

PART 1

The Philosophic Idea of Encyclopedia in the Light of the Cosmomic Idea. The Theory of the Law-Spheres as the Primary Foundation of the Encyclopedia of the Science of Law

1.1 Introduction to the Science of Law and the Philosophic Idea of Encyclopedia

The gradual eclipse of the title “encyclopedia of the science of law” by “introduction to the science of law” was sanctioned in the Netherlands by the *Academic Statute* established by Order in Council of June 15, 1921, p. 800, in which the former designation “encyclopaedia” was replaced by “introduction.”

Although there is no basis for the conclusion that with the change of title the legislature also intended a material change of content,¹ nevertheless, it is symptomatic of a trend in which the original idea of encyclopedia has gradually been abandoned, even though the name itself still remains in use.

In the middle of the last century, Walter, the author of an encyclopedia of the science of law, which in the interim has achieved considerable recognition, registered his protest explicitly against the already growing custom of identifying encyclopedia with introduction to the science of law. His view, which was largely shared by the already numerous philosophically schooled jurists, was that encyclopedia is a philosophic science which indicates the place of the special sciences in the totality of human knowledge. It gives us insight into the internal coherence of the branches of a science which is founded on the concept of the field of investigation surveyed by the particular science in question.²

The thought that lies at the foundation of this conception therefore was that the various areas of scientific knowledge have an inner coherence and are not simply related to each other in an external fashion. In order to attain knowledge of the internal connection of the science of law with the other sciences it is necessary to undertake an investigation of the internal structure of the entire extent of human knowledge so that, in terms of its

1 Willem Zevenbergen, *Formeële encyclopaedie der rechtswetenschap als inleiding tot de rechtswetenschap* ('s-Gravenhage: gebr. Belinfante, 1925), 2.

2 Walter, *Juristische Encyclopädie* (n.p., 1865), 5.

place within this totality, we can deduce the inner structure of the science of law.

Considered in this fashion, encyclopedia is of necessity a “universal science” of a philosophic character. This universal science, however, is not so much oriented to the ever increasing fund of knowledge, which is being collected by the special sciences within this structure, as it is oriented to the structure itself, apart from which no special science would be possible.

This inner delimitation of the task of encyclopedia has been expressed in the term “formal encyclopedia.” That is not a particularly satisfactory expression because the term is also used by those who have broken with the idea of a universal science and have reduced the encyclopedia of law to that of an introduction to the science of law.

An introduction, in contradistinction to an encyclopedia, cannot be viewed as an independent philosophic science. In an introduction to the science of law the pedagogical goal of giving such introductory knowledge as is required to obtain insight into the nature, the scope, and the various branches of this particular scientific discipline is predominant.

Now it can be asserted that it is only possible to obtain a thorough insight into this discipline by means of an encyclopedia in the sense described above. It then must be recognized, however, that this judgment rests upon two presuppositions: (i) an encyclopedia in the sense of a philosophic universal science is possible; and (ii) even from a pedagogical point of view such an encyclopedia is the best introduction to the science of law.

Since the second half of the last century, the idea of encyclopedia as a philosophic universal science has fallen into disfavor and has been virtually abandoned. The idea was identified with a speculative conception of it, discussed later, which was elaborated and defended by the great founders of German idealism, Fichte, Schelling, and Hegel.

Without any justification this idea was branded as an a priori attempt to capture the whole range of the burgeoning knowledge of the special sciences in a subjective scheme of totality and thereby to lay down the law for the development of the special sciences in terms of an arbitrary philosophical conception. It goes without saying that, in the face of such a disparaging judgment concerning encyclopedia as the “science of the sciences,” the question was no longer even raised whether, considered from the pedagogical point of view, encyclopedia could be regarded as the most appropriate introduction to the science of law.

The prejudice to which we refer rests upon a lack of real insight into the significance of the philosophical idea of encyclopedia. Nevertheless, we must not simply sidestep the issue of whether the idea in question does indeed only belong within the framework of a speculative system of

thought, or whether it possesses a firm foundation in the structure of the life of law itself and in the structure of scientific thought which addresses itself to legal life.

In answering this question we do not wish to commence with profound philosophical and epistemological considerations, but rather give a brief account of the multifacetedness of an ordinary activity in daily life.

I enter a store and purchase a box of cigars. A jurist, who considers this act in the role of a scientific observer, begins at once to abstract from the act its legal configuration. The transaction is taken into consideration by the jurist only as a jural transaction, as a legal agreement, out of which flow mutual rights and juridical obligations for the buyer and the seller.

Furthermore, it is clear that this legal configuration forms only one of many aspects of the transaction in question.

If an aesthete were present among the scientific observers, that specialist would view the same transaction from the particular standpoint of its aesthetic aspect and would provide an answer to the question as to whether or not the attitude, speech, and the expressions of those who were involved in the transaction were harmonious.

An economist, however, would direct attention not to the jural, nor to the aesthetic, but to the economic side of the transaction. Another aspect is now brought into view out of the concreteness of the act of real life, namely, that of economic valuation and the economic measure which was applied in working out the price of the purchased goods.

A fourth scientific observer, who makes the social side of human society a subject of special study, focuses on what is taking place in the store between the buyer and the seller, and considers it specifically from the point of view of social forms. In the form and the tone of their greetings, and in their questions and answers, such an observer quickly discerns the degree of education, status, or importance of the buyer and the seller.

The aspect of language, which is unbreakably connected with the aspect of social intercourse, is interesting to the linguist, who pays particular attention to the lingual significance of the words, to the construction of the sentences, to the possible differences of dialect, and to flaws in pronunciation, etc.

A historian, who views the transaction from its historical aspect, fastens our attention on the fact that the cigars in their packaging, as well as the money with which payment is made, are typical historico-cultural objects which have come into use only in the course of the historical development of Western society. That specialist also directs our attention to the fact that in the transaction the typical forms of language and social convention, the fixing of a price, and the content of the positive law involved in the agreement rest entirely upon a historical foundation.

A logician directs attention to the logical side of the transaction. Does the answer conform to the question in a logical fashion, and are question and answer an expression of a logical train of thought?

A psychologist is interested more in the unique sensory aspect of the transaction. Which psychical strivings, emotional representations, and desires drive the buyer and the seller to an agreement of will? What mood manifests itself in their tone, their expressions, their entire attitude as they make the deal and carry it out? Is it possible to point out emotional aberrations and disorders?

A biologist is interested in the transaction only in respect of its organic aspect of life.

Finally, it would also be possible to invite a physicist and a mathematician to join the group of scientists. Even though, at first, they might well excuse themselves, observing that the event lies outside the field of their own scientific interests, they would admit, nevertheless, that this transaction manifests a physico-chemical, a spatial, and a numerical aspect, etc.,¹ that is to say, precisely those aspects of reality to which their scientific interest is directed.

The variety of aspects of the transaction is by no means exhausted by the foregoing. The theorist of ethics and the theologian also discover in it

¹ *General Editor's note:* Initially Dooyeweerd distinguished only fourteen aspects. In his first designation of the physical modality he used the term "movement" (see *De Wijsbegeerte der Wetsidee*, vol. 2 [Amsterdam: H.J. Paris, 1935-36], 71: "den wetskring der beweging"). After 1950, he realized that the science of kinematics (phoronomy) can "define a uniform movement without any reference to a causing force" – an insight which inspired him to distinguish between the *kinematic* and the *physical* aspects (see *A New Critique of Theoretical Thought*, vol. 2, trans. David H. Freeman and William S. Young, The Collected Works of Herman Dooyeweerd, gen. ed. D.F.M. Strauss [Amsterdam: H.J. Paris, Philadelphia: Presbyterian and Reformed Publishing Company, 1953-58; reprint, Lewiston, NY: The Edwin Mellen Press, 1997], 99 [hereafter cited as *A New Critique*]). A noteworthy historical point in this connection is the fact that in 1930 the brother-in-law of Dooyeweerd, professor D.H.Th. Vollenhoven, introduced *fifteen* modalities in the first edition of his book, *Isagogé Philosophiae* – by distinguishing the *mechanical* from the *physical* aspect. However, in the editions of 1936 and later this distinction vanishes and Vollenhoven then only acknowledges the physical aspect (cf. K.A. Bril, "A Selected and Annotated Bibliography of D.H.Th. Vollenhoven," *Philosophia Reformata* [1973]: 216). Dooyeweerd, in this respect, rightly mentioned the law of inertia as formulated by Galileo (cf. *A New Critique*, vol. 2, 99). That this law was anticipated by thinkers from the fourteenth century was convincingly shown by A. Maier (*Die Vorläufer Galileisim 14. Jahrhundert*, Roma 1949, 132-215). In a different context P. Janich also emphasized a "strict distinction between phoronomic (subsequently called kinematic) and dynamic statements" ("Tragheitsgesetz und Inertialsystem," *Frege und die moderne Grundlagenforschung*, ed. Chr. Thiel [Meisenheim am Glan, 1975], 68). This explanation applies each time Dooyeweerd refers to the physical or the kinematic aspect.

aspects which comprise the field of investigation of their special sciences, respectively, the moral aspect and the aspect of faith.

Each aspect of the concrete transaction which took place in the cigar shop, having been described, of course, in general and provisional terms only, is abstracted from concrete temporal reality by the science pertaining to it.

Thus the thought might easily arise that every special science, as special science, would be able to close the gates of its own field of investigation such that the disciplines mutually separate themselves strictly from each other as each one studies its own, theoretically abstracted aspect. If we pay attention, however, to the differentiated aspects of reality themselves, we make the surprising discovery that, on the contrary, it is precisely the distinctive character of these aspects themselves that stands in the way of such isolation.

This is immediately clear from the following considerations. As already stated, the jurist abstracts the legal figure of a commercial agreement from the full concrete transaction between the buyer and the seller in the cigar shop. In this legal figure two divergent interests, which could enter into conflict with each other, are brought into a certain harmony.

It is quite evident that the harmony in question cannot be an aesthetic harmony in the proper sense of the word; here it is undoubtedly a matter of the jural harmonizing of interests. But does this jural harmony exist in isolation from the aesthetic?

According to an aesthetic view of social life, every unilateral invasion of the rights of others is instinctively sensed to be a disturbance of the aesthetic harmony of society, even though the aesthetician might remain quite aware of the fact that the harmony of law is something completely different from the beautiful harmony in the aesthetic aspect of reality.

