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# "New Human Possibilities" in Patočka's Philosophy of Literature

Erin Plunkett

#### ABSTRACT

This article considers Patočka's phenomenological account of literature in "The Writer's Concern" to defend the idea that literary writing offers a distinctive philosophical contribution. In this text, Patočka gives the writer a special claim on the activity of world disclosure and suggests that literature may offer a glimpse out of the techno-scientific framework that dominates contemporary life. I examine both science and literature as modes of relating to the world, raising questions about the distinctiveness of each and their use of the written word. Finally, I locate the philosophical advantage of literary writing in Patočka's dual claims about literature: that it offers "an *individual* capturing of *life's meaning*" and that it presents "the world" as an "undivided" whole.

#### **ABSTRAKT**

# "Nové lidské možnosti" v Patočkově filozofii literatury

Článek se zabývá fenomenologickou koncepcí literatury v Patočkově studii "Spisovatel a jeho věc" a rozvíjí myšlenku, že literatura nabízí výrazný filozofický přínos. Patočka přisuzuje spisovateli spoluúčast na aktivitě zjevování světa a ukazuje, že literatura může poskytnout vhled za technickovědecký rámec, který dominuje současnému životu. Zabývám se vědou i literaturou jako způsoby vztahování se ke světu, reflektuji osobitost každé z nich a způsob, jakým používají psané slovo. V závěru nacházím filozofický přínos literárního psaní v Patočkově dvojím tvrzení o literatuře: že nabízí "individuální zachycení smyslu života" a že představuje "svět" jako "nedělitelný" celek.

### **KEYWORDS**

Jan Patočka, phenomenology, philosophy of literature, literary criticism, fantasy, science, scientism, techno-science, world-disclosure, lifeworld, world horizon.

# KLÍČOVÁ SLOVA

Jan Patočka, fenomenologie, filozofie literatury, literární věda, fantazie, věda, scientismus, věda a technika, zjevování světa, životní svět, horizont světa.

Patočka begins his 1969 essay "The Writer's Concern" (Spisovatel a jeho věc) by heralding the possibility of a renewed era of reason that would be characterised by "attentiveness to essential things" in contrast to a brute factualism. He identifies the intelligentsia as the branch of civil society with the power to bring this possibility to fruition. "The creative intelligentsia – those whose task is not  $\pi \rho \tilde{\alpha} \xi_{I} \zeta$  [praxis], but  $\pi o i \eta \sigma_{I} \zeta$  [poiesis] – may be roughly divided into technical, artistic, and scientific. Technology, science, and art create new human possibilities" (PATOČKA 2019: 39).

One might register some initial surprise to find technology, art, and science classed together, given Patočka's criticisms of techno-science elsewhere. Indeed, Patočka will go on in this essay to make some crucial distinctions between them. Yet these domains belong together insofar as each offers a kind of world disclosure; each tells what the world is like, what it is to be in a world – extending to what is recognised as a thing and what things are deemed worthy of attention. To use Patočka's formulation, *possibilities* are disclosed within the frames of all three spheres of activity, and modern technology, science, and modern art all offer "new possibilities" for human being-in-the-world. We can note immediately that these possibilities are not unambiguously *good*.

In what follows, I attempt to clarify Patočka's conception of the writer's task and the specific contributions of literary writing to the project of disclosing possibility. In this text, Patočka gives the writer a special claim on the activity of world disclosure and suggests that literature may offer a glimpse out of the techno-scientific framework that dominates contemporary life. But what sets literary disclosure apart from scientific disclosure? How do both use language? How should the relationship between the two be understood? After arguing for the distinctiveness of the scientific and literary, I locate the philosophical advantage of literary writing in Patočka's dual claims about literature: it offers "an *individual* capturing of *life's meaning*", and it presents "the world" as an "undivided" whole (PATOČKA 2019: 45, 49).

# 1. Scientific truth as objectivity

The writer's concern contrasts most sharply with what Patočka, echoing Husserl's 1936 *Crisis in the European Sciences*, calls the "scientific" model. Both Husserl and Patočka see such a model as revolutionary in its own right, underpinning modern society and the advances in knowledge in modernity. However, the scientific framework at the same time prevents certain kinds of truths about the world from appearing.

