

# Normativity II – Towards an Integral Perspective

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## Abstract

This is a follow-up article of Strauss 2011. In order to transcend the shortcomings present in the dialectical legacy regarding normativity, this article further explores key elements within the dialectical tradition focused on the basic motive of nature and freedom and the effect it had on modern social contract theories which aimed at reconstructing human society from its “atoms,” the *individuals*. The transition to an alternative approach commences with a discussion of the distinction between conditions and what is conditioned. It concerns a correlation found within all aspects of reality, namely that between the *law side* or *norm side* on the one hand and the *factual side* on the other. The basic assumption of this alternative view is found in the idea of *ontic normativity* which is rooted in a non-reductionist ontology. Against this broader background shortcomings in Kelsen’s theory of law are briefly traced to the dialectic of the *causal* and *non-causal*, before a positive characterization of the concept of a principle is given. It turned out that it is a *compound basic concept* in which terms from different modal aspects of reality are encapsulated at once. The recognition of ontic normativity therefore also enables a distinct methodology, the transcendental-empirical method, which makes it possible to distinguish between the pre-positive nature of a principle, as a universal and constant starting-point for human action, and the historically varying ways in which such a principle can be made valid, (*enforced*) through a competent organ disposing over an accountable will and capable to interpret the unique historical circumstances in which the principle has to be positivized (given a positive *form* or *shape*). The nature of modal norms is highlighted in terms of various examples, such as jural, historical, logical and aesthetic principles, with special reference to Derrida’s understanding of credit as economic trust or economic faith. In order to make this transcendental-empirical method understandable a more detailed account of the nature of modal aspects is given. The emphasis on ontic normativity also helps us to steer clear of conceptions of *natural law*, *historicism* and the shortcomings present in the idea of a *social construction of the world*. The guiding perspective flowing from this analysis is that modal norms can be articulated through an analysis of analogical structural moments on the law sides of the normative aspects. The last part of this article briefly introduces the distinction between *modal* and *typical norms* without entering into a discussion of the latter.

### Ontic normativity

In the South African Journal for Philosophy (SAJP), Volume 30, number 2 the first part of this article appeared. Although it mainly focused on what was designated as the *dialectical legacy*, an initial brief positive statement regarding the *freedom of choice* which we have in order to act in norm-conforming or norm-violating ways, is given. This acknowledgment at once also highlighted the importance of human responsibility and accountability.

This first article then continued by tracing the path of modern philosophy in its dialectical development. We now proceed by highlighting additional relevant elements of this legacy geared towards the introduction of alternative approach to be developed in this second concluding part.

We mentioned the negative articulation of human freedom by putting it in *opposition* to natural *causality*. It turned out that since the Renaissance this development revealed a tension between the natural science ideal and the personality ideal of human freedom and autonomy. An abbreviated characterization speaks of the dialectic between *nature* and *freedom*.

The term *dialectical* should be understood in the sense of two opposing motives mutually threatening and presupposing each other. In such a tension the only option is to give *primacy* to one of the opposing motives, while at the same time depreciating the other motive. Initially modern philosophy advanced under the primacy of the science ideal which aimed at reconstructing the universe from its simplest elements, *atoms* in the case of nature and *individuals* in the case of human society (individuals are the atoms of human society). This view lies at the foundation of the well-known *social contract theories* of modernity. However, as long as the science ideal maintained its supremacy, its *deterministic universe* constantly threatened to eliminate *human freedom*.

Within the initial dominance of the science ideal all of reality was reduced to natural functional categories, such as *spatial extension* (Descartes and Spinoza), the *discrete* and *continuous* [Leibniz with his discrete monads and his law of continuity (*lex continui*)], and *perception* (Locke, Berkeley and Hume – the British empiricists). The deterministic consequences of this humanistic natural science ideal continued to endanger the personality ideal. But as we have noted in the previous article, within the on-going dialectical development of modern thought, Rousseau forms a transitional figure in the sense that he attempted to liberate himself from the grip of the natural science ideal (see Strauss, 2011:209). Rousseau was indeed the first philosopher who called Humanism back to a radical reflection on its truly deepest motivation, namely the Renaissance ideal of a free and autonomous humanity. However, his transitional position is underscored by the fact that his social contract theory still proceeded from the “atoms” of society, the “individuals,” which means that in this regard he still adhered to the attempts of the science ideal to provide a *rational explanation* of an ordered society by reconstructing it from its supposedly *simplest elements*, the *individuals*.<sup>1</sup>

