Ought to Be, Science and Being in Moral Philosophy and Legal Theory: Between Mikhail Bakhtin and Hans Kelsen / *Dever ser, ciência e ser na filosofia moral e na teoria jurídica: entre Mikhail Bakhtin e Hans Kelsen*

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ABSTRACT

In this text, we build dialogues between Mikhail Bakhtin's moral philosophy and Hans Kelsen's legal theory, analyzing the notions of ought to be, science, and being. The goals are to shed light on Bakhtin's (1999) legal foundation, from the perspective of moral philosophy as *philosophia prima*, which encompasses the philosophy of religion and the philosophy of law (Bakhtin, 1999; Simões, 2024); and to point out ethical considerations for the sciences, particularly for Law and Linguistics. The research is bibliographical, and the *corpus* consists, centrally, of the works *Toward a Philosophy of the Act* (Bakhtin, 1993) and *General Theory of Law and State* (Kelsen, 1949). Our conclusions point to Bakhtin's (1999) contributions, which appear to be authoritative for a perspective on the ought to be in the world of life; and for the debate on ethics in the sciences (Kelsen, 1949; Rajagopalan, 2011), particularly around the scientist's relationship with the ought to be (Bakhtin, 1999).

KEYWORDS: Ought to be; Legal science; Linguistic science; Mikhail Bakhtin; Hans Kelsen

RESUMO

Neste texto, construímos diálogos entre a filosofia moral de Mikhail Bakhtin e a teoria jurídica de Hans Kelsen, analisando os entornos das noções de dever ser, ciência e ser. Os objetivos são: lançar luzes sobre o fundamento jurídico de Bajtín (1997), na perspectiva da filosofia moral como prima filosofia, que abarca a filosofia da religião e a filosofia do direito (Bajtín, 1997; Simões, 2024); e apontar considerações éticas para as ciências, particularmente para o Direito e a Linguística. A pesquisa é bibliográfica e o corpus é constituído, centralmente, pelas obras Hacia una filosofía del acto etico *(Bajtín, 1997) e* Teoria geral do Direito e do Estado *(Kelsen, 1990). Nossas conclusões apontam para as contribuições de Bajtín (1997) que parecem autorais para uma perspectiva do dever ser no mundo da vida; e para o debate da ética nas ciências, particularmente em torno da relação do cientista com o dever ser.*

PALAVRAS-CHAVE: Dever ser; Ciência jurídica; Ciência linguística; Mikhail Bakhtin; Hans Kelsen

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Introduction

Bakhtin's notion of the *active* subject (Bakhtin, 1990)[1] is based on moral philosophy (Bakhtin, 1999),[2] in which man's ethical action is conceived in the obligation, the duty, *to form*. It is man's *activism of form* (Bakhtin, 1990).[3] Form implicates the singularity of life, insofar as each human body is a unique center for the irradiation of values (Bakhtin, 1999).[4] Every individual operates with *participatory-performative* thinking and the answerable act is the expression of a bilateral answerability: moral answerability, with which the *singular fact of form* takes place, and specialized answerability, with which the act becomes objective in the *tendency towards infinity of semantic content* and the *multiple valuation and restlessness of meaning* (Bakhtin, 1999).[5]

In the context of the singular fact of form, it is possible to circumscribe categories that, developed in dialogue with Kantism, phenomenology and philosophies of life (cf. Simões, 2024), point to Bakhtin's (1999) contributions to the *philosophy of law* and the *philosophy of language.*[6] Authors (Liapunov,[7] 1999; Brandist, 2012)[8] have observed the relationship between Mikhail Bakhtin's moral philosophy and the philosophy of law and legal theory. This Bakhtinian approach can be identified in the work Toward a philosophy of the act (Bakhtin, 1999),[9] in which the author presents the foundations of a phenomenological method, in which moral philosophy is the first philosophy. The notion of an answerable, bilateral act is central (Bakhtin, 1999)[10] and language (language-discourse) is the expression of the act in its entirety. There, science is questioned from an

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[1] BAKHTIN, Mikhail. Author and Hero in Aesthetic Activity. *In*: BAKHTIN, M. *Art and Answerability*: Early Philosophical Essays by M. M. Bakhtin. Edited by Michael Holquist and Vadim Liapunov, translated with notes by Vadim Liapunov, supplement translated by Kenneth Brostrom. Austin, TX: University of Texas Press, 1990. pp.4-256.

[2] BAKHTIN, Mikhail. *Toward a Philosophy of the Act*. Translation and notes Vadim Liapunov. 3. ed. Austin: University of Texas, 1999.

[3] For reference, see footnote 1.

[4] For reference, see footnote 2.

[5] For reference, see footnote 2.

[6] For reference, see footnote 2.

[7] LIAPUNOV, Vadim. Translator's preface. *In*: KELSEN, Hans. *General Theory of Law and State*. Translation Andres Wedberg. 3. ed. Cambridge: Harvard University, 1949.

[8] BRANDIST, Craig. The Hero at the Bar of Eternity: the Bakhtin Circle's Juridical Theory of the Novel. *Economy and Society*, v. 30, n. 2, p. 208–228, 2001. https://doi.org/10.1080/03085140120042280.

[9] For reference, see footnote 2.

[10] For reference, see footnote 2.

ethical point of view (Bakhtin, 1999;[11] Simões, 2024), regarding to the *scientist's relationship with ought-to-be and being*.