In the above transaction, in which the jurist has discovered the jural figure of a commercial agreement, let us suppose for a moment that the buyer had specified a box of 25 authentic Havanas of good quality and, with the store owner's consent, had only paid one dollar for it. In such a case suspicion immediately arises in the jurist's mind as to whether the agreement was a genuine one. Is it a true commercial agreement, or do we have here a disguised gift, a sham transaction? Or if no gift is intended, is the entire matter suspect? Has the store owner obtained the cigars honestly? Does the agreement indeed have a "lawful cause?"¹

Why does doubt arise here concerning the genuinely legal character of the transaction? It is because the sum of one dollar does not represent a

¹ *Editor's note:* "Lawful cause (*causa*)" is a Civil Law concept for which there is no exactly corresponding concept in Common Law jurisdictions. Contracts however, may be declared void or illegal for being contrary to "public policy" in some respect, e.g. a contract to commit an unlawful act (crime or tort). At the time when Dooyeweerd was writing, *causa* was a requirement of all contracts under the Dutch

real price for these expensive cigars according to their current market value, at least, if they have not been damaged. Without having to take on the thought-pattern of an economist, the jurist's task itself demands consideration of the economic aspect of the commercial agreement. The juridical character of the commercial agreement as such is unbreakably connected with this economic aspect.

In article 1375 of the Civil Code, the jurist finds a reference to "usage" which, in addition to the express stipulations of the transaction itself and the requirements of "fairness" and the "law," determines the extent of the responsibilities and rights of the contracting parties.

In having to consider "usage" (custom) the jurist is immediately brought up against the norms of social intercourse in that society. Yet the meaning of social intercourse may not be read into the concept "usage" as that is intended in the mentioned article. The social rules of courtesy, politeness, social appropriateness, and tact as such do not have any juridical meaning. But there exists such an intimate connection between legal custom and customs of social intercourse that it is impossible to consider the meaning of the former apart from that of the latter.

Consider, for example, under normal economic conditions, the commercial custom of not demanding payment from a sound trader immediately upon delivery of the goods. It is apparent that this custom is primarily a social one; it is initially a rule of courtesy. But it is not out of the question that in various lines of business this custom might have taken on such established forms that it would also have to be taken into account juridically in determining the extent of the mutual rights and responsibilities of the contracting parties.

The intimate connection between legal and social rules can also be irrefutably shown outside the context of an agreement. Think of the transgression involved in breaching a requirement of discipline in wearing a particular kind of clothing, or a requirement in the army to salute in a certain way. In a jural sense, these fall into the category of an unlawful act, but undoubtedly they primarily involve transgressing the rules of social intercourse.¹

The jurist, who has established that the earlier described transaction in the cigar shop, as a legal configuration, meets the requirements of the con-

Civil Code. This requirement has now been abandoned. Common law jurisdictions such as the English still retain the requirement of "consideration" which is a more narrowly economic concept than the continental *causa*. See Samuel & Rinkes, *The English Law of Obligations in Comparative Context* (Nijmegen: Ars Aequi Libri, 1991), 72-73.

¹ *Editor's note:* It is important to realize here that in Dooyeweerd's philosophy, as a universal modal aspect, the jural aspect not only manifests itself concretely as state law but in nonstate spheres of life as well. It is possible that when he refers to the breach of a disciplinary requirement of dress he has in mind an actual state law to

tract of sale, now discovers in articles 1378–1387 of the Civil Code an entire heading devoted to the “interpretation of contracts.” The jurist, *qua* jurist, thereby comes into immediate contact with the lingual aspect of the transaction, and it is plain from the outset that the entire jural configuration of the commercial agreement can only exist on the basis of linguistic forms of expression in which contracting parties make a disposition of their jural agreement of will.

Having already established that we are dealing with a contract of sale, there is presupposed an explanation, an interpretation, of the lingual signs employed by means of which, as the jurist says, the parties express their intentions. Nevertheless, the legal interpretation, in its jural sense, is not merely linguistic.

For example, the interpretation of getting into a street car as a declaration of intention to enter into a transportation agreement with the street car company certainly cannot be understood as a linguistic interpretation. But law cannot exist without language, so unbreakable is the connection between the two.

That the jural aspect of the transaction unbreakably coheres with the historical aspect is immediately apparent when we account for the fact that the positive juridical content of the agreement, as well as usage, wherever recognized in the Civil Code, has a close connection with the modern stage of cultural development. The form of the contract itself has its own legal history and can only be understood scientifically in connection with it. In the most primitive phase of Roman and German law, the contract, as a source of legal relationships relating to property, was unknown. Here only a delict created juridical relations between members of the tribe.

Furthermore, it is already apparent from the first attempt at juridical interpretation of the sale contract under consideration, that the jural significance of the agreement is unbreakably connected with the logical aspect of the transaction. If there is no logical process of thought underlying the expressions of will of the contracting parties, it is impossible *per se* to ascribe to them a juridical meaning. As yet there cannot be any agreement of will, in the juridical sense of the word, if the declarations contradict each other logically.

As soon as the jurist, however, begins to consider the jural sense of the declaration of will, the unbreakable connection between the jural and psychological aspect of the act will also be encountered. Behind the declaration is

that effect. However, it is also possible that he is thinking of what might be called a “dress code,” i.e., rules of greater or lesser formality functioning within some sphere of societal life, but not originating in state law. In which case it would still be correct to speak of the transgression of those rules as constituting an “unlawful act” “in a jural sense” because, as a general jural concept, it can be taken to encompass both breaches of state law and nonstate law, even rules contained in a dress code.

concealed a psychological process of desires, imaginings, and strivings, which cannot be ignored by the jurist in questions relating to matters such as mistake, bad faith, and fraud.

A valid declaration of will, furthermore, can only be expressed in a jural fashion by responsible persons, and responsibility in a jural sense is unbreakably interconnected with a normally developed life of feelings and imagination. Young children, for example, cannot legally bind themselves.

No further demonstration is required to show that the psychological aspect in question is in turn itself completely bound up with the biotic aspect of the organic development of life. In this connection think of the juristic notion of majority, as a rule, a primary condition for complete legal capacity.

And finally, the configuration of a legal act such as a commercial agreement also unbreakably coheres with the following aspects of reality: movement, space, and number.

As the jurist says, a sale agreement is a legal ground for legal consequences. It introduces changes into the previous jural state of affairs. The purchased cigars, by being handed over, cease to be the property of the owner and become the property of the buyer. The money which is given in payment passes in the same fashion from the possession of the buyer to that of the seller. No demonstration is required to show that the jural aspect of the transaction is directly connected with the physical aspect of movement.¹ We here encounter the elementary legal configuration of jural causality, which cannot be understood apart from its connection with physical causality, but which nevertheless retains its own inviolable meaning.

Furthermore, a sale agreement is made in a particular place and thereby manifests its spatial character. Nevertheless, the location of the transaction in its jural sense is not at all a mathematical concept. This becomes clear if one considers the following case:

A German trader in Amsterdam orders by telephone a shipment of grain from Brussels. Immediately the jurist asks, Where did this agreement come into existence? It goes without saying that mathematics cannot provide us with an answer. But the place of agreement must be established for juridical purposes, because the question as to the applicable system of law depends on it. At the same time, this finally brings us to the expression of the unbreakable connection between the jural and the aspect of number. How does the difficulty arise here with respect to establishing the place of

¹ *Editor's note:* In light of his later distinguishing of the aspects of movement and the physical aspect (see note on p. 14), Dooyeweerd would have been required to revise this analysis so as to distinguish two distinctly different "elementary legal configurations": (i) jural movement (e.g. *transfer* of legal title to goods); and (ii) jural causality."

the agreement in a juridical sense? It is because the buyer and the seller are two different persons who, since they are located in two different countries, express their intentions from different places.

The agreement of sale presupposes, however, that out of this dual expression of will there must come into being a jural unity within the voluntary agreement. If the agreement of sale in this sense is to be a jural unity, then juristically speaking it can only come into being at a single place. The question whether the location is to be that of the buyer or the seller is a legal question, which, however, could not arise apart from the numerical aspect of the act.

Now I have yet to say anything about the connection between the jural aspect and the moral and faith aspects. Nevertheless, the connection here is just as intimate, even taking into consideration the unique nature of the aspects in question. In article 1356 of the Civil Code, one discovers the provision that if agreement is to be reached there must be a “lawful cause.” I cannot enter here into the various points of view concerning this concept. In the present context it will suffice to give an illustration of an unlawful cause which according to article 1371 of the Civil Code renders an agreement void.

Let us suppose that a person promises another a sum of money for spreading false rumors in the stock market by which means the first hopes to personally benefit. The other party agrees to this proposition. There is therefore mutual agreement. But such an agreement has an “immoral cause,” and for this reason is legally void. The connection here between the jural and the moral aspects of the transaction is immediately apparent. Article 1374 of the Civil Code explicitly states that an agreement must be brought into existence “in good faith.” Article 1357 provides *inter alia* that in an agreement assent is invalid if it is obtained by deceit. Article 1284 refers to the failure to perform an undertaking that is owing to the “guile” of the debtor.

The above mentioned sale agreement, which we have discussed earlier, is subject to all of the provisions of the Civil Code, and the unbreakable connection between its jural and moral aspects, at the same time, is thereby demonstrated.

An elementary legal figure in which the connection between the jural and the moral aspects is prominent is that of fault, which plays an essential role in respect of failure to perform or failure in timely performance of the agreement.

Finally, the connection between the jural aspect and the aspect of faith becomes clear if one considers that we live in a Christian land where legal conceptions have been influenced in great measure by Christian ideas. Completely independent of the question whether the contracting parties

personally adhere to Christian beliefs, the agreement which they conclude is thoroughly bound to this connection between law and faith.

So, for example, the principle of contractual freedom, with the simultaneous binding of every contract to a lawful cause, stems from the canon law of the Roman Catholic Church which based this principle on the Holy Scriptures. The interpretation of such concepts as “good morals” and “good faith,” etc. has also undoubtedly been strongly influenced by Christian conceptions and concerns.

The above summary examination of the various connections of the legal pattern of the sale agreement in question with all the other aspects of this transaction may be sufficient for now to demonstrate that the theoretical idea of encyclopedia cannot simply be thrust aside in the manner in which it is generally done at the present time.