Kant gave primacy to the personality ideal and he did that in terms of the classical distinction between *essence (thing-in-itself)* and *appearance* – to the latter (the world of appearances) he assigned the science ideal and to the former to the personality

<sup>1</sup> Korsgaard positions the problem of normativity within the context of *authority*, which explains why she takes into consideration both *contract theories* and the problem of *legitimate authority* (see Korsgaard, 1998:30 ff.)

ideal. This division is amply captured in his well-known exclamation that he was always intrigued by the starry sky above, governed by the universal law of causality (cause and effect), and the moral law within.<sup>2</sup> Implicit in his wonder and awe is an awareness of the difference between *natural laws* and a *domain of normativity*, of ought to be, but unfortunately we had to note that he turned this difference into a *dualism*, into a *separation* of what he called the domains of *Sein* and *Sollen*, of *is* and *ought*. In his third *Critique* Kant wanted to bridge the gap between *nature* and *freedom*, that is, between the causally determining and the teleologically reflecting view of nature. The reconciliation is sought in the unity of a supra-sensory principle which is supposed to be valid for the totality of nature as a system (Kant, 1790-B:304). However, this “solution” did not really reconcile the opposing poles of *nature* and *freedom*, since it simply reinforced the basic dualism between *natural necessity* and *super-sensory freedom* – each with its *own* law-giver (cf. Kant, 1790-B:LIII-LIV). Since such a law-giver serves as the conditioning order for human existence, the question may be asked what the relation is between conditions and what is conditioned.

#### **Conditions and what is conditioned: the correlation between law side/norms side and factual side**

Since early Greek philosophy the idea of a world-order acquired prominence (Heraclitus called it the *logos* of the universe – Diels-Kranz B Fr. 30 ff.). Ever since we had to distinguish between conditions and whatever meets these conditions. The latter were understood in an ontic sense and eventually such conditions were largely absorbed within the perspective of classical *realism*. Through the so-called *Copernican turn* in epistemology these ontic conditions were transferred to the human subject. In Kant’s mature philosophy human understanding, through its thought categories, was promoted to become the a priori (formal) law-giver of nature: “Understanding creates its laws (a priori) not out of nature, but prescribes them to nature” (Kant, 1783, II:320; § 36).<sup>3</sup>

The ultimate issue is the opposition between the human subject as its own (individual and social) law-giver and the acceptance of given (ontic) principles enabling and making possible typical human normed activities. Within the dimension of physical entities there is little doubt that elementary particles, atoms, molecules and macromolecules do not *coincide* with the laws determining their existence. The conditions for being material are not themselves material, showing that the physicalist stance claiming that *everything is material* is self-referentially incoherent.

Apart from the question where the (universal a priori) laws of nature are located (within the human subject or as ontically given), the modern idea of law in respect of natural reality still maintained the distinction between *law* and what is *subjected* to it. Yet, when nature, governed by the law of causality, is distinguished from the domain of ought (Sollen), it effectively was identified with the domain of *factuality* in its separation from normativity.

The form in which this separation emerged at the beginning of the 20<sup>th</sup> century is found in the opposition of *facts* and *values*. Particularly the Baden school of neo-Kantian thought distinguished between the realm of factual statements and the

<sup>2</sup> “Der bestirnte Himmel über mir, und das moralische Gesetz in mir” – Kant, 1790, A:289.