The movement of the sciences, particularly in Law (Kelsen, 1949;[12] Rabenhorst, 2005) and Linguistics (Rajagopalan, 2011), to describe things as they are, hegemonically ignores the political and is therefore an ethically indifferent movement. To ignore the political is to ignore the ought-to-be, in indifference to *life*, in the consideration that the singular fact of form is a *given* (being) and a *planted* (ought-to-be) in the world (Bakhtin, 1999).[13] The Austrian Hans Kelsen, particularly in his *General Theory of Law and State*, lays the foundations for legal science, for a pure theory of law, which does not imply pure law, but whose method aims to be axiologically neutral (Rabenhorst, 2005). "Kelsen follows a basic article of the analytical theory of law outlined by J. Austin and J. Bentham, namely that there is no correlation between *law as it is and law as it ought to be*" (Rabenhorst, 2005, p. 121; author's highlights, our translation).[14]

This movement is also happening in linguistics. In pragmatics, Rajagopalan (2003, 2011) discusses linguistic policies and the ethical issue. The author discusses the relationship between being and ought-to-be, as an opposition that has been dealt with by a lengthy philosophical tradition. In addition, Rajagopalan (2003) discusses the ethical context in which *natural* languages are conceived; and he discusses the linguist's position of ignoring the sphere of ought in order to focus on the sphere of being: 'this is a matter of principle, since modern linguists make a point of saying that they are dedicated only to *describing* linguistic behavior on the part of the speakers of a language, never *prescribing* what is right and wrong' (Rajagopalan, 2011, p. 122; emphasis added, our translation).

In this text, we built connections of meaning around the notions of ought-to-be, theory and being, developed in the works *Toward a Philosophy of the Act* (Bakhtin, 1999)[15] and *General Theory of Law and State* (Kelsen, 1949). The research is of a documentary-bibliographical nature; the corpus consists, centrally, of the aforementioned

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[11] For reference, see footnote 2.
[12] KELSEN, Hans. *General Theory of Law and State*. Translation Andres Wedberg. 3. ed. Cambridge: Harvard University, 1949.
[13] For reference, see footnote 2.
[14] In Portuguese: "Kelsen segue um artigo de base da teoria analítica do direito esboçada por J. Austin e J. Bentham, a saber, o de que não existe nenhuma correlação entre o direito tal como ele é e o direito tal como ele deveria ser."
[15] For reference, see footnote 2.

works by Bakhtin (1999)[16] and Kelsen (1949).[17] Secondly, we have used other works by Bakhtin (1981,[18] 1990),[19] and other authors from the fields of *Law* and *Linguistics*: Rabenhorst (2005) and Rajagopalan (2011, 2003). Methodologically, we have operated on the principle of the *phenomenology of answerability* and of *speaking with words* (Bakhtin, 1999,[20] 1981;[21] Simões, 2024), through the dialogues woven between Bakhtin (1999)[22] and Kelsen (1949).[23] The objectives are: 1. to shed light on the juridical foundation of Bakhtin's (1999) philosophy,[24] from the perspective of *moral philosophy* as *prima philosophia*, which encompasses the philosophy of religion and the philosophy of law (Bakhtin, 1999;[25] Simões, 2024); 2. to point out ethical considerations for the sciences, particularly of Law and Linguistics.

Our results show that Kelsen (1949)[26] and Bakhtin (1999)[27] start from the common movement in which the ought-to-be is conceptualized in the context for the notion of norm. However, Bakhtin (1999)[28] places the primacy of the historically concrete ought-to-be in relation to the ought-to-be that presents itself as the meaning of a norm (Kelsen, 1949).[29] The ought-to-be, says Bakhtin (1999),[30] is not to be found in the universal and semantic judgement itself, nor even in theoretical consciousness, but in the individual's morally orientated consciousness, in the constitution of the fact, in which the act is irreversible, irretrievable and irremediable. In these terms, for Bakhtin (1999),[31] the place of science/cognition is not disconnected from the dimension of values, and therefore refers to the ought-to-be as man's orientation in the event of being.

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[16] For reference, see footnote 2.
[17] For reference, see footnote 12.
[18] BAKHTIN, Mikhail. Discourse in the Novel. *In*: BAKHTIN, Mikhail. *The Dialogic Imagination*: Four Essays. Translation Michael Holquist and Caryl Emerson. Austin: U of Texas Press, 1981. p. 259–422.
[19] For reference, see footnote 1.
[20] For reference, see footnote 2.
[21] For reference, see footnote 17.
[22] For reference, see footnote 2.
[23] For reference, see footnote 12.
[24] For reference, see footnote 2.
[25] For reference, see footnote 2.
[26] For reference, see footnote 12.
[27] For reference, see footnote 2.
[28] For reference, see footnote 2.
[29] For reference, see footnote 12.
[30] For reference, see footnote 2.
[31] For reference, see footnote 2.

Thus, we conclude that Bakhtin (1999)[32] is inscribed around a juridical foundation, surrounding the notions of ought-to-be and being, presenting moral philosophy as a philosophy that answers philosophical questions as its principle (first philosophy); and contributes with a conception of ought-to-be as a form of active behavior on the part of the individual, in terms of *the moral disposition towards the other*. In these terms, it is possible to situate ethical matters for the sciences, in particular for Law and Linguistics, in the sense of the relationship between the object of research and intonation.

1 The Ought-to-Be in Mikhail Bakhtin and Hans Kelsen

Kelsen (1949)[33] presents his conception of ought based on the notion of *norm*, understanding that the command of a law can be described as the will of the legislator. Bakhtin (1999)[34] explains: "A norm is a special form of the free volition of one person in relation to others, and, as such, it is essentially peculiar only to law (laws) and religion (commandments)" (Bakhtin, 1999, p. 24).[35] It is not will in the psychological sense; it happens in a way that is 'quite similar to the situation when one individual wants another individual to behave in such-and-such a way and expresses this will in the form of a command' (Kelsen, 1949, p. 35).[36] However, the legal rule is de-psychologized, that is, because of it 'one "shall," one "ought" to observe the conduct prescribed by the 'law' (Kelsen, 1949, p. 35).[37] He continues: "A 'norm' is a rule that expresses the fact that someone ought to act in a certain way, without implying that anybody actually "want that person to act that way" (Kelsen, 1949, p. 35).[38] For Bakhtin (1999),[39] the mandatory nature of a norm is not determined by the semantic content of the norm, but instead

> from the standpoint of the actual authoritativeness of its source (free volition) or the authenticity and exactness of transmission (references to laws, scriptures, canonical texts, interpretations, verifications of authenticity or-more fundamentally and essentially the foundations of

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[32] For reference, see footnote 2.
[33] For reference, see footnote 12.
[34] For reference, see footnote 2.
[35] For reference, see footnote 2.
[36] For reference, see footnote 12.
[37] For reference, see footnote 12.
[38] For reference, see footnote 12.
[39] For reference, see footnote 2.

