

STUDENT NOTE

# The Application of Husserlian Phenomenology to the Examination of the Translatability of Criminal Law Practices Across American and Italian Culture in the Prosecution and Acquittal of Amanda Knox

Jenna Mueller

Washington and Lee University School of Law, Lexington, Virginia  
Email: [mueller.j24@law.wlu.edu](mailto:mueller.j24@law.wlu.edu)

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## Abstract

This Article uses various concepts of Husserlian phenomenology to explain the disparate opinion between the North American and Italian public in response to the prosecution and ultimate acquittal of Amanda Knox. This Article argues that the comparative difference in public opinion is due to an extensive shift in culture that is necessarily accompanied by a shift in spatial-temporal location. In this Article, the Husserlian concepts of intentionality, the Self, the Other-I, and empathy overlay the judicial opinions and media releases critical to shaping North American and Italian public perceptions of Amanda Knox. As applied, these Husserlian concepts function as interpretive lenses, providing the reader with a novel framework for analyzing the cause of interpretive difference across cultures.

**Keywords:** Phenomenology; Edmund Husserl; culture; cultural interpretation; criminal law; comparative law; Italy; North America; Amanda Knox; public opinion; perception

## A. Introduction

Husserl's theory of phenomenology—especially the Husserlian conception of empathy—helps to explain the varying perspectives held by people in different cultures with respect to the processes of a foreign legal system. The case of Amanda Knox provides an excellent study of this concept, as the widely publicized trial resulted in the North American and Italian public developing starkly contrasting opinions on the merits and processes of the matter.<sup>1</sup> This Article uses Husserlian phenomenology to illuminate the perceptual differences that help explain this disparate public response.

Section B will provide a general overview of Husserl's phenomenological project. Section C will explain Husserlian intentionality, the phenomenological reduction, and Husserl's understanding of time and temporality. Section D will discuss the various senses of "I" in relation to the differing positions of the phenomenological observer. Section E will describe the concept of Husserlian empathy. Section F will analyze the Amanda Knox case, as well as the American and Italian public reaction to the proceedings. Lastly, this article will conclude by stating that the negative evaluations of a foreign country's legal processes are the result of an inadequate cultivation of empathy for the respective alien culture.

<sup>1</sup>See *infra* Section F, 3.3.

## B. Background

Edmund Husserl is widely considered the principal founder of phenomenology. Phenomenology is a philosophical approach that focuses on the study of consciousness and the objects of direct experience.<sup>2</sup> Over time, Husserl refined his philosophy into what he called a “transcendental phenomenology”—a phenomenological method that focuses on the essential structures that allow the objects one takes for granted in everyday life and ordinary science to constitute themselves in consciousness.<sup>3</sup> In pursuit of more refined thought, Husserl formulated a perspective on the realm of intentional consciousness through a study of what he believed comprised the chief features of the basic constitution of consciousness.<sup>4</sup> He contended that, by adopting this phenomenological perspective, the philosopher would have the ability to cultivate an unprejudiced justification for his basic views of the world.<sup>5</sup>

Husserl’s philosophy began as a critique of psychology and naturalism and endeavored to abstract away from the scientific method of induction.<sup>6</sup> Indeed, Husserl stated that “phenomenology is by no means psychology. It is found in a new dimension and demands an essentially different attitude from that of psychology, as well as of any science of spatial-temporal existence.”<sup>7</sup> Thus, Husserl’s philosophy revolved around the idea that phenomenology constitutes its own distinctive and rigorous science of consciousness and not of empirical things.<sup>8</sup> Specifically, he believed that only after bracketing away the “natural attitude”—Husserl’s term for the mode of experience in which natural-scientific and psychological knowledge is attained—could philosophy become this type of rigorous science.<sup>9</sup> Accordingly, Husserl contended that only by placing this natural attitude aside would the philosopher have the tools to effectively explore the rational connections underlying the experiences of his daily life.<sup>10</sup>

Perhaps owing to his empirical science background,<sup>11</sup> Husserl’s philosophical critique importantly and necessarily establishes the existence of a non-prejudicial perspective.<sup>12</sup> Husserl argues that phenomenology should be the study of specific incidents of experience as they exist independent of any underlying theoretical presuppositions. Predictably, this philosophical method is the obverse of the scientific method of induction, which uses large amounts of data to formulate a general theory that goes beyond the data itself.<sup>13</sup> Thus, Husserlian phenomenology uses isolated occurrences of perception to generate a specific theory on experience as a whole.

As Husserl developed his critical philosophy, he explored various pillars of phenomenology, including those that are within the scope of this Article: The senses of “I” in relation to the position of the phenomenological observer; the “halo” or horizon of experience; and empathy.<sup>14</sup> These concepts are valuable for the ways in which they explain and discuss the Husserlian notions of the

<sup>2</sup>See Christian Beyer, *Edmund Husserl*, STAN. ENCYC. PHIL. (2003), <https://plato.stanford.edu/entries/husserl/>.

<sup>3</sup>See Beyer, *supra* note 2.

<sup>4</sup>See Beyer, *supra* note 2; EDMUND HUSSERL, *The Basic Problems of Phenomenology*, in 12 HUSSERLIANA 1, 5 (Ingo Farin & James G. Hart trans., Rudolf Bernet ed. 2006) (1911).

<sup>5</sup>See Beyer, *supra* note 2.

<sup>6</sup>Naturalism is the contention that everything belongs to the world of nature, and that this natural world can be studied through the scientific method. See Marianne Sawicki, *Edmund Husserl*, INTERNET ENCYC. PHIL., <https://iep.utm.edu/husserl/> (last visited Dec. 22, 2022).

<sup>7</sup>See HUSSERL, *supra* note 4, at 2.

<sup>8</sup>See Sawicki, *supra* note 6.

<sup>9</sup>See HUSSERL, *supra* note 4, at 5.

<sup>10</sup>See Beyer, *supra* note 2.

<sup>11</sup>See Beyer, *supra* note 2 (providing background on Husserl). Husserl obtained his PhD in mathematics in Vienna in 1883. In 1884, he began studying philosophy in the company of Franz Brentano, the author of *Psychology from an Empirical Standpoint*. Brentano’s work largely impacted and influenced Husserl’s own ideology. *Id.*

<sup>12</sup>See Beyer, *supra* note 2.

<sup>13</sup>See Sawicki, *supra* note 6.

<sup>14</sup>Ingo Farin & James G. Hart, *Translators’ Preface* to EDMUND HUSSERL, *The Basic Problems of Phenomenology*, in 12 HUSSERLIANA XII, XIV (Ingo Farin & James G. Hart trans., Rudolf Bernet ed. 2006) (1911).

Self, the Other, and the interaction between the Self and the Other—concepts that are crucial to cultivating an understanding of experience from a personal and third-party-observational perspective.<sup>15</sup>

### C. Relevant Terms and Concepts

Husserl's ideas on empathy, the Self, and the Other are based upon his understanding of temporality, as well as his broader theories of intentionality and the phenomenological reduction. Notwithstanding the indirect relevance of the latter subjects to this project, it is valuable to briefly mention their respective function in Husserlian phenomenology for the sake of comprehensive clarity. Section I describes intentionality. Section II explains the phenomenological reduction. Section III discusses time and temporality.