In any case, quite apart from the question whether the speculative doctrines of science of Fichte, Schelling, or Hegel are acceptable, it is impossible to deny that the structure of law itself demands that scientific thinking, in respect of juridical investigation, proceeds according to an idea of the interconnection of the legal¹ with the other aspects of reality. In this regard, it is of little consequence how this idea is more precisely expressed and whether scientific jurists are aware of the fact that they maintain it. Provisionally, it is sufficient to establish that the idea in question is a necessary presupposition for investigation within the special sciences.

If this can be established, then the encyclopedia of the science of law, which aims to acquaint us with the internal structure of the science of law by pointing out its place within the coherence of the special sciences, can no longer be rejected as aprioristic speculation. On the contrary, it would then appear that this encyclopedia, as itself a philosophical theory of science, must be considered to be utterly essential for bringing to light the foundations of the science of law.

If it is the case that the jural aspect of reality can only exist in unbreakable connection with the remaining aspects of reality, then legal science can only operate theoretically in a responsible fashion if it also proceeds governed by a proper insight into the place of the legal within the universal coherence of aspects.

This insight ought to be expressed, first of all, in jural concept-forming. To be more precise, the basic concepts of the science of law can only be formed in a fruitful manner if they are understood in their proper relationship to, and in their connection with, the basic concepts in which the remaining aspects of reality are theoretically captured. As we shall later observe, entirely incorrect formulations of problems arise from a lack of in-

¹ *Editor's note:* By “the legal” (*het recht*) Dooyeweerd clearly means what he refers to as the normative “jural aspect” (*juridische aspect*) of concrete law and not concrete (positive) law itself.

sight into the true relationship and interconnections between the jural and the other aspects of reality.

If it is the task of an introduction to the science of law, first of all, to introduce the aspiring jurist to the nature of the science of law and the basic concepts which the jurist handles, then, on the view presented here, it is also absolutely necessary that such an introduction is based upon a philosophical encyclopedia of the science of law in the sense provisionally outlined.

Such an encyclopedia of the science of law is in reality a philosophy of law. And the philosophy of law thus conceived cannot be divorced from the science of law as a special science.

It is not a hobby for speculatively inclined souls who feel the need for an idealistic conception of law divorced from reality. The encyclopedia, on the contrary, brings to light the necessary foundations and presuppositions of the science of law. It holds up to the science of law the mirror of self-criticism.

1.2 Science and Reality

This self-criticism is indeed indispensable to the science of law. It is also of great importance for aspiring jurists to know, as they make their entrance into its noble edifice, that there is within it no peaceful atmosphere of agreement. It must be realized that they are entering a veritable battlefield of opposing opinions in which, lacking a legal-philosophical orientation, they are bound to end up on the wrong track.

One might try to put their minds at rest, perhaps, with the statement that it is not the task of the science of law as a special science to intrude upon the battle of the philosophical theories of law, but that it ought to restrict itself to the positive law, that is, actually valid law. But what is positive law?

There are widely differing views even on this question. By positive law is one only to understand – as the positivistic approach within legal philosophy taught – the complex of rules of conduct which have been set down in the legislation, and of those (arising from some other source) to which that law refers? Or is there, in addition, positive law which does not derive its validity from the legislator?

If the first standpoint is adopted, then is it the form of law that is alone sufficient to guarantee the positive validity of a legal prescription? Or is it, in the final analysis, determined by the question whether this prescription is really controlled in its application by the organs of state charged with its application? If this latter position is adopted, how then can the science of law come to a decision if, in its estimation, there is a clear discrepancy between, for example, the declaration of a court of law and the legislation itself?

Are there also provisions in the law which can be characterized as not binding, and if so, what is the criterion according to which we distinguish between binding and nonbinding provisions of the law, when the law itself has great difficulty in offering a criterion?

Is the provision in our law containing the General Provisions that custom, unless derived from law itself, does not establish law to be understood as positive law? But if there is the formation of an established jurisprudence *contra legem*, is this then customary law? And if so, given the possibility of an established jurisprudence *contra legem* is difficult to deny, what then is the positive law – a legal rule which has become a dead letter or a rule which is applied outside of, and in conflict with, the law actually in effect?

Furthermore, if in the final analysis everything depends upon the question whether a mandatory rule of behavior is actually applied, is the actual course of conduct of the societal institutions charged with the administration of law alone decisive, or is the common attitude of the legal participants also a factor?

And, finally, is positive law only a factual datum, or does it also bear the character of a “norm,” of rules with which one ought to comply?

Here I have deliberately formulated a number of questions which present themselves inescapably even to those who believe that in positive law they have an unproblematic given. This “naive-positivistic” attitude has now been widely recognized as unscientific.

Even though positive law as such may not be dependent on the view one has of it (a proposition that, incidentally, is contested), within the science, it is precisely this view on which depends the answer to the most difficult question as to what must be understood by positive law.

What we have revealed in this difference of opinion that has emerged is a fundamental disagreement affecting the entire investigation of law.

How profoundly legal theory is influenced by the difference in viewpoint concerning the structure of reality appears when we become better acquainted with the basic concepts and the general doctrines of the science of law. From the outset, it must be observed that philosophy can never take a neutral position when it appeals to reality in the interest of refuting a particular theoretical point of view.

In part 1.1, we showed by way of an illustration of a simple sale agreement how great is the diversity of aspects which reality displays. In the meantime, it is indeed clear that in the ordinary experiences of daily life one does not arrive at an articulated distinguishing of reality into separate aspects.

In daily life, events, acts, things, etc., are experienced as individual, temporal totalities of which the different aspects are never experienced

explicitly and individually, but only implicitly and in an unbroken mutual coherence of this particular act, this particular thing, etc.

So in naive, that is, “nonscientific” experience of reality, an individual thing, such as the chestnut tree in my garden, is not separately conceived with respect to its mathematical aspects of quantitative multiplicity and spatial relationships, its physical aspect of energy-mass, its biotic aspect of organic life, etc. Instead, it is conceived immediately, in its individual unity, as a tree in which all of these aspects are presented as an unbroken coherence but without my analyzing them separately.

It is only in the scientific, theoretical attitude of knowing whereby the aspects of reality are individually analyzed and distinguished from each other that the possibility of the separate special sciences arises.

At the outset of theoretical instruction in mathematics, one is taught to think of the relationships of number and space apart from the things which are perceived by the senses in everyday experience. In their naive way of thinking, children begin to observe these relationships in the context of concrete things; for example, they must use wooden beads on their play pens in order to learn to count, and only gradually do they develop an eye for relationships of number and space as such.

Thus jurists, too, in their scientific speciality, do not direct their attention to the full concrete reality of a thing or event. Instead, they aim to become acquainted with its jural aspect. For just this reason: in the area of scientific investigation, an appeal to naive experience of reality, in order to defend a particular theoretical view of the field of investigation, has no meaning. It is not because this prescientific attitude of experience is wrong or valueless, but simply because knowledge gained by the special sciences is only oriented to aspects of reality which have been theoretically distinguished from each other; about this, naive experience has nothing to teach us.

Astronomers, whose thought is oriented to the physical aspect of movement of the heavenly bodies, will not ascribe to the naive experience of a sunset any power to refute the astronomical theory of the double movement of the earth. And yet, insofar as they remain conscious of the limitation of their special science, they will restrain themselves from asserting that naive experience is false.

From a special scientific point of view, that latter assertion is no longer sound. In our naive observing of a sunset, we do not experience the separate aspect of movement of this event but the full concrete reality of it as an individual, total structure. Yet naive experience cannot teach us anything relating to the distinct aspects of this event. To be able to say that it gives us erroneous information about “the true state of affairs” regarding the aspect of movement it is necessary, first, to have ascribed to that mode

of experiencing a particular theory about the movements of the sun and the earth. It is this that is false because naive experience is in no way a theory of reality; it is simply naive experiencing of reality without any further refinement. As soon as it is concluded on the basis of sensory experience that the sun moves around the earth, you have already crossed over the boundary into theory. If one says, however, “I observe how the sun is sinking below the horizon,” then no theory about the movements of the heavenly bodies has yet been presented.

Therefore when those working in one of the special sciences begin to appeal to “reality,” they ought to be aware of the fact that they are appealing to a coherence of reality which they have already broken up into its aspects in order, subsequently, to investigate it in a scientific fashion within one of these theoretically distinguished aspects. As scientists, they must keep in mind that the reality which has been theoretically analyzed in this fashion is no longer the reality which presents itself to them in ordinary experiencing, but is, on the contrary, a theoretical view of reality. This view, if it is truly to be a view of reality, cannot limit itself to theoretical insight into a particular aspect; it must always be a view of reality within the structure of the mutual interrelationships of its aspects.

An illustration may clarify what we have been saying here. In 1929 there appeared the first volume of a remarkable book by the Swedish professor Anders Wilhelm Lundstedt, *Die Unwissenschaftlichkeit der Rechtswissenschaft*. In this work the author attempts to show that all of the current concepts with which the science of law operates, such as those of rights and duties, obligation, legal norm, etc., are nothing more than false speculative constructions without any basis in empirical (experiential) reality.

The Roman jurists taught that an undertaking, an obligation, arises from an agreement in virtue of which one party is obligated to the other to execute a performance and the other party acquires the right to have this performance carried out. That writer, following his colleague Hägerström, maintains this entire view of the matter was merely based on a primitive, magical conception whereby, through the pronouncement of a specific formula, one acquired a mysterious power over the person from whom performance was due and from which the latter could only be freed by performance. The modern science of law has turned this magical power over the person from whom performance is owing into a “right” of the person to whom performance is due, and a corresponding physico-psychical “debt.”¹

¹ *Editor's note:* “Debt” here has the meaning of one owing a performance, rather than its usual narrower meaning in the (English) common law of one owing a monetary payment (debt).

But according to Lundstedt, there is nothing in reality corresponding to these concepts, any more than there is in reality something corresponding to the primitive magical notion that the “obligation” is a sphere of power to which the person owing a performance is bound. According to him, the unique reality of the “obligation” resides in the factual situation that when a person acts or fails to act (whether prescribed by law, contract or otherwise) whereby the other party suffers damage (prescribed in a specific manner), the former, on the demand of the injured party, can be compulsorily required to give in satisfaction a certain sum of money to cover the trial costs and the damage suffered.

Rights, duties, and norms therefore are not to be found in reality. Science, however, is bound to the limits of experiential reality. Therefore there must be a radical cleaning out in legal science’s arsenal of concepts because nothing in empirical reality corresponds to the concepts which are currently employed there.