lite, the foundations of legislative power, the proven divine inspiration of scriptures) (Bakhtin, 1999, p. 24).[40]

Bakhtin (1999)[41] understands the place of effective authoritativeness in relation to the expression of the will of the one who makes the norm, referring to what is in the sphere of law and religion. In this sense, the author believes that "the problem of an authoritative free volition (that creates a norm) is a problem in the philosophy of law, in the philosophy of religion, and constitutes one of the problems of a real moral philosophy as a fundamental science-as a first philosophy (the problem of the lawgiver)" (Bakhtin, 1999, p. 24).[42] Based on Austin, Kelsen believes that the command of a law results from its force of obligation, that is, from the fact that the law is a norm: "No one can, properly speaking, command oneself. However, it is possible for a norm to be created by the same individuals who are bound by that norm" (Kelsen, 1949, p. 36).[43] In this sense, there is the one who commands and the one who is commanded, so the norm is impersonal, as it is incompatible to identify the one who commands with the one who is commanded. Approaching ought-to-be and norm as correlates, Kelsen (1949)[44] explains:

> The ought simply expresses the specific sense in which human conduct is determined by a norm [...] A statement to the effect that something ought to happen is a statement about the existence and content of a norm, not a statement about natural reality, *i.e.* actual events in nature [...] if the norm says that a certain individual ought to behave in a certain way, then the norm is 'obligatory' for that individual. Only with the concept of norm and the related concept of 'ought' can we understand the specific meaning of the rules of Law (Kelsen, 1949, p. 37).[45]

And he continues:

> To say that a norm is valid for certain individuals is not to say that the individuals effectively conduct themselves in a certain way; because the norm is valid for these individuals even if they do not conduct themselves in such way. The distinction between 'ought' and 'is' is fundamental to the description of Law (Kelsen, 1949, p. 37).[46]

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[40] For reference, see footnote 2.
[41] For reference, see footnote 2.
[42] For reference, see footnote 2.
[43] For reference, see footnote 12.
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[46] For reference, see footnote 12.

Rabenhorst (2005) argues that Kelsen's distinction between being (*Sein*) and ought-to-be (*Sollen*) is imprecise:

> At the ontological level, Kelsen presents the dualism between being and ought-to-be as an opposition between two distinct "realities": nature on the one hand, and values on the other. However, the Austrian jurist gives us a very imprecise analysis of this ontological distinction. In fact, Kelsen presupposes this distinction, without actually justifying it (Rabenhorst, 2005, p. 124).[47]

And he continues:

> What Kelsen will do more clearly is to present this same ontological dichotomy between being and ought-to-be in a second sense, namely as a difference between the act of will that establishes the legal norm and its objective meaning. In fact, according to the *Pure Theory of Law*, the legal norm is the "signification of an act of will" through which a certain conduct is ordered, authorized, enabled or derogated from. Therefore, the legal norm is not to be confused with the act of will that establishes it. It is therefore an ought-to-be (*Sollen*), while such an act of will is only a being (*Sein*) (Rabenhorst, 2005, p. 124; emphasis added).[48]

In the perspective at hand, the ought-to-be is presented through the significance of an individual's act. Being is what naturally happens, in terms of an act of will. Other authors make progress in terms of the distinction between being and ought-to-be and come to realize that "the task of the science of law consists precisely in describing" the 'schemas of interpretation that are legal norms'" (Rabenhorst, 2005, p. 124).[49] This means that legal norms do not exist in terms of intrinsic elements of being, but through what the norms themselves present in terms of signification.

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[47] In Portuguese: "No nível ontológico, Kelsen apresenta o dualismo entre o ser e o dever-ser como uma oposição entre duas "realidades" distintas: a da natureza, por um lado, e a dos valores por outro. Porém, o jurista austríaco nos fornece uma análise por demais imprecisa de tal distinção ontológica. Na verdade, Kelsen pressupõe tal distinção, sem justificá-la propriamente."

[48] In Portuguese: "O que Kelsen fará com mais clareza é apresentar essa mesma dicotomia ontológica entre o ser e o dever-ser, num segundo sentido, a saber, como diferença entre o ato de vontade que instaura a norma jurídica, e a sua significação objetiva. Com efeito, segundo a Teoria Pura do Direito, a norma jurídica é a "significação de um ato de vontade" através do qual uma determinada conduta é ordenada, autorizada, habilitada ou derrogada. A norma jurídica não se confunde, portanto, com o ato de vontade que a instaura. Ela é, pois, um dever-ser (Sollen), enquanto tal ato de vontade é apenas um ser (Sein)."

[49] In Portuguese: "a tarefa da ciência do direito consiste precisamente em descrever" os 'esquemas de interpretação que são as normas jurídicas.'"

In criticism of Rickert, Bakhtin (1999)[50] puts forward his position regarding the conception of ought as a superior formal category: that ought can justifiably be based on "the actual presence of a given judgment in my consciousness" (Bakhtin, 1999, p. 4),[51] in specific historical conditions. The author believes that the ought-to-be exists as a judgement of universal validity (as meaning), and that this is necessary for the norm to become an *ought for me*. However, for Bakhtin (1999),[52] it is for a historically concrete duty, present in my consciousness, that the universal judgement exists. Referring to the "content/sense of a judgement" as part of the "objective theoretical unity of science," Bakhtin (1999)[53] states: "To hold a judgement to be true means to refer it to a certain theoretical unity, but this unity is far from being the singular historical unity of my life" (Bakhtin, 1999, p. 4).[54] And he continues: "The affirmation of a judgment as a true judgment is an assigning of it to a certain theoretical unity, and this unity is not at all the *unique historical unity of my life*" (Bakhtin, 1999, p. 4, emphasis added).[55]

Bakhtin (1999)[56] refers to the ethical act, which is expressed in the unrepeatable historical moment in which the individual finds themself. In this sense: "The ought is a distinctive category of the ongoing *performance of acts or deeds* […]; it is a certain attitude of consciousness, the structure of which we intend to disclose" (Bakhtin, 1999, p. 6; emphasis added). The author emphasizes that there are no moral norms that are valid in themselves but circumscribes the moral subject as the subject of a certain structure, which is neither psychological nor physical. It is the moral subject "he will know what is marked by the moral ought and when, or to be exact: by the ought as such" (Bakhtin, 1999, p. 6).[57] Kelsen (1949),[58] as we have seen, reminds us that what appears as obligation, as ought, does not occur in the psychological sphere of the volition:

> If the rule of law is a command, it is, so to speak, a de-psychologized command, a command which does not imply a "will" in a psychological sense of the term. The conduct prescribed by the rule of law is

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[50] For reference, see footnote 2.
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[58] For reference, see footnote 12.