Patočka suggests that literary writing allows for the foregrounding of truths that are not available to scientific consciousness; specifically, he names the subject of modern literature and poetry as "life's meaning". The writer is accorded a unique and privileged position, since the activity of elucidating "life's meaning" is "something for which there is no substitute and which cannot be displaced by any other intellectual activity: science, philosophy, religion" (PATOČKA 2019: 47). In order to bring the nature of this activity into relief, I will first explain the model of scientific truth with which Patočka wishes to contrast the concern of the writer-artist.

The hallmarks of a scientific conception of the world are clear in Husserl's *Crisis* text, which, along with Heidegger's writings on technology, shaped Patočka's conception of the scientific or techno-scientific. In a scientific framework, truth is characterised by exactness and objectivity – where objectivity implies binding, universal applicability and the subtraction of any subjective perspective. "What constitutes 'exactness' [*Exaktheit*]? [It is] empirical measuring with increasing precision, but under the guidance of a world of idealities, or rather a world of certain particular ideal structures that can be correlated with given scales of measurement – such a world having been objectified in advance through idealization and construction" (HUSSERL 1970: 34).

Scientific truth, then, relies on a prior translation or objectification of the lived world into "ideal structures" that are open to precise measurement. To illustrate the point, one might consider how an object comes into view for an existing subject: a thing is always seen from a singular, embodied perspective, and the perception of any thing is a combination of presence and absence, fulfilled and unfulfilled intention. Moreover, an individual thing presents itself to a subject's attention always within a context, a world horizon, which Patočka describes as "co-intended" with particular things (PATOČKA 2019: 49). By contrast, the scientific as Husserl describes it offers fully present, timeless objects that can be divorced from their worldly manifestations and defined mathematically. The

manifestation of objects, how they come to be present, is not a *problem* within a scientific framework: rather, the total givenness of the object is presupposed.

As the scientific logic of objectification is extended in modernity, "the original thinking [within experience] that genuinely gives meaning to this technical process and truth to the correct results [...] is excluded" (HUSSERL 1970: 46).¹ Husserl's point, one shared by Patočka and by phenomenology more generally, is that the achievements of the sciences rely on a prior opening of things within the lifeworld, the world of our experience. The crisis Husserl diagnoses is that this opening is forgotten, and reality becomes identified with the objective. The primordial experience of a natural world in which we are always oriented between earth and sky,² and which is, for us, always a world of significance, drops out.

Central to the distinctiveness of the scientific framework is the redefinition of truth as precise, measurable, and neutral knowledge – what Patočka calls "objectivity" that is achieved "through the exclusion of subjective components" (PATOČKA 2019: 43). Yet he notes that "the connectedness of meaning that our *activity* [my emphasis] effectively brings about is only in our lives; it does not stand before us as an object" (PATOČKA 2019: 44). The intimacy between subject and world – the world's opening to the embodied subject through the subject's own activity, loses its status as truth. The subject becomes a passive observer – or, at most, a manipulator of reality rather than a being in a primordial relationship to truth. It is precisely the relationship between the living, embodied subject and the world that Patočka will argue is rehabilitated in literary writing.

It is not the case for Husserl or Patočka that such essential human abilities as abstraction, idealisation or objectification are to be avoided. Both are clear that the achievements in these domains make essential strides toward knowing the world and toward human development. In "The Writer's Concern", philosophy and the sciences sit alongside literature as ways of "exploiting" the "fixed, objective meaning" of the written word (PATOČKA 2019: 43).

<sup>1)</sup> See also Anita Williams, "The Meaning of the Mathematical" (WILLIAMS: 2018).

<sup>2)</sup> See Patočka's "The Natural World and Phenomenology" for an elaboration of this point (PATOČKA: 1989).

