but merely as a certain adjustment of motility, physiognomically distinguishable from any other.⁵²

As we observed above, this adjustment of motility is carried out by way of a recalibration of the corporeal schema after inducting the instrument involved into it. As a result, just how the operant reason is at work as the fulfilment of an intention in the lived body in its perpetual movement towards the world, it is at work in the demonstration of a skill as well. The difference being that, in the former case, it is the inherent body schema which guides the operant reason, whereas in the latter case it is the recalibrated body schema which guides it. Thus, "When the typist performs the necessary movements on the typewriter, these movements are governed by an intention, but the intention does not posit the keys as objective locations. It is literally true that the subject who learns to type incorporates the key-bank space into his bodily space."⁵³

Put shortly, this is how the idea of "lived body" as explicated by Merleau-Ponty revolutionizes our conception of embodiment and the body-world relation: human embodiment is a phenomenon necessarily geared onto the world in its perceptual mode facilitated by "motor intentionality" working in tune with the "body schema," the two existential phenomenological features which characterize it and distinguish it from other objective phenomena. This ontological body is fundamentally a "knowing body" animated by its "motives" according to which it is self-propelled. And in that process, the lived body absorbs its equipment by way of incorporating the same into the "body schema" and develops a comprehensive grasp of its environs as formation of "habits," which in turn is a permanent recalibration of the "body schema."

Thus, in the formation of a "rational animal" to whom alone justice, law and ethics have any meaning at all, the body itself plays a pivotal role as a natural self. Consciousness and selfhood arise from and sustain on this primary "perceptual self" that we are. But in order to completely set the realm of justice and ethics, not only the "self" but the "other" too is

⁵² Ibid, 166.

⁵³ Ibid, 167.

needed. Therefore, let's now see how this 'embodied other' is conceived in the scheme, and how through the intercorporeality of the self and such others, the "rational animal" transforms itself into a "social animal" who alone is capable of materializing the principles of justice and ethics that it has imbibed in its capacity as the former.

In the Merleau-Pontyan phenomenological scheme, this socializing capacity is something inherent in the body and is pre-given to the development of human existence into the "cogito" which is the basis of the "reasonable man" concept. And interestingly, such pre-given capacity has an "intercorporeal" dimension of development. Let us see how Merleau-Ponty demonstrates these facts through a unique inter-subjective experience, in which one of the subjects is an infant:

A baby of fifteen months opens its mouth if I playfully take one of its fingers between my teeth and pretend to bite it. And yet it has scarcely looked at its face in a glass, and its teeth are not in any case like mine. The fact is that its own mouth and teeth, as it feels them from the inside, are immediately, for it, an apparatus to bite with, and my jaw, as the baby sees it from the outside, is immediately, for it, capable of the same intentions. "Biting" has immediately, for it, an intersubjective significance. It perceives its intentions in its body, and my body with its own, and thereby my intentions in its own body.⁵⁴

A baby who hasn't yet entered the "mirror stage" is one of the subjects here. If "biting" has some inter-subjective significance for it, as is demonstrated, it cannot be asserting through the mediation of any reasoning faculty. Rather such recognition has an existential immediacy. For the infant, the other is already an "existence" on a par with itself. How is this existential parity achieved? The secret lies in the "existential complementarity" of body and consciousness in human existence that we have discussed which, as demonstrated, is already accomplished even in an infant:

Between my consciousness and my body as I experience it, between this phenomenal body of mine and that of another as I see it from the outside, there exists an internal relation which causes the other to appear as the completion of the system. The other can be evident to me because I am not transparent for myself, and because my subjectivity draws its body in its wake.⁵⁵

Thus, as long as we are not normatively stipulated as "self-transparent cogitos, it is the intercorporeality that is unique to humans that creates and guides our societal existence. And this in turn is facilitated by the phenomenological features of the "lived body" that we have explicated so far in the scheme adopted.

III. Lived Body as the New Guiding Principle for Embodied Human Agency

In abstract terms, our phenomenological scheme stresses the following facts about embodied human existence. Firstly, that it is an ambiguous phenomenon distinct from other objective phenomena that is primarily and necessarily geared onto the world thereby forming

⁵⁴ Ibid, 410.

⁵⁵ Ibid.

an interactive perceptual system. Secondly, that it develops a comprehensive grasp of its environs as formation of “habits” which amounts to a permanent recalibration of its self image/schema. And thirdly, social life of mankind is fundamentally facilitated by the intercorporeality of such embodied selves.