<sup>3</sup> While Kant maintained universality, historicism and its after-effect within postmodernism sized it down to the level of the individual and social *construction* of reality and society. I have treated this outcome in a different article (see Strauss, 2009a).

realm of value-statements. This is an example of a philosophical school introducing an opposition that soon was absorbed within the everyday parlance of ordinary people. This reception was enhanced by two views. The one is found within the Baden school and became known as the *value-freedom of science*, particularly advocated by Max Weber. The other is associated with *positivism* and *neo-positivism* in their claim that “science” (physics and perhaps mathematics) is *objective* and *neutral*, bound only to sensory perception (sense-data).

In a rather witty way MacIver once reacted to this legacy as follows:

The following seem to be the chief tenets of their creed. First, I believe in facts, and to be saved I must discover new ones. Second, when I have discovered them, I must if possible measure them, but, failing that consummation, I must count them. Third, while all facts are sacred, all theories are of the devil. Hence the next best thing, if one can't discover new facts, is to refute old theories (MacIver 1967:21).

Neo-Kantian value-philosophy merely introduced their value-idea *within* the sphere of ought-to-be. It resulted in the opposition of facts and values, identified with (scientific) *description* and (non-scientific) *evaluation*. However, this split cannot account for the nature of logical-analytical normativity. We merely have to consider the question whether or not it is possible to obey and disobey logical-analytical principles. Whenever proper identification and distinguishing took place these principles are obeyed. Therefore, being subject to the modal logical norms of identity and contradiction causes every analytical act – as an act of identification and distinction – ought to conform to these (and other logical) norms. Hence it should be seen as just a different form of evaluation, viz. *analytical evaluation*.

Acknowledging this at once cancels the ideal of *objectivity* and its denunciation of human subjectivity. The generally accepted view is that subjectivity should be seen as something *disturbing* scientific endeavours. For this reason it is assumed that it should be replaced by the ideal of objectivity. Yet, to see subjectivity as a *disturbing factor*, as a form of arbitrariness in scientific activities, presupposes the existence of one or another *normative standard*. If the input of subjectivity in the course of scientific research is evaluated as something *arbitrary*, this very evaluation already applies a normative standard by judging subjectivity (in its arbitrariness) as not conforming to the norm. However, the opposite of *arbitrary subjectivity* is not *objectivity*, but *norm-conforming subjectivity*. Arbitrariness is an *anti-normative configuration*, presupposing the existence of a norm and leaving open the possibility for norm-conforming subjective human actions. And suddenly the bifurcation between “values” and “facts” is unveiled in its untenability.<sup>4</sup>

At this point we have to consider the fact that logical-analytical principles are *making possible* human logical thinking and therefore cannot be generated by through or by means of thought activities, for then the conditioned will coincide with what conditions. Since Kant investigations directed towards what makes possible our *experience* are designated as being *transcendental* in nature. What we have in mind is to proceed by following a *transcendental-empirical* method. This method is closely related to the foundational coherence between *constancy* and *change* – where constancy relates to what is *transcendental* and change to what is *variable*.

<sup>4</sup> We shall return to the normative status of these two most basic logical principles below.

Different trends within the social sciences embody elements of this approach. For example, the methodology developed by Parsons did see something concerning the relationship between a constant universal ontic order on the one hand and the dynamically changing experiential phenomena made possible by this order on the other. Johnson et al., explains his view as follows:

Rather he suggests that while these concepts do represent universal, constant features of human action, the particular values or contents they have vary historically, and are problems of empirical research (1984:72).

What Parsons calls the “universal, constant features of human action” relates to an ontic order and what he reserves for historically variant problems of empirical research relates to the second element of a transcendental-empirical method.

The problem with the theoretical stance of Parsons is that his position still, in a subtle way, continues the neo-Kantian opposition of *facts* and *values*. He understands society in a purely factual sense and opposes it to “culture” which turns out to be a *bas-ket term* for all forms of normativity, encompassing norms, values, meanings and symbols (in a similar way also present in the thought of Sorokin and MacIver). The implication is that society turns into something *a-normative* which is purely *factual* in nature.

