Encyclopedia of the Science of Law

[1946, Chapter I, Introduction]

by

Herman Dooyeweerd

Translated by J. Glenn Friesen

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There were various editions published of this Encyclopedia. A translation of the 1967 SRVU [Students Council of the Free University] edition was published in 2002.¹

The 1946 edition of the Encyclopedia, which I have translated here, is very different. It is much shorter (only 35 single-spaced pages in the original). It also contains some material that is not included in the later editions. This translation is therefore not intended to replace the 2002 translation of the 1967 edition, but rather to provide Dooyeweerd scholars with an early text that helps to explain the meaning of Dooyeweerd’s legal philosophy.

The 1946 edition was published by Drukkerij D.A.V.I.D. (De Algemene Vrije Illegale Drukkerij” [The Common Free Illegal Press]. This was a publishing company started by Marten Toonder, the famous cartoonist.² It operated as an underground press from 1944 and then continued after the war. The unusual nature of the D.A.V.I.D. Press does not mean that Dooyeweerd would not have used it, since D.A.V.I.D. was also publishing

² JGF: Toonder is famous for his cartoons of Heer Bommel en Tom Poes. The D.A.V.I.D. press was housed in Toonder’s studio. Toonder had previously worked at De Telegraaf; he left in 1944 when it obtained a new Editor, who was a member of the SS.
newspapers like Trouw. But it is possible that the publication of the 1946 edition was arranged for by students, who then presented it to Dooyeweerd. Dooyeweerd criticizes such a student edition for its many misprints.\(^3\) But there is a typewritten list of Errata included with my copy of the 1946 edition, prepared by a student, Ch. de Graaf. The errors that are listed for both volumes run to 26 typewritten pages, although there are only 9 minor errors listed in relation to the Introduction that is translated here. An example is the misprint referring to ‘comic’ time instead of to ‘cosmic time.’ And it is also clear that students used the 1946 edition, together with the Errata sheets. My copy lists schedules of readings, and indicates that the Introduction translated here was no longer used [vervangen], and replaced by a separately published set of notes [dictaat]. That implies that at one time, the text included in the 1946 edition was used.

The importance of the 1946 edition is underscored by the fact that in 1963, two years before Dooyeweerd’s retirement, another edition was published by the Hanenburg press. This 1963 Hanenburg edition appears to be identical to the 1946 edition, except that the errors identified in the Errata sheets have been corrected. Whereas the 1946 edition was printed as a hardbound copy, the 1963 Hanenburg edition is mimeographed. Words that are italicized in the 1946 edition have had to be emphasized with underlining in the mimeographed version. Whereas the 1946 edition of the Introduction was 35 printed pages, the mimeographed edition is 38 typewritten pages. This is a much smaller work than the 1967 SRVU edition on which the 2002 translation is based. Hanenburg was also the publisher of the Correspondentiebladen of the Association for Calvinistic Philosophy, and so I believe we must presume that Dooyeweerd himself authorized the republication in 1963 of this corrected version of the 1946 edition.

So whether Dooyeweerd published the 1946 edition, or whether students published it, it provides us with very important historical and scholarly information to compare with the later editions of the Encyclopedia, and for understanding Dooyeweerd’s philosophy in

general. In particular, it provides one of his clearest explanations of the theoretical Gegenstand-relation. It is also important in showing Dooyeweerd’s contrast between central concepts (or Ideas), and peripheral concepts. The Idea of Law is central, and, like all Ideas, can only be understood in relation to our central selfhood, which transcends time. The peripheral concepts are temporal, and practical, but they can only be understood from out of the central Idea. The synthesis of meaning achieved in the Gegenstand-relation occurs when our supratemporal selfhood enters into its temporal meaning functions:

The meaning synthesis of scientific thought is first made possible when our self-consciousness, which as our selfhood is elevated above time, enters into its temporal meaning functions.

In my translation, I have joined together some shorter paragraphs. I have also shortened some longer sentences for ease of reading. I have translated the terms that Dooyeweerd uses in this work, even though in some cases, Dooyeweerd later substituted other terminology for those terms. For example, he substituted ‘modal aspects’ for the term ‘side’ [zijde] that is used here.

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4 JGF: Elsewhere, Dooyeweerd says,

The idea in this transcendental sense has the necessary function to fix theoretical thought upon its presupposita. The theoretical ‘concept’ has the function to discriminate the different aspects of reality. The transcendental idea, on the contrary, concentrates theoretical thought on their common radical unity and final Origin.” (Herman Dooyeweerd: Transcendental Problems of Philosophic Thought, (Grand Rapids: Eerdmans, 1948, 76).

See the discussion in the text regarding the transcendental Ideas of radical unity and Origin (pages 13, 16, and footnote 17).

5 See page 12 of the text.
Introduction

The *Encyclopedia* has a peculiar ambivalent character. If we look at it according to its Idea (but not in its historic-etymological sense), then in its foundations it undoubtedly belongs to philosophy. This is so insofar as it gives an encyclopedic account of the inner structure of [legal] science, and of the coherence in which this science stands in relation to the sciences that are situated around it.

But in its goal and tendencies, the *Encyclopedia* really has a practical-pedagogical nature. Its task is to give a preliminary and general orientation regarding the concrete subject matter of [legal] science. The concept ‘*egkuklios*’ therefore expresses the philosophic basis of the *Encyclopedia*, and the concept ‘*paideia*’ expresses its pedagogical task.

We want to give an account of both of these elements in this *Introduction*, in order to provisionally set out our plan for these lectures on *Encyclopedia*.

Insofar as the philosophical basis of *Encyclopedia* establishes the general inner structure of science, and the coherence with the other sciences, it is of course *formal* and not material.

Here, however, we must already warn against a misunderstanding of the distinction between *formal* and *material*.

In our view, ‘*formal*’ does not mean “externally logical” [*uitwendig-logisch*]. It merely refers to a limitation to the *determination* [*fixeeren*], by means of scientific-logical

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6 JGF: The Dutch is ‘*tweeslachtig,*’ which has a primary meaning of “bisexual or androgynous.” The word is also used metaphorically to mean ‘ambivalent,” in the sense of coexisting but contrasting attitudes. The contrasting attitudes in the *Encyclopedia* are the central philosophical Idea of law and the peripheral, practical concepts of law. But the original meaning of ‘androgynous’ might also be intended here. See Franz von Baader’s use of ‘*androgynous*’ to refer to the Center and periphery, the active and the reactive principle, in one individual essence, both nature and product. See Baader’s “*Vorlesungen über Societätsphilosophie,*” *Werke* 14, 141 ff. Also *Fermenta, Werke* 2, 326, and the index entry for ‘*Androgyne,*’ *Werke* 16, 71 ff.
analysis, of the general a-logical meaning-structure\(^7\) of the domain of law within the inexhaustible particularity of meaning of concrete legal life. (An explanation follows below).

Formal encyclopedia may therefore not disregard concrete law. Rather, it must impart scientific training, in order to teach the jurist how to judge in a concrete juridical way.

However, it can only reach this goal by using concrete legal figures as examples, in order to make clear the foundational general meaning-structure of the domain of law, and not by giving a superficial summary of the positive legal material without understanding it in its meaning-structure.

As a philosophical science, the *Encyclopedia* therefore does not need to systematically discuss the concrete subject matter of science as such.

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Rather, the *Encyclopedia* needs to discover the universal framework in which material science groups its subject matter and on which it constructs its system.

In this regard, the direction of the *Encyclopedia’s* research proceeds from the center to the periphery; it is *egkuklios*.\(^8\)

\(^7\) JGF: I have translated ‘zinstructuur’ as a compound word ‘meaning-structure.’ Because Dooyeweerd regards created reality as meaning, and not as being, the translation needs to show that the structure is meaning, not that it is a structure of meaning, which might suggest that structure and meaning are different. A similar translation of a compound in other works, ‘individualiteitsstructuur’ is translated as ‘individuality structure’ and not ‘structure of individuality.’

\(^8\) JGF: This is the idea of circular education [*egkuklios paideia*], where one Idea refers to another in a kind of hypertext way, all related to a Center. See my article “The Mystical Dooyeweerd The Relation of his Thought to Franz von Baader,” *Ars Disputandi* 3 (2003) [http://www.arsdisputandi.org/publish/articles/000088/index.html]. I have emphasized Dooyeweerd’s similarity to Baader, who says,

> Because true gnosis is a circle and not a row of concepts, it matters little from which concept we begin our theory; it is more important that each concept must be related to the Center, from which this concept then necessarily points to other concepts in a regressive (retrocipatory) or anticipatory way; this relation to the Center therefore shows itself in act and essence as the only systematic relation (*Werke* VIII, 11.)
It therefore begins with the basic concepts of science and seeks the irreducible meaning in these basic concepts. This irreducible meaning determines and imprints its specific stamp on all other concepts.

If I want to become conscious of the central concept of legal science, it does not help to compare concrete concepts like ownership, lien, hypothec, novation, buying and renting, delegation of authority, etc. with each other, and then to attempt to bring out their common characteristics.

For the number of these concrete concepts is indeterminate, and I cannot be assured that I could ever completely finish this investigation; on the contrary, I know from beforehand that I shall not complete it, since the juridical forming of concepts does not stand still, but just like science itself, must be understood in its never-ending progress.

I therefore cannot use the inductive and abstracting method that is generally used in jurisprudence.

I must seek a method that brings to my consciousness the meaning of the concept of law as such. And it is the task of Encyclopedia as a philosophic-formal science to track down this method.

When we have found the correct method, and when we have we have established the central concept of law that determines all concrete concepts of law, and which imprints on them their unique juridical character, then we have established the middle point of the circle, and we can thereafter cover the distance to the periphery, to the circumference.

But the Encyclopedia cannot fulfill the task assigned here to it without investigating the mutual coherence in which legal science stands to the sciences situated around it.

And it is just on this point that the Encyclopedia again finds its deepest foundation in the life- and worldview whose basic question asks: “How can temporal creation, in all of its varied multiple forms and diversity, be brought together into a deeper organic unity?”

Although a more detailed analysis of the meaning of a life- and worldview for legal scientific and for legal philosophic thought really belongs to lectures on the philosophy of law, we are nevertheless forced, in order to define our standpoint concerning the
foundations of Encyclopedia, to again here give an account of the scientific attitude that is required by our Calvinistic life- and worldview.

Here we will limit ourselves here to mentioning certain central thoughts from the philosophical structure of our life- and worldview, insofar as they are of fundamental importance for the concept of Encyclopedia.

The domain of law is a distinct side\(^9\) [zijde] of the full temporal reality in which we live; this is so both as to its law-side (the legal norms) as well as for the subject-side that is subjected to these norms (legal subjects, legal actions, legal facts).