"demanded" without any human being having to "will" it in a psychological sense (Kelsen, 1949, p. 35).[59]

However, distancing himself from the foundation defended by Kelsen (1949),[60] that the ought-to-be appears precisely as a normative signification, that is, at the level of a universal valid judgment, of the semantic content that expresses a norm, Bakhtin (1999)[61] believes that the content of the norm exists only for a concrete ought-to-be that exists in the consciousness of the individual. In fact, the Russian thinker is dedicated to arguing in defense of the perspective in which the ought-to-be refers to the historically concrete moment in which the individual finds themself.

Referring to a theoretical subject, a "theoretical *subjectum,*" Bakhtin (1999)[62] believes that this subject "had" to be "embodied" in every "real, actual, thinking human being, in order to enter [...] into communion with the actual, historical event of Being as just a moment within it" (Bakhtin, 1999, p. 6).[63] Bakhtin (1999)[64] continues his argument by stating that "to look for the actual cognitional act as a performed deed in the content/sense is the same as trying to pull oneself up by one's own hair" (Bakhtin, 1999, p. 7).[65] In this sense, it is not possible to find oneself in the theoretical world; in this world, I am oblivious of principle. Even in the face of advances regarding Kelsen's thinking (Rabenhorst, 2005), it is possible to observe the understanding of the ought as an element limited to the normative signification, that is, the semantic content of the norm.

When dealing with "ethical systems," Bakhtin (1999)[66] states that they are divided into *content-ethics* and *formal ethics* and presents objections to both systems. Content-ethics, says the author, "endeavors to find and to ground special moral norms that have a definite content-norms that are sometimes universally valid and sometimes primordially relative, but in any case universal, applicable to everyone" (Bakhtin, 1999, p. 22).[67] From this perspective, an act is ethical "when it is governed throughout by an appropriate moral

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[59] For reference, see footnote 12.
[60] For reference, see footnote 12.
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[66] For reference, see footnote 2.
[67] For reference, see footnote 2.

norm that has a definite universal content" (Bakhtin, 1999, p. 22).[68] Bakhtin (1999)[69] criticizes the perspective of the existence of special norms, in which ethics is conditioned to the semantic content of normative thinking and argues that the conscience of the human being has a moral disposition, which is "unknown" to content-ethics. Bakhtin[70] (1999) states: "No theoretical proposition can ground a performed act immediately, not even a thought-act, in its actual performedness. In fact, theoretical thinking does not have to know any norms whatever" (Bakhtin, 1999, p. 24).[71]

Bakhtin (1999)[72] also points out that the problem with content-ethics is "its universality - the assumption that the ought can be extended, can apply to everyone" (p. 25); and the author considers that: "The universality of the ought is a defect which is peculiar to formal ethics as well" (Bakhtin, 1999, p. 25).[73] Bakhtin (1999)[74] says that formal ethics gets it right insofar as it situates the meaning of the ought-to-be in consciousness but fails when it understands the ought as a category of theoretical consciousness, so that theorizing about the ought, it loses sight of the individual act. Bakhtin (1999)[75] is precise: "[…] the ought is precisely a category of the individual act; even more than that-it is a category of the individuality, of the uniqueness of a performed act, […] of its historicity, of the impossibility to replace it with anything else or to provide a substitute for it" (p. 25). And the Russian author sees the categorical imperative as being centered on the theorization of the law. "And that is exactly what Kant demands: the law, which applies a norm to my act or deed, must be justified as capable of becoming a norm of universal conduct" (Bakhtin, 1999, p. 26).[76] Following his critique of formal ethics, in the aspect of the theoretical sphere, Bakhtin (1999)[77] considers: "The principle of formal ethics is not the principle of an actually performed act at all, but is rather the principle of the possible generalization of already performed acts in a theoretical transcription of them" (p. 27).

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[68] For reference, see footnote 2.
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To present his proposal, in criticism of the formal and content ethical systems (cf. Simões, 2024), Bakhtin (1999)[78] defends a first philosophy as "the philosophy of unitary and once-occurrent Being-as-event" (Bakhtin, 1999, p. 27).[79] The author points out that even the semantic content is an abstraction "from the once occurrent actual act/deed and its author-the one who is thinking theoretically, contemplating aesthetically, and acting ethically" (Bakhtin, 1999, p. 27).[80] He continues: "It is only from within the actually performed act, which is once-occurrent, integral, and unitary in its answerability, that we can find an approach to unitary and once-occurrent Being in its concrete actuality. A first philosophy can orient itself only with respect to that actually performed act" (Bakhtin, 1999, p. 28).[81]

2 Law and Linguistics: Two Sciences, or Two Moments in a Scientist's Life

Kelsen presents the foundations for a legal science, that is, a "a science whose only purpose is the cognition of law, not its formation. A science has to describe its object as it actually is, not to prescribe how it should be or should not be from the point of view of some specific value judgments" (Kelsen, 1949, p. XIV).[82] The author states that the problem of values is a problem of politics, "concerns the art of government, an activity directed at values, not an object of science, directed at reality" (Kelsen, 1949, p. XIV).[83] Just as it is necessary to separate science from politics, it is necessary to separate legal science from natural science, because the object of legal science implies the behavior that ought to be and not the behavior that is (Kelsen, 1949).[84] This is behavior that is part of the randomness of natural reality and does not constitute a prescription or prediction. The legal object refers to a horizon of obligation, not in the sense of understanding what the law should be, but in the sense of understanding what the law is, in other words, describing the norm: "The specific subject of legal science is positive or real law in contradistinction to an ideal law, the goal of politics" (Kelsen, 1949, p. XIV).[85]