#### I. Intentionality

Husserl's philosophy is grounded in the intentionality of consciousness. "Intentionality" is the terminological expression Husserl uses to designate consciousness as the basic character of being. Specifically, Husserl qualifies this consciousness as one that is necessarily of an object to which a person is turned or directed toward.<sup>16</sup> For example, when a person is engaged in the act of reflection, his experiencing gaze is turned inward toward himself, yet when he is perceiving an object that is external to himself, his gaze is directed outward toward that object.<sup>17</sup> Thus, Husserl also understands intentionality as an "intrinsic directedness-toward" or "relating-oneself-to" an object through a mode of lived experience. The general concept of Husserlian intentionality is comprised of three separate—albeit interrelated—genres: Intentional act, intentional object, and intentional content.

An intentional act is the particular mental event that defines a thought, including the acts of experiencing, thinking, willing, and valuing.<sup>18</sup> Specifically, Husserl believes that these mental events—experiencing, thinking, willing, and valuing—are examples of the various modes of "lived experiences in which we relate directly to objects."<sup>19</sup> It is within these modes of lived experience that "everything to which we relate shows itself—that is to say, 'appears.'"<sup>20</sup>

The intentional object of a mental event is the topic, thing, or state of affairs that the act is about.<sup>21</sup> For example, when a person is looking at a white dog, he is engaged in the intentional act of perceiving, and the intentional object of his perception is a white dog.<sup>22</sup> While intentional acts and intentional objects are distinct, they are also correlated: The same intentional act may be directed at different intentional objects, as when one perceives a pond, a house, and a bird; and different intentional acts may be of the same intentional object, as when one perceives, evaluates, and remembers a pond. However, it is nonsensical to speak of an intentional act that is not directed at an intentional object, and an intentional object cannot be apprehended without a corresponding intentional act.<sup>23</sup>

<sup>15</sup>See generally HUSSERL, *supra* note 4.

<sup>16</sup>Richard E. Palmer, "Phenomenology," *Edmund Husserl's Article for the Encyclopedia Britannica (1927): A New Complete Translation*, 2 J. BRIT. SOC'Y FOR PHENOMENOLOGY 77, 79 (1971).

<sup>17</sup>See *id.*

<sup>18</sup>See HUSSERL, *supra* note 4.

<sup>19</sup>EDMUND HUSSERL, *The Encyclopedia Britannica Article: Attempt at a Second Draft (Oct. 22, 1927)* (unpublished draft), in EDMUND HUSSERL, *COLLECTED WORKS* 144, 149 (Thomas Sheehan trans., Rudolf Bernet ed. 1971).

<sup>20</sup>*Id.*

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

Intentional content is a description or set of information that the subject takes to characterize or be applicable to the intentional objects of her thought.<sup>24</sup> As such, a subject will always think of or experience an object from a certain perspective as being a certain way or thing.<sup>25</sup>

Husserl contends that “[a]ll lived experiences in which we relate directly to objects . . . allow a turn of the gaze whereby [these lived experiences] *themselves* become objects.”<sup>26</sup> Husserl elaborates:

With the turning of the gaze to the [lived experiences] . . . a universal task opens up, that of exploring systematically the multitudes of lived experiences, their typical forms, levels and interrelations of levels, and of understanding them as a self-contained whole . . . [t]he whole of a complex of lived experience—that is to say, a psychic life—exists at each moment as a self (an ‘I’), and as this self it lives factually in community with others.<sup>27</sup>

## II. The Phenomenological Reduction

Husserl believes that the phenomenological reduction enables the separation of the proper object of philosophical inquiry from the objects of experience inherent to the natural world. Husserl also contends that the objects of experience inherent to the natural world are perceived through the natural attitude.<sup>28</sup> He elaborates, stating that in this natural attitude, the external world is presented as the self-evidently existing universe of realities within which everyday life exists.<sup>29</sup> Thus, the phenomenological reduction functions to abstract away from this external reality to the purely psychical.<sup>30</sup> He states:

The turning of the gaze towards [these lived experiences], the experience . . . of the lived experiences as such is the phenomenological attitude . . . [d]irected towards the lived experiences, we make the ‘soul’s’ modes of comportment—the pure psychic—into our object . . . [w]e call it the ‘pure psychic’ because, in looking at the lived experiences as such, one prescind[s] from all psychic functions in the sense of the organization of bodiliness.<sup>31</sup>

Husserl argues that the psychical may itself be experienced as a stratum of being, yet the psychical may simultaneously be revealed through our experience of reflection and also through the intersubjective experience of other psychic lives.<sup>32</sup> Husserl cleverly describes the interrelatedness between the real and the psychical as “[t]he experienced ‘exterior’ that does not belong to one’s intentional interiority, [despite] the experience of the exterior itself belonging to [one’s intentional interiority] as experience-of the exterior.”<sup>33</sup>

Given this unavoidable entanglement between the real and the psychical, Husserl concedes that “the great difficulty [in accessing the pure phenomenological field] rests on the way that . . . self-experience. . . is everywhere intertwined with external experience, with that of extra-psychical real

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<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

<sup>26</sup>*Id.* (emphasis added).

<sup>27</sup>*Id.*

<sup>28</sup>EDMUND HUSSERL, *The Phenomenological Grounding of Factual Sciences and Empirical Phenomenology*, in COLLECTED WORKS 205, 206 (Thomas Sheehan & Richard E. Palmer trans., Rudolf Bernet ed. 1997); HUSSERL, *supra* note 4, at 2 (detailing Husserl explaining the “natural attitude” as a type of cognitive situation in which one experiences the “straightforwardly existent world of experience and the corresponding positive sciences, empirical as well as a priori, related to that world.”).

<sup>29</sup>Palmer, *supra* note 16, at 79 (1971).

<sup>30</sup>*Id.*

<sup>31</sup>See Husserl, *supra* note 19.

<sup>32</sup>See Palmer, *supra* note 16.

<sup>33</sup>See HUSSERL, *supra* note 28, at 216.

things.”<sup>34</sup> Thus, to untangle the psychical from the external, Husserl states that “a consistent *epoché* [pocketing away] of the phenomenologist is required, if he wishes to break through to his own consciousness . . . .”<sup>35</sup> This is the phenomenological reduction.

“[I]n the accomplishment of phenomenological reflection [one] must inhibit every co-accomplishment of objective positing produced in unreflective consciousness, and therewith inhibit every judgmental drawing-in of the world as it ‘exists’ for him straightforwardly.”<sup>36</sup> Accordingly:

The universal *epoché* of the world . . . shuts out from the phenomenological field the world as it exists for the subject in simple absoluteness . . . [and] individual things in the world as absolute, are replaced by the respective meaning of each in *consciousness* . . . .<sup>37</sup>

Therefore, by refraining from making assertions about the natural world through the phenomenological reduction, one enters into what Husserl believes to be the proper philosophical attitude.<sup>38</sup>

The importance of the phenomenological reduction is not to be understated, as Husserl premises the validity of his entire project on the concept.<sup>39</sup> Despite the value and necessity of this abstraction, Husserl recognizes that the natural world functions as the starting point for the greater theory of general knowledge.<sup>40</sup> As such, he does not completely dispense with the natural attitude in his phenomenological project, but instead uses it as a launch pad for the formulation of an experiential phenomenology.<sup>41</sup>

Husserl endeavored to structure his experiential phenomenology as a general theory comprised of inferential systems. This effort was based on his belief that every science could be looked upon as a system of propositions interconnected by a set of inferential and grounding relations.<sup>42</sup> Husserl analyzed these propositions by studying the units of consciousness vocalized by a speaker in his linguistic expression of a proposition. These units of consciousness are another example of an intentional act because they always represent something as having certain properties.<sup>43</sup> Accordingly, a disengagement by way of the phenomenological reduction is a necessary step for the phenomenologist because attitude and object of reflection are correlated in phenomenology. Indeed, the act of philosophy itself provides an example of the relationship between the intending act and the intended object of the phenomenologist’s investigation.<sup>44</sup>

Ultimately, Husserl concludes that his phenomenology acts as a quasi-parallel case to natural science, insofar as both disciplines deal with individual objectivities.<sup>45</sup> He states that natural sciences deal with the objectivities inherent in the natural attitude, and phenomenology deals with those naturally present in the phenomenological attitude.<sup>46</sup> These concepts, and the utility of the phenomenological reduction, may be explained as follows:

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<sup>34</sup>See HUSSERL, *supra* note 28, at 216.