Of course, apart from its legal side, temporal reality has many other sides, which in turn form the particular objects of other special sciences.

This becomes immediately clear, when for example, we consider a simple legal act, like buying some cigars, and look at this act in relation to life.

Apart from its juridical side, this act has its moral, economic, social, linguistic, historical, logical, psychical, biotic, mechanical, spatial and numerical sides.

The jurist is really interested in a distinct way in the legal side of this act, and he views this side in the legal concept of the contract of sale.

The act as such is subjected to particular laws, legal norms, just as the economic side of the same act is subject to economic norms. The social side of the act is subjected to laws of association and social intercourse, the linguistic side to linguistic law, the psychical side to psychical laws, the mechanical side to mechanical laws, etc.

The question now arises, “What makes the domain of law into an independent side of temporal reality?”

The answer must be. “Universal meaning, which resides in all legal phenomena, and which is irreducible to the meaning of other sides of temporal reality.”

\(^9\) JGF: Dooyeweerd uses the term ‘zijde’ [side] for what he later on page 8 refers to as ‘law-spheres.’
This irreducible common *meaning* is also the only fundamental criterion to delimit the special sciences from each other. Consider the *particular meaning* of a certain object of scientific investigation. So long as we can show a *universal meaning*¹⁰ in this particular meaning, which it has in common with other objects of investigation, the special science in question continues to direct itself to one and the same side of temporal reality. Let’s say we are considering constitutional law. As long as it has a universal meaning—in this case it would be the meaning of *law qua talis* [law as such]—with, for example, civil law, commercial law, private international law, etc.), then we are directing ourselves to the same side of temporal reality. Constitutional law, commercial law, international law, etc. are all within the *legal side* of temporal reality; they only form particular parts *within* that side.

In contrast, phenomena such as *legal feeling* and *legal action* are not both found within the same side of reality. For in *legal feeling*, the universal meaning resides in the psychical side of reality, namely the meaning of sensitive consciousness, whereas *legal action* belongs in its universal meaning to the *legal side*.

Legal feeling is also not then subjected to *legal norms*, because it is outside of the power of the giver of legal norms to control the feelings of people. Legal feeling remains subjected to the psychical side of reality.

The sides of temporal reality are delimited from each other by such universal, irreducible meaning, and as such, these sides are also subjected to a particular sphere of laws. So from now on, we shall call these sides of temporal reality ‘*law-spheres,*’ in order to thereby express their closed,¹¹ irreducible, meaning character.

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¹⁰ JGF: ‘Universal’ here refers to the nuclear meaning of an aspect; in this case, it is the meaning of law as such, which Dooyeweerd elsewhere finds to be that of retribution. ‘Particular’ refers to different kinds of law. The universal-particular distinction has meaning only within the modal aspect or side. ‘Universal’ does not mean ‘generic concept,’ for generic concepts “only have a right of existence within the framework of the mutually irreducible aspects.” See 2002 translation, 82, 93.

¹¹ JGF: See Dooyeweerd’s discussion of the meaning of ‘closed.’
Irreducible *meaning* is therefore the fundamental criterion of a law-sphere.

In each law-sphere, full temporal reality has a separate subject-side and a separate law-side. We can also refer to these as a separate *subject function* and a separate *law function*.

So in the numerical law-sphere, which is delimited by universal numerical meaning, the subjective numerical side of reality is subjected to numerical laws. In the spatial law-sphere, the subjective spatial side of reality (spatial figures) is subjected to laws of spatial relationships. In the sphere of movement (delimited by the meaning of movement), the subjective energy-side of reality is subjected to laws of movement, etc.

And also in the juridical law-sphere (delimited by legal meaning), the subjective legal side of reality (its legal subjectivity) is subjected to legal norms.

Temporal reality is enclosed in this way in a great diversity of law-spheres. But on the other hand, in naïve, pre-theoretical experience, reality is nevertheless experienced [*beleefd*] as an organic *unity*. Therefore, the following question irrevocably rises for philosophical consideration: “How are we to view the origin, the deeper unity and the mutual coherence of these law-spheres?”

Naïve experience of everyday life, which is not yet scientific experience, experiences [*beleefd*] full temporal reality, but without an articulated knowledge of the various meaning-sides of reality that are enclosed in the law-spheres.

If I decide to go to my office to write, I perform an action that is experienced as a continuous unity, without giving an articulated account of the separate meaning-sides of this action in my naïve pre-theoretical experience of this action.

But naïve experience, although it possesses no articulated synthetic knowledge [*kennis*] of the law-spheres, does have an intuitive knowledge [*weet*] of their richness of meaning.¹²

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¹² JGF: This distinction between ‘*kennen*’ and ‘*weten*’ is important. ‘Weten’ is a non-theoretical, intuitive knowledge. Sometimes Dooyeweerd also uses the word ‘*schouwen*’ for such knowledge. Or, as above, he sometimes uses the word ‘*besef*.‘
For as soon as a theoretician wants to make me believe that this table, this chair, upon which my eye is resting, is in reality nothing but a collection of psychical-sensory impressions, which are ordered by my logical function of consciousness, my naïve consciousness of reality reacts intuitively against this arrogance of philosophical theory, which wants to reduce temporal reality to two of its meaning-sides (the psychical and the logical).

I [naively] realize [besef] that such a theory robs me of many of the meaning-sides of my full temporal reality. And although with my naïve experience I cannot scientifically refute this theory, I am nevertheless deeply convinced that this theory must be false.

It is false because full temporal reality, which I experience in everyday life, is given to me as an inseparable coherence of all meaning-sides, both of the natural-sides (the mathematical, mechanical, biotic and psychical), as well as of the spiritual\textsuperscript{13} sides (the logical, historical, linguistic, social, economic, aesthetic, juridical, moral and faith sides). This little table, standing in front of me, is no longer this table for my naïve experience, if its reality can be reduced to the psychical sensory impressions of colour, hardness and form, which are merely be ordered by logical concepts.

The following functions also belong to the full reality of this table: its objective social function (in association and social intercourse), its objective linguistic function (its name), its objective economic function (its economic value), its objective aesthetic function, its objective juridical function (the table is my property as a legal-object), etc.

Now what is unique to naïve experience is that it does not set the functions of consciousness over against a reality that is foreign to it (the ‘Gegenstand of knowledge,’

\textsuperscript{13} JGF: Dooyeweerd uses the term ‘geestelijk’ or spiritual to describe what he later refers to as ‘normative’ law-spheres. He contrasts these ‘spiritual’ law-spheres with the non-normative ‘natural’ law spheres. This usage is also found in German, which speaks of the ‘Geisteswissenschaften,’ which might be compared to the ‘arts’ in contrast to the ‘sciences.’ But in Dutch and German usage, the term ‘science’ [\textit{wetenschap, Wissenschaft}] also applies to both the normative and the natural sciences.
as the Germans call it). Rather, our naïve experience is naively fitted into full temporal reality, including the functions of consciousness (the psychical and logical). That is to say, it understands the psychical, logical and the later spiritual functions as an organic part of and in full temporal reality.

Naïve experience is therefore fitted into full temporal reality with all of its meaning-sides (law-spheres), but without an articulated knowledge of the law-spheres.

In contrast, theoretical thought, in the special sciences, is no longer merely naively fitted into reality, but in deepened logical activity, it sets certain meaning-sides of reality over against itself, making these meaning-sides into a Gegenstand of knowledge in the special sciences.

The gain of scientific thought as compared to naïve experience is that it obtains for us an articulated knowledge of the particular law-spheres, and of their particular conformity to law (wetmatigheid).

The loss is that special scientific thought only allows us to know subtracted sides [afgetrokken zijden] of reality, abstractions from out of full temporal reality, and that it misses the view of totality over reality.

Neither the mathematician, nor the physicist, nor the psychologist, logician, historian, linguist, aesthetician nor jurist can teach us what the temporal reality is.

It is the task of philosophy to fill in this lack within special scientific thought, and to obtain the view of totality over temporal reality,

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no longer in the unarticulated experience [be-leving] of naïve experience, but in an articulated distinguishing of the law-spheres.

\[14\] JGF: The term ‘ingesteld’ is important. Dooyeweerd uses it to mean that, in contrast to an autonomous law or ‘stellen,’ we are ‘gesteld’ by God’s law (See Dooyeweerd’s 1923 address, "Advies over Roomsch-katholieke en Anti-revolutionaire Staatkunde). By this law, our supratemporal consciousness is also ‘ingesteld’ or fitted into the cosmos along with other temporal reality (WdW I, 47, NC I, 24)). We then live in both the supratemporal and the temporal realms. In the WdW and the New Critique, Dooyeweerd sometimes substitutes the word ‘ingevoegd’ for ‘ingesteld” (See WdW I, 36; NC I, 24).
Both above and within the vast *diversity of meaning* of temporal reality, as it reveals itself in the law-spheres, philosophy cannot rejects its task of teaching us to know the deeper unity and the mutual relation and coherence of the law-spheres. For philosophy is the science of totality.

If philosophy is to fulfill this task, it must first give an account of the question, “How is it that the articulated knowledge of the law-spheres, which is obtained by special scientific thought, robs us of the unity of the naïve experience of reality?”

For this is certain: even all the special sciences put together, mutually supplementing each other, cannot obtain for us a knowledge of full temporal reality.

After we have divided an apple into parts, putting the parts together again does not give us back again the full fruit.

Well now, the coherence in temporal reality is given by *time*, which streams through all meaning-sides of reality. The law-spheres themselves are first made possible by cosmic time, and holds it them in correspondence [to each other].

This [cosmic] time, which streams through our temporal cosmos, and which holds all of its meaning-sides together, itself has its own meaning-side within each law-sphere.

If with respect to the series of numbers, I say that 2 is *earlier* than 3 and 4, then I grasp this relation of time between the numbers *in the specific meaning of number, which is discrete quantity (how much).*

The meaning of the numerical side of time is this, that *earlier and later in the series of numbers* implies a *more or less* of the numerical value.

In the law-sphere of movement, cosmic time has a *meaning of movement*. In the biotic law-sphere it has an *organic meaning of life.* In the logical law-sphere, it has a *logical-analytical meaning* (the logical *prius* and *posterus*. For example, both premises of the

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15 For example, the question, “When does a living individual come into being?” can only be answered in this biological meaning. The answer is, “As soon as the organism begins to function independently and no longer via the individuality of its mother.”
syllogism: “All men are mortal, Socrates is a man.” are earlier than the logical conclusion, “Therefore Socrates is mortal”).