Yet ontic normativity only makes sense if there is a strict correlation between normativity and what is determined by it (in the sense of being subjected to it). Our reference to the two most basic logical principles already illustrates this claim, for without these underlying logical principles no logical or illogical thinking is possible. While physics, for example, may distinguish between physical laws (“laws of nature”) and what is subjected to such laws, within the domain of normativity we may likewise distinguish between principles or norms to which human beings (and societal collectivities) are subjected. Every normative aspect of human experience therefore will display this correlation between norm side and factual side.

This strict correlation belongs to the intrinsic nature of these normative aspects, *in casu* the logical-analytical, cultural-historical, lingual, social, economic, aesthetic, jural, moral and certitudinal. These aspects are designated as *normative* aspects, because within each of the post-logical aspects we find contraries similar to the one that we discussed earlier, namely *logical – illogical*. The contrary logical – illogical is dependent upon the logical principle of non-contradiction and this contrary serves as the *foundation* of those discernable in the post-logical aspects (such as historical – unhistorical, polite – impolite, frugal – wasteful, legal – illegal, and moral – immoral).

### **What is inherent in normativity?**

It is quite normal that methodological considerations would not pay attention to the fact that our scientific knowledge merely *deepens* and *discloses* our non-scientific experience of reality in its diversity. Prior to developing a method serving the investigation of reality from the vantage point of any specific aspect, every special scientist must already have a non-scientific insight into the nature of her field of inquiry. The method eventually designed to investigate its field of inquiry could never provide or substitute this *presupposed knowledge*. The unique nature of whatever is investigated, ultimately determines every method aimed at acquiring knowledge of it.

This means that the rich diversity of different kinds and forms of normative practices may be varying across cultures and at once undeniably shows that humankind

partakes in shaping its world without avoiding its *basic functional contours*. Therefore, when we observe the peculiarities of different kinds of *logical* thinking, *cultural* habits, *lingual* discourses, *economic* systems, *social* organizations, *aesthetic* expressions, *legal* arrangements, *moral* preferences and *cultic* activities, however diverse they may be, none of them succeeds in bypassing the constant and underlying multiplicity of functional modes italicized in the previous sentence. The mere fact that amidst such a variety of practices one can still refer to *logical*, *cultural*, *lingual*, *social*, *economic*, *aesthetic*, *jural*, *moral* and *certitudinal* states of affairs underscores the presence of overarching *ways of existence* or *modes of being*, each displaying its own functional or modal universality. However, the claim that each one of these underlying modes displays a unique *universality* needs an explanation. What is meant is that every aspect co-conditions all possible kinds of entities functioning within it. Different instances and forms of *economic* or *jural* relations presuppose their shared functioning within these aspects, for otherwise it would be meaningless to use the same functional characterization to refer to them. Let us briefly look at an attempt to relativize the universality of modal aspects in terms of cultural differences.

Oswaldt Spengler, pursues such a relativistic approach in which *cultural relativity* is over-emphasized. He argues that *number as such* does not exist, for there are *different worlds* of number, owing to the existence of *multiple cultures*. According to him we therefore find Indian, Arabic, Antique, and Western types of number, each with its own distinctive uniqueness and each bringing to expression a different tone of the world and as an ordering principle each with a limited symbolical validity. There are therefore more than one instances of mathematics.<sup>5</sup> Ironically enough he does not realize that the possibility of speak of different types of number presupposes that each culture still has a **number** concept! That is to say, every culture (a universal claim!) has a specific (culturally shaded) awareness of the multiplicity (quantitative) *mode of reality*.

The normativity inherent in the various normative aspects of reality is therefore not only *universal* but also *constant*, underscoring the fact that change can only be detected on the basis of persistence or constancy.

#### **Normativity at the intersection of entities and functions**

Similar modes of being or aspects of reality are also found within nature, because material things, plants and animals (as well as human beings) function in the aspects of *number*, *space*, *movement*, *energy-operation*, *life* (the biotic) and the *sensory* facet. Every material thing, plant, animal or human being therefore displays numerical properties, spatial properties, kinematic features, and physical traits. In fact the same applies to human artefacts. These remarks actually refer to a very basic ontological distinction, namely that between the *how* and the concrete *what* of our experience. After the “what-question,” when something concrete is identified (like a chair), one can only proceed with “how-questions,” such as: how *many* are there (number)? how *large* is it (space)? how *strong* is it (physical)? how *expensive* is it (economic)? and so on.