<sup>35</sup>See HUSSERL, *supra* note 28, at 216.

<sup>36</sup>See Palmer, *supra* note 16.

<sup>37</sup>See Palmer, *supra* note 16.

<sup>38</sup>See FARIN & HART, *supra* note 14.

<sup>39</sup>HUSSERL, *supra* note 4, at 87.

<sup>40</sup>HUSSERL, *supra* note 4, at 2 n.1.

<sup>41</sup>HUSSERL, *supra* note 4, at 2 n.1.

<sup>42</sup>See Beyer, *supra* note 2. Stated *supra* note 11, Husserl obtained a PhD in Vienna prior to his study of philosophy. Thus, the meaning of the term “inferential” is likely used in this context in the same way that it is used to describe the mathematical discipline of inferential statistics. In mathematics, a statistical inference refers to the process of using data analysis from a sample of subjects to generalize about a larger population of subjects.

<sup>43</sup>See Beyer, *supra* note 2.

<sup>44</sup>FARIN & HART, *supra* note 14, at XX.

<sup>45</sup>HUSSERL, *supra* note 4, at 88 n.1.

<sup>46</sup>Palmer, *supra* note 16, at 88.

If for our present attitude we thus disengage the existence of nature, and if in this present sphere of findings we in no way pass judgment *on* nature, there remains for the enormous and, in each case, definite field of actual and possible experiences of nature, in virtue of which alone we gain the field of the pure stream of consciousness, which, of course, contains nothing of nature but only the experience of nature, plus all the other acts of presenting, feeling, desiring, and willing, which are interwoven with it.<sup>47</sup>

### III. Time and Temporality

Husserl understands every conscious experience as contextualized within the passage of time.<sup>48</sup> Notably, Husserl believes that the knowledge of the Self is reliant on self-remembering; and that the similarities and differences between memory and expectation are defined by their relative positions in time.<sup>49</sup> The concepts of the Self, memory, and expectation are directly valuable to this article because the understanding of the Self directly contributes to the understanding of the other in Husserlian phenomenology.<sup>50</sup> Additionally, the concept of expectation can deepen an understanding the Self, as it helps explain the Self's reaction to things in the external world.<sup>51</sup>

Husserl believes that the concept of time enters into every perceptual experience, whether the experience is straightforwardly a form of temporal awareness, such as memory or expectation; or whether the experience has nothing to do directly with time, such as judgment, desire, or a comment on aesthetics.<sup>52</sup> Although judgments and values do not, strictly speaking, endure in time, Husserlian phenomenology nevertheless recognizes these experiences as existing against the background of time, as one experiences them as being timeless.<sup>53</sup> By comparison, Husserl states that temporal objects do endure in time; however, this is not the only characteristic that qualifies a temporal object as such, as these objects, or things, may also differ from one another in respects other than time.<sup>54</sup> Examples of temporal objects include fixed objects, such as a desk, a chair, or a house. It is important to note that even events that involve continuous change such as the departure of a ship, or the perception of its departure, are also temporal objects.<sup>55</sup>

Husserl further states that the Self, and every object that exists, or did exist, occupies its temporal place in time.<sup>56</sup> He elaborates, explaining that every person exists in a limited spatial-temporal surrounding where the person either directly perceives this surrounding, or he remembers it in his immediate memory.<sup>57</sup> Husserl likens this surrounding to a piece of an endless chain that stretches back into the endless past and reaches forward into the endless present.<sup>58</sup>

Husserl also employs this chain analogy to explain how memory and expectation occur.<sup>59</sup> He characterizes memory and expectation as contents of thought that exist in opposite relations to one another.<sup>60</sup> He states that the act of remembering is a mental act aimed at an event from the past, where the act of remembering this event is necessarily an act that is occurring in the

<sup>47</sup>Palmer, *supra* note 29, at 79.

<sup>48</sup>See generally HUSSERL, *supra* note 4.

<sup>49</sup>HUSSERL, *supra* note 4, at 59.

<sup>50</sup>HUSSERL, *supra* note 4, at 59.

<sup>51</sup>See generally EDMUND HUSSERL, *The Basic Problems of Phenomenology*, in 1 HUSSERLIANA 1 (Ingo Farin & James G. Hart trans., Rudolf Bernet ed. 2006) (1911).

<sup>52</sup>FARIN & HART, *supra* note 14, at XVIII.

<sup>53</sup>FARIN & HART, *supra* note 14, at XXVI.

<sup>54</sup>FARIN & HART, *supra* note 14, at XXV.

<sup>55</sup>FARIN & HART, *supra* note 14, at XXV.

<sup>56</sup>HUSSERL, *supra* note 4, at 2.

<sup>57</sup>HUSSERL, *supra* note 4, at 2.

<sup>58</sup>HUSSERL, *supra* note 4, at 2.

<sup>59</sup>See generally HUSSERL, *supra* note 4.

<sup>60</sup>HUSSERL, *supra* note 4, at 57.

present.<sup>61</sup> Accordingly, the present act of remembering follows *after* the event that is the object of memory.<sup>62</sup> Thus, the difference in expectation is that the present act of expecting is aimed at the future, and the object of expectation *precedes* the event which has not yet occurred in time.<sup>63</sup> Importantly, Husserl states that only memory yields the concept of the “remembered” as it exists in itself; expectation, and even less so, empathy, do not present these future events in this manner.<sup>64</sup>

Despite these differences, Husserl qualifies both memory and expectation as indeterminant mental acts.<sup>65</sup> To this he states:

[M]emory can also be intuitive and yet not very determinate . . . [i]n the case of “perfect” memory, of course, everything down to the smallest detail would be clear . . . But this is also possible in the case of expectation. In general, expectation leaves much open, and this remaining-open is again a characteristic of the components in question. But as a matter of principle, a prophetic consciousness is conceivable . . . Yet in the intuitive anticipation of the future . . . there will be much . . . which in many respects can exist otherwise. [Expectation] from the beginning . . . is characterized as being open.<sup>66</sup>

Here, Husserl explains how the openness of the mental act of expecting provides for a possible misalignment between the expected event and the event as a present occurrence.<sup>67</sup> This quality of openness is an important concept, as it helps explain why memory and expectation falter in certain situations.<sup>68</sup>

#### D. The Various Senses of “I” Depending on the Differing Positions of the Phenomenological Observer

Husserl explicitly asks himself, “What is this thing, ‘my own consciousness’ . . . ?”<sup>69</sup> In reply, he states:

One’s own consciousness is that which a person, who makes judgments about it, lives through and experiences himself; which he himself sees directly in reflection; of which he himself is aware in the unified continuity of remembering, which in turn is directly bound up with the respective present perception; and, which through remembering, is intuitively given directly as his past consciousness.<sup>70</sup>

In formulating this conception of one’s own I-consciousness, Husserl attempted to define a form of pure consciousness abstracted from a necessary dependency on lived bodies.<sup>71</sup> He distinguished between two different ways of doing so: First, he conceded that there is a question about the psycho-physical connections between the objective properties of things as they are placed in an objective relation to the subjective consciousness, where this subjective consciousness is tied to

<sup>61</sup>HUSSERL, *supra* note 4, at 57–58.