In the juridical law-sphere, cosmic time also has its own meaning-side or meaning function. If, for example, I ask, “When did this tort (delict) begin?” or “When did this agreement come into existence?”, these questions do not pose a problem for the natural sciences, or a mathematical or logical problem, but a legal problem.

Within the legal sphere, time carries the meaning of law, which we shall learn to know in the meaning of retribution. In the extinguishment by limitation of time of certain property rights or of a claim,

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time does not reveal itself in a mathematical or logical or historical meaning, but in a juridical meaning, which is governed by legal norms.

If the Civil Code defines the limitation period for claims to be generally 30 years, then this time limitation realizes a normative demand of law and not a logical or natural necessity.

Whenever the question is asked whether a law also has retrospective force–that is to say, whether it shall also apply to legal facts that came into being before the coming into force of the law–then this question puts forward a juridical problem of time, which needs to be solved in accordance with the normative demands of justice and in the meaning of law.

We are referring to the weighing of legal interests in the balance scale of retribution, weighing the interests of legal certainty for the citizens of the state versus the public legal interest that the law wants to serve.

Suppose for example that in time of war, a law is promulgated against the hoarding of food. This law could then entirely miss its goal–the assurance of a regulated provision of foodstuffs–if it could not direct itself against hoarders who had already exercised their unsociable practices even before the coming into effect of the law.

The legal interest of citizens, not to be punished for facts that at their commencement were not punishable, is here outweighed by the public legal interest that the law wants to serve.
The problem of time evidently carries here the meaning of retribution. In this way, we see how within the law-spheres themselves, cosmic time takes on the meaning of the law-sphere.

But cosmic time, just like temporal reality itself, cannot be reduced to the sum of the law-spheres. It extends beyond the boundaries of the law-spheres; it possesses cosmic continuity.

In our naïve experience, we live through [door-leven] this continuity of the cosmic order of time. This is because naïve experience is merely fitted into temporal reality.

Consider again the example of writing or working in my office. I experience this event as a continuous unity, one that does not break through the boundaries of the law-spheres in which the particular meaning-sides of the action are enclosed.

It is cosmic time, which spreads over [heengrijpen] the boundaries of the spheres, which makes it possible for me to execute decisions. For example, it makes it possible for me to carry out a decision, which has matured in my psychical and logical sides of consciousness, by means of the mechanical function of movement.

If our theoretical and special scientific thinking wants to obtain for us an articulated knowledge of a specific meaning-side of temporal reality, it really cannot remain merely fitted into [ingesteld] this continuous cosmic order of time, like our naïve experience. Rather, in its concept formation, it must abstract from this continuity in time, in order to be able to fix a law-sphere in the scientific view, in a discrete and articulated way.

The continuous cosmic order of time does not allow itself to be grasped in a scientific concept, since cosmic time, which also maintains the cosmic relation between the logical and the non-logical law-spheres, is what makes possible any concept even possible.

Scientific thought consists in a synthesis of meaning between logical thought and the meaning of the non-logical law-sphere that has been made into a “Gegenstand.” Such scientific thought is only possible because the law-spheres find themselves in a systasis of meaning because of [cosmic] time.
The meaning-synthetic thought of science is first distinguished from mere meaning-systatic thinking of naïve experience by the fact that the scientific concept consciously gives up \([afziet\ van]\) the continuity of the cosmic order of time.

Systatic thought remains naively fitted into the continuity of the order of time; it therefore cannot obtain a concept of the law-spheres. Meaning-synthetic thought subtractions \([afrekt]\) the investigated law-spheres from their continuous coherence within time, and sets them over against itself, making them into a “Gegenstand.”

This synthetic abstraction, this sub-traction, cannot be brought about by our logical function of consciousness itself.\(^{16}\) For as a subjective meaning-side of temporal reality, the logical function is itself within time.

The meaning synthesis of scientific thought is first made possible when our self-consciousness, which as our selfhood is elevated above time, enters into its temporal meaning functions. This supratemporal selfhood of our human existence is the religious root of our personality, which in its individuality participates in the religious root of the human race. And as Scripture reveals to us, in Adam this root fell away from God, his Creator, but in Christ it is again directed towards God.

In the religious root of the human race is found the supratemporal unity and fullness of meaning of all temporal meaning-sides of reality.

Temporal natural things (trees, animals, etc.) have no independent religious root.

Temporal nature fell in the fall into sin of the first head of the human race, because the fullness of meaning and the supratemporal unity of all temporal reality was given in the root of this human race.

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\(^{16}\) JGF: The Gegenstand-relation of theoretical thought does not occur by the logical function or aspect itself. As Dooyeweerd has just mentioned, the opposition in the Gegenstand-relation is between the act of thinking and the aspects that are its Gegenstand. All acts, including the act of thinking, proceed from out of our supratemporal selfhood (NC III, 88), and are expressed in all temporal aspects (NC II, 112). And see Dooyeweerd’s “32 Propositions on Anthropology”: All our acts \([verrichtingen]\) come forth out of the soul (or spirit) but they function within the enkaptically structured whole of the human body.”
As we just said, philosophic thought must necessarily raise the question of the deepest origin, unity and mutual coherence of the law-spheres, the meaning-sides of our temporal reality.

In order to fulfill this task, philosophy must occupy a standpoint, what philosophy calls an *Archimedean point,*’ which is elevated above all temporal meaning-sides (law-spheres) of reality. This standpoint therefore transcends time.

We have now seen how this Archimedean point is not given in any single one of our temporal functions of consciousness. For we have seen that we can transcend time only in our self-consciousness, because our *selfhood* individually participates in the *supratemporal religious root* of the human race.

From this it follows that philosophic thought, as scientific thought, must derive its Archimedean point from religion, and in that sense is necessarily *religiously determined.*

Philosophic thought as such necessarily operates with an *a priori* religious Idea of the deepest origin and coherence of the law-spheres. We will call this the ‘law-Idea’ of a philosophical system. The law-idea determines the course of philosophic thought in both of its main questions:

1. What is the origin and the deeper unity of all law-spheres?
2. How is there mutual relation and coherence to be viewed?\(^{17}\)

In a narrower sense, we can also understand the law-idea as the Idea of the deepest origin and mutual relation of all temporal *law-sides* of the law-spheres. Then there corresponds to the law-Idea a *subject-Idea*\(^{18}\), as the Idea of the deepest origin and mutual relation of

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\(^{17}\) JGF: Dooyeweerd generally refers to three transcendental questions: Origin, Archimedean point (religious root), and temporal coherence. Here, the first question includes two transcendental Ideas: Origin and Archimedean point (deeper unity). Later, at p. 16, Dooyeweerd refers to three questions. Similarly in the 2002 translation, p. 77.

\(^{18}\) JGF: Dooyeweerd’s correlation of a subject-Idea here with the law-Idea is consistent with his view of the refraction of the supratemporal unity into temporal individuality. By the prism of cosmic time, central law (*NC I*: 11, 63, 174, 507) is refracted into the modal
all temporal subject-sides of the law-spheres. Law-Idea (in this narrower sense) and subject-Idea stand in an inseparable correlation to each other, since a law would have no meaning without a subject that is subjected to it.

The law-Idea of a philosophic system must be distinguished from the legal concept that is wielded by scientific thought. The law-Idea directs the view of totality over the separate law-spheres, and seeks their deeper unity. As opposed to this, the legal concept only wants to establish the characteristics that must be possessed by the law-conformity [wetmatigheid] in each law-sphere as such.

The law-Idea seeks the fullness of meaning of the law above the temporal diversity of the law-spheres. But the legal concept only wants to understand the characteristics of the temporal laws, and as such it must orient itself to the distinguished meaning of the law-spheres.

The legal concept is dependent on the law-Idea, just as surely as the temporal meaning-sides of reality do not exist “an sich” [in themselves], but exist only as temporal refractions of meaning of the supratemporal fullness of meaning in the religious root of the human race.

Now in the law-Idea, in which the Archimedean point of philosophic thinking is fixed, there is revealed an unbridgeable chasm between two kinds of life- and worldviews. The first seeks for the deepest origin of all temporal sides of reality in an idolatrous way, by seeking this origin in the temporal functions of human reason. The second seeks its deepest origin in a Christian sense, in God’s sovereignty as Creator.

As a consequence, the first life- and worldview seeks our supratemporal selfhood in our temporal functions of consciousness. The second seeks our supratemporal selfhood in aspects (NC I, 100). All individuality is rooted in the religious centre of our temporal world: all temporal individuality can only be an expression of the fullness of individuality inherent in this centre (NC II, 418).
the religious root of our temporal existence. This second life- and worldview is in accordance with God’s revelation in Scripture (Out of the heart are the issues of life!).

And as a further consequence, the first life- and worldview tries to bring all temporal law-spheres under the common denominator of the meaning-sides of temporal reality that it has absolutized in an idolatrous way. The second life- and worldview seeks the common denominator (the deeper unity) of all temporal meaning-sides above time in the religious root of creation, and can therefore ascribe sovereignty in its own sphere to each law-sphere in its relationship with the other law-spheres, based on its irreducible meaning.

The first life- and worldview seeks philosophy’s Archimedean point within time, and is therefore to be characterized—in all its variations—as immanence philosophy. The second life- and worldview seeks the Archimedean point above time in the religious root of the human race in its subjectedness to the religious fullness of meaning of the law, which is to serve God.

All “–isms” in philosophic thought (mathematicism, materialism, psychologism, historicism, aestheticism, moralism, etc.), which try to reduce all the remaining meaning-sides of temporal reality to the meaning of one or more absolutized law-spheres, are therefore differentiations of the law-Idea of immanence philosophy.

This law-idea also reveals its a priori influence in the philosophy of law. For example, Prof. Krabbe asserts that law is a psychical phenomenon, and that all positive law has its unique legal source in the feeling of justice held by fellow citizens. This results from a psycho-logistic view of law, which is itself grounded in the psycho-monistic philosophy of Prof. Heymans, who seeks the deepest origin and unity of all temporal law-spheres in the (logically understood) psychical law-sphere.

And the neo-Kantian Professor Kelsen (currently professor at Cologne, previously at Geneva and prior to that at Vienna) views law as a logical form of thought, in which we

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19 The professor in philosophy and psychology at Groningen, now deceased.
20 To be defined as a hypothetical judgment: “If A, then B should occur.” That is to say, whenever these or those facts take place, then this measure of force (punishment or execution) must be applied.
order our confused sensory (psychical) impressions. That view results from a mathematical-logicistic view of law (which is itself grounded in the mathematical-logicistic philosophy of the Marburg school of neo-Kantianism), which seeks the deepest origin and unity of all temporal law-spheres in mathematical thought.