# 2. Writing and literary language

The first part of Patočka's essay offers an analysis of the change wrought in human history with the development of the written word, where writing is "the result of a process of gradual objectification of the word" (PATOČKA 2019: 40). The language that Patočka uses to describe the innovation of the written word at many points echoes his descriptions of the scientific framework in this and other texts. The advent of writing offers "objectified, reified, stable linguistic architectures" that "contain" the world and "enable us to see it in front of us, to objectify it", allowing for "accumulation, control, revision" (PATOČKA 2019: 44, 42). In Patočka's analysis, philosophy and the sciences further the objectifying power of language, its ability to contain the world (PATOČKA 2019: 43). The fixing of precise meanings that Husserl describes is in large part a linguistic achievement – one that, among other things, makes possible the computer "language" that runs most of the systems underlying contemporary life. Because Patočka's description of the written word is so similar to his description of the sciences elsewhere, the objectifying power of the written word stands in an ambiguous relationship to the literary activity of expressing life's meaning. This objectifying power – the power to set the world in front of us – is a necessary precondition for the writer, but the expression of life's meaning seems at the very least to stand in tension with the powers of "reification", "accumulation", and "control".

The path of the literary writer then draws from the objective linguistic structure already in place, but does not, like the sciences or logic-dominated analytic philosophy, strive to reduce language to the simplest, most unambiguous units – the logical proposition. The urge toward simplicity and precision is countered by an exploitation of the full range of expressive power inherent in *ordinary* language. "For the writer-artist the fundamental element is not unambiguous conceptual speech, but ordinary language with its metaphorics, its ability to demonstrate, to expand, to specify meaning through its suggestive power" (PATOČKA 2019: 46).

Demonstration, expansion, and suggestion are the powers of ordinary language exploited by the literary writer to present a world. Metaphor allows for spontaneous and dynamic relationships between things. Ambiguous uses of language point in multiple signifying directions at once. Language presents the phenomenon of lived time itself: condensing or expanding, pausing, slowing down, or racing ahead. The advantage of ordinary language is its proximity to life and therefore its proximity to the experience of embeddedness of the living subject within a world.

The account of the richness of ordinary language here no doubt owes something to eighteenth-century philosopher J. G. Herder, whose account of language Patočka discusses in other essays. Herder goes further than Patočka in outright mocking the philosopher's attempt to tame and purify language (HERDER 2002: 64)<sup>3</sup> and in claiming that ordinary language is superior to conceptual speech in its ability to mean and to signify. For both Patočka and Herder, it is the *suggestive* power of ordinary language – rather than its *Exaktheit* that allows it to demonstrate and expand meaning. The same term "suggestive" is used by Patočka in "The German Spirit in Beethoven's Era" to describe the power of music (PATOČKA 2011). The "echo" of the world that we hear in ordinary language and in musical tones, an intimate relationship to the form of our life – itself bears a kind of truth – though it is one that cannot be translated into straightforward content. Language bears the marks of our embodiment; music bears witness to our finding ourselves always in a *mood*.

# 3. Literary language and subjectivity

For Patočka, literature and poetry, which draw on the capacities of ordinary language, involve a conception of truth that is not only wider than the objective model of the sciences but one upon which this model relies. The orientation toward prediction and control in the scientific model relies on a prior openness to the world. This opening is a fundamentally subjective one, in that the world opens up to an embedded subject. The literary writer captures this dimension of the subject's involvement in things and their manifestation.

The writer is able to: employ language to uncommon ends, in a seemingly new direction, to make language an expression of life instead of things, to express life as it springs ceaselessly from the living presence within us, creatively integrating this outpouring into all our previous achievements – this is the task that sets the writer-artist apart from other types of writer... the writer is a revealer of life (PATOČKA 2019: 46).

<sup>3)</sup> Herder celebrates the excessive quality of ordinary language in contrast to the philosopher's efforts to tame and it: "And where was the philosopher who would have ordered what he saw into classes and washed away the excess? New subject matters, new objects, conditions, circumstances, yielded new names – and in this way language became only all too rich. Sensuous objects were referred to sensuously – and from how many sides, from how many view-points they can be referred to! In this way language became full of crazy and untamed word transformations, full of irregularity and stubborn idiosyncrasy" (HERDER 2004: 64).