<sup>62</sup>HUSSERL, *supra* note 4, at 58.

<sup>63</sup>HUSSERL, *supra* note 51, at 58.

<sup>64</sup>HUSSERL, *supra* note 4, at 144.

<sup>65</sup>HUSSERL, *supra* note 4, at 58.

<sup>66</sup>HUSSERL, *supra* note 4, at 58.

<sup>67</sup>HUSSERL, *supra* note 4, at 58.

<sup>68</sup>See generally HUSSERL, *supra* note 4.

<sup>69</sup>HUSSERL, *supra* note 4, at 95.

<sup>70</sup>See HUSSERL, *supra* note 4.

<sup>71</sup>See HUSSERL, *supra* note 4.

living beings and distributed among them in a certain objective way.<sup>72</sup> Second, he realized that, when one perceives a thing, this perception implies the possibility of passing from this thing-perception to another, regardless of the thing's real existence in some philosophical scheme.<sup>73</sup>

Section I will explore the relationship between the objective properties of things and the subjective consciousness. Section II will delve into the possibility of passing from one thing-perception to another.

### I. The "I" Itself

Husserl contends that each of us lives in the natural attitude, where this attitude represents the extant position of our consciousness before we bring about the philosophical transformation of our viewpoint.<sup>74</sup> In the natural attitude, the subjective consciousness perceives a series of pre-given things, where such "things" are understood to exist as segments of the perceptible world.<sup>75</sup> One such pre-given thing is that each of us exists as "I", where each "I" is comprised of:

A determinate person who has a definite proper name, who experiences his perceptions, memories, expectations, phantasies, feelings, wishes, and volitions, who is in various states, who achieves his acts, and who further has his dispositions, innate propensities, his acquired capabilities, and skills, etc. Of these things, each "I" has his own.<sup>76</sup>

Husserl then makes an important distinction—despite the "I" finding itself in possession of these forementioned predicates, the "I" itself is not an experience; instead, it is the one experiencing.<sup>77</sup> Thus, the natural attitude is itself the attitude of experience, wherein the "I" is able to experience itself, the experience of things, other lived bodies, and "other-I's."<sup>78</sup> Specifically, Husserl states that there is a "fundamental and essential distinction . . . between what is personally one's own, so to speak, and what is other than oneself."<sup>79</sup>

Husserl then qualifies the "I" as finding itself, its I-experiences, and its I-dispositions as existing in time.<sup>80</sup> Thus, the "I" knows<sup>81</sup> itself as being present in a distinct place in time; as an "I" that has memories; and as an "I" that is the same "I" that, at an earlier time, had such and such determinate experiences.<sup>82</sup> Moreover, the "I" knows that the present time in which it perceives itself to be existing is only a piece of the total surrounding that exists, and that things continue further in endless Euclidean space.<sup>83</sup>

The "I" also finds that it has an organic, lived body; however, it knows that this body is not an "I", but a spatial-temporal thing surrounded by other things.<sup>84</sup> Yet, the thing which the "I" comes across as its body is precisely distinguished from all other things as the lived body it owns.<sup>85</sup>

<sup>72</sup>HUSSERL, *supra* note 4, at 92.

<sup>73</sup>HUSSERL, *supra* note 4, at 92.

<sup>74</sup>See HUSSERL, *supra* note 4, at 2 (stating this transformation occurs through the phenomenological reduction). See also *infra* Section B, II.

<sup>75</sup>HUSSERL, *supra* note 4, at 2.

<sup>76</sup>HUSSERL, *supra* note 4, at 2.

<sup>77</sup>HUSSERL, *supra* note 4, at 2.

<sup>78</sup>HUSSERL, *supra* note 4, at 10. These concepts are discussed further *infra*.

<sup>79</sup>EDMUND HUSSERL, *Phenomenology and Anthropology*, in COLLECTED WORKS 381, 390 (Thomas Sheehan & Richard E. Palmer trans., Rudolf Bernet ed. 1997).

<sup>80</sup>HUSSERL, *supra* note 4, at 2.

<sup>81</sup>HUSSERL, *supra* note 4, at 2, 4 (equating the idea of knowledge with the notion of certainty). Thus, when an "I" is certain of something, he can transfer this idea of certainty of existence into evidence of that thing actually existing.

<sup>82</sup>HUSSERL, *supra* note 4, at 3.

<sup>83</sup>HUSSERL, *supra* note 4, at 3.

<sup>84</sup>HUSSERL, *supra* note 4, at 3.

<sup>85</sup>HUSSERL, *supra* note 4, at 4.



Despite this distinction, the “I” nevertheless relates its I-experiences, and its specific I-possession, to the lived body through a form of *sui generis* localization.<sup>86</sup> As such, these I-experiences must be, to some extent, dependent on the body, its states, and its processes.<sup>87</sup>

Husserl defines this localization as *sui generis* because it is completely different from the kind of localization that given parts and moments of a thing have with respect to that thing, regardless of whether these in-thing-localizations are sensory or physical determinations.<sup>88</sup> For example, joy and sorrow are not in the heart in the same way that blood is in the heart; nor, are sensations of touch in the skin in the same way as pieces of organic tissue.<sup>89</sup> Thus, the way in which things are related to the body is according to what direct experience, or indirect, analogizing experience, teaches about these matters.<sup>90</sup>

Husserl also emphasizes the idea that the things surrounding the body exist in themselves.<sup>91</sup> In making this statement, Husserl effectively asserts that his theory of phenomenology is anchored in a version of philosophical realism, instead of an idealist, mind-dependent conception of phenomenology.<sup>92</sup> Accordingly, he contends that the “I” knows that things exist independent of the “I”’s immediate perception of them, and that they exist independently of their having been perceived by the “I” at some past point in time.<sup>93</sup> As such, Husserl explains the notion of experience in the context of temporality:

For each Now I have a new region of what is simultaneous to consciousness, as well as a region of what is past to consciousness, as well as what is to come. Thus, it is certain that my flow of consciousness contains this constant flow of consciousness which never breaks off . . . each particular memory, *qua* recollection, has a futural halo . . . of the yet to come that has been, and thus [is] steadily advancing to the living present.<sup>94</sup>

Husserl then clarifies that, even though one may possess some degree of knowledge regarding the existence of things in his halo of experience, the “I” is liable to error, as it normally does not “take the trouble” to determine the definitive truth of the descriptive statements it makes about reality.<sup>95</sup> Nevertheless, these statements are not considered to be expressions of doubt about the existence of the world and the things in it, as the “I” is also aware that, in spite of its occasional error, the world exists, and the “I” undoubtedly exists as the center point of this reality.<sup>96</sup>

It is important for Husserl to tether his phenomenological project to the doctrine of realism, as it permits him to claim that other-I’s are constitutive of an “I”’s surrounding without denying the existence of the “I” as an extant being.<sup>97</sup> This concept will be further discussed below.

## II. The Other-I

The second distinction that Husserl contemplates about consciousness is more complex; he states that, when one perceives a thing—regardless of the thing’s real existence in some philosophical scheme—this perception implies the possibility of passing from this thing-perception to

<sup>86</sup>HUSSERL, *supra* note 4, at 4–5.

<sup>87</sup>HUSSERL, *supra* note 4, at 4.

