

## Introduction

# Institution and Passivity: A Reassessment

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There are some thinkers who while not establishing a system of thought that is in itself conclusive or one that bears definite contours are nonetheless (or for that very reason) capable of illuminating new paths, of opening up prolific lines of thought, and of offering rhapsodic leads to their readers. One might say that such thinkers make this *openness* the very meaning of their oeuvre, an oeuvre that is best seen as «an activity en route [...] which opens a future»<sup>1</sup>. Perhaps, these offerings of lines and paths can be thought of as the *deposit of sense*.

Such is the case with Maurice Merleau-Ponty, who defined through the iconic phrase ‘deposit of sense’, the concept of institution in his *Institution and Passivity. Course Notes from the Collège de France (1954-1955)*.

This work demonstrates, the very traits of what it seeks to investigate and is presented to the reader in its rather fragmentary form – this is also due to the fact that we possess notes and not the entire two courses that the author had undertaken – of a deposit of sense, which is worth reactivating today in order to ask ourselves boldly and not at all obviously: *what are we to do with instituting?*

The tradition of anti-institutional thinking is long and has strong entanglements with a certain strain of contemporary critical discourse. In contrast, a more recent approach, also within critical theory, is trying to ground the hypothesis of a less ideologically and prejudicially negative approach to institutions. The research of central authors of political and legal

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<sup>1</sup> Merleau-Ponty, (2010) *Institution and Passivity. Course Notes from the Collège de France (1954-1955)*. Evanston (IL): Northwestern University Press, p. 6.

institutionalism, who, particularly during the twentieth century, provided fundamental categories for theoretically grounding a possible relationship between law and politics, and did not deny institutions a proper place, are being felicitously rediscovered today<sup>2</sup>.

The merit of Merleau-Ponty's gaze should be emphasized above all from the perspective of a history of the present, that is, in view of a necessity that is contemporary to us, the distinctive features of which are to be seen in the actions of reactivation, reuse and transformation. In spite of proposals that hover between the two poles of institution and destitution, the focus here is found neither on what has already been instituted nor even less on what should be destituted. On closer inspection, both options move in precisely the same range: only a gaze that starts from the instituted can conceive of its destitution.

Both options can only struggle to conceive of transformation. They look at what is (always) already there, as a survivor to be kept alive, or at what they no longer want, to be made to die. It is evidently a matter of looking at the dying with eyes that are not too dissimilar to one another, except for the end one intends them to serve. In the former case one wants to *conserve* its life, in the latter one wants to *sanction* its death.

Instead, in Merleau-Ponty the deposited sense, that is, the institution, is looked at «not as an object left behind, as a simple remainder or as something that survives, as a residue. [It is deposited] as something to continue, to complete without it being the case that this sequel is determined<sup>3</sup>».

There is neither conservation nor a capital sanction. The key words of an instituting thought that wants to find fragments of inspiration in Merleau-Ponty would be «continuing», «completing», «opening», and «reactivating», but

<sup>2</sup> The oeuvre of Santi Romano has been republished: Santi Romano, *L'ordinamento giuridico (1917-18)*, ed. by M. Croce, Quodlibet, Macerata 2018; Romano's best-known work was also translated and published for the first time in English: *The legal order*, (with the foreword by M. Loughlin and afterword by M. Croce), Abingdon: Routledge, 2017. Hauriou's works are also being rediscovered, albeit with different intentions than the author would have subscribed to: see P. Napoli, «Ritorno a 'instituere'. Per una concezione materialistica dell'istituzione» in F. Brancaccio e C. Giorgi (ed. by), *Ai confini del diritto. Poteri, istituzioni e soggettività*, Derive Approdi, Roma 2017, pp. 77-88. As a thinker of the instituent thought, Claude Lefort has been investigated by R. Esposito, *Pensiero istituente: tre paradigmi di ontologia politica*, Torino: Einaudi, 2020; see also R. Esposito, *Istituzione*, Bologna: Mulino, 2021 and Mattia Di Piero, Francesco Marchesi, Elia Zaru, ed. By, *Almanacco di Filosofia e Politica 2.* (dir. By R. Esposito), *Istituzione. Filosofia, politica, storia*, Quodlibet, Macerata, 2020.