Obviously, these facts are in full accord with the contemporary neuro-scientific account of embodied agency that we have seen in the beginning. But wouldn't it amount to too narrow and technical an account of human existence? From the existential-phenomenological point of view, that is not so. For these notions of, “intentionality,” “motives” and “habits” from such a point of view can be of any kind – they can vary from the spatial or physical to the social or emotional. As far as Existential Phenomenology is concerned, such demarcations are meaningless, for in that stream of thought, fact is value and value is fact. They are inextricably intertwined. This is especially true of the version developed by Merleau-Ponty, pivoted around the concept of “lived body.” Now, how does this version respond to the normative vs. explanatory debate, around which we have developed our arguments?

1. Lived Body and the Scientific vs. Normative Debate

To have a grasp of Merleau-Ponty's take on the normative aspect, Professor Hamrick's work on Merleau-Ponty's thought on law⁵⁶ could be quite helpful. Just as he points out there, for Merleau-Ponty, “the efficacy or the power of enforcement, is a necessary but not sufficient condition of the validity of a legal system because law is more than power, a legal order more than mere force. Rather it is a matter of societal choice as to the way we live.”

This observation which distils his normative stance clearly accords with the fact that we have emphasized in the introduction, i.e. the normative has often remained a political choice rather than any necessity. Now on the explanatory side, as to the origin of law and its embeddedness in human nature, Merleau-Ponty observes in *Sense and Non-sense*: “Man might be defined by this ability of his to conceive or in any case respect what he is not and has not. All several men need do is live together and be associated with the same task for some rudimentary rules and a beginning of law to emerge from their life in common.”⁵⁷

Reading the above observation against the backdrop of the phenomenology of “lived body” that we have explicated so far, we take notice of two insights contained in it. First is as to the characteristic ability of mankind “to conceive or in any case respect what he is not and has not.” And the other is as to the genesis of law taking place in the shared life-world. It is based on these two insights that we have to understand how this innovative scheme of human agency developed around the phenomenological concept of “lived body” can revolutionize criminal jurisprudence.

⁵⁶ William S. Hamrick, *An Existential Phenomenology of Law: Maurice Merleau-Ponty* (Dordrecht: Martinus Nijhoff Publishers, 1987), 116.

⁵⁷ Maurice Merleau-Ponty, *Sense and Non-sense*, trans. Hubert L. Dreyfus and Patricia Allen Dreyfus (Evanston: Northwestern University Press, 1964), 118.

2. Lived Body, Law, and Society

Man's sense of justice and human dignity springs forth from his ability to conceive and respect "what he is not" and "what he has not." And the same ability drives him to change, for some better version of himself and his circumstances. Therefore, in order to see the essence of man, this unique human capacity of self-change and reformation is what we have to focus on. And the normative will serve its real purpose only when formulated with this fact on mind.

Thus, with the adoption of this new approach towards human agency, the blanket jurisprudential issue that we have to re-invoke is contained in the question that we posed at the end of the introduction, viz. what cause should the normative serve ultimately – retribution or reformation? As envisaged in the scheme if there is in embodied human agency what may be called "existential plasticity" in tune with "neuro-plasticity" which is the buzzword of contemporary neuroscience, then the straight forward answer has to be the latter.

As a constructive synthesis of the explanatory and the normative that is suited to our times, we have to abandon the whole idea of retributive theory of justice, and embrace a new version of the reformatory one – one scientifically informed (in the sense we have seen so far) and humanistically formulated.

And in the light of our phenomenological scheme, when we think where should such a reformation begin? The answer is obvious – at the level of the "lived body." The readiness of this natural self in acquiring new habits, its dynamicity in adapting to new environs and the creative mode of permanently implanting such newly acquired habits and capacities guarantee the reformation of human person beyond the levels so far attained to through various psychological approaches.

In this new approach, while any particular handicap in terms of functional or anatomical anomaly – what we have called the "brain factor" – may still be invoking a legal defense, the very fact of culpability will be invoking a social responsibility – the responsibility to rehabilitate the person in conflict with law by extending all possible scientific help – not only neurological but sociological as well. This is because, as we have seen, the societal being of mankind is primarily established in terms of and sustained by way of the intercorporeality of lived bodies. And as we have seen, each lived body constituting such societal fabric is existentially gifted with inherent potential for change, adaptation and rehabilitation. Now, how should this reformation be carried out materially? Where should we begin? We will conclude with certain suggestions as to the same.