<sup>88</sup>HUSSERL, *supra* note 4, at 4.

<sup>89</sup>HUSSERL, *supra* note 4, at 4.

<sup>90</sup>HUSSERL, *supra* note 4, at 5.

<sup>91</sup>HUSSERL, *supra* note 4, at 3.

<sup>92</sup>HUSSERL, *supra* note 4, at 3.

<sup>93</sup>HUSSERL, *supra* note 4, at 3.

<sup>94</sup>HUSSERL, *supra* note 19, at 140, n.2–4.

<sup>95</sup>HUSSERL, *supra* note 4, at 4.

<sup>96</sup>HUSSERL, *supra* note 4, at 4.

<sup>97</sup>HUSSERL, *supra* note 4, at 5–6.

another.<sup>98</sup> Here, Husserl essentially claims that if two individuals change places, or even imagine their places changed, then each individual will find that what currently appears to his consciousness is that which had appeared to the other's consciousness.<sup>99</sup> Simply stated, Husserl contends that each person assumes an approximate correspondence of his perceptions with those had by others, where deviations or alterations in this correspondence are understood to be the result of an illness or some other deviation from bodily normalcy, as in the case of blindness or deafness.<sup>100</sup>

It is important to note that, although every person may hypothetically be surrounded by the same world, and in this world he may see the same thing, this thing will appear differently to each person in accordance with its momentary place in space relative to the "I" as he stands in the middle of his world.<sup>101</sup> For example, what constitutes the front of a box to one is the side of the box to another.<sup>102</sup>

Husserl asserts that humans subsequently recognize and come to an understanding that—despite any spatial-temporal misalignments—this perceptual correspondence exists, and humans are able to pass judgment with one another on the basis of this understanding in the form of descriptive statements about their respective experiences.<sup>103</sup> As such, the sense of things the "I" finds in his understanding of the other-I are not found through self-perception and self-remembering, but through a form of apprehension called empathy.<sup>104</sup>

## E. Empathy

Accordingly then, Husserlian empathy is the perception of the other lived body and a supposition of the other consciousness, where the other consciousness is supposed to be a stream of consciousness, having an essence and regimentation analogous to "my" stream of consciousness.<sup>105</sup> Stated differently, Husserl defines empathy as an irreducible and direct experience of other subjects, yet one that is characterized by its distinction from the basic intimacy of the self.<sup>106</sup> He states:

The empathizing I experiences the inner life or, to be more precise, the consciousness of the other-I. He experiences the other-I, but no one will say he lives it and perceives it in inner perception . . . just like his own consciousness. And even more so, no one will say that he remembers it or expects it . . . [f]or when I feel empathy with your anger, I am myself not angry, not at all. Just as I am not angry when I imagine anger or merely recall it—unless, in the latter case, I become angry once again. [Empathy] is a phenomenological experience . . . where someone attains experience of another in terms of that person's inner life.<sup>107</sup>

For example, a man's awareness of his wife's sadness is an empathic experience—the man's experience of his wife's sadness contains a certain form of directedness toward her.<sup>108</sup> This hypothetical illustrates how the intentional object of empathic experience is either the other

<sup>98</sup>HUSSERL, *supra* note 19, at 92.

<sup>99</sup>HUSSERL, *supra* note 4, at 7.

<sup>100</sup>HUSSERL, *supra* note 4, at 7.

<sup>101</sup>HUSSERL, *supra* note 4, at 7.

<sup>102</sup>HUSSERL, *supra* note 4, at 7.

<sup>103</sup>HUSSERL, *supra* note 4, at 8.

<sup>104</sup>HUSSERL, *supra* note 4, at 10.

<sup>105</sup>HUSSERL, *supra* note 4, at 93.

<sup>106</sup>James Jardine, *Husserl & Stein on the Phenomenology of Empathy*, 58 SYNTHESIS PHILOSOPHICA 273, 276 (2014).

<sup>107</sup>HUSSERL, *supra* note 4, at 83, 85 n.1.

<sup>108</sup>Jardine, *supra* note 106, at 274.

herself, or something belonging to her experiential life.<sup>109</sup> Thus, empathy constitutes those experiential acts in which a foreign subject is experienced by the “I” himself—not simply hypothesized or inferred; therefore, empathy is a mental act that immediately grasps the other embodied mind.<sup>110</sup>

Husserl contends that through empathy and empathic understanding of another person’s experiences, human beings can observe one another for the sake of gaining knowledge.<sup>111</sup> Empathic understanding is said to give one psychological knowledge, which is attained through self-perception and self-remembering, as well as by theorizing upon empathic experience; and psycho-physical knowledge, which deals with the relations of dependency of one’s psychical realm on the body.<sup>112</sup> Husserl believes that psychology, as understood in terms of the laws of causality, aids in explaining human personalities and their changing states, acts, and character tendencies.<sup>113</sup>

Husserl reaches this conclusion through an argument by analogy. He states that just as the natural sciences employ the laws of causality to explain the transformations of physical things, so too can psychology explain the variation in human disposition.<sup>114</sup> To elucidate, when a physical thing transforms, a human being is able to experience the change only through the changed appearance of that thing—he cannot experience these changes as experiences in themselves.<sup>115</sup> For example, if a flower bud is in the process of blooming, a person may recognize the bud as a flower that is blooming because he sees that this is so through his perceptual experience. However, he is not able to experience the blooming through self-perception, as he is not the flower undergoing that transformation. In the same vein, Husserl contends that it is only by analogy to one’s own lived body that empathy ensues and is possible at all.<sup>116</sup>

Additionally, Husserl recognizes that empathy can create a doctrine of “a community constituted purely psychologically, in whose acts of community life there is constituted the ‘objective’ world—the world for everyone—as ‘objective’ nature, as a world of culture and as a world of ‘objectively’ existing communities.”<sup>117</sup> However, the creation of this community necessarily depends on the phenomenology of empathy “[running] its course with harmony and consistent confirmation.”<sup>118</sup> Husserl skillfully explains:

[T]hat which is experienced does not appear simply as identical and different . . . as useful, beautiful, or good; rather, it is *confirmed* as true or untrue. But the essential forms of individual lived experiences are embedded in a closed psychical nexus. The essential form of this nexus . . . is that of the psychic life of an individual self . . . [t]his self exists on the basis of its abiding convictions, decisions, habits, and character-traits . . . [T]he self always lives in community with others.<sup>119</sup>

## F. Applying Husserlian Empathy to the Amanda Knox Case

### I. Introduction

The Amanda Knox case received widespread, international media attention in the wake of her conviction and subsequent appeal.<sup>120</sup> Due to the notoriety of the case, many relevant judicial

<sup>109</sup>Jardine, *supra* note 106, at 274.

<sup>110</sup>Jardine, *supra* note 106, at 276.

<sup>111</sup>HUSSERL, *supra* note 4, at 10.

<sup>112</sup>HUSSERL, *supra* note 4, at 8.

<sup>113</sup>HUSSERL, *supra* note 4, at 13.

<sup>114</sup>HUSSERL, *supra* note 4, at 13.

<sup>115</sup>HUSSERL, *supra* note 4, at 13.

<sup>116</sup>HUSSERL, *supra* note 19, at 100.

<sup>117</sup>Husserl, *supra* note 19, at 150.

<sup>118</sup>Husserl, *supra* note 19, at 128.

<sup>119</sup>Husserl, *supra* note 19, at 150.