So much for Lundstedt. His argument is an instructive example of an appeal to reality in justification of a specific theoretical view of legal life. What kind of “reality” is this which is set over against the “scholasticism of the jurists” with such pathos? Certainly not reality as it presents itself in ordinary experience!

Every normally developed person who enters into an agreement, or does something that is forbidden by law, has an implicit awareness of rights and obligations, of that which is proper and that which is improper before the law, even though that person may not possess any theoretical insight into the jural aspect of human society.

As soon as the normative aspects are eliminated, that is to say, those aspects in which reality functions according to rules of what “ought to be done,” it is no longer concrete reality to which an appeal is made, but rather a theoretical abstraction from that reality. And the moment that one equates such a theoretical abstraction with “true reality,” not only the boundaries of ordinary experience but also those of the special sciences are transgressed. A theoretical view of the structure of reality is simply being presented as the true one, and this theoretical view of reality is of necessity philosophical in character.

Thus Lundstedt’s view of reality identifies the abstracted physico-psychical aspects of reality with the concrete reality of experience and is thereby obliged, in a theoretical fashion, to locate legal life within these physico-psychical aspects. Legal life is thereby entirely deprived of its normative meaning.

That writer is being very consistent in maintaining this naturalistic view of law when he correctly observes of his own standpoint that, in the nature of the case, it is impossible to speak any longer of “compensation” because “reality” does not know this phenomenon.

But reflecting on the argument set forth in the preceding paragraph, one might remark: Does such a theoretical, essentially philosophical view of the structure of reality not have any higher standards of evaluation than the subjective conviction of the scientific inquirer?

If this were so, every appeal to reality (“the facts”) would be without scientific value, and a boundless theoretical arbitrariness would, in the last analysis, take the place of scientific truth.

Happily, science is not in such an abominable state! The “facts” to which it appeals must indeed make themselves accessible to naive experience in which reality presents itself structurally just as it is. Furthermore, the theoretical view of the structure of reality is not simply surrendered to the subjective arbitrariness of the thinker. It must be able to give a proper theoretical account of the nontheoretical experience of reality; otherwise it builds upon speculative quicksand. There is a further criterion for the scientific truth of that view, about which I shall later speak when considering the so-called antinomies.

An appeal to reality for theoretical purposes is completely unjustified if reality, as it presents itself in ordinary experience, is identified in an aprioristic manner with a theoretical abstraction of particular aspects of that experiential reality. The danger which this brings with it is the impression left with the student who is philosophically unschooled that such a theoretical view of reality is not dependent upon a particular philosophical standpoint and this uncritical way of thinking is also urged upon the neophyte jurist “in the name of simplicity” because the intention is to reproduce only what is the “ordinary, everyday conception” of reality.

In opposition to this view, I require as a demand of scientific honesty that a jurist-in-the-making must be taught to recognize the unbreakable connection between a view of the structure of positive law and the philosophic vision of the structure of reality in its entirety. This is because the theoretical view of reality is always of a philosophical character.

In order to render a satisfactory account of this state of affairs it is necessary to examine in more detail the question as to the relationship in which philosophy stands to the knowledge of the special sciences, on the one hand, and to naive, nontheoretical experience of reality, on the other.

1.3 Philosophy, the Special Sciences, and Naive Experience of Reality. Cosmic Time and the First Transcendental Basic Problem of Any Conceivable Philosophic System

In part 1.2 we saw that in the naive, that is to say, nontheoretical approach of everyday life, the various aspects of reality are neither individually distinguished, nor theoretically analyzed. In this approach our vision is directed not to abstract relationships of number, to abstract fig-

ures of space, abstract movements of matter, abstract interrelationships of feeling, abstract forms of language and social intercourse, abstract legal relationships, etc. Instead, we experience reality here in the concrete totality structures of individual things, events, acts, and of concrete forms of social life, such as the family, the state, the business enterprise, the church, etc.

These structures, which we shall call individuality-structures of reality, embrace in principle all aspects of reality without exception. But in such structures, the aspects are grouped in a typical manner within an individual totality. In naive experience attention is oriented not to the distinct aspects of this totality but to the individual totality itself.

Nevertheless, in the attitude of naive experience, we do have an implicit awareness of the richness of aspects in which reality presents itself within these totality structures.

If a theoretician, for example, would like to set me straight by informing me that this little table, this tree, this chair are in reality nothing more than complexes of atoms, and that only physics and chemistry are able to give us any insight into their true structure and nature, then my naive awareness of reality reacts intuitively against this pretension of scientific theory to restrict the full reality of these things, which are familiar to me in my everyday experience, to their physico-chemical aspect (that is to say, the aspect of movement).

I sense that such a theory deprives me of the many-sided richness of things as I experience them. Actually, it eliminates them altogether. And, even if I cannot refute it in a scientific fashion with my naive experience, I am nevertheless deeply convinced that it cannot be right.

This is because the full temporal reality of the things which I experience in daily life is only given to me in an unbreakable coherence of all the aspects, of the “natural sides” (namely, the mathematical, physical, biotic, and psychical aspects) in which reality is subject to natural laws, as well as the “normative sides” (namely, the logical, historical, lingual, social, economic, aesthetic, jural, moral, and faith aspects) in which reality is subject to rules of what ought to be.

For my untheorized conception of reality, this little table is no longer this little table as soon as theory attempts to reduce what is given to a system of abstract physico-chemical formulas. The full reality of the thing as we experience it in everyday reality also has its objective-sensory form, its objective coherence of logical attributes by which it is differentiated from other things, its objective meaning in language, its function in social intercourse and interaction, its economic value (I can immediately observe whether it is an expensive or a cheap article), its objective beauty or ugliness, its function as a legal object (it belongs either to me or to someone else), etc.

Insofar as a thing also functions in the normative aspects of reality, naive experience subjects it without objection to norms, not as a responsible subject, but as an object, as a thing. The table, for example, is well or poorly formed, pretty or ugly, nice or not nice, expensive or cheap, etc.

The peculiarity of naive experience reveals itself in the fact that our thought does not set its logical-analytical aspect over against the distinguished nonlogical aspects of reality; it does not make an aspect into a problem – into a *Gegenstand*, as the Germans call it – of knowledge, but reveals itself in the fact that our thought instead remains naively incorporated into full temporal reality, that is to say, it experiences the psychical, logical, and the remaining normative functions of things as indissoluble constituents of and in reality.

Wherever, in some fashion or other, we abstract in our thinking a *Gegenstand* out of concrete reality, we are not dealing with the naive but with the theoretical attitude of thought. This is the source of the error in the view which seeks a kind of theory of knowledge in naive experience, such as, for example, the “copy theory.” In epistemology it is understood that this theory involves the conception that in our consciousness there is reflected a photographic-like physical reality. As if temporal reality were able to be entirely composed of sensory impressions!

It is scientific thought that initially separates temporal reality into its various aspects and sets the nonlogical aspect as a *Gegenstand*, as a problem, over against the logical function of concept-forming. To this end it must abstract these aspects out of their given indissoluble coherence by way of theoretico-logical analysis. It should certainly be clear that theoretical thought is indeed thought that subtracts something from full reality. The special sciences have broken up reality into compartments; but all of the special sciences together, in their mutual complementing of one another, cannot bring us to a knowledge of reality in its unbroken unity. Piecing together the slices cut from an apple does not give us back the original piece of fruit.

The first question now is this, What is abstracted by theoretical thought from the fullness of given reality? Of what is the abstraction made?¹

¹ *Editor's note:* The same question is stated in two ways. The answer that would be expected is “the modal aspects” (see *A New Critique*, vol. 1, 38 ff). However, the actual answer given does not refer to the aspects but to (cosmic) time. The reason for this is that Dooyeweerd does not clearly distinguish here two different but closely related questions: 1. What is abstracted in the theoretical act of thought (*Gegenstand*-relation)? and; 2. From what is the abstraction made? Cosmic time, in which the aspects are embedded, and which ensures their inter-modal coherence, is the answer to the second question only. The relationship between time and the aspects is more clearly explained, and the questions more clearly formulated, in *A New Critique*, vol. 1, 22 ff. More complicated internal inconsistencies in Dooyeweerd's un-

With this question we introduce the so-called transcendental critique of theoretical thought which, through exploring the nontheoretical presuppositions of theoretical thought, initiates an investigation into that which, from the outset, makes philosophic thought, as theoretical thought, possible. This critical question makes it impossible for us to proceed from the abstract theoretical *Gegenstand*-relation as an unproblematical datum and thus to seek our starting point within the theoretical attitude of thought itself.

The answer to this question we have posed must be the following: In the first place, theoretical thought abstracts from time, which holds all aspects of reality in an unbroken coherence, and within which the logical aspect is bound together with all the nonlogical aspects.

Time, in this universal, cosmic sense, must indeed be distinguished from the particular aspects of time in which it expresses itself, for example, from clock time, insofar as this simply presents a measurement of time in the aspect of movement. In every aspect of reality, cosmic time, which embraces all of the aspects, expresses itself in a specific sense within a particular modality. A few illustrations make this clear.

In the aspect of number, time functions in the particular sense (modality) of how much (discrete quantity). If I say that 2 precedes 3 and 4 in the system of numbers, I have in mind a temporal relationship amongst the numbers which may not, however, be confused with the consecutive moments of my subjective act of counting. In this series, the number 2 precedes the numbers 3 and 4 and has a quantitative temporal sense: $2 < 3 < 4$. This is a fact that is not dependent upon my subjective act of counting but is founded in the temporal order of numbers.

In the spatial aspect of reality, time functions in the particular sense of spatial simultaneity, and within that spatial simultaneity, in the sense of spatially greater or smaller. A particular geometrical plane figure, for example, can only exist in the simultaneous extension of its spatial parts and not in the succession characteristic of movement in which one point disappears as the following one appears. If I take a triangle and divide one of its sides (A–B) down the middle, then I have point M. Even though the lines AB and AM are simultaneous in their extendedness, nevertheless, figuring from point A, point M is spatially earlier than point B because the latter is situated further from point A than is point M. Here the time relationships clearly bear the particular sense of the spatial relationship with respect to the length of the lines AM and AB.