<sup>5</sup> “Eine Zahl an sich gibt es nicht und kann es nicht geben. Es gibt mehrere Zahlenwelten, weil es mehrere Kulturen gibt. Wir finden einen Indischen, Arabischen, antiken, abendländischen Zahlentypus, jeder von Grund aus etwas Eigenes und Einziges, jeder Ausdruck eines anderen Weltgefühls, jeder Symbol von einer auch wissenschaftlich genau begrenzten Gültigkeit, Prinzip einer Ordnung des Gewordenen, in der sich das tiefste Wesen einer einzigen und keiner andern Seele Spiegels, derjenige, welche Mittelpunkt gerade dieser und keiner anderen Kultur ist. Es gibt demnach mehr als eine Mathematik.” (Spengler 1923, I, 78f.)

The next question to explain is of course what the “how-dimension” of reality entails and how it relates to the normativity of life. What is the criterion of an *aspect*, *function* or *mode* of reality? Our answer will be dependent upon the ingenious theory of modal aspects developed by the Dutch philosopher, Herman Dooyeweerd, also known as his theory of *modal law-spheres*. First of all these aspects, with the modal universality displayed by each of them, are functional ontic conditions, co-determining whatever concretely exists in subjection to them. They are therefore not merely *modes of thought* (as Descartes already claimed) – they have an *ontic* status. A prominent mathematician, Paul Bernays, and a famous logician, Kurt Gödel, both argue for the *ontic* nature of quantitative properties, without identifying this “ontic existence” with concrete material “objects.”<sup>6</sup>

### Uniqueness and coherence

The idea of universal modal aspects encompasses the awareness of the above-mentioned *normative contraries* within all the post-sensitive aspects. The theory of modal aspects is a response to the perennial philosophical problem of *unity and diversity*. Instead of attempting to use a particular aspect as mode of explanation in terms of which one can understand all the others, the uniqueness and irreducibility of each mode is acknowledged. This uniqueness entails an element of *indefinability*, which accounts for the *irreducible core meaning* of each aspect. It is also designated as the *meaning-kernel* of each aspect.<sup>7</sup>

The reverse side of uniqueness is found in *coherence*. The meaning of every unique aspect comes to expression in its coherence with other aspects. These aspects are fitted into an order of before and after and the connections between them are called backward-pointing and forward-pointing analogies, also known as *retrocipations* and *anticipations*. An analogy concerns similarities and differences. To be more specific, an analogy is noticed when the difference is shown in what is similar and vice versa. For example, although both mathematical space and physical space are extended, the former is continuous and infinitely divisible while the latter, bound to the quantum nature of matter, is neither continuous nor infinitely divisible. Consider another example in which two retrocipations are prominent. The meaning of space reflects the foundational coherence between space and number. The mere possibility of distinguishing between one, two or more dimensions presupposes the original quantitative meaning of number which now appears analogically within the spatial aspect. To put it differently, the spatial concept of *dimension* presupposes the retrocipation to number (1, 2, ... dimensions). Likewise, the *extension* of spatial figures, such as a one dimensional line-stretch, is specified by providing a number related to the *magnitude* of extension – in this case *length*. It would be more precise to say that *dimension* is a numerical analogy on the law side of the spatial aspect whereas *magnitude* is a quantitative analogy at the factual side.

6 Their views are analyzed in more detail in Strauss, 2011a.

7 A brief enumeration of the aspects with their respective meaning-nuclei looks as follows: number (discrete quantity), space (continuous extension), movement (uniform flow/constancy), the physical aspect (energy-operation), the biotic aspect (life), the sensitive mode (feeling), the logical-analytical function (analysis/identification and distinguishing), the cultural-historical facet (formative power/control), the sign mode (signification), the social aspect (sociation), the economic (frugality/avoiding what is excessive), the aesthetic (beauty/harmony), the jural (tributation/retribution), the moral/ethical (love/care), the certitudinal (trust/certainty/confidence).