<sup>120</sup>Discussed *infra*.

documents and opinions have been preserved, analyzed, and translated into English.<sup>121</sup> These documents provide a detailed insight into the world of Italian criminal jurisprudence, the judicial justifications underlying Knox's conviction, and those used to grant her ultimate acquittal.<sup>122</sup> Despite the starkly divided opinion of the Italian courts, public opinion in Italy generally supported her conviction.<sup>123</sup> By contrast, public opinion in the United States tipped strongly in favor of acquittal on the belief that Knox was innocent, and that her conviction had been a gross miscarriage of justice.<sup>124</sup> The concept of Husserlian empathy will attempt to explain this incompatibility by demonstrating that any biases inherent in these opinions are the result of insufficiently analogous perceptual experiences between the Italian and American public.

More specifically, this article will argue that the lack of a directly equivalent translation in the English language for a criminal charge that exists in the Italian language does not prevent Anglophones from understanding the ethical underpinnings and jurisprudential value of the judicial process, even if the subject is incapable of comprehending the linguistic meaning of its component parts. Instead, any negative evaluations regarding the jurisprudential value of the judicial process are more likely the result of the subject's inadequate cultivation of empathy for an alien culture.

The following sections will provide an objective summary of the Amanda Knox case, the rules of Italian criminal procedure relevant to Knox's conviction, the charges brought against her, and the judicial opinions explicating the grounds for her conviction and acquittal. These sections are recounted in an objective manner to illustrate the ways in which comparative differences in spatial-temporal surrounding can produce vast perceptual differences, despite a fixed factual narrative.

## II. Procedural and Factual Summary of The Amanda Knox Case

In the early afternoon of November 2, 2007, Meredith Kercher was found murdered on the floor of her bedroom at Via della Pergola 7 in Perugia, Italy.<sup>125</sup> She shared the upper level of the two-story home with Knox and two other Italian girls.<sup>126</sup> Kercher's throat had been cut, Kercher's blood was on the floor and the walls of her room, and her assailant had covered her lifeless body with a white quilt; only her bare foot protruded from under the blanket.<sup>127</sup> Allegedly, on the morning of November 2, when Knox returned to Via della Pergola after spending the night with her then-boyfriend, Raffaele Sollecito, she remarked that: The front door was wide open; the toilet in one of the bathrooms had not been flushed; there was blood in the sink and on the bathmat in the other bathroom; and Kercher's bedroom door was locked.<sup>128</sup> Knox left the cottage to inform Sollecito of what she had seen, and when the couple returned to Via della Pergola together, they discovered that one of Kercher's bedroom windows was broken.<sup>129</sup> Knox was also unable to reach Kercher via phone, and she was not responding to persistent knocks at her bedroom door.<sup>130</sup> At this point,

<sup>121</sup>See Ass. App. di Perugia, 3 ottobre 2011, n. 9066, Foro. it. 2007, II, 1 (It.) (English translation).

<sup>122</sup>See *id.* (describing the reasons for reinstating Knox's conviction on appeal).

<sup>123</sup>See generally *id.* (reversing Knox's conviction on appeal).

<sup>124</sup>Ass. App. di Perugia, 3 ottobre 2011, n. 9066, Foro. it. 2007, II, 9, 12 (It.).

<sup>125</sup>See Giancarlo Massei & Beatrice Cristiani, *The Massei-Cristiani Report*, WORD PRESS, <https://masseireport.wordpress.com/contents/exposition/> (last visited Dec. 22, 2022). Italian judicial procedure requires judges who decide the outcome of a case to provide a written document justifying the decision of the court. *Id.* The name of the presiding judge, or judges, who authored the report becomes the title of the report. *Id.* The report here referenced is the Massei-Cristiani Report, issued by the presiding judge and the assistant judge who oversaw Knox's trial in the Court of Assizes of Perugia. *Id.*

<sup>126</sup>See *id.*

<sup>127</sup>See *id.*

<sup>128</sup>Injustice Anywhere, *Case Summary*, AMANDA KNOX & RAFFAELE SOLLECITO CASE, <http://amandaknoxcase.com/> (last visited Dec. 22, 2022).

<sup>129</sup>See Massei & Cristiani, *supra* note 125.

<sup>130</sup>See Massei & Cristiani, *supra* note 125.

Sollecito informed the Italian authorities of the suspicious circumstances, and, upon their arrival, Kercher's bedroom door was forced open and her body was discovered.<sup>131</sup>

Three days later, in the early morning hours of November 6—during an overnight interrogation by detectives—Knox spontaneously confessed on two different occasions to being in the home when Kercher was murdered.<sup>132</sup> Knox was arrested that morning.<sup>133</sup>

### III. Relevant Rules of Italian Criminal Procedure

In Italy, criminal investigations are initiated if either the police or the public prosecutor becomes aware of the commission of a crime; however, only the public prosecutor has the duty to initiate criminal proceedings and carry out investigations on the evidence of the case.<sup>134</sup> The respective Judge for the Preliminary Investigations limits the conduct of the prosecutor when the personal rights of the suspect are at stake; thus, the Judge seldomly intervenes during the course of an investigation.<sup>135</sup>

The Italian judicial system allows the defendant to opt for a “fast-track” trial process that consists of a series of judicial proceedings in the absence of a trial phase.<sup>136</sup> In a fast-track trial, the preliminary hearing becomes the trial of first instance, and the defendant is tried based on the evidence as it then stands.<sup>137</sup> The judge presiding over the preliminary hearing will then be the one to hand down the defendant's judgment.<sup>138</sup> A fast-track trial functionally reduces the defendant's right to present new evidence and to be tried by a trial judge; thus, the defendant must affirmatively demand this type of proceeding from the presiding judge.<sup>139</sup> A defendant is rewarded for engaging in a fast-track trial through a reduction of his sentence in the order of one-third of his non-mitigated sentence.<sup>140</sup>

Knox did not elect to be tried with a fast-track trial, but Rudy Guede—a man with little connection to Knox, and the person ultimately held responsible for the murder of Kercher—was convicted by a judge in a fast-track trial and sentenced to thirty years in prison.<sup>141</sup> His sentence was later reduced to sixteen years on appeal.<sup>142</sup>

Knox was tried following an “ordinary” trial procedure in a court of first instance, namely, the Court of Assizes.<sup>143</sup> A court of first instance is the first stage of a criminal proceeding in an Italian trial.<sup>144</sup> A proceeding of this nature is conducted by two judges, a presiding judge and an assistant judge, and requires the collection and presentation of all evidence, thereby enabling the court to

<sup>131</sup>Douglas Matthews, *Injustice in Perugia*, INJUSTICE ANYWHERE, <http://www.injusticeinperugia.org/CaseSummary.html> (last visited Dec. 22, 2022).

<sup>132</sup>Douglas Linder, *Knox's 1:45 AM Confession (Nov. 6, 2007)*, FAMOUS TRIALS, <https://famous-trials.com/amanda-knox/2627-knox-s-1-45-am-confession-nov-6-2007> (last visited Dec. 22, 2022). See e.g. Claudio Matteini, *The Matteini Report*, WORD PRESS <https://matteinireport.wordpress.com/the-matteini-report/>, (last visited Dec. 22, 2022) (confirming the detention of Knox on the basis of flight risk and the existence of serious indications of guilt).

<sup>133</sup>See Declaration of Arrest Issued by the Prosecutor to the Judge of Preliminary Investigations of the Court of Perugia.

<sup>134</sup>See Nicola Canestrini, *The Italian Criminal Trial*, HG.ORG <https://www.hg.org/legal-articles/the-italian-criminal-trial-26794>, (last visited Dec. 22, 2022).