In the aspect of movement, time functions in the particular sense of the relationships of movement. As we have said, clock time, in its merely

derstanding of the *Gegenstand*-relation are extensively discussed in D.F.M. Strauss, "An Analysis of the Structure of Analysis (The *Gegenstand*-relation in discussion)," *Philosophia Reformata* 49, no. 1 (1984): 35-56.

physical aspect, is nothing more than the measure of movement. In the meaning of movement there is no static simultaneity, but only a dynamic one dependent upon movement itself.

In the biotic aspect of reality, time functions in the particular sense of the time of the organic development of life, of birth, maturation, and death. The question as to when a living individual is born is clearly a question of biological¹ time which can only be answered in a biological sense.

In the aspect of feeling, time functions in the particular sense of feeling time in which the moments of feeling interpenetrate each other qualitatively in a continuous stream, which does not allow for a mechanical isolation of moments. In the duration of a feeling of emotional tension or anxiety there is a quality of intensity which does not lend itself to being measured in purely extensional terms. If a person is aroused emotionally, time just flies; if one is bored and depressed, time simply crawls along.

In the logical aspect, time functions in the particular sense of logical priority and posteriority as this temporal relationship expresses itself significantly in the logical principle of sufficient ground. What serves as a logical premise is prior in logical time: in the logical syllogism the logical grounds (premises) logically precede the consequent (conclusion). So, for example, the basic concept of law is also anterior in the logical order of time to the concept of a concrete legal phenomenon such as a sale agreement.

In the historical aspect, time functions in the specific sense of cultural development with its internal interpenetration of past, present, and future. The historical period, bounded as it is by important transitional points in cultural development, is a temporal configuration in the particular sense of history, as is the case for a historical moment.

In the lingual aspect of reality, time functions in the particular sense of symbolical meaning. One need only think, for example, of the symbolic pause between two spoken sentences, of the significance of the slow movement of a conductor's baton to indicate to the orchestra the beginning of an *adagio*.

In the aspect of social intercourse, time functions in the particular sense of politeness, courtesy, tact, conviviality. One need only think of the special social significance of allowing someone to go first who has a higher position in society, of greeting a hostess first, of choosing what is the precise moment for making a visit as a matter of tact.

¹ *General Editor's note:* Dooyeweerd's philosophy is sensitive to the distinction between what is *ontically given* and what is the result of human intervention – be it through reflection or through giving positive form to ontic possibilities. Dooyeweerd's own language use is not consistent, however, and in most cases throughout this text, biological, ontological, and psychological should read biotic, ontic, and psychical.

In the economic aspect, time functions in the particular sense of economic value, which always presupposes a relative scarcity of serviceable economic goods and an avoidance of too great a cost to obtain and use them. Thus the economic phenomenon of interest depends upon a higher economic valuation of the immediate over the future utility of the same economic goods, or of the abstract value of the money, by which they may be procured. Consider also the English expression, "time is money."

In the aesthetic aspect of reality, time functions in the particular aspect of beautiful harmony. One need only think of the Aristotelian rule for drama: unity of time, place, and action. The difference in principle between historical and aesthetic time reveals itself pregnantly in a historical drama or a historical novel. If their authors simply follow the historical order of occurrence of the events, then they mistake the requirements of a work of art. Aesthetic time should not be aesthetically empty. A historical course of events, as such, does not follow any aesthetic order of time.

In the jural aspect of reality, time functions in the particular sense of law which we have yet to investigate more closely. For example, in the extinguishment of ownership, or of a claim through being statute-barred because of the expiry of a specified period during which the right-holder does not give any indication from conduct that the right will be exercised, time does not display a mathematical, physical, logical, or historical sense but a very definite jural sense which is governed by jural norms.

For example, the Civil Code stipulates that the period of limitation for claims in general is 30 years. In this fixed period of time there is an expression of a normative legal requirement, namely, that of securing legal certainty in intercourse. In determining the period of validity of legal norms, as well as that of the period of time in which a legal fact (that is, a fact to which legal consequences attach) occurred, the juridical sense of time which we have in mind comes to expression. Consider the question as to when a commercial agreement has taken place, for example, if, between the offer to sell and the acceptance, a period of a week has elapsed, and if the written reply to the offer made by the offeror, for example, is received a week after it has been sent. Consider also the question as to whether a law has "retrospective force," whether it will hold for legal facts which occurred before the law comes into effect but whose legal consequences are yet to be manifested. Such would be the case, for example, for someone who, at the point of reaching the age of twenty-one, has attained majority under civil legislation, but who in the meantime is faced with a new law which only allows it to commence at the age of twenty-three. Finally, think of the legal consequences of not fulfilling one's legal obligations on time.

In the moral aspect of reality, time functions according to the particular sense of the moral obligation of love. In the moral order of time, every lost moment means an omission morally speaking. “Time is pressing” is an expression which, used in a moral sense, brings this situation sharply into focus.

Finally, in the faith aspect of reality, time takes on a specific meaning of the revelation of the supra-temporal, of what lies hidden beyond time. It is in this sense that the opening words of the Book of Genesis, “In the beginning God created the heavens and the earth,” should be understood. It is in this sense also, as I see it, that one should understand the “days” of creation, in which God’s creative work – not subject to time as such – is related in faith to human work days in order that we might always view our temporal work in the light of God’s supra-temporal work of creation. And it is also in this sense that the confession that rebirth precedes faith is to be understood.

Now all of the aspects mentioned are simply particular modalities, particular ways of expressing cosmic time which embraces these aspects in a cosmic continuity. This cosmic time, considered as to its law-side, is a time-order which gives to the various aspects their established place and structure. Considered as to its subject-side, it is a cosmic time-duration which differs according to various things, acts, events, and temporal human existence and which expresses itself in all of the aspects of reality as well. In naive experience, time is not experienced according to its particular abstracted aspects but in the continuity of its temporal coherence in which all the aspects of time are inseparably joined together. When in everyday life I look at my watch, I do not consider time simply in its abstract aspect of movement, but also in its aspect of feeling, its symbolic, its social, and its jural aspect, etc. Clock time continually reminds me of my social responsibilities.

It is precisely because naive experience remains enmeshed in this continuity of cosmic time that the aspects of reality do not come to my awareness in an articulated fashion, in the discontinuous way characteristic of theory. The continuity of cosmic time conceals the various aspects of our cosmos from naive awareness.

It is not possible to form a concept of cosmic time as such. The fact is that every concept presupposes time. We can only form for ourselves a theoretical idea or “limiting concept” of time as a cosmic presupposition of every concept toward which theoretical thought also points in its restlessness. Theoretical thought, however, must begin by abstracting from cosmic time which, in its continuity, spans the various aspects of reality in order to be able to grasp these aspects themselves in a logical discontinuity.

For this reason the special sciences remain oriented to the investigation of the changeable phenomena within a particular aspect of reality. They do not in any way direct their attention to the nature of the aspects themselves. By contrast, it is the inescapable task of theoretical thought to grasp the theoretically differentiated aspects within their root-unity and according to their constant structure which lies at the basis of all changeable phenomena, that is to say, to understand the aspects in their mutual coherence out of their root-unity.

What we have already said entails the idea that the philosophical idea of totality must be something completely different from the natural-scientific idea of the cosmos or the “universe.” By its very nature, astronomy only views the cosmos according to its mathematical and physico-chemical aspects, with a conscious elimination of all the rest. It does not consider the fundamental nature or structure of the above aspects as a theoretical problem, but it only investigates the variable reality within these aspects.

Contrastingly, it is philosophy which initially must subject the internal structure and nature of the aspects of reality themselves to an investigation within a view of totality, not the variable phenomena which come to expression within them. None of these aspects can be left out of consideration. Attention must be directed theoretically to the totality, the entirety of aspects, in terms of their deeper root-unity.

This eliminates as a matter of course the positivistic position which asserts that philosophy has nothing to offer other than a synthesis of what the various special sciences have provided for us by way of theoretical results.

This root-unity cannot itself be given in time because there we only encounter the aspects in their irreducible diversity. On the one hand, philosophy cannot be allowed to fall back into the attitude of naive experience. It must maintain the theoretical, the scientific attitude of thought and retain a theoretical distance over against naive experience, if it is to remain true science. On the other hand, however, if it truly wishes to embrace temporal reality in the theoretical view of totality, it cannot stay focused on the disconnected multiplicity of scientifically abstracted aspects; instead, it must grasp these in their deeper unity and in their mutual coherence.

Only in this fashion is a theoretical conception of temporal reality possible which presents itself in its many-sidedness within naive experience. Naive experience cannot itself give a theoretical account of the structure of the reality which is experienced by it. The special sciences, as such, are in no better position to do this because they only take into view the variable phenomena within particular aspects.

To philosophy alone falls the task in question. And above all it is the philosophical encyclopedia which is in a position to perform it.

1.4 *The Second Transcendental Basic Problem of
Philosophy: The Archimedean Point*

As a science of totality in this sense, however, encyclopedia, in its intrinsically philosophic character, is in need of a point of departure, an Archimedean point, as we shall call it,¹ from the standpoint of which it is possible to grasp the various aspects of reality in the theoretical view of totality.

If, to employ a metaphor, a traveller wishes to obtain a panorama of the surrounding landscape, that person must ascend an observation point which towers above the various points of this landscape. Remaining at ground level, the traveller can only obtain an impression of the landscape from a particular optic angle.

Thus philosophy, too, needs an observation point that stands above the various aspects of temporal reality. The structure of theoretical thought itself, which holds universally, impresses upon us, in accordance with our critical investigation, the necessity of such an Archimedean point.

In part 1.3 we observed that the theoretical attitude of thought, differing in principle from the naive or pretheoretical attitude, is characterized by the abstract *Gegenstand*-relation in which the logical aspect of thought is intentionally set over against the nonlogical aspects of reality presented for investigation.

In this *Gegenstand*-relationship there arises a true antithesis, a setting over against each other of the logical and the nonlogical. Now if we are to truly arrive at a concept of the *Gegenstand*, however, theoretical thought cannot remain within this antithesis. It must arrive at a true synthesis, an epistemological connection of the logical, analytical aspect of thought and the nonlogical *Gegenstand*. If I am to obtain a genuinely logical concept of law, then I cannot stop at the theoretical problem, which is posed for thought in the nonlogical character of law, but I must orient logical analysis to this nonlogical *Gegenstand* and bring into being a true connection between my analysis and the modal meaning of law. By “modal meaning” is to be understood the “how-ness” (modus = the manner of being) of law.