Conclusion

It has been the practice to associate the reformatory approach to the "mind" while the retributive measures are traditionally carried out on the body. This practice has its rationale in the assumption that humans are, fundamentally rational animals, where, as we have seen above, such rationality supposedly abides in the mind and has nothing to do with the body!

But we have learned by now that the body – whether of oneself or of another person is no more a purely material and objective phenomenon. It is no more one part of the notorious conceptual dichotomy of mind and body. As per the phenomenological scheme adopted, we fundamentally are “knowing bodies” animated by their “motives” according to which they are self-propelled. And it is primarily through the intercorporeality of such lived bodies that societal life has been established.

In such a scheme, human dignity is not an ideal “mental” phenomenon that’s disconnected from the body. Rather it is something that germinates from and stays rooted in the material reality of embodiment and its environment. All human values like love, empathy, solidarity etc. as well as detrimental feelings like fear, lust or anger have such a bodily and worldly basis that is common to the whole species. And they develop at an intercorporeal level, rather than at the solitary cerebral level.

So, for the invocation and nurturing of such congenial feelings, as well as for the reformation of such detrimental ones, it is the “natural subject” that the body is and its environs, that the reformative system should fundamentally appeal to. Therefore, the reformative measures have indeed to be carried out primarily at the level of the body if at all they have to be effective. But by “body” here is meant the “lived body” embedded in its physical as well as socio-cultural environs, which is equipped with the existential capacity to develop new skills and abilities and thereby transform itself. And by “measures” is meant the constructive implementation of scientifically informed methods practices and the necessary infrastructure that are aimed at developing bodily skills and habits that will bring about a positive change in the self image of such embodied agent.

The Norwegian prison facilities at Halden and Bastoy seem to exemplify these guidelines.⁵⁸ They materialize what they call the principle of “dynamic security” (to be contrasted with the old fashioned “static security” with “barred cells, barbed wire and surveillance cameras”⁵⁹) and a model of “non-complementary prisons” (as opposed to traditional prisons where guards complement detainees’ behaviour in similar terms).

In these facilities, there are no cells or bars. Rather there are implemented all facilities aimed at ensuring a comfortable and dignified bodily existence of the inmates. Inmates and guards live as a commune. They eat meals together, play together and one can’t even tell them apart, for the guards don’t wear uniforms. All amenities for an utmost refined and productive “intercorporeality” have been ensured. Above all, as Bregman puts it:

Inmates have to work hard to keep their community running: they have to plough and plant, harvest and cook, chop their own wood and do their own carpentry. Everything is recycled and they grow a quarter of their own food some inmates even commute off the island to jobs on the mainland using a ferry service operated by the inmates themselves.⁶⁰

⁵⁸ For a brief description on these facilities see Rutger Bregman, *Humankind: A Hopeful History*, trans. Elzabet Manton and Erica Moore (London: Bloomsbury Publishing, 2020), 326–30.

⁵⁹ *Ibid*, 328.

⁶⁰ *Ibid*, 327.

And most importantly, the inmates have access to all equipment necessary for such works, and get expert training in using them. Thus, the whole approach has been bodily and intercorporeally oriented. Of course, the establishment costs of such facilities and the per capita expenditure on inmates required may make the initiative appear to be not cost-effective. But that is not so, given the positive outcomes that this approach has produced both in economic and societal terms.⁶¹

Thus, it has proved to be highly recommendable an alternative,⁶² and therefore further social and scientific research and experimentations have to be promoted with the aim of furthering such a body-oriented rehabilitation strategy. What we need are more and more rehabilitation centers in place of prisons and the so called “correction facilities.” The whole infrastructure and ambiance of such existing facilities have to be revamped. It should be made reflective of the “existential plasticity” that’s been assured by the new theory of embodied human agency that we have adopted.

What we have explicated so far indicates what the philosophy of such an approach should be. However corrupted an individual maybe, put in the right environs as an embodied agent he or she has an intrinsic capacity for change, which begins at the level of the body. But it is not the “clockwork mechanism”⁶³ that we have to work on. Rather it is the “lived body” equipped with its existential plasticity embedded in the proper socio-cultural environs that we have to work on.

Maybe the rootedness of values in the body and its environs is not so obvious a fact and the proposition that we are making is only a tentative one. But we can’t deny it unless it is given a chance to prove or disprove itself. And given the plight of the reformative strategies focused on the “mind,” it’s high time that we gave this alternative a try. We have to make sure that such a chance of transformation is given to every human in conflict with the law, irrespective of his/her background and criminal history.