Within each one of the normative aspects one can also discern *modal analogies* on the norm side and the factual side – an insight to which we shall return below. The underlying *rationale* of this perspective is given in the acknowledgement of a *non-reductionist ontology*. Such an ontology, in turn, depends on a more-than-logical principle, namely the *principium exclusae antinomiae* (the principle of the *excluded antinomy*). This principle forms the foundation of the logical principle of non-contradiction.<sup>8</sup>

It should be noted that natural and social entities as well as human beings are not mere “bundles” of functions (aspects or properties), just as little as aspects are merely aspects of individual entities. Entities exceed the boundaries of every aspect and every aspect has a scope transcending the existence of individual entities.

### **Ontic modal universality**

An atom, for example, is a *unity* in the *multiplicity* of its particles (numerical function) and it is characterized by a particular spatial configuration – the *nucleus* of an atom with *peripheral* electron systems. According to wave mechanics, we find quantified wave movements around the nucleus – the kinematic function of the atom. Already in 1911, in Rutherford’s atomic theory, the hypothesis was posed that atoms consist of a (electrically positive) nucleus and negatively charged particles which move around it (a view which was inspired by the nature of a planetary system), which clearly evinces its physical function of energy-operation.

Animals, which, according to Adolf Portmann, are secured by their instincts and restricted to a particular ambient (Portmann 1990:79), experience the world in terms of their natural dispositions. They are only concerned with that which has a direct *physical*, *biotic* and *sensitive* meaning to them. Consequently, they experience reality in terms of places suitable for walking or flying (physical accessibility), in terms of sex partners and other animals belonging or not belonging to the same species, in terms of what can be eaten and what not (biotic interest), and in terms of things or events which are causing anxiety or which may be comforting (sensitive concern) (see Landmann 1969:162 ff.). Recognizing this state of affairs at once acknowledges the co-conditioning role of these natural aspects and also reveals their ontic universality. For example, although Mill thought of *numbers* as being attached to something and therefore incapable of existence in the abstract, he did say that they may be “numbers of anything,” of “all existences of every kind, known to our experience” (quoted by Cassirer 1953:33-34 – with reference to Mill, *A System of Logic*, Book II, Chapter 6, 2), thus highlighting an element of modal universality.

Since our argumentation entails that the existence of no concrete entity is exhausted by its function within any single aspect, one has to acknowledge the *co-conditioning* role of these aspects in the existence of natural and societal entities as well as in the existence of human beings. The fact that everything within reality functions within ev-

8 For example, confusing two spatial figures, such as a triangle and a circle, is *illogical* (a “triangular circle” confuses what appears within the spatial aspect – it is *intra-modal*), but confusing two different modal aspects is inter-modal and therefore it results in an antinomy (the arguments of Zeno against multiplicity and movement – Achilles and the tortoise).



ery aspect<sup>9</sup> highlights what we designated as the *modal* or *aspectual universality* of every aspect. In opposition to the above-mentioned modern nominalistic idea that number and all universals are mere *modes of thought* (see Descartes, *Principles of Philosophy*, Part I, LVII), the various aspects are the *functional ontic aprioris* (conditions) of our experience. In an *apriori* ontic sense they co-condition the universe, along-side the *type-laws* that co-condition the multi-aspectual existence of all kinds of entities (we shall return to this distinction below).

The important point in this context is the insight that the *conditions for being something* do not coincide with whatever *meets* these conditions, not even if these conditions are an instance of *ontic normativity*. The implication is that although human beings undoubtedly *give shape* or *form* to all kinds of *principles*, this reality cannot escape from an *ontic element*. The expression “an ontic element” refers to something *given*, something not *created* by a human being. The ontic universality of the quantitative aspect of reality lies at the foundation of all the other modal aspects, including the normative (norming) modes.