<sup>3</sup> Merleau-Ponty, (2010) *Institution and Passivity*, p. 9.

without any determined sequel, pre-established outcome or already determined directionality: here, there is no destiny but destination, deposit rather than a deposition.

This lexicon is, then, not so much the lexicon of institution or destitution, but that of transformation.

It could be said that the lexicon of transformation is *instituent*, that is, it makes the institution not what is already instituted, and is to be maintained as such or conversely to be rejected, but a real project whose past is alive as a deposit, whose present lives on in transformation, and whose future is always open<sup>4</sup>.

The institution is not a given: rather than having the features of an accomplished result, of a crystallized form, the institution seen through Merleau-Ponty's eyes appears as an enterprise indeterminate in its future, whose meaning can rely on a deposit, through which the awakening from sleep, the possibilities of reactivation are released. The institution displays this kind of temporality; it is «the initiation of the present, which is productive after it»<sup>5</sup>.

With reference to the individual, to the formation of the subject, Gramsci used words that might sound Merleau-Pontian when he said that it is as of a *living archaeological site* in which the historical process has left indelible sedimentations<sup>6</sup>. The Marxian teaching certainly remains central, and in particular those famous words from *The Eighteenth Brumaire of Louis Bonaparte* which in extreme but very effective synthesis detect the relationship between history and the subject.

Men make their own history, but they do not make it as they please; they do not make it under self-selected circumstances, but under circumstances existing

<sup>4</sup> See *infra* the essay by Chiamonte, (2022) Instituting: a legal practice *Institution and Passivity. Humana.Mente* 1, 2022, in which, as in the words of R. Esposito, *Pensiero istituyente*, p. 31, attention is centered on law as an instituting art par excellence: “il diritto è oggetto di una lotta che verte, prima ancora che su singoli diritti, sul suo stesso significato. Dire che il diritto, anziché rispondere a istituzioni fissate nel tempo, non smette mai di istituire, significa attribuirgli una forza di trasformazione che ne libera tutta la potenza performativa.”

<sup>5</sup> *Ivi*, p. 6.

<sup>6</sup> We owe knowledge of this passage, from Gramsci, *Quaderni dal carcere*, Torino: Einaudi, 1975, p. 1376, to the precious research of V. Morfino, *Intersoggettività o transindividualità. Materiali per un'alternativa*, Roma: Manifesto, 2022.

already, given and transmitted from the past. The tradition of all dead generations weighs like a nightmare on the brains of the living.<sup>7</sup>

The link between the institution, or public history as Merleau-Ponty calls it, and passivity, or the pole of the subject is not at all obvious. While the institution clearly shows a relationship with time and history, passivity seems to be located outside them—highlights Claude Lefort in the introductory pages of the *Course Notes*<sup>8</sup>. However, this appearance is misleading. Merleau-Ponty argues that, if this is how passivity appears to us, it is only because we think of it as starting from the constitution of the subject and not from the perspective of the institution.<sup>9</sup> Admittedly, “the person himself [must be] understood as institution, not as consciousness of. . .”<sup>10</sup>.

However, it is necessary, at this level of analysis, to take a step back, and question what can be read in this watermark of the French phenomenologist’s research.

The origin of the Merleau-Pontian philosophy of perception could be placed emblematically in a passage from the lectures on passive synthesis, in which Husserl defines perceiving as a process of taking note through ever new particularizations within the constantly co-functioning intentional horizon: it is a «(...) specifying fulfillment, (...) a process of acquisition [that takes place] within knowledge that is abiding and that becomes habitual. (...) Let us note in advance that the primordial place of this accomplishment is the continuously co-functioning retention.»<sup>11</sup> Passivity as acquisition and habit, then: as the re-activation of an already-been (of an already-instituted), of sedimentations already produced, according to a modality that—and herein lies the difference from Husserl’s lesson—is not rooted in the sovereignty of the subject. «The explication of perceptual experience,» Lefort reports in his foreword to Merleau-Ponty’s text, «must make us acquainted with a genus of being with regard to which the subject is not sovereign, without the subject being inserted

<sup>7</sup> Marx, *The Eighteenth Brumaire of Louis Bonaparte*, 1852, consulted on July 21, 2022: <https://www.marxists.org/archive/marx/works/1852/18th-brumaire/ch01.htm>

<sup>8</sup> C. Lefort, Foreword to: Merleau-Ponty, M. (2010) *Institution and Passivity. Course Notes from the Collège de France (1954-1955)*. Evanston (IL): Northwestern University Press, p. xix.