And the view of jurisprudence within the Historicist School of von Savigny (and those who follow him) is that law is a phenomenon of historical development, and that the only true source of law is the historical-national spirit of a people [Volksgeist]. That view is itself a result of a view of law, which is grounded in the historicistic philosophy of post-Kantian idealism (Schelling, Hegel), etc.

Within immanence philosophy, two main schools of thought initially appear: the rationalistic and the irrationalistic schools.

From the very beginning, the rationalistic school of thought sought to reduce the subject-side of temporal reality to the law-side, and to find true reality only in conformity to law [de wetmatige]. For example, they saw in nature only a logical system of natural laws, of which all subjective, individual events in nature are only exemplary instances.

Conversely, the irrationalistic school of thought sought to reduce the law-side to the individual subject-side of reality. Then individual subjectivity became true reality, and law became merely an abstract concept of thought, corresponding to nothing in reality.

Within jurisprudence, rationalism revealed itself concisely in the idea that the legal sphere consists only and exclusively of legal norms, and that legal subjectivity is itself merely a dependent function of the legal norm. This is what Kelsen teaches—that the subjective legal personality can be reduced to a composite of “Rechtsätze” [pure legal judgments]. On this view, the State as a legal institution is identical legal norms, identical with the legal order, etc.

And in his Encyclopedia, Prof. Zevenbergen teaches that law does not belong to “reality,” but is a thing [constructed by] thought, and that it consists solely and exclusively of legal norms. This view tears apart full temporal reality into a supposed suprtemporal
noumenon (a world of thought or ideas), and a temporal phenomenon (the sensory, physical-psychical side of reality).  

Rationalist immanence philosophy must then accept that the legal sphere has no independent subject-side, and that temporal reality has no meaning-side of its own in the legal law-sphere.

Such a view has important consequences in legal theory. It would reduce all subjective actual events in legal life to physical-psychical natural reality. As a consequence, this view is not able to accept the existence of juridical causation.

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juridical time, juridical space, etc. It must rather try to reduce all of these factors to natural factors.

So naturalistic theories of time and causation were introduced into the science of law, which have brought about great confusion, since legal theory cannot begin with natural-scientific concepts.

We already have seen how the meaning of retribution, legal meaning, is found in the juridical determination of time [tijdsbepaling].

Consider the question, “When and where did this tort (delict) occur, and has this tort really caused definite damage?” The idealistic rationalistic view of law, which identifies the legal sphere with its law-side, and which understands all reality in legal life as natural reality, shall see in this issue merely an ordinary question about nature, which in itself falls outside of the legal concept.

For example, the naturalistic theory of causality, the condicio sine qua non, was introduced in legal science. It teaches that any consequence, which has judicial

21 This tearing apart is a consequence of the idealistic choice of placing the Archimedean point in the functions of reason, which consequently must be absolutized to a supratemporal world of ideas or concepts. Over against this view, those in the Kantian tradition allow time to apply only to the physical-psychical sides of reality, which then are in fact degraded to a mere phenomenon (apparent reality, sensory appearance).
consequences in the legal order, is caused by every factor that cannot be eliminated from thought without also eliminating the concrete consequence.

The naturalistic theories concerning the time and place of a tort (the theory of the bodily deed, the theory of the instrument, the theory of the consequence that arises) want to determine the time and place of the tort wholly outside of the meaning of law. They want to do this either according to the (psychical) perceptual time, during which the physical-psychical side of actions was completed, or else according to the (psychical) perceptual time, during which the instrument (e.g. the pistol or bomb) was used for carrying out the tort, or else according to the perceptual time during which the sensorily perceptible (physical-psychical) side of the deed’s consequence was played out.

All such naturalistic theories fail to appreciate the truth that the legal sphere is a meaning-side of temporal reality itself, and that legal science can only operate with legal concepts, that is to say, with concepts in which legal meaning is grasped.

In contrast to all such views of law, which are rooted in a law-Idea of immanence philosophy and which are then specified one way or another, we have from the beginning based our view of law on the Calvinistic-Christian law-Idea.

One basic question of life- and worldview is, “What is the deepest origin of all temporal law-spheres?” Our law-Idea answers, “God’s holy, sovereign will as the Creator.”

Another question is, “Where can we find the deeper unity of all law-spheres?” Our law-Idea answers, “In the religious root of the human race, reborn in Christ.”

And a third question is, “How are we to view the mutual relation and coherence of the law-spheres?” Our law-Idea answers, “With respect to their meaning, all law-spheres are mutually irreducible to each other; they possess sovereignty in their own sphere according to their universal meaning, and they mutually cohere in the cosmic order of time.”

Time can be viewed as the prism, by means of which the unrefracted light of full supratemporal meaning is refracted into the colour ranges of the law-spheres, just like the rainbow is the refraction into colour of sunlight.
The law is everywhere the absolute boundary between Creator and Creation. Whoever oversteps this boundary in his thinking, and who also places God, under the law, falls into rebellious speculation. It was in this sense that Calvin spoke the profound words, “Deus legibus solutus est” [“God is above the law”].

Our law-Idea teaches that cosmic time maintains the law-spheres in correspondence.

In this cosmic time, there is also a cosmic law order, which assigns each law-sphere its defined place in temporal reality. The law-spheres are not arbitrarily mixed up in their places. Rather, they carry and support each other in a determined order of succession, regulated by the cosmic order of time.

The spatial sphere cannot exist without the foundation of the numerical sphere, although the converse is possible. For space always requires dimensions, and dimension presupposes number (space is two-dimensional, or three-dimensional, or multi-dimensional). Each spatial figure rests on the substratum of numerical relations.

And so in its turn, the spatial sphere is the foundation for the sphere of movement; movement is the foundation of the biotic sphere (of organic life); the biotic is the foundation of the psychical (of the sensitive consciousness), the psychical is the foundation of the logical sphere (of the analytical); the logical is the foundation of the historical sphere (of cultural development), the historical is the foundation of the linguistic sphere (of symbolic signification); the linguistic is the foundation of the social sphere (of association and social intercourse); the social is the foundation of the economic sphere, the economic is the foundation of the aesthetic sphere (of beautiful harmony), the aesthetic is the foundation of the juridical sphere (of retribution), the juridical is the foundation of the moral sphere (of the inclination towards love), and the moral is the foundation of the sphere of faith (which is regulated as to its law-side by divine revelation, positivized in the confession of faith).

Thus the legal sphere also has its particular place in the cosmic order of the law-spheres.

We will call all law-spheres that precede the legal sphere in cosmic time the ‘substratum spheres’ of law.
Without the foundation of these substratum spheres, law would have no meaning. None of these substratum spheres can be eliminated by thought, without law becoming meaning-less.

The place that the legal sphere occupies in the cosmic coherence is, as we shall see, by no means a matter of indifference for legal science. On the contrary, it is essential.

In our view, *The Encyclopedia of Legal Science* must first determine this place [that the legal sphere occupies]. For we shall demonstrate the essential importance that this cosmological insight has for the method of juridical concept formation.

The inseparable coherence in cosmic time, which exists mutually among the law-spheres, does not only reveal itself in the external relation between a law-sphere and its substratum spheres.

If, as taught by our law-Idea, all law-spheres are really a refraction in time of the religious fullness of meaning in the supratemporal root of our creation, the organic coherence of meaning with all other law-spheres must also already be revealed within each of the law-spheres separately, in the structure of universal meaning, by which the law-spheres maintain their sovereignty over against each other.

How does this organic coherence reveal itself in the universal meaning-structure of a law-sphere? And how—in spite of this coherence—does a law-sphere maintain its sovereignty in its own sphere according to its meaning?

On the one hand, the universal meaning-structure of a law-sphere possesses a nuclear meaning, which is completely irreducible to the meaning of the remaining spheres. And on the other hand it possesses meaning-moments, which point back to the meaning of all earlier spheres and meaning-moments that point forward to the meaning of all later spheres.
We will call those meaning-moments that point back in the universal meaning-structure either ‘analogies’ or ‘retrocipations.’ And we will call the meaning-moments that point forward in the universal meaning-structure ‘anticipations.’

Using several examples, we will now illustrate this architectonic structure of the universal meaning-structure of the law-sphere.

We must first remark that analogies can only arise in the meaning-structure of those law-spheres that possess substratum spheres. And anticipations can only arise in the meaning-structure of those law-spheres that are succeeded by even later spheres in cosmic time.

In the universal meaning-structure of the numerical sphere, as the first boundary sphere of our cosmos (which as such possesses no more substratum spheres), we can point to no analogies. In the universal meaning-structure of the sphere of faith, as the second boundary sphere of our cosmos (upon which as such no more later spheres follow), we can point to no anticipations. On the other hand, it can be established that the number of analogies in the meaning-structure depends on the number of substratum spheres on which a particular law-sphere is founded, just as the number of anticipations is dependent on the number of law-spheres that still follow that law-sphere in the cosmic order.

In order to illustrate the function of nuclear meaning, analogies, and anticipations in the meaning-structure of the law-spheres, we will begin by analyzing the universal meaning-structure of the two simplest spheres, those of number and space, in their mutual relation.

The nuclear meaning of numerical meaning is discrete quantity (how much).

We have already seen that the universal meaning of number can include no analogies; on the other hand, it possesses as many anticipatory meaning-moments as there are law-spheres that follow the numerical sphere.

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22 JGF: Dooyeweerd uses ‘analogies’ here to refer only to retrocipations. In other works, he also includes the word ‘analogies’ to refer to anticipations.

23 Faith is “…the open window to eternity.”
In its still unanticipated meaning, number can only determine discrete things. This is what is called the natural, finite function of number.

But in fact in its own meaning of discrete quantity, number can also approximate the meaning of continuous space, and in this way unfold its first anticipatory meaning function (upon spatial meaning). Number does this in its infinite or infinitesimal functions as an approximate number.

Let us suppose a straight line A—B Ax————————xB

We can think of this straight line, in itself continuous and spatial, as arising from an infinite series of points.

If we now assign the whole number 1 to point A, and the whole number 2 to point B, then we can assign to each of the following points a number that is > 1 < 2.

In this way, there arises an infinite series arises of irrational numbers, which only find their limit in 2, but which in the fullest sense of the words form an infinite series, a series of approximation.

It is clearly evident here how discrete number, in its infinite function, approximates the meaning of continuous space, without itself ever taking on its meaning.

For if number itself could ever become continuous, then it would have to assume the spatial meaning, which is not possible without wiping out the boundaries of meaning between number and space, and thereby bringing insoluble antinomies or logical contradictions in thought.

The infinite numerical function is therefore an anticipatory meaning-function of number.

Conversely, we find analogies of numerical meaning in the universal meaning-structure of space.