The "direction" of the writer's language here is a direction inward, to subjectivity, to life as it springs from "living presence within us". 4 If the objectivising move of scientific and philosophical language is to subtract the subjective elements of experience and to present the *contents* of objective reality – things, beings – then it misses something essential of what it is to be in the world. The phenomenological conception of "world" is such that the world is not a mere collection of things but forms the horizon within which things can come to be recognised at all. Crucially, ordinary experience entails a relationship to this horizon, insofar as we find ourselves always already situated and oriented; we are not objective observers in a neutral relationship to things. "Life" in the above passage and related remarks in the essay suggests a movement - between present things and what is not yet or no longer present. It also suggests a temporality and activity, as the process of "creatively integrating" the movements of our life. The "direction" that language takes here is then an inward one, but an inwardness that has already gone outside of itself (in practical life, in language) and that gestures outward yet again. There is in "life" and in the meaning of a particular life an essential relationship to what is, an "undivided relationship to the universe" that goes beyond mere subjectively felt meaning (PATOČKA 2019: 50).

The "living world" of the poetic or literary work is always "the world of a *particular* life" (PATOČKA 2019: 49, my emphasis) in that the writer-artist, "summons the world" and "takes responsibility" for the vision that is presented. Crucially though, "in spite of this individual *key*, the *universal totality* of things is always revealed both implicitly and in covert fashion" (PATOČKA 2019: 49).

# 4. Reading and "fantasy"

The intersubjective truth or validity of such a vision relies in part on the phenomenology of reading as such, of which Patočka offers a brief sketch. Patočka names this reading experience "fantasy", and he describes it in much the same terms that Wolfgang Iser will use a few years later in his *Implied Reader* and the *Act of Reading*. In the experience of reading, readers are "placed in a quasi-present, with quasi-reality presented to them in such a way that they pass through it as

<sup>4)</sup> I read this as the import of following passage: "The writer reveals the creative process of reality itself, that part of reality which is not an aspect of 'substance' and yet undeniably exists [Spisovatel odhaluje tvůrčí proces samotné skutečnosti, to v ní, co není stránkou 'substance', a přece nepopiratelně jest.]" (PATOČKA 2019: 48, PATOČKA 2006: 290).

if it were real" (PATOČKA 2019: 46). Though what they are presented with is not their own life's reality, but another's, it is "as if it were taking place inside of them" (PATOČKA 2019: 46). In a sense, the fictional world is "both lived and seen – and therefore *reflected upon*" (PATOČKA 2019: 46). Patočka explains further that the reflection does not take the form of introspection, as when we reflect on ourselves, but the "form of fantasy": an imagined variant of reality (PATOČKA 2019: 46). This is significant because it links to Patočka's claim that the actual direction of reflection, like the direction of language, is outward toward things, toward the world, rather than 'in the mind' (PATOČKA 2019: 46).

Fantastical reflection occurs "along with an appeal to our own experience of the essential" (PATOČKA 2019: 15). Patočka thus hints at the dynamic exchange between fictional world and everyday lived world that is part of any experience of reading fiction or poetry. While I take up the "as if" of a novel through a "suspension of disbelief", my own lived experience, for that moment thrust into the background, constantly informs my experience of the novelistic present. I have to recognise myself within the fantasy. Yet the meaning of the "appeal to my own experience of the essential" is not immediately clear. What I am presented with in the act of reading is not, Patočka later clarifies, *knowledge* – "which is always objective, i.e., intersubjectively identical and binding" (PATOČKA 2019: 49), though it is clear that for him reading literature and poetry has "cognitive value", as Daniela Blahutková has argued.

The essential is not fundamentally a matter of content but a sense for the "relations between events" and things, a sense that develops in our embeddedness in the world rather than from any conceptual schema, logic, or any particular experience (PATOČKA 2019: 46). When we judge these relations to be true or fitting, whether they occur in the narrative of a novel or in everyday life, it is "not simply from habit or because they are familiar" but has to do with the whole context of human meaning in which we find ourselves (PATOČKA 2019: 46).

A novel does not only show the particulars of a world, particular possible situations or life paths. Patočka argues that it also offers the sense of a world as a whole, as the horizon of possibility for any particular things, events, or experience at all. The fantasy experience of grasping the relationship between things offers a truth that seems to "echo" in us, to use a term Patočka favours, because it gives back to us the wholeness of the world and our situatedness in it.