<sup>135</sup>See *id.*

<sup>136</sup>See *id.*

<sup>137</sup>See Massei & Cristiani, *supra* note 125, at n.3, 14.

<sup>138</sup>See Canestrini, *supra* note 134.

<sup>139</sup>See Canestrini, *supra* note 134.

<sup>140</sup>See Canestrini, *supra* note 134.

<sup>141</sup>See Massei & Cristiani, *supra* note 125.

<sup>142</sup>See Massei & Cristiani, *supra* note 125.

<sup>143</sup>See Canestrini, *supra* note 134.

<sup>144</sup>See Canestrini, *supra* note 134.

issue a conviction or an acquittal.<sup>145</sup> Comparatively, a fast-track trial involves only one presiding judge, and the totality of the evidence there presented constitutes the evidence presented at the preliminary hearing.<sup>146</sup>

#### IV. Charges

Knox was charged with the following crimes for her alleged involvement in Kercher's murder:<sup>147</sup>

1. Multiply-aggravated murder, in material conspiracy;
2. Carrying a knife, allegedly constituting the murder weapon, taken from Sollecito's residence without justifiable reason;
3. Sexual violence, in conspiracy with Guede in the role of primary perpetrator, where this charge is aggravated under the present circumstances in the sense of *Codice Penale* Article 609-ter no. 2 due to the use of the knife mentioned in Charge 2 to accomplish the alleged violent and threatening behavior;
4. Theft of property belonging to Kercher, including two cell phones, money, and two credit cards;
5. Staging a burglary, encapsulated by *Codice Penale* Article 367: *Simulazione di reato*, with the aggravating circumstance of possessing a criminal purpose with a teleological nexus, assuming that the burglary was staged with the goal of attributing the responsibility for the murder and hypothesized sexual violence suffered by Kercher to the unknown persons who would have penetrated the apartment; and
6. The crime of calumny, *Codice Penale* Article 368: *Calunnia*, here charged as a continuation—in that the alleged false accusations regarding another suspect's involvement were contained in several statements that Knox made to investigators and in one written note presented to the police—aggravated in the sense of *Codice Penale* Article 61 no. 2 because it was hypothesized that, by falsely accusing someone else of Kercher's murder, Knox sought to obtain impunity for herself.<sup>148</sup>

Knox was found guilty on all counts with one minor exception: She was partially acquitted on the charge of theft and was found guilty of stealing Kercher's phones, but she was not guilty of theft with respect to any other items.<sup>149</sup> The Court of Assizes acquitted Knox on the grounds that “no evidence emerged against the accused, [and she is] therefore absolved for the relative and residual charge because it was not proven that the crime was committed.”<sup>150</sup>

The elements of the latter two charges, *Simulazione di reato* and *Calunnia*, dovetail well with the core concepts of Husserlian phenomenology, as each charge requires the allegedly deliberate manipulation of objects in one's surrounding for the purpose of creating a false perceptual experience. Thus, an analysis of the respective judicial and public opinions on these charges will

<sup>145</sup>See Canestrini, *supra* note 134; Massei & Cristiani, *supra* note 125.

<sup>146</sup>See Massei & Cristiani, *supra* note 125.

<sup>147</sup>See Massei & Cristiani, *supra* note 125, at 12 n.2; Claudio Pratillo Hellmann & Massimo Zanetti, *The Hellmann-Zanetti Report*, WORD PRESS <https://hellmannreport.wordpress.com/contents/history-of-the-case/> (last visited Dec. 22, 2022). See also *Calumny*, LEGAL INFO. INST. (June 2021), <https://www.law.cornell.edu/wex/calumny>. *Calunnia* is commonly translated as “slander.” *Id.* This is an approximate translation, as there is no equivalent charge to *calunnia* in the American common law system. *Id.* However, and rather interestingly, *calunnia* translates to calumny, meaning the act of maliciously misrepresenting someone's conduct to harm the person's reputation, which is akin to the tort of defamation. *Id.*

<sup>148</sup>See Hellmann & Zanetti, *supra* note 147. Article 61 of the Italian Penal Code describes circumstances that, when not part of the constituent elements of a crime, aggravate the underlying crime committed. C.p. art. 61 (It.). Section 2 states that the commission of a crime in pursuit of one's impunity for another crime constitutes an aggravating circumstance. *Id.*

<sup>149</sup>See Hellmann & Zanetti, *supra* note 147.

<sup>150</sup>See Massei & Cristiani, *supra* note 125.

shed light on the ways that analogous experience can assist in grasping the motivations and conduct of another person.

### 1. *The Court of Assizes' Justification for Knox's Conviction*

The Court of Assizes summarizes Kercher's murder as, on the one hand, the product of a set of random circumstances, and on the other hand, a product of extreme experimentation, a choice of evil for the sake of evil.<sup>151</sup> Notwithstanding the diametric classification of the actions in question as the product of fortunate chance and the exercise of deliberate evil, the Court emphasizes that the illicit conduct was encouraged by an environment full of erotic temptations.<sup>152</sup> The court elaborates on this characterization, stating that Kercher became a predestined object of desire, and that her injuries and subsequent murder were not planned, but were done for the purpose of experiencing the new emotion of *eros* and violence.<sup>153</sup>

#### 1.1 *Simulazione di reato*

The trial court reasoned that the staging of the burglary was a *mise-en-scène* for the purpose of leading investigators into error regarding the perpetrator's means of entry into the residence.<sup>154</sup> The belief that the burglary had been staged stemmed from various pieces of evidence that had been recovered from the scene.<sup>155</sup> The court concluded that the perpetrator had entered through the front door of the home, and that Knox was the only one that could have granted him access that night.

#### 1.2 *Calunnia*

The trial court convicted Knox of calumny on the grounds that, due to her involvement in the commission of the crime, she knew the details of how it occurred. Thus, by accusing another man of the homicide, she was clearly aware that she had falsely accused an innocent man.<sup>156</sup>

### 2. *The Appellate Court's Justification for Knox's Partial Acquittal*

#### 2.1 *Simulazione di reato*

The appellate court rejected the logic of the trial court. It stated:

If we now turn from considering the objectively feasible means of entry to considering the subjective experience and disposition [of the perpetrator] as well, we cannot avoid assigning relevance to the specific sense of experiences verified in whatever way and not denied even by the person concerned . . . [C]ontrary to the finding of the first-level *Corte di Assise*, there is no reason to conclude that [the perpetrator] had any psychological obstacles or particular fears about inserting himself into the house . . . in the absence of those who lived there.<sup>157</sup>

<sup>151</sup>See Hellmann & Zanetti, *supra* note 147.

<sup>152</sup>See Hellmann & Zanetti, *supra* note 147 (displaying the Court of Assizes concluded that on the night of the murder, Knox, Sollecito, and Guede had all been present in Knox's house; that they had perhaps made use of mind-altering substances; that Knox and Sollecito then engaged in sexual intercourse in Knox's room; and, that Knox and Sollecito engaging in sexual intercourse prompted Guede to approach Kercher in her room with the intent of engaging in sexual intercourse with her).

<sup>153</sup>The Court of Assizes also claims that instead of defending Kercher, Knox and Sollecito aided Guede in the commission of homicide. See Hellmann & Zanetti, *supra* note 147.

<sup>154</sup>See Hellmann & Zanetti, *supra* note 147.