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[78] For reference, see footnote 2.
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Rabenhorst (2005) explains that, for Kelsen, there are two types of knowledge: that produced in the *causative sciences*, that is, in the natural sciences (physics, chemistry, etc.) and the social sciences (sociology, history); and that produced in the *normative sciences*, namely the sciences that describe norms, such as the science of Law. Rabenhorst (2005) states: "Even if norms are objective facts situated in time and space, they do not allow themselves to be apprehended by a cause-and-effect correlation. On the contrary, they require a specific principle of interpretation" (Rabenhorst, 2005, p. 126)[86] - called "imputation" by Kelsen (1949),[87] based on Kant. The *descriptive statement*, which is expressed as a proposition in the science of law, can be assessed from the vericonditional point of view: whether it is *true* or *false*. *Prescriptive statements*, on the other hand, being normative, are *valid* or *invalid*.

Kelsen (1949)[88] places the science of law as a normative science alongside Ethics, stating that the latter focuses on rights and duties, on the meaningful content of an ought-to-be, so that Ethics also operates with descriptive statements, but in its turn of *moral norms*. The science of Law thus focuses on *legal norms*: "Morality is distinguished from law by the fact that its norms, like legal norms, do not have the character of coercive acts" (Rabenhorst, 2005, p. 128). Law and Ethics being normative, they are both equally governed by imputation: by the signification of empirical facts (Rabenhorst, 2005). From the 1960s onwards, Kelsen advanced his studies in order to question the vericonditional conditions of descriptive statements. In this context, the author presented the concept that *being* and *ought-to-be* are two modes that can take on any and all content. This is how the author conceives the norm from the perspective of the *act of will*. In these terms, the descriptive statement of Linguistics can be questioned in terms of being vericonditional, from Kelsen's perspective (Kelsen, 1949).[89]

According to Kelsen (1949),[90] Linguistics is a science, that is, it describes things as they are and does not state how things ought to be. In these terms, the science that studies the object of *language* is not political, because it is not concerned with the values

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[86] In Portuguese: "ainda que as normas sejam fatos objetivos situados no tempo e no espaço, elas não se deixam apreender por uma relação de causa e efeito. Ao contrário, elas exigem um princípio de interpretação específico."
[87] For reference, see footnote 12.
[88] For reference, see footnote 12.
[89] For reference, see footnote 12.
[90] For reference, see footnote 12.

surrounding language, but rather with reality.[91] Rajagopalan (2011) points out the long philosophical tradition of distinguishing between the verbs be and ought to and refers to the "ambiguity inherent in the use of rule,"[92] based on Searle (*qtd. in* Rajagopalan, 2011), in relation to the constitutive rule (football match, for example), and the regulatory rule (traffic law, for example). In theory, says Rajagopalan (2011), this distinction between rules fits well, but in practice it is problematic. "When Searle himself proposed the distinction, he stated that, in his view, the rules that regulate linguistic behavior are of the constitutive order" (Rajagopalan, 2011, p. 124).[93] In this statement, Searle "is simply withdrawing an old claim of 'modern' linguists [...], who since the reconstitution of the discipline as a 'modern science' have made a point of vaunting their infamous scientific neutrality in opposition to the traditional grammarians" (Rajagopalan, 2011, p. 124).[94]

Constitutive rules refer to descriptive grammar; regulatory rules refer to prescriptive grammar. But "it's not easy to make" the distinction: constitutive/descriptive on one side, regulative/prescriptive on the other. Many "of the rules in both descriptive and prescriptive grammar have to do with rhetoric [...] they constantly make us wonder where grammar stops and rhetoric begins" (Rajagopalan, 2011, p. 125).[95] Linguists, like traditional grammarians, choose groups of speakers to use for description, "although traditional grammarians don't hide their preferences, whereas modern linguists prefer to hide or disguise them by means of terminological prestidigitation" (Rajagopalan, 2011, p. 125).[96] He continues: "so-called modern grammar, under the aegis of so-called modern linguistics, prescribes its preferred uses and norms in a veiled manner and, worse still,

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[91]In general, it can be said that Linguistics does not present itself as a normative science, that is to say, a science that describes linguistic prescriptions. But it is possible to observe movements in linguistic historiography that have operated in the critical description of what Traditional Grammar has done historically (Vieira, 2018). Also, through the lens of Kelsen (1949), we can see that an *Ideal Language* is presented in Vieira and Faraco (2023), in *Gramática do português brasileiro escrito* [Grammar of the Written Brazilian Portuguese], in an explicit political role, from the sphere of values (cf. Kelsen, 1949), regarding language.

[92] In Portuguese: "ambiguidade inerente ao uso de regra."

[93] In Portuguese: "O próprio Searle, quando propôs a distinção, afirmou que, em sua ótica, as regras que regulam o comportamento linguístico são da ordem constitutiva."

[94] In Portuguese: "simplesmente está retirando uma velha reivindicação dos linguistas 'modernos' [...], que desde a reconstituição da disciplina como uma 'ciência moderna' fizeram questão de alardear sua famigerada neutralidade científica em oposição aos gramáticos tradicionais."

[95] In Portuguese: "não é fácil de fazer;" "das regras tanto na gramática descritiva como na gramática prescritiva têm a ver com a retórica [...] elas nos fazem perguntar constantemente onde para a gramática e começa a retórica."

[96] In Portuguese: "com a diferença de que os gramáticos tradicionais não escondem suas preferências, ao passo que os linguistas modernos preferem escondê-las ou disfarçá-las por intermédio de uma prestidigitação terminológica."

covers them up by invoking the authority and prestige of science" (Rajagopalan, 2011, p. 126).[97]

For Bakhtin (1999),[98] science is a moment of ethics, since it is a moment of life, of answerability. In this context, Bakhtin (1999)[99] - in his presentation of a phenomenological method whose object is the architectonics and its concretely valid opposition (I-other) - situates the relation between the *object of the research*[100] and the *researcher's intonation*. The researcher's tone when conducting the research can be that of desiring to be publicly known, for example (Bakhtin, 1999).[101] No rationality/cognition, such as that proposed by Kelsen (1949)[102] for a science of law or that expressed in linguistic science (Rajagopalan, 2011), is detached from the emotional-volitional tone and expressiveness of the author.