<sup>9</sup> Regarding the distinction between institution and constitution, see Dardot e C. Laval, *Common. Essai sur la révolution au XXIe siècle*, La Découverte, Paris 2014.

<sup>10</sup> Merleau-Ponty (2010) *Institution and Passivity*, p. 15.

<sup>11</sup> Husserl (2001) *Analyses Concerning Passive and Active Synthesis. Lectures on Transcendental Logic*. Trans. A. J. Stenibock. Dordrecht: Kluwer Academic Publishers, p. 45.

in it».<sup>12</sup> The dimension of passivity reminds us, in Merleau-Ponty, that *Sinnggebung* does not consist in an operation *of* the subject (which, that is, belongs to the subject and is performed by the subject), but is essentially activated as a response to a «(...) solicitation from the outside»: <sup>13</sup> the dynamic of activity and passivity does not draw a power relationship, in which the synthesis is dominant over the otherwise inert passive background. «We are not in some incomprehensible way an activity joined to a passivity, an automatism overcome by a will, a perception overcome by a judgment, but wholly active and wholly passive, because we are the upsurge of time»<sup>14</sup>—we read in *Phenomenology of Perception*.

In this perspective, the project that Merleau-Ponty develops in these *Course Notes* consists of going beyond—if not even of a breaking through—the phenomenological notion of constitution. Unlike in Husserl, this notion is contrasted with that of institution, at the core of the first part of the text: if constitution—following the Kantian legacy—consists in the creation of something that does not pre-exist the act of constitution, thus constructing a correspondence (and dependence) between constituted and constituent, institution presents a more ambiguous structure, in which the act of instituting always assumes something already-given and, at the same time, the instituted always implies a certain openness. Already-given, i.e., past, and openness, i.e., future: the institution posits (and presupposes) temporality, and this is how it intersects passivity—if it is true that we are «wholly active and wholly passive, because we are the upsurge of time.»

The parity of activity and passivity, subtracted—in the name of institution—from a relationship of priority, dominance or hierarchy, constitutes in our view the most interesting and fruitful aspect of Merleau-Ponty's thought. Husserl, as we have seen, had already lead the way: however, in his interpretation the constitution of an object as a sense takes on the significance of an operation of consciousness characteristic for each type of objects, since each fundamental type of objects requires a specific intentional structure. It follows precisely that an existing object, which cannot in principle be an object for a consciousness is,

<sup>12</sup> Lefort (2010), *Foreword*, in M. Merleau-Ponty, 2010, p. xix.

<sup>13</sup> Ivi, p. xx.

<sup>14</sup> Merleau-Ponty (1981) *Phenomenology of Perception*. Trans. C. Smith. London: Routledge, p. 428. Cit in C. Lefort, *Foreword*, in M. Merleau-Ponty, 2010, p. xxii.

for Husserl, a non-sense:<sup>15</sup> but this is precisely what Merleau-Ponty disputes. «In order for there to be consciousness of something, there must not be consciousness of everything»:<sup>16</sup> if this were so, if consciousness were always “consciousness of,” it would result that «there is nothing to know about me before the *Sinnggebung*, i.e., no personal history, adversity, ambiguity, chaos that says neither yes or no.»<sup>17</sup>

Consciousness is not a flux of experiences, but rather of lacks and open situations: «perception is not, therefore, categorial subsumption, *Sinnggebung*, experience of a *Zusammenstimmung* between a signification and an exterior (...);<sup>18</sup> the life of consciousness, consequently, «is not *Sinnggebung* in the constituting sense, but the fact that something happens to someone.»<sup>19</sup> In Husserl, passive intentionality constitutes the precondition for the self to have something in regard to which to decide for or against: deciding is an *appropriating* activity on the part of the active self, which thus acquires permanent knowledge.<sup>20</sup> Insofar as the passive sphere is recognized as independent of egological activity, this recognition nevertheless implies in Husserl the attribution of intentionality: there is a specifically passive intentionality, which precedes all attention by the ego. Insofar as it precedes it, it prepares and presupposes it: independence, then, but as a function of egological appropriation.<sup>21</sup> Passive intention is «a special shape that a consciousness *of something must* assume in order for it to be able to function in

<sup>15</sup> See Husserl, (2001), p. 57: «An object that *is*, but is not and in principle could not be an object of a consciousness, is pure non-sense».