The nuclear moment of space is continuous extensiveness. But as we have already seen, continuous extensiveness implies dimensionality, and dimension must always rest upon the numerical substratum. (Space is one-, two-, three- or multi-dimensional!).

Thus, dimensionality is a numerical analogy in the meaning of space.
Spatial meaning does not display any more analogies. But it displays a correspondingly greater number of anticipations. In the first place, the anticipation to the meaning of movement.

Analytic geometry investigates this anticipatory function of space, by not beginning with static, given figures, but by thinking of each spatial figure as arising out of the movement of points,

straight lines, corners, etc., in relation to a fixed system of coordinates in relation to numerical values.

Yet is it clear that no movement is possible within the meaning of space itself.²⁴

Here, in its anticipatory function, spatial meaning approximates the meaning of movement. This anticipation of movement in fact continues to carry a static spatial meaning. It remains under the sovereign rule of the nuclear moment of space, which guarantees the sovereignty in its own sphere of the spatial sphere.²⁵

Numerical meaning also has an anticipation to movement, and this is seen in the numerical function of differential calculus, which serves to approximate in a numerical meaning certain differences in movement, which are themselves found outside of numerical meaning.

²⁴ In modern times this was first acknowledged by Einstein in his General Theory of Relativity, who allowed kinematic space [bewegingsruimte] to be determined by the characteristics of energy, and who thereby demonstrated the analogous character of kinematic space.

²⁵ Antinomies, which arise by wiping out the boundaries between space and movement, have been demonstrated in a classic manner in Zeno’s paradoxes. Elezab Zeno demonstrated, that in a contest between Achilles and a tortoise, where for example the tortoise obtains a head start of 100 meters, Achilles could never make up this deficiency. For in order to overtake 100 meters, Achilles must first put behind him half of this space, and this half allows itself to again be infinitely divided. Achilles can no more reach the tortoise than this division can ever come to an end.
Modern mechanics, which makes the *sphere of movement* into a "*Gegenstand*" of scientific investigation, arose for the first time when these analogical and anticipatory meaning-moments in the meaning of number, space and movement were *discovered*.

*And this natural science is therefore constructed in the closest coherence of meaning with mathematics and mechanics!*

Just as in the other law spheres, the universal meaning-structure of the psychical law-sphere displays a nuclear moment ("*sensitive consciousness"*), analogies and anticipations.

For example, the spatial analogy in psychical meaning is *perceptual space* (feeling-, touching-, optical space), which does not itself carry a spatial meaning, but the psychical meaning of the sensitive consciousness.\(^{26}\)

Geometry then does not have psychical perceptual space as its "*Gegenstand.*” Rather it has the *non-sensory spatial sphere* itself as its "*Gegenstand."*

On the other hand, *psychical meaning* has its *anticipations in logical feeling, historical feeling, the feeling for language, social feeling, aesthetic feeling, legal feeling,* etc. And when we now consider the legal sphere, the general meaning-structure of law also has its analogical and anticipatory functions.

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We will investigate this systematically in the analysis of the meaning of law.

As an introduction, we need only a few examples, in order to make clear the juridical scientific importance of this investigation.

*Example 1.* Legal meaning necessarily has a *spatial analogy*, which as to its *law-side* we call the ‘*area of validity* of legal norms.’ And as to its *subject-side*, we call it ‘the *place* of subjective legal conduct.’

The area of validity of legal norms does not itself carry *spatial meaning*.\(^{27}\)

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\(^{26}\) Spatial meaning itself *anticipates* psychical meaning in the function of *three-dimensional space*, which alone is suited to our sensory perception. *A multi-dimensional space cannot be psychically represented!*
For example, in the rule of international law, “A ship is territorial,” the legal principle expressed is that the area of validity of a national legal order also extends to ships carrying a national flag, wherever they may find themselves.

This is again no natural necessity, but a normative legal requirement.

In this way the statues theory, which was taken over in our Law of Algemene Bepalingen of 1829 (the “Law A.B.”) [“The Law Containing the General Provisions”], governed the issue of how the area of validity of legal norms should be governed in the case of several competing national legal orders (e.g. the French, Germans and Dutch).28

And we have already refereed to the problem of the place of the tort and have recognized a legal meaning in it, a meaning of retribution.

Example 2. Legal meaning necessarily has an analogy of movement. As to its law-side, we call this ‘the legal ground and legal consequence.’ As to its subject-side, we call it ‘causality of subjective legal conduct.’

In connection with the issue of juridical causality, we have already referred to how naturalistic theories of causation reign supreme in legal science, and how juridical causality can really only be understood in the meaning of justice (the meaning of retribution).

A mechanical concept of causality, which views causality in the meaning of natural movement, has no meaning in legal science. This is immediately evident, whenever we think of the “causa omissionis” [causes of omission] in legal life.

Merely by negligence, by remaining still, doing nothing, in a case where we ought to have acted, can cause damage to someone in a juridical sense.29

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27 What sense would it make to say that a legal order is valid in a natural space? For legal norms are not spatial figures that occupy a place in space, are they?

28 For example, a Dutchman in London buys a shipment of grain, which is stored in Hamburg. Which national rules of law will acts as norms for this legal act?

29 Cf. Art. 1402 of the Civil Code [B.W.]: “Everyone is responsible not only for the damage caused by his deed, but also for that, which he has caused by his negligence or carelessness.”
How can one really understand the *causa omissionis* itself as a natural causality, and how can one accept the naturalistic theory of *condicio sine qua non*, where in the meaning of mechanical movement, only positive factors have meaning in the chain of causality?

Undoubtedly, juridical causality cannot exist, and has no meaning *without the substratum* of causality in the meaning of *natural movement*.

But it is only an analogy in the subjective meaning of law, and as such, it remains qualified by retribution, the *nuclear moment* of law.

Juridical causality is always the causality of actions or conduct, which must always be *accounted for in relation to* [toegerekend] a legal subject. In contrast, mechanical natural causality does not know of any normative *accounting in relation to*, but only a mechanical *accounting by means of* [door-rekening] every subjective factor of movement that cannot be eliminated without also eliminating the consequence.

*Example 3.* Legal meaning necessarily has a *psychical analogy, i.e. an analogy of sensitive consciousness*.

This analogy embodies itself in the *juridical will*, which functions in both the *law-side* of a legal sphere (the positive legal norms as “the will of the former of law”), as well as the *subject-side* (the subjective legal will, which reveals itself in subjective legal conduct).

This juridical will cannot possibly be identified with *psychical will* in the sense of a striving and desiring of the sensitive consciousness. This is immediately evident when we consider the following:

In the Netherlands, a law comes into force by the common consultation of the Crown and both Chambers of the States General, after having obtained the advice of the Council of State. Suppose now that a bill is proposed in the Second Chamber [Lower House].

Whether or not at the instigation of a minister, the bill is worked out in his Department by one or more chief bureaucrats, and accompanied with the advice of the Council of State. During the deliberations in the Second Chamber, various members make use of their right of amendment. The bill is revised, added to, perhaps against the wishes of the relevant minister and various members of the Second Chamber. Finally the bill is passed, not
because each member of the Chamber individually desires the bill in this form, but by means of a compromise between the factions of the majority parties in the Chamber.

If the bill is strongly technical in character, then one can be sure that a large proportion of the members of the Chamber, who are not familiar with or have no interest in this area, scarcely know what its contents are, although they nevertheless give their approval to it.

The bill is subsequently passed in the First Chamber, and is then approved, contrary to the views of the minority.

Finally the Crown gives its sanction to the bill, and the bill then becomes elevated to law and the law is placed in the Statute Book of the Netherlands.

This law embodies the will of the lawgiver.

But everyone still senses that this will is not the same as the psychical desires and strivings of a number of individuals. It rather concerns the juridical will, which manifests itself in certain conduct of the law-giving organ.

Now suppose this case. A simple man wants to enter into an insurance contract. An agent from one of the companies visits him and tells him about the practical advantages of this or that system of insurance. He finally chooses a certain form. The agreement is made, and the insured now receives at his home a written document called a ‘policy.’ The policy is signed by the insurer, and it is full of clauses which the insured as such barely understands, or of which he only has superficial knowledge. But in any case, the document contains a lot more content than that to which his desire and imagination had directed itself during the coming into force of the agreement of wills.

There is an agreement of wills in the juridical meaning with respect to the contents of the contract of insurance. But it cannot be maintained, that this legal-forming agreement of wills is the same as a psychical and logical agreement with respect to what was imagined and sought by both parties with respect to insurance.

The psychological theory of the will in legal science is a result of the psychological concept of law, and must use the mask of [legal] fiction in order to cover up the
antinomies (contradictions), which it calls forth by wiping out of the boundaries of meaning between psyche and law.

Where the discrepancy between the juridical and the psychological concepts of the will appears too clearly, it helps itself by using the legal fiction of psychical will. But the fiction used in this way is a scientific lie, and thus a proof of how theory is unusable.

But although the meaning of psychical and juridical willing is totally different [toto coelo, by the total extent of the heavens], it cannot be denied that the juridical will cannot exist without the substratum of a psychical sensitive consciousness, and thus can also not be understood outside of its coherence of meaning with that substratum.

No more than the meaning of movement can be grasped scientifically outside of its coherence of meaning with number and space.

For now, the above examples must suffice for making clear the function of analogies in the meaning-structure of law.

As an example of a juridical anticipation, I would mention guilt\textsuperscript{30} in criminal law, in which the moral meaning of a lack of a loving attitude is approximated in the meaning of law, the meaning of retribution.

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Moreover, in the legal concept “good morals” (see for example article 14 of the A.B. law, 1375 of the Civil Code (B.W.), and the law concerning the right of association and gathering), we clearly see a juridical anticipation to moral meaning.

Yet even in juridical anticipation, law’s sovereignty in its own sphere continues to be maintained in its meaning.

The anticipatory meaning functions of law cannot be understood outside of the coherence of meaning with the law-sphere whose meaning is anticipated.

\textsuperscript{30} JGF: The same word ‘schuld’ is used for both criminal guilt and civil fault. I have differentiated these English meanings.
But even anticipation remains under the sovereign rule of the nuclear moment of law.

Psychological or moral theories of fault are juridically unusable.

How are we to view the relation between analogical and anticipatory meaning moments in the universal meaning-structure of the law-sphere?

Whenever meaning has not yet unfolded its anticipatory functions, that is, whenever meaning still only reveals itself in the coherence of the nuclear moment and its analogies [retrocipations], then we shall say that it is still found in its “closed” or “restrictive function” and that the anticipatory spheres of meaning are still closed.

The anticipatory meaning-moments, which approximate the meaning of the succeeding spheres, deepen meaning, bringing it in an “expansive” or deepened function.”