Rajagopalan (2011) speaks of rhetoric; based on Bakhtin (1981),[103] we can speak of responsiveness, and from a perspective of intentionality in which the relation with the object takes place in the refraction of the words of others (Bakhtin, 1981).[104] Grammars, says Bakhtin (1981),[105] are linguistic systems, meaning that they are creative forces operating on social heteroglossia and language variations (Bakhtin, 1981).[106] There is no single plan of confrontation of these languages (Bakhtin, 1981;[107] Rajagopalan, 2011), so that a single national language exists only as a linguistic system (Bakhtin, 1981).[108] The linguist and the philologist, since ancient priests, have been at the service from the strange and sacred word to the profane (Vološinov, 1973),[109] presented in the form of a hard, rigid

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[97] In Portuguese: "a gramática dita moderna, sob a égide da linguística, também dita moderna, prescreve seus usos e normas preferidos de maneira velada e, o que é pior, acoberta-os, invocando a autoridade e prestígio da ciência."
[98] For reference, see footnote 2.
[99] For reference, see footnote 2.
[100] The object of Bakhtin's (1999) moral philosophy is the *architectonics*, which finds its method in phenomenology.
[101] For reference, see footnote 2.
[102] For reference, see footnote 12.
[103] For reference, see footnote 16.
[104] For reference, see footnote 16.
[105] For reference, see footnote 16.
[106] For reference, see footnote 16.
[107] For reference, see footnote 16.
[108] For reference, see footnote 16.
[109] VOLOŠINOV, Valentin. *Marxism and the Philosophy of Language*. Translation Ladislav Matejka and I. R. Titunik. Cambridge/Massachusetts/London: Harvard University Press, 1973.

core, containing the growing heteroglossia (Bakhtin, 1981).[110] This is the horizon in which descriptive and prescriptive grammars are found.

In other words, science (data/cognition: being) and politics (planted/value: ought to be) are constituted in a mutual determination, in which the planted implies the first orientation: it is life in the principle, for Bakhtin (1999).[111] Reason is a moment in the life of those who operate with values. "The one who describes does so while being part of the world being described" (Simões, 2024, p. 84).[112] The fact is not a given, but it is a *given and planted*. In other words, the form is never conceived outside of expressiveness, as if it were an isolated fact in the world of cognition, but it is a fact that is planted in the world through the subject's formative activism (Bakhtin, 1990).[113] Man is an individual with a *moral disposition* towards the other: it is in this condition that form is conceived in the active process required by meaning and determined by the consciousness of moral orientation (Bakhtin, 1999).[114] Form is an elaboration of the cognitive and valuative aspect of man, who plants constantly, uninterruptedly, expressing the *complex ethical act* that is life (Bakhtin, 1999).[115]

Rajagopalan's pragmatism (2011), based on Searle and authors from language policy studies, ignores the perspective of a moral disposition towards the other, perhaps because of the individualism that pragmatism incurs. In fact, Rajagopalan (2011) significantly advances the discussion on ethics and the politics of language, implicating questions for the sciences. But we must see the substance of Bakhtin's (1999) phenomenology,[116] in which moral philosophy is principled, in relation to Searle's analytic philosophy (*qtd. in* Rajagopalan, 2011). Only in the dimension in which the other is placed as a condition for the oneness of the self can an ethical foundation be visualized (Bakhtin (1999).[117] The other, I *encounter* in the world, in the way that the other is in the eternal truth of the world, and that the encounter requires form as the active proceeding of meaning (Bakhtin (1999).[118] The "world is organized, for my participative

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[110] For reference, see footnote 16.
[111] For reference, see footnote 2.
[112] In Portuguese: "Aquele que descreve o faz sendo parte do mundo que é descrito."
[113] For reference, see footnote 1.
[114] For reference, see footnote 2.
[115] For reference, see footnote 2.
[116] For reference, see footnote 2.
[117] For reference, see footnote 2.
[118] For reference, see footnote 2.

consciousness and around me, as a concrete and unique architectonic whole" (Simões, 2024, p. 129). The supreme architectonic principle is the opposition between the self and the other, in which there is "a biplane character of the axiological determination of the world: for oneself and for the other" (Simões, 2024, p. 148).[119] My place and the place of the other in the world are irreplaceable, and the ordering of the form thus points to birth and death as the limits of the individual's life, which is a lapse in time, a moment in the world. There is the intuited tone of death and the constitution of emotional and volitional tones, which determine, in what is planted (ought to be), the event of being (Bakhtin (1999).[120]

In his analysis of rationalism as a current of thought, Bakhtin (1999)[121] criticizes a notion of *hypothesis* and states that "the answerable act is, after all, the actualization of a decision-inescapably, irremediably, and irrevocably" (Bakhtin, 1999, p. 28).[122] The author understands that the act encompasses a broad context, and the integrity of the act has nothing subjective or psychological about it, to the extent that the rationality of the act is not in question for Bakhtin's (1999)[123] first philosophy, but as a moment of the answerability of the act. Faced with the notion of the answerability of the act, Bakhtin (1999)[124] situates rationality in a metaphorical relation: like the glimmer [rationality] of a lamp before the sun [answerability]' (p. 29). Bakhtin (1999)[125] explains that "in its answerability, the act sets before itself its own truth […] that unites both the subjective and the psychological moments" (p. 29), namely: *the moment of general signification* and the *moment of individual realization*. "This unitary and unique truth [*pravda*] of the answerably performed act is posited as something-to-be attained *qua* synthetical truth [*pravda*]" (Bakhtin, 1999, p. 29).[126]

In the moral disposition of the scientist towards the other, it is necessary to think about the relation between research and fact. The linguist's and jurist's act of description presupposes the ought as a moral orientation of conscience. For Bakhtin (1999),[127] this is