<sup>16</sup> Merleau-Ponty, 2010, p. 117.

<sup>17</sup> Ivi, p. 118.

<sup>18</sup> Ivi, p. 165.

<sup>19</sup> Ivi, p. 217.

<sup>20</sup> See Husserl, (2001), p. 95: «It is a question of appropriation through which the active, strivingly active ego appropriates to itself an acquisition, that is, an abiding knowledge».

<sup>21</sup> A separate discussion should be made for retentions, which, as Husserl states in the *Analyses Concerning Passive and Active Synthesis*, do not originally have an intentional character but assume it later. «I said that retentions, insofar as they arise in their originality, do not have an intentional character»—Husserl writes. This is because retention is an awakening and not an associative consciousness, as protention is. At the same time, Husserl reiterates that: «it is generally maintained that what presents itself, toward which the ego directs its gaze—what is perceived, what is remembered, even what is retained—must already be intentional in itself, that is, it must already have in its passive content an orientation toward its object.» (Ibid., p. 120) In these lectures, then, Husserl seems to imply that even retentional consciousness takes on an intentional form, however derivatively.

syntheses of fulfillment»: <sup>22</sup> it is still “consciousness of,” and in a form that consciousness “must” assume as preparatory to the fulfillment of meaning. It is precisely this aspect of domestication and normalization that Merleau-Ponty targets, not coincidentally by referring to Sigmund Freud—the author who, by centralizing the unconscious and thus passivity precisely in its autonomy, radically challenged the narrative of a subjectivity dominant in its constitutive functions, normalizing and transparent to itself.

Husserlian phenomenology, as is well known, glimpsed the unconscious, but also sought to secure for it a quiet place in the sphere of the “consciousness of.” In § 33 of the lectures on passive synthesis, Husserl asks:

Are there not regulated inhibiting, weakening counter potencies which, by not letting affection arise any longer, also make the emergence of self-subsistent unities impossible, unities in other words that would not emerge at all without affection? (...) I do not need to say that the entirety of these observations that we are undertaking can also be given the famed title of the “unconscious.” Thus, our considerations concern a phenomenology of the so-called unconscious. <sup>23</sup>

Note that Husserl puts the term unconscious in quotation marks “”, and then qualifies it as “so-called:” rhetorically thus signaling to us the critical caution with respect to the assumption of something as an “actual unconscious.” In fact, the unconscious is conceived by Husserl as a zero case of the awakening consciousness—a “zero” grade that is, however, not “nothing.” There is, in fact, a connection between pre-affective element and actual affection: while it is true that we are not always dealing with an actually perceptible affection, it is also true that what is unperceived *can become perceptible* (and vice versa). We must be cautious in interpreting inadvertent elements as lacking in affective force: affection approaches zero (in the case, for example, of background consciousness and retentions), but its absolute zero grade is never actually given. There is always an implication, that is, some kind of modalization, of the zero affective degree. The point of view expressed here by Husserl is opposite to that of Freud and, through him, also to that of Merleau-Ponty.

In his *Introduction to Psychoanalysis*, Freud assumes the unconscious as proof of the non-evidence of the ego’s attestations:

<sup>22</sup> Ivi, p. 133. (Our emphasis)

<sup>23</sup> Ivi, p. 201.

If one is to believe the evidence of the ego, it would appear to have been active all along, all its symptoms would have been actively willed and formed. Yet we know that it has passively allowed a great deal to occur, a fact which it subsequently seeks to conceal and to palliate.<sup>24</sup>