_The anticipatory function can therefore never be set over against the analogical function._

So in criminal law, for example, it is fundamentally wrong (although it almost always happens) to discuss juridical causality and juridical fault wholly separately from each other or even in opposition to each other.

The three basic concepts of criminal law—_injustice, causality_ and _fault_—belong together in the meaning of law. Fault deepens the “restrictive meaning” of injustice and causality _in an approximation of the meaning of the moral_, just as the infinite numerical function deepens the restrictive meaning of number in approximating the meaning of space.

Only on this view does an inner system arise in legal concepts. It is not just a formalistic logical system that eliminates the meaning of law (as in Kelsen’s “reine Normlogik” [pure logic of norms]), but rather a system _in the (logically understood) meaning of law._

In primitive legal arrangements, both culpability and the measure of punishment of a tort depend exclusively on the degree of damage _caused_. By contrast, in modern developed legal arrangements, _cum grano salis_ [taken with a grain of salt], they depend primarily on the _fault_ of the wrongdoer. In this way, we discover that legal meaning in primitive criminal law has a “restrictive or closed function,” and that modern criminal law on the other hand has a “deepened function.”

In modern criminal law, the causality of the tort is not set aside, but humanity
has learned to see that the realizable \[ideéele\] damage that an unjust deed can inflict on the public is greater when it is done intentionally or by “gross fault,” than when it is committed without fault. And in general, damage must be viewed as primarily requiring the presence of fault in order for the act to be worthy of punishment.

Causality itself is deepened, made heavier by means of fault.

After the foregoing explanation, it is now apparent that an anticipatory meaning function like ‘juridical fault” must be understood in two kinds of meaning coherence: 1. in coherence with the meaning of the substratum spheres and 2. in coherence with the meaning of the anticipated sphere.

For anticipation deepens the nuclear meaning with its analogies, and we have seen that analogy itself presupposes the relation of meaning with the substratum sphere.

This explains how both psychologistic as well as moralistic theories of guilt have appeared in criminal law. Psychologistic theories wrongly interpret this psychical analogy in terms of psychical meaning, when it without a doubt should be understood as juridical fault according to its legal meaning. And moralistic theories wrongly interpret moral anticipation within the juridical sphere as moral meaning [within the moral sphere].

Both involve the theory of guilt in antinomies, since they blur and wipe out the boundaries between the law-spheres. Unlike the juridical sphere below it, it is not possible for moral guilt to be dependent on the presence of juridically caused damage. Another antinomy is that a psychical feeling of guilt can really be completely lacking in a delinquent, which makes the juridical guilt that much more grievous.

In particular, where the wrongdoer has wholly not thought about his legal duty, the discrepancy between psychical guilt feeling and juridical guilt is readily apparent.

Therefore, because of its analogical and anticipatory structure, the meaning of a law-sphere appears to really guarantee the organic coherence with all other law-spheres within time.
In this sense, we can say that sovereignty in its own sphere finds its counter-image in the universality in its own sphere of a law-sphere according to its meaning.

In principle, the all-sidedness of reality reflects itself in the meaning of each law-sphere. And so we can truly say that in principle, the fullness of meaning of the religious root of creation refracts itself into a sovereign meaning-tone in each law-sphere.

By this we have then also explained the apparent possibility of all “-isms” in philosophy. For example, it is seemingly possible to abstractly carry out psycho-logicism only because psychical meaning, like the meaning of every other law-sphere,

is “universal in its own sphere.” That is to say, it displays analogies or anticipations to the meaning of all earlier and later law-spheres respectively.

And yet, although psychologism seemingly shows such high esteem for the psychical law-sphere—by absolutizing it—this absolutization really signifies not only an enormous robbery of the meaning of full temporal reality, but also an irrefutable robbery of meaning of the psychical law-sphere itself, since this sphere can only reveal its meaning in the coherence of meaning with the remaining law-spheres that are sovereign in their own spheres.

Such views of law are founded in absolutizations, of which immanence philosophy must necessarily be guilty, because of its choice of Archimedean point. In contrast, the theory of the law-spheres offers a method of immanent critique (i.e. a critique that is practiced on the basis of the law-idea of the system that is itself being criticized).

We call this method the ‘method of antinomies.’ It consists in demonstrating the antinomies or contradictions, in which each view of law must necessarily become involved, if it tries to reduce the meaning of law to the meaning of another law-sphere (for example, by reducing law to the psychical or to the logical).

Such an immanent critique of modern systems of legal philosophy, one that uses this method, can be found in my “De betekenis der wetsidee voor rechtswetenschap en rechtsphilosofie” [The meaning of the law-idea for legal science and legal philosophy] (Amsterdam: ten Have, 1931). I applied it to humanistic theories of the state in my “De
“Crisis in de humanistische staatsleer” [The Crisis in the humanistic doctrine of the state] (Amsterdam: ten Have, 1931).

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Until now we have viewed the law-side of temporal reality in a synthetic, scientific way—that is, in an articulated distinguishing of the meaning-sides of reality, which are enclosed in the law-spheres (see p. 5 above).

And previously, we have also contrasted the systatic view of naïve, pre-theoretical experience to this synthetic, theoretical view.

We saw at that time that meaning-synthetic thought, in its scientific formation of concepts, sets itself over against the law-spheres, in a conscious abstraction from the continuity by which cosmic time spreads beyond the boundaries of the law-spheres.

In contrast, naïve experience, with its temporal functions of consciousness, appeared to be fitted within [ingesteld] temporal reality, in the continuity of the time order, and that it therefore was not capable of obtaining articulated knowledge of the law-spheres. Naïve thought does not understand the sovereign meaning-sides, the meaning functions of temporal reality, but much rather individual things.

What is the concept of things in naïve experience?

As shall appear from the whole course of the later chapters, it is of essential methodological importance for legal science to obtain clarity with respect to this question.

The concept of a thing in naïve experience has frequently been confused with the metaphysical concept of substance.

By ‘metaphysics,’ we understand a branch of philosophy that comes from immanence philosophy, and which seeks within time itself for the unchanging essence (substance) of things that is elevated above time.
In this way, metaphysics seeks a natural substance, a thinking substance, a moral substance of personality, etc, and it supposes that it is able to track these down with the help of abstractive thought.

Descartes (16th to 17th century) argued in this way. He is the founder of modern, humanistic philosophy (that declares human personality to be sovereign). He argues as follows, “If I hold a piece of wax in my hand, then I perceive in it a certain form, a colour, a smell, a hardness. But if I place the piece of wax in the fire, all of these sensory qualities disappear. The “substance,” the unchanging, supratemporal essence of the wax, cannot exist in these sensory, changing qualities, but it must be tracked down in another way. And that way is by means of mathematical thought.”

For as an immanence philosopher, Descartes absolutizes mathematical thought to a supratemporal, absolute instance (“quae nulla re indiget ad existendum”) [“that which needs no res in order to be”].

In this way he arrives at his “res extensiva,” “spatial matter” as the mathematical substance of nature.

Everyone senses that the naïve concept of a thing can have nothing to do with this metaphysical concept of substance. For the concept of substance is itself nothing more than an absolutized product of theoretic, philosophic thought. And as we have seen, naïve, pre-theoretical thought registers a stubborn, not-to-be-silenced intuitive opposition against every tearing apart of temporal reality into a supratemporal noumenon (conceptual or ideal world) and a temporal phenomenon (the bare apparent reality of psychical-sensory experience).

Naïve thought understands things as completely changeable temporal reality, in an organic-temporal coherence of natural and spiritual functions.

So what then are the “things” of temporal reality?

We begin first by asserting that a “thing” coheres in an unbreakable way with individuality in “temporal reality.”
According to our law-idea, individuality reveals itself in all law-spheres in their own sovereign meaning, and individuality finds its supratemporal fullness of meaning in the religious root of the human race (cf. Paul’s image of the Corpus Christianum or Body of Christ, as a body, with an individual head and individual members!)

In contrast, because it has chosen its Archimedean point within time, immanence philosophy must deny this all-sided meaningfulness of temporal individuality.

Insofar as immanence seeks true reality in an idealistic way in the world of ideas and concepts (a supposed supratemporal noumenon), and insofar as it seeks to absolutize the law-side of reality at the expense of the subject-side, it must rationalistically come to the conclusion that “true reality” (the substance of things) knows no individuality.

Immanence philosophy must therefore raise the issue of the “principium individuationis” [principle of individuation]. It then seeks the basis of individuality in the sensory (physical-psychical) phenomenon.

That is to say, it attempts to explain all individuality on the basis of a certain law-sphere, but it assigns this law-sphere to the “phenomenon,” to merely apparent reality.

In contrast to such rationalism, irrationalistic immanence philosophy, which conversely always absolutizes the subject-side of temporal reality at the expense of the law-side, teaches that true reality is individual through and through, and that it is therefore foolish to seek for a principle of individuation (principium individuationis).

But just as in the case of rationalism, there are nuances in irrationalism.

Because they are rooted in immanence philosophy, the irrationalistic systems, too, wipe out the boundaries of meaning of the law-spheres. In this way we can conceive of a psychologistic irrationalism, 31 a biologistic irrationalism, 32 a historicistic irrationalism, 33 an aestheticistic irrationalism, 34 etc.

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31 Bergson and his disciples.
32 Such were already the skeptic sophists.
33 Spengler.
34 The romantics.
In this way, irrationalism also comes to seek the fullness of meaning of individuality in a certain law-sphere, but then not like rationalism in the law-side of that law-sphere, but in the subject-side.

Naïve, pre-theoretical experience of things knows nothing of all such absolutizations.

The “things” of this naïve experience are nothing other than the individual structures of temporal reality, which possess their individual meaning-sides in all law-spheres.

When it is first heard, this assertion still sounds very learned and incomprehensible; we will now try to bring it to complete clarity.

Yet we can only first do this by illuminating from within [doorlichten] the givenness of naïve experience, that is, the individual thing-experience, by means of meaning-synthetic, philosophic thought, which distinguishes the meaning-sides of naïve reality in an articulated way.

Let us begin with the analysis of meaning of a natural thing, such as an apple tree.

Without a doubt, this tree has a meaning-side, or meaning-function, in the law-spheres of number, space and movement.

But as long as we only view the apple tree, as a natural thing, only from these “sides” of its reality, it does not yet have any meaning to speak of an apple tree.

Algebra can perceive nothing in a tree other than a complex of numerical relations; geometry nothing other than a complex of static spatial figures; physics nothing other than a complex of energy-movements.

None of these special sciences uses the concept of a thing, since the tree, insofar as it is viewed in the law-spheres in only a meaning-functional way, that is to say, on the basis of its abstract reality-sides, does not distinguish itself as an individual thing.