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[119] In Portuguese: "mundo se organiza, para a minha consciência participativa e ao redor de mim, como um concreto e único todo arquitetônico."
[120] For reference, see footnote 2.
[121] For reference, see footnote 2.
[122] For reference, see footnote 2.
[123] For reference, see footnote 2.
[124] For reference, see footnote 2.
[125] For reference, see footnote 2.
[126] For reference, see footnote 2.
[127] For reference, see footnote 2.

not the case of the ought-to-be (of the semantic content in traditional grammar) historically rejected by linguists (Rajagopalan, 2011), and it is not the case of the ought-to-be (of the semantic content in law) which jurists deal with as they deal with a primary norm (Kelsen (1949).[128] Following Bakhtin (1999), we are talking about the historically concrete ought that is constituted exactly in the consciousness of the individual. Thus, the linguist's description of the thing-being of a language (Bakhtin, 1981),[129] and the jurist's description of the fact that it is a prescription, are always the description of the given-implanted. The fact results from ethical action, in the orientation of politics/value, of the ought-to-be, from one individual to another, in the singular and unrepeatable event of being.

Conclusions

In the dialogues that have been conducted here, we have observed that Bakhtin (1999)[130] and Kelsen (1949)[131] start from a common interpretation in relation to the ought-to-be. This centrally implies the notion of norm, in which authoritarian volition creates the norm; this is therefore the expression of the will from the subject of power: the legislator. In this sense, the dimension of obligation appears, which does not imply a desire and a psychic subject, but a duty and a moral subject.

However, the authors differ, insofar as Bakhtin (1999)[132] places the ought-to-be in the context of a norm that exists not only as semantic content, but as a historically concrete ought-to-be of the individual conscience, which is morally orientated. Bakhtin (1999)[133] says that what is at stake regarding the ought-to-be is the concrete historicity of conscience, and not just its meaning.

We have seen that Kelsen (1949)[134] limits himself to placing the ought-to-be in the signification, that is, in the judgement of universal validity, in the theoretical element, given by norm (Bakhtin,1999).[135]

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[128] For reference, see footnote 12.
[129] For reference, see footnote 16.
[130] For reference, see footnote 2.
[131] For reference, see footnote 12.
[132] For reference, see footnote 2.
[133] For reference, see footnote 2.
[134] For reference, see footnote 12.
[135] For reference, see footnote 2.

Bakhtin (1999)[136] argues centrally from the critique of the content and formal ethical systems, defending the perspective of a moral disposition towards the other, which is unknown to both systems. In content ethics, the goal is to define a universal content as common, as if a postulate could be the basis for an act. In formal ethics, particularly in Kant and his categorical imperative, the ought-to-be is situated in theoretical consciousness (Bakhtin, 1999).[137]

Situating the ought-to-be as a phenomenon of consciousness, Bakhtin (1999)[138] sets for the scientist the condition of always operating morally in rationality, in relation to the object. The scientist is a moment in the world because he/she is a life, who occupies a place in life, and is answerable for his/her actions, in which acts of research, exemplified in Linguistics and Law, are moments of answerability. Reason is to answerability as a lamp is to the sun. This highlights the contradiction in the scientist's discourse of neutrality in relation to the object of their research.

What is planted in the world when we theorize with this or that tone, with this or that decision/choice for the composition of the object of research? We need to see that the Law is not only making choices in relation to the norms that are described, but it can also be indifferent to life if it ignores the historically concrete ought-to-be of individual consciousness, in favor of the description of universal judgement or the localization of the ought in theoretical consciousness, in which there is no room for me (Bakhtin, 1999).[139]

Meanwhile, Linguistics not only chooses what it represents and theorizes as language, but also needs to clarify the ethical and political foundations for the act of research. This is an answerable act, determined by the ought-to-be, by the obligation to exist, and necessarily implies affecting the other that exists in the world, through the moral disposition to be actively creative of form.

Science is an area of meaning, and it acts in the semantic determination of culture in the answerably bilateral encounter between culture and life. A science that is not indifferent to life is a science that problematizes an ethical foundation from the principle.

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[136] For reference, see footnote 2.
[137] For reference, see footnote 2.
[138] For reference, see footnote 2.
[139] For reference, see footnote 2.

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Research Data and Other Materials Availability

The contents underlying the research text are included in the manuscript.

Reviews

Due to the commitment assumed by *Bakhtiniana*. Revista de Estudos do Discurso [Bakhtiniana. Journal of Discourse Studies] to Open Science, this journal only publishes reviews that have been authorized by all involved.

Review I

Title's adequacy to the article: The title "Mikhail Bakhtin's moral philosophy in dialog with Hans Kelsen's legal theory: paths towards a linguistic theory of law" seems interesting to me, but it raises a certain concern: can we conclude that the dialog between Bakhtin and Kelsen, as proposed in the text, does in fact lead to a theory of law linguistic? The idea of a linguistic theory of law seems to me to have been little explored. Perhaps the term "theory" used here begins an interlocutory assumption of interpretation with enormous expectations about the text, in terms of the theoretical field itself and its epistemological foundations. I suggest that you review the term "theory of law" and recommend that you perhaps use something like: ...paths for a reflection on (or an analysis of) linguistic law. 2. Explanation of work's aim and coherence of its development in the text: The work presents the following definition as its aim: "Our objective is to understand the jusphilosophical complexities that are instituted in Bakhtin's phenomenology of the ethical act, insofar as it sets on the agenda of knowledge a perspective of moral philosophy as first philosophy." Taking the aforementioned proposal as a starting point, there is a difficulty in clearly linking the explained aim, the title of the work and the coherence of this aim with the textual development, since the idea of Bakhtin's "jusphilosophical complexity," which would make the dialogue with Kelsen's work possible for a path towards a supposed "theory of linguistic law," seemed to me to be little explored as a dialogical element of analysis. Furthermore, the idea of how this complexity would support the notion of the aforementioned path in the "theory of linguistic law" as presented in the title of the article did not seem clear to me. There seems to be a three-dimensional intentionality in the text (Bakhtin-Kelsen-Linguistic Law) that could be analyzed in a more robust and interconnected way, but there is also an effort to make it explicit, albeit in separate sections or topics. It would be interesting to explain what is meant by "jusphilosophical complexities" in this context of the path of linguistic law and to elaborate on this concept by means of quotations from both thinkers who are part of the corpus of analysis in this research (Bakhtin and Kelsen) so that ideas can better intersect and, moreover, to prove the nature of this possible dialogue in order to direct the analysis of linguistic law. It is important to point out that there is considerable effort put into demonstrating the philosophical thinking of each of the authors that have been