The object of life is not originally life itself but a world that is given meaning by life, elaborated, besouled, the world as a constant echo (in which we hear also our own voice from outside, from

a distance)... [The writer] constantly reveals and shows us the echoing of the world. They do not add to, complete, or insert meaning, but simply gather and reveal it (PATOČKA 2019: 48).

This claim goes beyond the idea of literature capturing "a particular life's meaning". As I suggested, the "echo" or resonance involves the relationship between that life's meaning and the world itself; an echo is most fundamentally a metaphor of relationship. The above passage pushes back against the notion that the cognitive value of a literary work is merely subjective in the sense of an expression of personal meaning. Patočka's claim elsewhere in the essay that literary knowledge has the value of a "personal hypothesis or philosophical creed" (PATOČKA 2019: 47) must be understood alongside the above claim that the writer does not add or complete meaning, but merely makes meaning explicit through a process of "gathering" and "revealing". There is then a quasi-objective quality to the writer's activity of "revealing life" (PATOČKA 2019: 48). Patočka draws from Václav Černý's analysis of German idealist aesthetics, in which the "literary work *shapes* [my emphasis] meaning, making real what is unspoken in the world" (PATOČKA 2019: 47).

Therefore every true writer's or poet's performance is at the same time a summoning of the world in its essence and yet full of mystery, of what has not yet been resolved and yet is here at every step. By what method does the writer achieve this result? By none other than *underscoring* those life echoes with the help of that medium in which the world is naturally reflected and expressed: language (PATOČKA 2019: 48).

"Mystery" here is key to the distinctiveness of the literary as a mode of world disclosure and refers to the original situation of the subject's relationship to the world. The manifestation of the world involves not only disclosure but an ongoing dialectic of concealment and unconcealment. In other words, the configurations of the writer-artist are not the projection of *any*, arbitrary meaning on things, but a reflection of the way in which the world both opens up to and recedes from our efforts to know it. The writer does not "create" a world, insists Patočka, but is rather a "revealer of life" and a "revealer of the creative process of reality itself" (PATOČKA 2019: 48). The poetic or literary text's suggestiveness, its ability to echo and resound with bottomless meanings, is a way of opening up what remains unresolved or unpresented in the world itself.

<sup>5)</sup> Heidegger's term for truth is *aletheia*, literally unconcealment or unhiddenness. The term ἀλήθεια is borrowed from ancient Greek philosophy. For a reading of Patočka's theory of modern art as *aletheia*, see JOSL: 2016.

The interplay between world and particular human existence-in-the-world in literature and poetry explains Patočka's claim that the writer is able to open up new *human* possibilities. Elaborating Husserl's concept of the lifeworld, Patočka argues that we do not reach the world by "gradually eliminating all anthropomorphism" but only through our activity in and with the world (PATOČKA 2019: 49).

The world in its lived form is *a whole* [...] and yet at the same time the world does not stand as a finished thing, but rather as a framework of possibilities for the free being, which is constantly crossing out certain of its possibilities and embracing and mapping out others, grasping some and casting off others, until it fulfils itself entirely in its own way, such that this being is a being of this world and the world is through and through a world of its possibilities [...] So the world is still a world of *generic* possibilities, and therefore comprehensible to everyone, yet it possesses a "that-whichness" which means the world is not even possible without subjectivity, and *discovery*, the uncovering of things which is the world's work, cannot happen otherwise (PATOČKA 2019: 49).

Literature and poetry allow for reflection on the structure of manifestation as such, and the reality of a world as the horizon of our activity, rather than a set of manipulable things. The human being is the site of manifestation for the world, and the possibilities of the free being are in turn reflected back into the world. Patočka here offers an account of the mutual work of subject and world in the uncovering of things and thus in the unlocking of potential in both the world and in human being.

In Heidegger's "Essay Concerning Technology", he stresses that science and technology share the assumption that reality stands ready or available, to be ordered up, classified, and controlled. The living subject stands among these "resources". What is revealed of Being and of ourselves by the framework of the sciences "can indeed permit correct determinations; but precisely through these successes the danger may remain that in the midst of all that is correct, the true will withdraw" (HEIDEGGER 1993: 331).