The possibility of this synthesis depends, in the first place, on the fact that in reality the aspects are not distinguished and set over against each other but find themselves within an unbreakable underlying coherence which, as we saw in the previous paragraph, is preserved by the cosmic or-

¹ Archimedes, the well-known Greek natural scientist, sought an immovable position beyond the world from which he could move the world. Thus philosophy seeks a firm standpoint above the temporal diversity of meaning of the aspects in order to understand their deeper unity and totality.

der of time. Therefore that from which the theoretical attitude of thought must abstract is indeed the presupposition of every theoretical concept. But this given temporal coherence is not able to account totally for the possibility of the synthesis. Synthesis also presupposes an idea of the deeper root-unity of the distinguished aspects, an idea which can be obtained only if we choose our standpoint above the theoretical diversity.

Here, however, the second basic problem of the transcendental criticism of thought arises, which can be formulated as follows: From what standpoint can the aspects, which have been distinguished and set over against each other in the theoretical *Gegenstand*-relation, be united again in a theoretical view of totality?

It is clear that this standpoint, which we have called the Archimedean point of theoretical thought, cannot be discovered in any one of the aspects which have been articulated theoretically, and therefore not in the logical aspect, in particular. Within the logical aspect, the opposition between the logical aspect of thought and the nonlogical *Gegenstand* cannot be bridged. The Archimedean point, which makes the theoretical synthesis initially possible, must lie, as a starting point, above the aspects which have been theoretically set apart if the intrinsic diversity of the latter is not to be eliminated in an uncritical fashion by reducing the nonlogical to the logical, or the logical to the nonlogical.

The structure of theoretical synthesis demands that the theoretical *Gegenstand*-relation, with which the theoretical attitude of thought stands or falls, be allowed to remain intact. Even in their theoretical reconciliation, the logical aspect of thought and the nonlogical *Gegenstand* aspect should not be allowed to transgress each other's boundary, theoretically, but must remain mutually distinct.

Therefore the second transcendental basic problem of every conceivable philosophy is the problem of its starting point.

By making this problem the subject of our transcendental critique, we view the starting point of any conceivable philosophical system in light of the transcendental critique. Every dogmatic beginning with theoretical thought as a self-sufficient and unproblematic datum is branded here, in the most fundamental way, as unscientific because the true starting point of a thinker is thereby camouflaged under an arbitrary dogmatic assertion.

We want now to show, first of all, that this dogmatic standpoint necessarily leads philosophy into an impasse. Without any further proof, the following has been set forth as an axiom: a philosophy which desires to remain truly scientific must choose its starting point in theoretical thinking and in theoretical thinking alone. Those who make theoretical thought de-

pendent upon prescientific presuppositions confuse faith with science and exclude themselves automatically from the scientific community.

So it is assumed! But those who believe that they can find their starting point within theoretical thought must immediately indicate more precisely what they mean by this starting point.

We have observed that the theoretical attitude of thought is bound to the *Gegenstand*-relation, and according to its inner structure is necessarily dependent upon theoretical synthesis. This synthesis always exists, as we have seen, in a theoretical connecting of the logical aspect of thought with the nonlogical aspect delimiting the field of investigation. The synthetic character it adopts depends upon the aspect of reality to which theoretical thought directs itself as a field of investigation. Is it, for example, mathematical, physical, biological, psychological, historical, or juridical thought?

In which of these synthetic specifications of theoretical thought should the starting point of philosophy now be located? Irrespective of where the starting point is chosen, the elevation of such a standpoint – which remains, in essence, simply the standpoint of a special science – to the starting point of philosophy must result in the absolutization of a special-scientific aspect of reality. There arises then mathematicism, or physicalism, or biologism, or psychologism, or historicism, etc.

This procedure is certainly not a scientifically sound one. But it is also indefensible with reference to so-called purely theoretical philosophy because it seeks to eliminate the fundamental diversity of the set-apart and opposed aspects of reality which are implied in the *Gegenstand*-relation by a dogmatic absolutization of one of these aspects.

The above “isms,” after all, are very prevalent in contemporary philosophy, and the special sciences become the victim of them as soon as they place such an uncritical philosophic vision of reality at the foundation of their special scientific interpretations of the data of experience. Nevertheless, so long as a starting point is sought within theoretical thought itself, it appears that such an uncritical absolutization of a special scientific point of view cannot be avoided.

From this point on we shall call those who defend this current point of view the advocates of the “immanence standpoint” because they consider the Archimedean point of philosophy to be immanent with respect to philosophic theoretical thought. And we shall call contemporary philosophy which embraces this point of view “immanence philosophy.”

There is, however, a movement within this immanence standpoint which has come to a definite awareness of the uncritical nature of the absolutization of a special scientific point of view and of making it the starting point of philosophy. This movement holds, nonetheless, that a starting point can be discovered entirely within the bounds of theoretical

thought, while fully retaining the dogma of the so-called autonomy of science. This starting point is purported to be elevated above the diversity of the particular synthetic points of view of the special sciences and therefore maintained as an all-embracing standpoint.

We need first of all to subject this critical direction within immanence philosophy to closer investigation.

1.5 *The Christian Transcendence Standpoint and the
Critical Immanence Standpoint in Philosophy.
The Third Transcendental Basic Problem of
Philosophy*

In part 1.4 we saw that the starting point, the Archimedean point of philosophy, from which we have to grasp the theoretically analyzed diversity of aspects of temporal reality in a view of totality, can only be of service if it itself is elevated above this diversity. The question is simply where within human consciousness this point can be found. The question demands critical self-reflection within philosophic thought.

So long as our thought remains oriented only to the diversity of theoretically analyzed *gegenständliche* aspects, it lacks concentration upon the deeper unity of the aspects. In critical self-reflection, by contrast, thought obtains its orientation to the I-ness which is operative in thought. Now our "I-ness" is not merely operative in its logical function of thought; it functions in all aspects of temporal reality without exception. It is the undivided center of all temporal human existence. In every case, philosophical reflection will thus have to direct itself to this undivided center in order to discover an Archimedean point for a philosophical encyclopedia.

Even in immanence philosophy, which seeks to discover its starting point within theoretical thought itself, the insight that a truly philosophical orientation of thought must begin with reflection on one's self was attained relatively early. The saying of the Delphic oracle, "Know thyself," was already placed at the gateway of philosophy by Socrates.

But immanence philosophy throughout has not reached this insight. That is the case, for instance, with the modern naturalistic movements. They seek to reduce the entire cosmos to a natural-scientific system of thought and also conceive of humanity as merely a complicated system of physico-chemical relationships which are able to be investigated by means of the natural-scientific method.

In modern times, it was Immanuel Kant who, following the path of critical self-reflection, thought he could discover an Archimedean point within the logical aspect of theoretical thought itself, which would be elevated above the diversity of the synthetic points of view of the special sciences.

Now it must be kept in mind that the concrete act of thought, as a real act proceeding from the “I,” can never be totally subsumed by its logical aspect. Instead, as a real act, it functions in all the aspects of reality without exception,¹ even in the aspect of faith, just as does, for instance, an act of imagination or an act of will.

In the theoretical attitude of thought, however, as we saw earlier, we set the logical aspect of thought theoretically over against the nonlogical aspects. Kant proceeds from this *Gegenstand*-relation as an epistemological datum, and searches for the epistemological subject of the activity of thought, which he believes he can discover by way of a complete abstraction, from the concrete, real activity of thought. According to him, the thinking ego must lie as a presupposition at the foundation of every conceivable special scientific synthetic act of thought because it is the ego that makes the latter possible in the first place. It must then be sought in the logical aspect because, according to him, all of empirical reality, including the concrete activity of thought, is in principle the *Gegenstand* of the logical subject of thought. The thinking ego, as an epistemological subject, is then to be viewed as a subjective-logical pole of thought over against which all of empirical reality stands in polar opposition as the *Gegenstand*. All of experiential reality is a *Gegenstand* for possible experience, which is related to the epistemological subject. The latter itself, however, can never become a *Gegenstand* of thought because, in the *Gegenstand*-relation, the “I think” always remains in the subjective-logical pole of thought. It is not able to become a *Gegenstand* because the thinking ego must always direct itself to every possible *Gegenstand*. Indeed, according to Kant, the “empirical ego,” in the sense of this individual person who is bound to time and place, can become a *Gegenstand* of the epistemological subject. But from this it merely appears that the latter can only be discovered by way of a total theoretical abstraction from all “empirical reality” which, according to Kant, coincides with the entire range of physico-psychical phenomena as the *Gegenstand* of the science of mathematics.

The concept of the “thinking ego,” which is acquired by way of epistemological abstraction, is called in Kantian circles the transcendental ego, or the “transcendental subject of thought.”² Here “transcendental” is understood as a generally valid presupposition. It makes human experience possible in the first place and underlies it as a presupposition without itself

1 Including the pre-logical aspects! This is immediately apparent when we consider that the activity of thought is confined to the cerebral cortex, and that it can therefore be shown that in every act of thought there is a dimension of emotional perception, a biotic (physiological) side, an aspect of movement (a physico-chemical aspect). So, for example, it is possible to measure the electrical current that is induced in the cerebrum by each act of thought. The living nerve cells of the cerebrum are also in action during every act of thought.

2 As a matter of fact, he calls it the “transcendental-logical unity of apperception.”

being empirical in character (that is to say, for Kant, a possible *Gegenstand* of universally valid experience).

According to Kant, this transcendental-logical subject of thought must of necessity be a logical unity above all the possible diversity of synthetic acts of thought insofar as all theoretical distinguishing and connecting proceed from it. So Kant believed that he had overcome the dogmatic absolutizing of the particular synthetic points of view of the special sciences via the so-called critique of knowledge (see his famous *Critique of Pure Reason*).

This entire “critical” method of thought established by Kant, which is emphatically opposed by the Kantians to the dogmatic or uncritical positions, in the meantime, has itself taken up a truly dogmatic position, as has been established in my own transcendental critique of thought. It still proceeds from the theoretical *Gegenstand*-relation as an unproblematical datum and thus eliminates in a dogmatic fashion the first transcendental basic problem of any conceivable philosophy, which has been proposed by us (namely, what is to be taken away, abstracted, in the theoretical *Gegenstand*-relation, from full, concrete reality as it is given to us, and how is this abstraction possible?)¹

The result of this dogmatic starting-out with the theoretical *Gegenstand*-relation is a wholesale theorizing of experiential reality and, by implication also, the naive (nontheoretical) manner of experiencing. According to Kant, all of empirical reality is a *Gegenstand* of the logical subject of thought. We know, however, that this is incorrect per se because the *Gegenstand* can only arise by a theoretico-logical abstraction, by abstracting something from reality as given.