<sup>155</sup>See Hellmann & Zanetti, *supra* note 147 (displaying the Court of Assizes stated that had an actual burglary occurred: Glass fragments from the shattered window would have been underneath the ransacked objects, not on top of them; there would have been signs that someone had climbed the wall of the building to access the second-story window but no such signs existed; and, that using a rock to break the window would have been very difficult because the shutters covering the window would have had to have been opened prior to its breaking when they had been closed).

<sup>156</sup>See Hellmann & Zanetti, *supra* note 147.

<sup>157</sup>See Hellmann & Zanetti, *supra* note 147.

The appellate court held that there was no reason to believe that the burglary was a *mise-en-scène* that was ultimately abandoned due to the tragic unfolding of events, rather than an actual break-in for the purpose of committing a theft.<sup>158</sup>

## 2.2 *Calunnia*

The appellate court rejected the Prosecution's alleged theory that Knox substituted "black man for black man" when she intentionally misidentified her acquaintance, Patrick Lumumba, as the perpetrator of the crime.<sup>159</sup> The court stated that it was understandable that Knox supplied police with a false name—not because she was guilty of murder as the prosecution stated—but to put an end to the true torment of the overnight interrogation to which she had been subject.<sup>160</sup> Despite the existence of this coercive environment, the appellate court affirmed her conviction on the grounds that *calunnia* is a crime of general intent, and therefore, intent to escape from a particularly oppressive situation is sufficient to sustain a conviction.<sup>161</sup>

## 3. Public Opinion in North America and Italy

Knox was tried in 2007—a year she dubs the year of the iPhone and the takeoff of Twitter and Facebook.<sup>162</sup> In a self-authored essay, she reflected on how the advent of digital and social media affected her trial, confessing that her most intimate thoughts were taken from her private diary and leaked to the press.<sup>163</sup> She elaborated further, stating that the media had profited by sensationalizing an already sensational story.<sup>164</sup> In Italy, public opinion seemed to confirm this consensus—the case of Amanda Knox was, and still is, the paradigm example of a trial by media.<sup>165</sup> Due to the media frenzy surrounding her trial, journalistic sources will be used as the primary evidence of both American and Italian public opinion on the *Knox* case.

### 3.1 Italy

In 2019, a member of Italy's Innocence Project stated that, although Knox had been definitively acquitted in court, she is still guilty in the popular imagination.<sup>166</sup> News articles published around the closing stages of the trial confirm this sentiment, reading: "Sex, lies, and stabbing;" "Lovers without inhibitions;" "And in prison, she even tries to sunbathe."<sup>167</sup> Moreover, a random sampling of women on the street in Rome from 2009 showed that every woman asked had heard of the case, and that most believed that Knox was implicated in the crime.<sup>168</sup> An American news source even stated that Knox could do no right in the Italian media.<sup>169</sup>

Also in 2019, speaking about Knox's first return to Italy following her release from prison, the former lawyer for the Kercher family remarked:

She comes to speak about judicial errors, but it was not her case. You can talk of judicial errors when a trial doesn't stand up from the beginning. In her trial, there were as many as

<sup>158</sup>See Hellmann & Zanetti, *supra* note 147.

<sup>159</sup>See Hellmann & Zanetti, *supra* note 147.

<sup>160</sup>See Hellmann & Zanetti, *supra* note 147.

<sup>161</sup>See Hellmann & Zanetti, *supra* note 147.

<sup>162</sup>See Sheena McKenzie, *Amanda Knox Arrives in Italy for First Time Since Prison Release*, CNN (June 13, 2019, 7:15 AM), <https://www.cnn.com/2019/06/13/europe/amanda-knox-italy-intl/index.html>.

<sup>163</sup>See McKenzie, *supra* note 162.

<sup>164</sup>See McKenzie, *supra* note 162.

<sup>165</sup>See McKenzie, *supra* note 162.

<sup>166</sup>See McKenzie, *supra* note 162.

<sup>167</sup>See Hadia Messia, *Murder Case Brings "Foxy Knoxy" Infamy in Italy*, CNN ROME BUREAU (Mar. 27, 2009, 12:13 PM), <http://www.cnn.com/2009/CRIME/03/27/amanda.knox.italy/index.html>.

<sup>168</sup>See Messia, *supra* note 167.

<sup>169</sup>See Messia, *supra* note 167.



three convictions if we also consider the first sentence of the high court. To call it a judicial error is excessive.<sup>170</sup>

### 3.2 North America

Notwithstanding this negative portrayal of Knox in the Italian media, American news outlets and attorneys alike believed the trial to be a sham. In 2009, a former prosecutor and pro bono attorney for the Knox family said that the intense media coverage was all a distraction from the lack of evidence.<sup>171</sup> She further stated, “[i]t’s the greatest travesty of a prosecution, ever. It’s so ludicrous. You’ve got to have a theory, or motive, but the theory has to fit the facts somehow. And in this case, there’s no solid evidence, no motive, and no match whatsoever.”<sup>172</sup>

### 3.3 Husserlian Analysis

A core concept of Husserlian phenomenology is the idea that a person experiences the world immediately surrounding him as a segment of an infinitely extending world.<sup>173</sup> Within this segment of the world, a person can have the experience of other conscious minds by assuming that the other perceives the world in a way that is analogous to his own manner of perception.<sup>174</sup> This is what Husserl calls the empathic experience, or empathy.<sup>175</sup> This theory of empathy is useful in understanding the disparate public opinion between American and Italian culture in the wake of the Knox trial.

The populations of America and Italy were both directly exposed to media that had been created by other lived bodies existing in the same segment of the world as they did. Thus, the object of any one person’s perceptive experience was the narrative of the Knox case that existed within his immediate surrounding. Even though Husserlian phenomenology could account for the difference in public opinion on the basis of the differing temporal-spatial locations of Italy and the United States, I argue that the populations of these countries are bound by an identifying unity of experience that to a greater extent is responsible for the incompatible public opinion: Culture.<sup>176</sup> Despite each perceptual being existing in his own segment of the infinite world, I contend that culture is geographically transcendent and facilitates empathic experience to the exclusion of those external to it.

## G. Conclusion

In sum, the primary reason for the disparate opinion between the North American and Italian populations is not due to the difference in each respective public’s spatial-temporal location—instead it is due to the difference in culture that accompanies an extensive shift in spatial-temporal location. Therefore, because the American population shared the same cultural identity as Knox, the American individual was more easily able to recognize her as hypothetically existing in his immediate surrounding. Thus, as she existed as an immediately perceivable lived body, her distress and turmoil were more readily understood by the American public through empathic experience. This empathic experience permitted the general population to favorably evaluate

<sup>170</sup>See Lauren Said-Moorhouse, “I am not a Monster, I simply am Amanda,” says Knox on her Tearful Return to Italy, CNN (June 15, 2019, 1:09 PM), <https://www.cnn.com/2019/06/14/europe/amanda-knox-italy-justice-festival-intl/index.html>.

<sup>171</sup>See Messia, *supra* note 167.

<sup>172</sup>See Messia, *supra* note 167.

<sup>173</sup>See generally HUSSERL, *supra* note 4 (describing the way that the “I” perceives the world).

<sup>174</sup>See generally HUSSERL, *supra* note 4 (discussing Husserl’s idea of empathy).

<sup>175</sup>See HUSSERL, *supra* note 4.

<sup>176</sup>Please note that what follows is outside the scope of Husserlian philosophy and serves as a personal conclusion formulated on the basis of my study of the Knox case, Husserl’s body of work, and my own experience.

Knox's character as one that was incompatible with a merciless murderer. As such, the American public perceived and experienced Knox to be an innocent victim—not a merciless murderer.

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