analyzed, but this explanation is not always connected to the effective dialogue between the authors or to the intersection of ideas that is intended to be approached for the path of linguistic law. For example, in the topic "Theoretical world, ought-to-be and being in Mikhail Bakhtin's moral philosophy: a dialogue with Hans Kelsen," even though the intention is to first analyze ought-to-be and being in Mikhail Bakhtin's moral philosophy, there is a proposal in dialogue with Kelsen interspersed from the subtitle that I felt was little explored. In this way, I have tried to point out a few moments in the body of the text (which is attached as an appendix) with the intention of contributing for the recovery of elements from Kelsen's work. No doubt there is a greater effort analyzing Bakhtin's thought in this section of the dialogue involving the aforementioned "theoretical world."

Finally, although there is a warning in the concluding remarks, mentioning "It was not our aim in this text to circumscribe in a more systematic way the foundations of a theory of linguistic law in terms of understanding the historical paths of legal norms formulation and the establishment of legal frameworks...," it seems that the wording of the objective, as it is presented at the beginning of the text, is incomplete or disconnected from the whole of the work. As a suggestion, perhaps this statement in the conclusion could be incorporated into the objective, at the beginning of the text, with a new wording, because it seems a little strange to me to conclude a scientific work on linguistic law with a statement that begins with a denial of elements that make up that same law. 2. Conformity with the proposed theory, demonstrating up-to-date knowledge of the relevant bibliography: The work is in line with the proposed theory and presents a good review of the literature pertinent to the analysis. Originality of the reflection and contribution to the field of knowledge: The work is original and makes an important contribution to linguistic studies in its multidisciplinary approach, especially with the legal sciences. Clarity, correctness and suitability of language for a scientific paper: The work is well written and complies with the linguistic standards required of a scientific paper. I would only suggest revising the repetition of terms, such as the expression "a *partir de*," to another category that is appropriate to the meaning used in the text.

I recommend reviewing the spacing between paragraphs to check if they are in line with the journal's regulations. In addition, I suggest reviewing the textual dimension that makes up the nature of some paragraphs that seemed too long to me, which could make it difficult to understand their ideas. This is the case, for example, with the paragraph that begins: "*Despite pointing to a post-positivist foundation of law, Abreu (2016), in his argument on normative interpretation [...]*". MANDATORY CORRECTIONS [Revised]

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Reviewed on May 23, 2024.

Review III

Title's adequacy to the article: After the second submission of the corrected and revised text to *Bakhtiniana*, the article now entitled "Ought to Be, Science and Being in Moral Philosophy and Legal Theory: between Mikhail Bakhtin and Hans Kelsen" seems appropriate to the proposed theme, since it seeks to discuss the movement of the

sciences, particularly Law (Kelsen, 1949; Rabenhorst, 2005) and Linguistics (Rajagopalan, 2011). In addition, it problematizes how this movement ignores the political and therefore becomes ethically indifferent. The article proposes a discussion regarding the idea that to ignore the political is to ignore the ought to be, in indifference to life, considering that the singular fact of form is a given (to be) and a planted (ought to be) in the world (Bakhtin, 1999). In the text, relations of meaning were built around the notions of ought to be, theory and being, developed in the works *Toward a Philosophy of the Act* (Bakhtin, 1999)[140] and *General Theory of Law and State* (Kelsen, 1949).[141] Explanation of work's aim and coherence of its development in the text: In this 2nd version of the article submitted to the *Bakhtiniana*, the objectives seemed clear and coherent with the main approach of the text which, in general, aims to shed light on the juridical foundation of Bakhtin's philosophy (1999), from the perspective of moral philosophy as first philosophy , and to point out ethical considerations for the sciences, particularly for Law and Linguistics. However, it seems to me that the theoretical liaison between the philosophy of religion and the philosophy of law, as mentioned in the text, has not been made more explicit. Conformity with the proposed theory, demonstrating up-to-date knowledge of the relevant bibliography: The work is in line with the proposed theory and presents a good review of the literature pertinent to the analysis. However, it is worth commenting that the theory on the philosophy of religion, as presented in the objective section, could have been explained in more detail in the text. Originality of the reflection and contribution to the field of knowledge: The work is original and makes an important contribution to linguistic studies in its multidisciplinary approach, especially with the legal sciences. It also provides a valuable perception on the results and conclusion of the research. As far as the results are concerned, the research states that Kelsen (1949) and Bakhtin (1999) start from the common movement in which the ought to be is conceived in the context of the notion of norm. However, Bakhtin (1999) places the primacy of the historically concrete ought to be in relation to the ought that presents itself as the meaning of a norm (Kelsen, 1949). In these terms, the place of science/cognition, for Bakhtin (1999), is not disconnected from the dimension of values, and therefore refers to the ought to be as man's orientation in the event of being. In relation to the conclusion, there is a perception that Bakhtin (1999) is based on a juridical foundation, around the notions of ought to be and being, in the presentation of moral philosophy as a philosophy that answers philosophical questions of principle (first philosophy). Thus, it defends that it has been possible to situate ethical questions for the sciences, in particular for Law and Linguistics. It is worth noting that, although the results and conclusion are pertinent and contribute to the originality of the article, it seems to me that, in the first part of the text, before topic 1, there was a lack of a conclusive seam aligned with the theories of Bakhtin and Kelsen examined in the study, since the text presents in its development and even in its final considerations a discursive analysis dialogued between these thinkers. Clarity, correctness and suitability of language for a scientific paper: The work is well written and complies with the linguistic standards required of a scientific paper. I would only suggest revising the excess of words and expressions in italics. APPROVED

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[140] For reference, see footnote 2.
[141] For reference, see footnote 12.

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