According to the “critical,” Kantian way of thinking, naive experience is itself nothing more than a totality of synthetic activities of consciousness by which the *Gegenstand* of experience is initially created. By themselves, the “syntheses” of naive experience are not yet scientific and therefore lack “general validity” or “objectivity.” One then does not have to reckon with it further in epistemology because it has been thoroughly refuted in this manner.

In the meantime, we know that naive experience does not have a *Gegenstand*-relation at all and that, in its acts of knowing, it does not establish any “theoretical synthesis,” any more than organic materials, as they appear in nature, are a product of an artificial synthesis in the chemical laboratory. Neither is it therefore a kind of theory about reality which can be fundamentally refuted by a critique of knowledge. On the contrary,

Apperception is discriminating experience, in contrast to the purely sensory perception experience. In his writing *Über die Fortschritte der Metaphysik* (1791), he calls it the “logical I.”

¹ See note on p. 28.

it is the very basis for a critique of knowledge, which can never be denied by the critique with impunity.

What is truly inherent in naive experience is the nonabstract subject-object relation which is founded in reality itself. This relationship, which also plays such a fundamental role in the jural aspect, we will return to consider in detail later on.

In the present context, we content ourselves with making the observation that, if in naive experience we ascribe to a rose sensory-psychical characteristics, such as a red color, a sensory form, etc., we remain very much aware that this flower is not a psychical subject and thus cannot itself perceive in a sensory fashion, but that, in this aspect, it is only an object of possible subjective perception. The same holds for the logical, the cultural, the aesthetic, and other normative characteristics which we ascribe to the rose. The rose indeed lives as a biotic subject, but in all later aspects we experience it only in an object-function which is related structurally not to the individual experiencing of any one person but to every possible subjective experiencing.

It is precisely by means of this subject-object relation that we experience temporal reality, not abstractly, that is to say, only in one or more theoretically isolated aspects, but as a totality in the given coherence of all of its aspects. This relationship is therefore diametrically opposed to that of the *Gegenstand*-relation. The subject-object relation leaves given reality intact; the *Gegenstand*-relation, by contrast, introduces abstraction. The subject-object relation leaves the unity of reality undisturbed. It even conceives the logical aspect of thought as being incorporated into concrete reality. Contrastingly, the *Gegenstand*-relation sets reality theoretically apart and puts the logical aspect of thought over against the nonlogical aspects.

The immediate result of proceeding from the *Gegenstand*-relation as from an unproblematical datum is the fundamental mistake of identifying the two relationships. Even for Kant *Gegenstand* and object are one and the same.

It is easy to see that in this manner the entire view of empirical reality is in principle distorted. This appears immediately from the fact that Kant identifies "empirical reality" with the theoretical abstraction by means of which the natural science of mathematics conceives it. He thus arrives at the identification of "empirical" reality with the reality of "nature."

In this theoretical abstraction, all of the normative aspects of the reality of experience are eliminated, even though they nonetheless comprise, in naive experience, an inseparable part of the things which only participate in these aspects within an object-function.

We have still not laid bare, however, the most dangerous trap in Kant's epistemological argument, namely, the conception of the transcendental-logical subject of thought as a logical unity above the diversity of the special scientific syntheses. The possibility of discovering, in an epistemological way, the starting point or Archimedean point in theoretical thought itself stands or falls with the question as to whether or not this is correct.

Kant's transcendental-logical subject of thought cannot transcend the *Gegenstand*-relationship with its theoretical antithesis. It is, in reality, nothing more than the subjective logical pole of thought over against which all empirical reality is supposed to stand as a *Gegenstand*. However, if the transcendental subject of thought itself does not transcend the *Gegenstand*-relation, then neither can it transcend the theoretical antithesis between the logical aspect and the nonlogical aspects. By implication, then, it is out of the question that the theoretical synthesis intended by Kant could proceed from this abstract subject of thought. For, as we saw in part 1.4, this synthesis (which may never eliminate the *Gegenstand*-relation if the theoretical attitude of thought is to be maintained) requires a standpoint itself elevated above the diversity of the aspects which have been theoretically set apart, and over against, each other.

It is undoubtedly true that the thinking "I" stands above, transcends this diversity. But the proposition that this can be accomplished by the ego in its logical-theoretical function of thought is incorrect. The immediate consequence of this false conception is that Kant, in an uncritical fashion, makes the synthesis itself into a transcendental-logical activity. And this conception has immediate consequences for the entire theory of science.

What we have called the aspects of reality, in Kant's way of thinking – insofar as they are even recognized by it – can only be transcendental-logical categories, or fundamental concepts, which lie at the foundation of all possible experience. According to him, these possess a synthetic character because they are related at the outset (a priori) to potential sensory experience.

According to Kant, nothing of reality is given to us other than as a chaos of as-yet-unordered, sensory-psychical impressions (*Empfindungen*) which form only the "material" or "stuff" of our experience.¹ These impressions are then conceived by human consciousness in the so-called transcendental forms of sensory perception, namely, space and time, and

¹ That this cannot be the case at all is apparent from the fact that sensory-psychical impressions can only be isolated from the full datum of experience via theoretical abstraction. A theoretical abstraction is, however, never given in experience; it is first the product of an artificial disjunction, or theoretical analysis, which is never carried out in naive experiencing.

are reduced by the transcendental-logical forms of thought, or categories, into real *Gegenstände* (natural things).

Kant therefore conceives of “space and time” as a priori, transcendental presuppositions of sensory (psychical) perception – transcendental in the sense that they lie at the foundation of all possible experience. And he calls them “sensory forms of perception” because they give an initial form to the chaotic sensory material of experience.

But it is only the logical forms of thought or categories, according to him, that introduce essential determinations into the sensory impressions in space and time. What we have called the mathematical aspect and the physical aspect of movement (these are just the aspects which mathematical natural science abstracts from concrete reality) become in Kant a system of logical categories of thought which are related synthetically to the forms of perception (space and time) of psychical-sensory perception, and in this synthetic function are called by him mathematical and dynamic categories.

That Kant acknowledges no other logical categories than that of mathematics and physics has its explanation in his dogmatic identification of empirical reality with theoretical abstractions of the latter via the natural science of mathematics.

For this reason he does not acknowledge any other aspects of empirical reality with the exception of the sensory (the psychical, in our sense of the word). Only the sensory-psychical, with its forms of perception of space and time, is not reduced by him to synthetic logical categories.

Kant refuses to do this, as we shall see later, in order to be able to put a stop to the natural sciences’ method of investigation at that time, which sought to determine all events in a closed chain of mechanical cause and effect, before it transgresses into the normative sphere of the supra-sensory, moral life (the moral aspect, in our sense of the word). According to Kant, within this moral sphere the freedom and autonomy of human personality must be accepted.¹

To this end he maintained that the categories of natural science are in principle limited in their applicability to the phenomena of sense perception.

For this reason the sensory could not be reduced to the logical aspect, and Kant maintained the true *Gegenstand*-relation, at least between the

¹ Kant did not seek the root of human personality in the logical function of thought at all but in the moral function of will which, according to him, was free and autonomous. That the human person, however, at the root of its being, is a free and autonomous moral personality which posits the norm for itself is, according to Kant, unable to be established by science; it is a matter of rational faith. He desires, however, to separate faith and science and to maintain the autonomy of science. Therefore Kant must seek the starting point of theoretical science in theoretical thought itself.

logical and the sensory (psychical) aspects. But here the problem of theoretical synthesis becomes very acute in his system. How is it possible, Kant asks himself, to have an a priori (lying at the foundation of possible experience) synthesis between logical categories of thought and the sensory material of experience?

He answers by appealing to the intermediary of time in which we construct an a priori sensory image (schema) out of our logical categories.

In time we also discovered the first transcendental presupposition that lies at the foundation of the possibility of synthesis. In doing this we conceived of time in the universal sense in which it embraces all the aspects. By contrast, Kant is required by his starting point to view time only in its psychical-sensory aspect as a form of sense perception. And it is clear that the psychical aspect of time, which is always restricted to the sensory sphere, can never explain a theoretical synthesis or connection between the logical and the psychical aspect. Kant therefore is prevented from offering a solution to the problem of synthesis.

In the twentieth century, contrary to his own conception according to which the categories of thought only relate to natural-scientific knowledge, Kant's epistemological method was also applied to the science of law by some jurists such as Kelsen and others who belonged to the so-called Marburg School of neo-Kantians. Rudolf Stammler, who did not himself belong to this school, began to explain the jural aspect as a system of synthetic-logical categories of thought, the categories of law, comprised in the transcendental concept of law,¹ in which we can order the content of experience. He thought that he was thereby remaining true to Kant's own approach which this great philosopher was supposed to have abandoned in his own philosophy of law.

How Stammler conceived of the role of these categories of thought in experience is possibly best made clear by the use of the following illustration. Suppose that you had been the witness of an accident in which a railroad gate had struck a passer-by in the neck resulting in that person's immediate death. Suppose also that you subsequently observe the lawful execution of a death sentence in which the condemned person dies by means of the guillotine. In what respect do these experiences differ from each other?

As the material of sense experience they do not differ, according to Stammler, except in the manner which that material is organized by consciousness in forms of thought – in the first instance, within the category of mechanics (movement), in the second instance within the category of law, which organizes the material of experience according to the scheme of means and end. The jural aspect of reality, according to him, is nothing

¹ Again called transcendental because it is viewed as a generally valid presupposition of all jural experiencing.

more than a logical form of thought in which our consciousness orders the in-themselves-completely-unformed impressions of sense experience.

Everyone senses that in such a conception of the nature of law the jural aspect is torn from its meaning coherence with all the other aspects and that the door is opened for the greatest arbitrariness in forming the basic jural concepts.

Kant's attempt to discover the true Archimedean point by following the path of critical self-reflection in the theoretico-logical aspect of thought must therefore be regarded as having completely failed.

In the question as to where this Archimedean point for theoretical thought may indeed be found, we encounter the third transcendental basic problem of all possible philosophy, which we can formulate as follows, How is the choice of the Archimedean point, from which the theoretical synthesis can be accomplished, possible?