The taste of a dignified and productive life at the level of the body and through it a chance for transforming oneself to become part of a constructive “inter corporeality” called society is what the offender has to be ensured of. Permanent facilities for this kind of rehabilitation have to be established in every country. We have seen that in Norway such facilities are common, maybe thanks to the good economic stature of the country. I would suggest that every country – without exception – should strive towards establishing at least some such pilot facilities, as the socio-economic conditions prevalent may permit. Such small efforts collectively would indeed pilot mankind towards the creation of a better world.

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⁶¹ See *ibid*, 329–30.

⁶² In fact, in the US, this model has inspired such a reformation in the North Dakota prison. See *ibid*, 344–46.

⁶³ The disastrous implications of this approach have been pictured with a touch of humour in Stanley Kubrik’s classic movie “A Clockwork Orange” (1971).

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Шива Рахман. Людська природа – втілена феноменологічна перспектива

Анотація. У статті здійснено аналіз поняття “природа людини” з соціально-історичної точки зору. Грунтуючись на цьому аналізі, показано, наскільки недосконалою є концепція “розумної людини,” яку підтримують правові системи в усьому світі, а також наскільки ця концепція застаріла та наскільки несправедливою вона була щодо екзистенційної реальності втіленої людської діяльності.

Після цього зроблено спробу виявити іншу схему такої діяльності, спираючись на екзистенціально-феноменологічну традицію (зокрема на творчість французького феноменолога Моріса Мерло-Понті), що вона являє собою радикальний перегляд поняття “розумна людина,” оскільки відмовляється від традиційної дихотомії “розум/тіло” та розглядає людину в її цілісності як агента тілесної діяльності і в такий спосіб проливає світло на деякі проблеми кримінального права, зокрема мету покарання.

Питання, яке розглядається у статті останнім, однак є ключовим, полягає в тому, якій кінцевій меті має служити нормативність – відплаті чи виправленню? У світлі перегляду поняття людської діяльності запропоновано також новий погляд на поняття людської гідності як такої, що вкорінена в тілесності та між-тілесності, а відтак, передбачає тілесно-орієнтовану стратегію реабілітації. Стверджується, що кожна людина, яка перебуває в конфлікті з правом, заслуговує на можливість гідного та продуктивного життя на рівні тілесності, що надасть людині шанс на позитивну трансформацію та перетворення на складову конструктивної між-тілесності, яку ми називаємо суспільством. У цілому ж, на думку автора, ці відносно невеликі колективні зусилля із забезпечення соціально-економічних умов гідного тілесного життя засуджених сприятимуть створенню кращого світу.

Ключові слова: людська природа; розумна людина; *cogito*; втілена діяльність; “живе тіло.”

Шива Рахман. Человеческая природа – воплощенная феноменологическая перспектива

Аннотация. В статье представлен анализ понятия “природа человека” с социально-исторической точки зрения. Основываясь на этом анализе, показано, насколько несовершенна концепция “разумного человека,” поддерживаемая правовыми системами во всем мире, а также насколько эта концепция устарела и насколько несправедливой она была по отношению к экзистенциальной реальности воплощенной человеческой деятельности. После этого предпринята попытка выявить иную схему такой деятельности, опираясь на экзистенциально-феноменологическую традицию, которая представляет собой радикальный пересмотр понятия “разумный человек” и тем самым проливает свет на некоторые проблемы уголовного права. Ввиду такой переориентации понятия человеческой деятельности вопрос, который рассматривается в статье последним, заключается в том, какой цели должна служить нормативность в конечном счете – возмездью или исправлению?

Ключевые слова: человеческая природа; разумный человек; *cogito*; воплощенная деятельность; “живое тело.”

Shiva Rahman. Human Nature – An Embodied Phenomenological Perspective

Abstract. The paper attempts an analysis of the notion of “human nature” from a socio-historic perspective. Based on this analysis it shows how flawed is the concept of “reasonable man” that’s been upheld by the legal systems all over the world. In this effort, it points out how obsolete this conception is, and how unfair has this been to the existential reality of embodied human agency. After this, it ventures on to bringing to light a different scheme of such agency available in the existential

phenomenological tradition that is capable of revolutionizing the notion of “reasonable man” and thereby enlightening criminal jurisprudence. And in view of such a re-orientation of the notion of human agency, the question that is addressed lastly in the paper is, what cause should the normative serve ultimately – retribution or reformation?

Keywords: human nature; reasonable man; *cogito*; embodied agency; “lived body.”

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