In the context of the objectifying achievements of the sciences, it is the "understanding" of the writer that serves as the "prerequisite for all objectivization in the sense of a methodical elimination of all subjectivity" (PATOČKA 2019: 49). And thus in a time when the scientific-technological schema of the available world dominates, when reality is characterised by the increasingly specialised data sets, literature offers a crucial reminder of "framework of possibilities for the free being" and for the intimacy of the relationship between the world and

a "personally achievable life's meaning" (PATOČKA 2019: 50), wherein the possibilities of the world are our own possibilities.

Despite arguing for the distinctive phenomenological value of the literary in this work, Patočka remains clear-eyed that the social and political value of literature can be co-opted by wider cultural forces. He ends the essay by noting that the prevailing logic of contemporary life, along with the structure of mass media, have the power to make the writer "a cog in the complex machinery of supply and demand" (PATOČKA 2019: 50) and thus to fall under the framework of "human resources" Heidegger warns against. Nevertheless, as Miloš Ševčík argues, writing about Patočka's conceptions of modern art: "It is the influence of modern science, which enables the visibility – and thus the independent existence – of art itself" (ŠEVČÍK 2014: 78). Indeed, Patočka insists that it is precisely within a context in which the primary mode of revealing is the technoscientific that literary writing acquires its power and urgency.

The greater the segmentation, the greater the need for compensation and a reminder of the wholeness of life, of the undivided relationship to the universe. Literature defends this undividedness above all else (PATOČKA 2019: 50).

# PRIMARY SOURCES:

#### HEIDEGGER, Martin

1993 [1954] "The Question Concerning Technology", in Martin Heidegger: *Basic Writings*, 2<sup>nd</sup> ed., trans. David Farrell Krell (San Francisco: Harper), pp. 307–342

#### HERDER, Johann Gottfried

2002 *Herder: Philosophical Writings*, ed. and trans. Michael N. Forster (Cambridge: Cambridge University Press)

### HUSSERL, Edmund

1970 *The Crisis of European Sciences and Transcendental Phenomenology*, ed. and trans. David Carr (Evanston: Northwestern University Press)

# PATOČKA, Jan

1989 [1967] "The Natural World and Phenomenology", in Jan Patočka: *Philosophy and Selected Writings*, trans. Erazim Kohák (Chicago: Chicago University Press), pp. 239–273

2006 [1969] "Spisovatel a jeho věc", in Jan Patočka: Češi I. Sebrané spisy Jana Patočky. Vol. 12, ed. Karel Palek, Ivan Chvatík (Prague: Oikoymenh – Filosofia), pp. 280–292

2011 [1971] "The German Spirit in Beethoven's Era", *Slovo a smysl* 8, no. 16, trans. Martin Pokorný (Prague: Karolinum Press), pp. 211–239

2019 [1969] "The Writer's Concern", in Jan Patočka: Care for the Soul. Three Essays by Jan Patočka (booklet), trans. Alex Zucker (Edinburgh: Indigo Press), pp. 39–50

#### SECONDARY SOURCES:

### BLAHUTKOVÁ, Daniela

2014 "Patočka's reflections on Faust and Modern Art", *Philosophica et Historica 1: Studia Aesthetica VII* (Prague: Karolinum), pp. 65–72

## JOSL, Jan

2016 "The End of Art and Patočka's Philosophy of Art", *Horizon Studies in Phenomenology* 5, no. 1 (Saint Petersburg: St Petersburg State University), pp. 232–246

### ŠEVČÍK. Miloš

2014 "Dominant science and influential art: Jan Patočka on relations between art and science", *Philosophica et Historica 1: Studia Aesthetica VII* (Prague: Karolinum), pp. 73–84

#### WILLIAMS, Anita

2018 "The Meaning of the Mathematical", *Asubjective Phenomenology*, eds. L'ubica Učník, Ivan Chvatík, Anita Williams (Nordhausen: Verlag Traugott Bautz GmbH), pp. 227–252

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