The claims of sexuality are suppressed by the ego: therefore, it is not by questioning the ego that we will be able to know about them. What comes from the ego is a narrative of constant activity: what is passively formed is concealed by the ego. In a sense, the ego is constantly active, but in the form of repression: it is actively engaged in rejecting, concealing the claims of sexuality, the formation of which is passive, unconscious. Between the unconscious and the pre-conscious in Freud's sense there is not the same implication that Husserl posits between the pre-affective element and actual affection: what is at issue is not a difference of degree, but of function. Merleau-Ponty acutely grasps this aspect of Freudian theory, pointing out how the distinction between manifest and latent content results in a duplication of thinking activity: responsible for the splitting is repression «by which something in the mind is at once made inaccessible and preserved.»<sup>25</sup> Therefore, «in order to challenge the splitting of the life of consciousness into two “I think”—the one that censors and deforms and the one that dreams and produces the manifest content—it will then be necessary to challenge first of all the overwhelming power of repression.»<sup>26</sup>

It is at this point that the criticism aimed at Freud is grafted onto the criticism towards Husserl: the splitting of oneiric life does not mean that the “I think” is duplicated, but that we are in the presence of a non-intentional form of consciousness. Symbolism «delimits a functioning which is not “consciousness of something” (simple, general function, *Erkenntnistheoretisch*), but development of a “world-for-me”».<sup>27</sup> Even more precisely, «Freud's most interesting contribution» is «not the idea of a second “I think” which would know what we do not know about ourselves», but having discovered a field of non-intentional life of consciousness: it is, again, a matter of admitting that

<sup>24</sup> Freud, *A General Introduction to Psychoanalysis*. Trans G. Hall. PDF Books. 333. (online at: <https://eduardolbm.files.wordpress.com/2014/10/a-general-introduction-to-psychoanalysis-sigmund-freud.pdf> and <https://creativecommons.org/licenses/by-nc-nd/3.0/>, last retrieved July 18, 2022).

<sup>25</sup> Merleau-Ponty, (2010), p. 175.

<sup>26</sup> Buongiorno and S. Kozel (2022)

<sup>27</sup> Merleau-Ponty, (2010), p. 151.

«being conscious» is not equivalent to «donate meaning.»<sup>28</sup> The unconscious theorized by Freud thus offers, when combined with the critique of repression as presented by Freud himself, the space to display a non-intentional consciousness as operative.

To devote a collective volume to the course on institution and passivity is to get to the heart of the potentialities disclosed by Merleau-Ponty's theory: the critique of Husserl's model of the *Sinnggebung* goes in the direction—taken up, for example, by feminist phenomenology—of enhancing, by rethinking it, «Husserl's late thought (...) characterized by a decisive rethinking of the relation between the transcendental and the mundane that ultimately forced him to consider the transcendental significance of issues such as generativity, tradition, historicity, and normality.»<sup>29</sup> Above all, it means emphasizing the wager of a thought and phenomenology that looks at the unconscious without a desire for normalization, that knows how to think the “non-intentionality” of intentional consciousness by fearlessly inserting it into the horizon of a historicity that is essentially resumption, re-activation, rebirth—and not, in the first place, creation, constitution, birth. It means recognizing the subjectifying effects of this historicity in the cracks, failures and opacity of a subjectivity that is *spoken* at least as much as it speaks, that is *other* than itself at least as much as it is itself: the contributions that are collected in the volume testify to the diversity, complexity and articulation of this discourse that makes subjectivity something that is given, in Merleau-Ponty's terms, *laterally* rather than frontally, sideways to “other” discourses. Such laterality should be read by laying down the (post)modern lexicon and preoccupation about the depowering, dismantling or deconstruction of subjectivity: what is at stake is not a conception of the ego as more or less strong, powerful or absolute, as much as more or less *in contact* with itself—a contact that is always also friction and, to some extent, tactical conflict.

This issue of *Humana.Mente* aspires at being a way to reopen the deposit of sense today, and to make use of the traces provided by Merleau-Ponty in different fields of knowledge. Rather than developed by followers or interpreters of the French author, the contributions that follow are written on the basis of a fruitful inspiration derived from his rich and visionary form of speculation. It is certainly no accident that the collection of essays published

<sup>28</sup> Ivi, p. 206.

<sup>29</sup> Oksala (2016) *Feminist Experiences. Foucauldian and Phenomenological Investigations*. Evanston (IL): Northwestern University Press, p. 101.

here includes diverse approaches (philosophical, juridical, sociological) and topics (from the unconscious to rituality, from language to symbolism, from the still ongoing pandemic to contemporary technologization). As editors of the issue, we are thankful to all authors for their generous and brilliant contributions.

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