The said special sciences do not wield a concept of a thing, but a concept of a function.

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35 In other words, Dooyeweerd uses the term ‘individualiteitsstructuur’ or ‘individuality structure.’
Only when we view the apple tree in its organic side of life (its biotic side) does it make sense to speak of an apple tree.

In the biotic law-sphere, the apple tree clearly has a meaning-function that first qualifies it as a tree.

The subject function that the apple tree possesses in this law-sphere is not an abstract, but an individual subject function.

When we now observe the internal structure of the tree as a thing, it then appears that these individual organic functions of life occupy a wholly unique place in that structure.

As we have seen, the tree also has subject functions in the preceding law-spheres of number, space and movement. But the individual organic function of life occupies a leading position in the internal structure of a tree.

In its internal process of life, all of its mechanical movements are also directed to the goal of life [levensbestemming] of the tree. As we know from our earlier explanation, this is not possible except in the anticipatory functions of mechanical meaning.

As we have seen, by unfolding of the anticipatory spheres of a law-sphere, its meaning is deepened in approximation of the meaning of the succeeding law-spheres.

The meaning of the later anticipated sphere thereby leads the meaning of the earlier sphere in the direction towards itself. So we can say that spatial meaning has a “leading function” with respect to the infinite numerical functions.

Well now, in the internal thing-structure of the tree, the organic function of life is the “leading function,” which in an individual way directs all earlier subject functions of the tree to its individual goal of life.

The individual “leading,” which the leading function that the thing exercises on the earlier functions, does not negate the “sovereignty in its own sphere” of the earlier functions.
Even in the internal structure of the tree, the mechanical movements continue to direct themselves according to laws of movement; the individual spatial figures in the tree direct themselves in accordance with spatial laws, etc.

The sovereignty in its own sphere of these meaning functions reveals itself in a clear way in the tree’s external relations. If a strong storm uproots the tree, then the tree falls, obeying in its function of movement the mechanical laws of movement, without this externally caused movement being led by the organic function of life.

The “leading function” of this apple tree, by its individual influence on the earlier meaning functions, ensures that all of these meaning functions will be grasped by naïve experience as a complete individual unity.

How is “leading influence” possible? That remains an insoluble problem for the special sciences. For the possibility of such influence can only be understood by pointing to the continuity of cosmic time. And, as we have seen, it is just by means of theoretical thought that this continuity of cosmic time is cut off from its concepts.

From all of this, it is clearly evident that the thing is more than the sum of its reality functions. And this “more” is hidden in cosmic time, within which, as we have seen, only naïve experience is fitted.

This explains how temporal reality reveals itself to naïve experience only in the individual thing-structure.

The philosophic, theoretical concept of a thing can only elucidate the functional structure of a thing (that is to say, the relation of its reality-sides). For the full experience of things, this theoretical way of thinking must appeal to naïve consciousness.

The “leading function” of the apple tree is, in its individuality, the last subject-function possessed by the tree.

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36 JGF: The word ‘appel-leeren’ is normally one word, meaning “to appeal.” Is the hyphenation here a pun, that in turning to naïve experience we learn what the apple is [appel] is really like?
Is the temporal reality of this natural thing really closed up in its organic function of life?

Naïve experience, the unique instance in which our temporal reality gives itself in an unfalsified way, witnesses to the contrary.

We have already seen how naïve experience does not shut off reality in any single law-sphere. Without thinking about it, naïve experience also grants psychical, logical, historical, social, economic, etc. reality to the tree (although not in a scientific articulated way). But the reality it grants is not to the tree as subject, but as object.

The tree does not perceive sensorily as a psychical subject, but is perceived as a sensory-psychical object. It does not think as a logical subject, but is the logical object of thought. It is not a linguistic subject, but the object of language (the object of name-giving); it is not a legal subject, but a legal object, etc.

In this way we must introduce the fundamental distinction between subject functions and object functions of temporal reality.

In principle, the tree—as an individual thing—has real object functions in all post-biotic law-spheres. These object functions can really only be understood in unbreakable coherence with subject functions that only conscious beings possess, and which the tree, as a natural thing, lacks.

The objective reality functions of the tree must be objectified and realized, by means of subject functions ordered in relation to them. Without a subject they cannot become real.

The objective sensory psychical qualities of the tree exist only for subjective psychical perception; the objective logical function (the concept of the tree) exists only for subjective thought; the tree is a legal object only for a legal subject, etc.

But it would certainly be incorrect to say that therefore the object functions are merely apparently real, and that they are a creation of subjectivity (of perception or of thought!).

Temporal reality knows no nature “an sich” [in itself], separate from the psychical, logical and post-logical reality functions.

In its object functions, temporal reality is a continual real-ization [ver-werelding].
Object functions are found closed up in temporal reality. Subjectivity can merely un-fold them [ont-sluiten], objectify them, but not create them.

The possibility of objectification in a certain law-sphere is guaranteed by the analogies in its meaning-structure.

A subject can psychically objectify only physical and mathematical subject functions, since the psychical meaning-structure possesses an analogy of movement, a spatial analogy and a numerical analogy.

The subjective, logical function of thought cannot really be psychically objectified. But conversely, logical thought can objectify the psychical subject function. Psychology, as a synthetic science, does this continually.

And in the legal sphere, the moral subject function or the faith function can never become a legal object. However, the possibility is not excluded that in a certain legal order, the economic, aesthetic or logical subject functions can be made into a legal object. The legal institution of slavery proves this.

The fact that the modern development of law has in principle abandoned this institution of slavery, under influence of Christianity and of historical development, signifies that man has come to see humanity as a personal unity of eternal value, elevated above all temporal things.

But this in no way prevents subjective human achievements from being juridically objectified, that is to say, from remaining in force as legal objects. If I commission an artist to paint my portrait, then I have a subjective legal claim on his subjective aesthetic work, as a legal object.

I can never make a subjective legal claim on a subjective moral act (e.g. charity), and I can never make an action of faith into a legal object.

We therefore see how the foregoing analysis, of the relation between subject-functions and object-functions of temporal reality, casts a clear light on the concepts legal subject and legal object.
If one thinks that the doctrine of legal personality in legal science defends the theory that securities (bills of exchange, stocks, etc.) can be viewed as legal subjects (Bekker), or that subject-less wealth can appear as legal subjects (in foundations), then it soon becomes clear that legal science urgently requires philosophical enlightenment.

* * *

Until now we have only analyzed the individual structure of a thing in relation to natural things like a tree (it is a ‘natural’ thing because the tree finds its “leading function” in a natural function, the biotic). Apart from natural things, there are also spiritual things, that is to say, things that have their leading function in a spiritual meaning-side of temporal reality.

And with this we must make another fundamental distinction.

Take, for example, a cultural thing like a work of art (a painting, a statue, etc.). Without a doubt, the work of art rests on a natural substratum.

But the artist has given an individual objectification and realization to his subjective-aesthetic conception, by which the work of art as a thing can never be qualified by a natural reality function. As a spiritual thing, the work of art is qualified by its individual aesthetic object function. We can understand the individuality of the work of art only on the basis of this individual object function. By means of this function, all the earlier object functions, as well as the natural subject functions of the thing are brought into an individual unity.

In contrast, rationalistic idealism [idea-lisme]–which places the “principium individuationis” in the sensory physical-psychical meaning functions–leads to the monstrous conclusion that e.g. the individuality of Rembrandt’s “Night Watch” is found exclusively in the sensorily perceptible bits of paint, while the aesthetic idea of the work of art as “Noumenon” is without individuality!

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37 Of course, securities can only be legal objects.
So for example, an object of use like a table, a chair, is just as little qualified by its natural subject functions, but is qualified by a *social object function* (in association and social intercourse of human society). That is an object function that can only be realized by means of human forming and objectification.

We will call such spiritual things *objective spiritual things*, since they are qualified by a spiritual object function.38

In contrast to this are the *subjective spiritual things*, which in their individual cosmic unity are characterized39 by a spiritual (normative) subject function. To these subjective spiritual things belong all relations of human society (church, state, business relations, household, family and clan relations, free association, etc.).

In relation to natural things, we have already mentioned an *internal* meaning-structure in distinction from the *external* or outward relations, in which the thing stands.

*This distinction between internal structure and external relations in the associations of human society is of essential importance for legal science.* For it teaches us, *in agreement with the reality of legal life*, to know the fundamental distinction between the *internal legal order of an association*, which must be under the individual leading of the “leading function” or “destination functions” (for example, the function of faith in church associations, the moral function of love in the household, the social function of association in society), and the *merely external legal relations*, in which the individual legal subjects mutually stand, and where they can cause damage to each other as coordinated individuals, or enter into contracts with each other, etc.

Already here, *individual structural differences* within the legal law-sphere reveal themselves, and they can only be understood with the help of the *philosophical concept of a thing*, never with the special scientific *concept of function*.

38 JGF: I believe that this idea of “objective spiritual things” is to be understood in terms of enkapsis. There is an enkaptic interlacement of the physically qualified thing with the historically founded intentional object, which is realized, for example in a work of art, or a cultural object of use. See NC __

39 JGF: Dooyeweerd here uses ‘characterized’ as synonymous with ‘qualified.’
In the dominant legal theories, these structural differences are completely wiped out, because they imagine that they can get by with the special scientific concept of function, and in this way, they deny the reality of the associations was denied.

The meaning-structure of subjective spiritual things displays a peculiarity in contrast to the meaning structure of natural things. In the first place, the fact that their reality requires a continual realization by means of human activity.

An association of state or church must be continually realized through human activity. It is not a given natural thing.

Second–and this is a peculiarity of all spiritual things, even of objective ones–they possess not only a leading normative subject function (respectively, object function), but also a particular founding function.

For the present, this may be demonstrated by a single example, both for objective as well as subjective spiritual things. As we have seen, the individuality of a painting as an objective spiritual thing is only to be understood from out of its aesthetic object-function, as its qualifying function.

But the structural difference between a painting as an individual thing, and for example a poem, can only be understood when we consider that the painting can only open its aesthetic individuality on the individual meaning substratum of an objective psychical canvas with its sensorily perceptible paint [verf-vulling]. The poem, on the other hand, finds its individual substratum for its objectification in an individual objective linguistic function.

Of course, paintings and poems as individual spiritual thing structures also have natural subject functions in law-spheres that precede those in which their individual meaning substratum functions.

But the individual thing-structure of a work of art has its structural principle in the individual coherence of meaning of leading and founding functions. It can only be understood on the basis of the individual structural principle.
With respect to subjective spiritual things, we may consider the example of the structure of the family. The family finds its founding meaning-function in the individual biotic function of sexual intercourse and natural descent. It finds its leading meaning-function in an individual (moral) community of love among the members of the family.