The answer to this question can only be given if, employing the truly critical method of self-reflection with which we have begun, we give an account of the nature of the human ego. In the latter the individual center, or concentration point of all our functions that diverge into the various aspects of temporal reality, is discovered.

How is it possible to have an essential concentration of all the aspects of temporal reality on their deeper unity, aspects which have been theoretically distinguished and set over against each other? What is the nature of this concentric direction of our thinking?

The answer must be: We can only discover the Archimedean point for theoretical thought from which the theoretical synthesis is initially made possible by relating all of the aspects to their absolute origin. And it is not an abstract epistemological subject but only our ego, as the individual undivided concentration point of all our temporal existence, that is able to give thought to this concentric orientation.

Now this concentric relating of all temporal diversity to the absolute origin of all things is an act of an unmistakably religious character. In religion, our ego, as the individual center, stands in immediate relationship to God as the absolute origin of all things.¹ Human beings come to know themselves in this basic religious relationship. The ego is nothing else than the religious root, the religious concentration point, of our entire temporal existence.

And humankind's self-knowledge is completely dependent on its knowledge of God. It is the divine Word-revelation, together with the self-revelation of God to humanity, which discloses humankind to itself.

¹ Religion is not an aspect of temporal reality, such as, for instance, the logical aspect or even the aspect of faith. It does not add any new aspect to reality but concentrates all temporality on its true, or supposed, absolute origin. Only religion, according to its nature, is immediately related to the absolute origin.

Even in apostasy from this Word-revelation, it remains a firm principle of human nature that self-knowledge is completely dependent on the knowledge which humankind has concerning its god (or god-substitute). We can call this law the “law of religious concentration.”

When, for example, the Greek philosopher Aristotle seeks the center of human nature, which distinguishes a human being from an animal, in the theoretical activity of thought, this conception is totally dependent upon his idea of deity as “the absolute and pure (no longer bound to sense) thought,” which has itself for an object (the *noēsis noēseōs*).

When in the modern period the German philosopher Leibniz seeks the center of human nature in exact mathematical thought, this conception also is completely dependent upon his idea of deity as creative mathematical thought, the “great geometer” (*intellectus archetypus*).

And when Kant seeks the deepest being and center of human nature in the supra-sensory, autonomous moral function, in which the will orients itself purely and exclusively to the moral law, and which it sets up completely independent of all natural causes, then this conception is entirely dependent upon Kant’s idea of God which is essentially moralistic.

But even outside philosophy as a science, the law of religious concentration holds universally. When many so-called primitive heathen peoples conceive of the deity impersonally as a mysterious power (*mana*) which reveals itself in as-yet-incomprehensible phenomena of nature, we notice that these same peoples have a lack of insight into human personality, a lack of any conception of its transcendence above the animals, plants, and inorganic things. In the sphere of mana-belief there also flourishes so-called totemism in which an entire people or tribe honors an animal, plant, or even an inorganic thing as the divine tribal father or tribal mother, and the members of the community identify themselves with this totem. They are storks, or eagles, or palm trees.

Impressed by this data, the German professor Ernst Cassirer, once a leading figure of the previously mentioned Marburg School of neo-Kantians,¹ declared, “So again it becomes evident that humankind grasps and knows its own being only insofar as it is able to make itself visible in the images of its gods.”²

In none of its branches was immanence philosophy able to rise above that phase of self-reflection in which the heart of human personality is sought within one of the temporal functions of consciousness (be it the

1 Its founder was Hermann Cohen. The other major figure along with Ernst Cassirer was Paul Natorp.

2 Ernst Cassirer, *Philosophie der symbolischen Formen*, vol. 2, *Das mythische Denken* (Berlin: Bruno Cassirer, 1925), 269. English trans. *Philosophy of Symbolic Forms*, vol. 2, *Mythical Thought*, trans. Ralph Manheim (New Haven: Yale University Press, 1955), 211.

logical function of thought, the moral function of will, the function of feeling, or the historical function, etc.).

It is in the divine Word-revelation, which has its fulfillment in Christ Jesus as the incarnate word, that humankind first truly comes to an understanding of itself. The words of the Scriptures, “out of the heart are the issues of life,” [Proverbs 4:23, KJV] is the pregnant summary of the consistent witness of God’s word concerning the religious root of all human existence. The latter transcends all of the temporal functions of human nature in the various aspects of reality because here they all come to a focus in the religious basic relationship to God as the absolute origin and creator of the cosmos.¹

Humanity functions in all the aspects of temporal reality without exception. But human existence finds its deeper unity, its true supra-temporal center, in the “heart” which is also called by the Scriptures the “soul” or the “spirit” of a person (which, however, has nothing in common with the concepts “spirit” and “soul” in immanence philosophy). Whether in the service of God or an idol, all the temporal functions, including thought, take their point of departure out of, and are focused in, the heart.

Every elevation of a theoretically isolated aspect to the root-unity of all the others, as we have discovered in the various “isms” of immanence philosophy, is in truth a religious choice of position of the human ego over against the absolute origin. Such an absolutization can never be explained in a purely theoretical manner because the theoretical *Gegenstand*-relationship as such does not provide any scientific foundation for the absolutization of a particular synthesis (in a theoretical concept). In such an absolutization there is revealed the ineradicable inner religious tendency of the human heart toward the origin, which does not discover any resting place in what is relative and does not rest until it has referred everything relative to an absolute ground.

Have we now discovered in the human ego, in the transcendent religious sense of the individual religious root of all temporal human existence, the true Archimedean point of philosophy?

No, because in the true point of departure there must be focused not only individual human existence but the meaning of the entire temporal cosmos. The theoretically differentiated aspects and individuality-structures of temporal reality are not simply the possession of the individual person; they form the fundamental structural framework in which all temporal creatures, relationships, and events are included, even the animal

¹ From this it is evident that the “heart,” in this pregnant, scriptural sense, may not be identified with the temporal function of thought or the temporal function of feeling. Those who read the Holy Scriptures in this way utterly fail to understand the radical significance of the fall into sin and redemption in Christ Jesus – in relation to themselves.

realm, the plant realm, and the realm of inorganic things. For that reason we have simply described true knowledge of oneself as the necessary way to the discovery of the Archimedean point of philosophy.

The latter must possess a supra-individual character but, at the same time, it must embrace the human ego, in the sense that the latter participates in it. For it is always the human ego that thinks philosophically. If it did not participate in the Archimedean point, in which the entire meaning of our temporal cosmos is concentrated, then the starting point of its thought would remain extrinsic to it. But the latter would be an impossible situation. The starting point that we choose must give a religious direction to all of our immanent theoretical activity of thought. How would this be possible if we ourselves did not participate in this starting point?

In his epistemology, Kant saw clearly that it is not the individual thinking ego that can be the starting point of theoretical synthesis. But in the interests of the dogma of the autonomy of science over against faith, he thought that he could discover a universally valid starting point in the theoretical abstraction of a “transcendental-logical subject of thought” from which all individual reality was theoretically abstracted.

As we have seen, this was an uncritical conception. Once we have perceived that the true Archimedean point of theoretical thought, according to the immanent structure of that thought itself, must be of a transcendent-religious nature, then there remains only one possibility for a supra-individual starting point in which the full individual ego participates. This is the religious root-community of the human race. An individual person indeed participates in this community, even though it has a supra-individual character.

The Bible has revealed to us that humankind has been created in such a root-community, so that along with Adam, the first head, the entire human race fell away from God into sin. And the Bible has revealed to us at the same time that the full meaning of the entire temporal cosmos was focused in this religious root-community. Because of humankind’s fall into sin the entire temporal world has been cursed. The other creatures, which are included with humanity in the same temporal order of the world, do not themselves have a religious root to their existence. Humanity’s task was to disclose the entire temporal creation in the service of God. When humankind, in its radical fall into sin, becomes disobedient with respect to this task, it takes with it, in this fall, the entire temporal world. Apart from humanity, the latter could not independently relate itself to God and develop its inherent potentialities in the service of God.

The Fall, the radical (that is, concerning-the-root) apostasy from God, involved the human heart elevating itself above its divine origin. Humankind, thinking that it was something in itself and that it was therefore like God, began to seek both itself and its god also within that which is tempo-

ral. This was the service of idols in apostasy from the true God as He has revealed himself in the human heart by his Word.

The religious root-community of humanity can only reveal itself in a communal religious spirit which, as a *dunamis*, a “spiritual power,” drives all human activity forward and sets its direction, even though the individual may not be at all conscious of it. We can call this *dunamis* the religious community-motive, if we take the word “motive” in its original, pregnant sense (Latin: *movere*, to move, to propel).

Since humanity’s fall and the promise in paradise of the coming redemption in Christ Jesus, there are active in the religious root-community of humanity two kinds of *dunamis*, and these two fundamental motives stand over against each other in an irreconcilable religious (thus not simply theoretical) antithesis.¹ The first basic motive is of an idolatrous nature; the second is the *dunamis* of the divine Word-revelation, which operates through the Spirit of God in the hearts of those who have been reborn in Christ as the restored humanity.

The first ground-motive can express itself in various forms because the idolatrous direction of the religious communal spirit orients itself in an absolutizing fashion to what is temporal with all its intrinsic diversity.

The second ground-motive, in the nature of the case, can only have a single, integral form because it cannot be anything else than the ground-motive of the divine Word-revelation itself. If, in the history of the human race, it begins to display various forms, that can only be attributed to the tendency of the human heart to seek an impossible religious synthesis between the ground-motive of the Word-revelation and the motives of idolatrous religion which stand in a radical antithesis to the former.

1.6 The Four Religious Ground Motives of Western Thought

Our transcendental critique of theoretical thought initiated an investigation into the necessary presuppositions of philosophy as the science of totality, that is, into those presuppositions required by the internal structure of this thought itself. It has now reached its final stage. Because of the direction which our investigation took in part 1.5, we are now in a position to expose the disguise of a supposedly scientific neutrality with respect to faith and religion, and to uncover the true starting points of theoretical systems. We now know that they are actually rooted in religious ground-motives which have an inherently communal character, and

¹ Theoretical antithesis is bridged over by theoretical synthesis. This can occur because it is not radical. Religious antithesis, by contrast, has to do with the spiritual root of the temporal cosmos and can never be bridged theoretically.