The meaning-individuality of the “leading function” cannot be understood apart from the coherence of meaning with its “founding function.” The “leading function” of the family is not universal love for one’s neighbour, which already resides within the universal meaning-structure of the moral law-sphere, but the individual relational love between man and wife, parents and children.

Of course, in the pre-biotic law-spheres, the family also has real subjective meaning functions, but its individual structure no longer finds any particular meaning substratum in these law-spheres. The structure is individually biotically founded.

Finally we must say something about the mutual relation of individual things.

A thing can be part of a composite individual thing structure, while retaining its own individual structure.

For example, the trees and plants in a wood, the wood in a larger landscape, etc.

In this way, various human associations, while retaining their individual structure, can obtain a function in a more encompassing society.

Example: all non-political associations have a function in the modern state, and they are thereby subjected in that particular relation to the state to the internal legal order of the state, they are subjects of the state (for example, they are subject to be taxed).

But they do not thereby lose their individual thing-structure, and their internal legal order (led by their “destination function”).

With respect to this internal structure, they cannot be submissive to the state, any more than a fir tree in its individual internal structure is reduced to the structure of the wood in which it stands.
These complications in the thing-structures, by which they can enter into more encompassing structures while yet retaining their internal independence can be referred to as enkaptic structures.

In the discussion of legal principles, the theory of the sources of law, the distinction of public and private law, the problem of interpretation, and so on, we will see that these introductory views cast a surprising light on the most important issues in these subject matters.

* * *

All things that are qualified by a “leading function” are as such temporally perishable. The “leading function” of the thing also restricts and limits its subjective activity. That is why the task of temporal human societies is a restricted one.

Because man was created for eternity, he does not possess any individual leading function within time; his individual being can only be understood based on the religious supratemporal root of his existence. Just for that reason, man can, based on his religious root, influence in a universal manner the unfolding of the anticipatory spheres in the law-spheres. Here, the religious attitude influences all the earlier law-spheres by means of faith (as its leading boundary function).

By virtue of the creation ordinance, man is “lord of all things within time.” He transcends all things.

Man’s task was to lead the unfolding process in the temporal cosmos in such a harmonious way, that in each law-sphere, the supratemporal religious fullness of meaning of human existence would completely shine through [doorlichte], and that in each meaning-side of reality, the fullness of meaning in its own meaning-tone would be completely reflected.

The fall into sin brought disharmony to this unfolding process, through the falling away of the religious root of the human race from its Creator.
By absolutizing and deifying the temporal meaning functions of reality, meaning is separated [afgetrokken] from its divine origin, and the night of idolatry covers the earth.

In Christ, the religious root of our creation is reborn.

And ever since the fall into sin, the irreconcilable conflict between the Civitas Dei and the Civitas terrena, the Kingdom of God and the Kingdom of Darkness, has continued in the history of the world.

Since the fall, the creaturely fullness of meaning of creation is found only in Christ, as Head of the reborn human race, in whom space and power, life and feeling, thought and history, language and association, beauty and law, love and faith, find their perfect religious fulfillment of meaning.

That is why the Scriptures also say that Christ has fulfilled the law of God, that is to say, he has fulfilled it in its religious fullness of meaning.

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The above introductory philosophical views have already given us the framework for the delimitation of the boundaries of the Encyclopedia of Legal Science with respect to its encyclical, philosophical side.

As a formal philosophical science, the Encyclopedia of Legal Science must first of all establish the cosmic place of the legal sphere in the temporal coherence of the law-spheres.

The method for this is given in a painstaking cosmological analysis of the general meaning-structure of the law-sphere both as to its law-side as to its subject-side.

For we have already seen that the cosmic coherence of the law-spheres reflects itself within this meaning-structure.

For legal science, this philosophical investigation involves tracking down the concept of law, in which the general meaning of the legal sphere is grasped in its “closed or restrictive function,” and the idea of law, in which this meaning is understood in its “deepened function.”
The concept of law is a condition of all legal scientific research. In this concept is found the methodological guideline for stating and dealing with all particular legal scientific problems.

In our discussion of the concept of law, let us begin with a historical-philosophical overview of the development of the views concerning the concept of law.

In its analysis of the general meaning of law, the Encyclopedia must first set up an investigation into the structure and meaning of the fundamental concepts that are necessarily set within the concept of law. First, the concept of the legal norm and that of the legal subject (in general), and in particular of the meaning-moments that are presupposed therein, such as: legal object, legal duty and subjective law, legal conduct and legal fact; area of validity and place of the legal conduct, subjective juridical causality and (according to the law-side), legal ground-legal consequence, positivity and legal validity, competent will of the former of law and subjective will of the legal subject, etc.

From this analysis of the meaning of law, it will be seen that we assume a much larger number of these juridical basic ideas than are found in the dominant view [of legal science]. This is wholly consistent with our view of the meaning of law, and in the final analysis, with the law-Idea that is found behind it.

The juridical order of time requires a separate discussion. As is evident from the above explanations, we cannot understand it as a particular meaning-moment (analogy or anticipation) in the meaning of law, but much rather as the juridical meaning-side of cosmic time, which flows through all law-spheres.

In the juridical problem of time, the issue arises regarding the meaning of the temporal boundaries of legal norms (in the sense of provisional or inter-temporal law). And with respect to the question of the area of validity of a legal order (spatial analogy), issues regarding the local boundaries of a legal order, and of private international law, which resolves conflicts in the areas of validity of various legal orders, systematically come forward.
All further formal basic problems of legal science will be discussed in connection to the meaning of law that is grasped in the concept of law, and the \textit{analogical} and \textit{anticipatory} spheres that are fixed within that concept.

In relation to the structure of the legal norm, the issue necessarily arises regarding the relation of \textit{legal principle} and \textit{human formative will} (psychical analogy in the legal meaning according to its law-side). We will discuss that relation in two separate sections.

In relation to the \textit{social analogy} in the general meaning of law, the issue necessarily arises regarding the \textit{problem of the sources of law}, with its structural nuclear moment [\textit{kern}]: the juridical competence of the state over against non-public associations and societal legal spheres.

In relation to the \textit{historical} and \textit{social} analogies, we will discuss the fundamental difference between \textit{public law} and \textit{private law}. In relation to the \textit{linguistic analogy}, we will discuss the \textit{problem of interpretation}. In relation to the \textit{logical} and \textit{historical} analogies, we will discuss the \textit{character of legal science} and its relation to the \textit{practical nature of law}.

Our whole method of discussion demands that we discuss these problems in the closest coherence of meaning between the law-sphere and its relevant substratum spheres.

There is therefore no place in our systematic plan for a separate discussion of what are called the ‘\textit{auxiliary sciences}’ [\textit{hulpwetenschappen}] for legal science, which make these substratum spheres, together with the legal sphere, into an object of investigation. Rather, we will discuss these auxiliary sciences in relation to each fundamental problem of law that displays a coherence of meaning with a certain substratum. For example, we will look at \textit{sociology} in the discussion

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of the problem of the sources of law. We will discuss \textit{linguistic science} in relation to the interpretation problem. We will discuss \textit{logic} and the \textit{science of history} in relation to the structure of legal science, etc.
In this way, the issue will naturally arise regarding the difference in meaning between legal norm and social norm, legal norm and linguistic norm, legal norm and historical norm, legal norm and logical norm, legal norm and moral norm, etc.

In this way, the formal, philosophical encyclopedia of legal science will obtain a strong methodologically systematic construction, and we therefore reject the view that was developed in Prof. Zevenbergen’s *Encyclopedia*, that such a systematic plan would be impossible, and that in the method of discussion, the subjective arbitrariness of the teacher must more or less hold sway.

At the outset, we already referred to the fact that in addition to its philosophic basis, the *Encyclopedia of Legal Science* possesses a practical pedagogical goal, namely to introduce the aspiring jurist to the legal subject matter that he must study for his doctoral exams. This subject matter is in the most prominent literature that has appeared in the general juridical area.

Therefore, a purely formal *Encyclopedia* in the previously intended sense is not sufficient, and it must also give a material introduction into concrete subject matters.\(^{40}\)

As much as possible, we will weave together the formal and the material methods of discussion, in order from the beginning to direct the view of the jurist to concrete problems of law and to teach him how he must use his basic concepts in studying the material subject matter, and the concrete structure of legal life, with which he, as a practical jurist, regularly comes into contact.

We also assign to material encyclopedia the present division of law into civil law (personal law, family law, business law, inheritance law), commercial law, bankruptcy law, legal process, criminal law, constitutional and administrative law, international law, private internal law, canon law, etc. and the problem of codification of law and its history, etc.

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\(^{40}\) In our view, such a material encyclopedia has been given (from a sociological standpoint) by Prof. Van Kan in his little book, *Inleiding tot de Rechtswetenschap* [*Introduction to Legal Science*]
Our view of encyclopedia requires that a critical investigation be set up as to the *inner meaning and value of these divisions in relation to the concept of law*.

Here the eyes of the aspiring jurist must be opened to the *individual structural differences* in the legal sphere, the mutual relation between public and non-public law, the structure of the internal laws of association and society, and the coherence between both.

The concept of function understands the law-side of temporal reality,

must here continually appeal to the concept of a thing, which grasps the individual structure of an association according to its individual structural principle, in all of its meaning-sides.

In other words, it also appears here that these questions have both a *formal* as well as a *material side*, and that the material side can only be scientifically discussed in the light of the *formal, the philosophical*.

From all of the foregoing, it is sufficient to conclude that we do not believe a *legal science* to be possible without the foundation of a *legal philosophy*, and that we must in principle reject the naïve positivistic separation between legal science and jurisprudence.

Naïve positivism in legal science, which supposes that it can work as a special science without philosophical presuppositions, rests on self-deception. Positivism is itself a legal philosophical theory, albeit a very primitive one. This will become ever more clear to us in the following discussion. In this connection, let us point to a single example for the purpose of illustration:

Whenever naïve (or what is called ‘genetic’) positivism teaches, “All positive law is the *will of the state as giver of the law,*” then this doctrine rests on a legal philosophical presupposition, which cannot possibly be derived from the positive legal subject matter, since it has as its foundation the *concept of law*, which first makes possible all concepts of positive law.

The law of the country must itself first be understood as *law*, and by that the problem of the concept of law is necessarily presupposed:
Positivism’s concept of law, “All law is the will of the state,” is therefore a legal philosophical presupposition of positivistically based legal science, and it thereby refutes the basic principle of naïve positivism, that legal philosophy and legal science have nothing to do with each other, and that legal science must work independently and have nothing to do with anything other than the positive legal subject matter itself.