Imagine a given *multiplicity* of entities (“objects”) in their “pre-counted” condition. The human act of *counting* them normally requires the creation of *number words* or *numerals*. The well-known phrase from the German mathematician, Leopold Kronecker, namely that the integers were made by God and that everything else is the work of humans, is therefore misguided, because humans are not responsible for a given *ontic multiplicity*, they are merely capable to respond to such a given multiplicity by discerning it and by naming the numerals corresponding to the natural numbers and integers.<sup>10</sup>

Discovering or construing norms?

Habermas wrestles with the same problem when he remarks that those moral norms which govern the social life of lingual- and action-competent subjects as such in a reason-conformative way, are not only “discovered,” since they are also at once “construed.”<sup>11</sup> He does leave room for something “ontic” (which is “discovered”) and for the response of the human subject (“construing” something). In his discussion of the peculiarities of normativity Turner says something similar: “The thingness of normativity is the source of its normative force – it is in some sense outside and inside us at the same time” (Turner, 2010:16). What is “outside us” corresponds to what Habermas designated as being “discovered” and what is “inside us” is the equivalent of what Habermas designated as “construed.” Korsgaard mentions the stance of real-

9 This occurs either as a *subject* or as an *object*. (i) Material things are physical subjects, subjected to physical laws (such as the law of energy-constancy, non-decreasing entropy and gravitation). (ii) Plants are biotic subjects and (iii) animals are sensitive subjects. Material things have therefore *object functions* in all post-physical aspects, plants have *object functions* in all post-biotic aspects and animals have *object functions* in all in all post-sensory aspects of reality. These *object functions* need to be “opened up” or “disclosed,” through the active function of subjects within the aspects concerned. This insight avoids the mistaken distinction between so-called *primary* and *secondary qualities*. If a physical entity did not have a *latent* sensory object function a perceiving sensory subject would not have been able to disclose it, to make it *patent*.

10 Part of the title of a work published by Stephen Hawking in 2005 contains this statement: “*God created the integers: The mathematical breakthroughs that changed history.*” The German reads: “Die ganzen Zahlen hat der liebe Gott gemacht, alles andere ist Menschenwerk.”

11 “Moralnormen, die ein vernunftgemäßes Zusammenleben unter sprach- und handlungsfähigen Subjekten überhaupt regeln, werden gewiß nicht nur »entdeckt«, sondern zugleich »konstruiert«“ (Habermas 1998:194). The problem of “social construction” is discussed in Strauss, 2009 (see pages 73, 341, 429, 497, 506 and 527).

ism which aims to escape from an infinite regress where the question “why?” is repeatedly asked. Realism holds that its “move is to bring this regress to an end by fiat: he declares that some things are intrinsically normative” (Korsgaard 1998:33).

Distinguishing between (normative) ontic conditions (discovered outside us) and the human response to them boils down to the well-known distinction found in everyday life, namely that between a *principle* and its *application*. Another way in which this state of affairs is captured is by speaking of *giving shape* or *form* to underlying principles. Yet, when humans engage in form-giving activities an *ontic point of departure* is presupposed. Its scope cannot be restricted to a specific place and time since it must have a *universal* appeal. In addition it must be *constant* for only applications or acts of form-giving are *varying*.<sup>12</sup> Another important feature of a principle is that it is not *valid* by and of itself, it always requires *human intervention* in order to hold, that is, to be *made valid* or to be *enforced*.<sup>13</sup>

Modern theories of *natural law* recognized something of this underlying (universal, constant) structure of legal principles but it distorted its meaning by assuming that those underlying principles are *already valid (enforced)* for all times and all places. Nonetheless only human beings can give a positive form or shape to *ontic* principles. The activity of giving form to such underlying principles is sometimes designated as acts of *positivizing*, and the result of such acts is accordingly known as *positivizations*. Habermas explicitly uses this term, for example when he speaks of “the positivization of law” (Habermas 1996:71, and 1998:71, 101, 173, 180). Already in 1930 the word “Positivierung” was used by Smend (see Smend 1930:98). Hartmann also employs the idea of *positivizing* (‘Positivierung’).<sup>14</sup> A French legal scholar, François Gény, also draws a sharp distinction between what is *given (donné)* and what is *constructed (construit)* (Gény 1922-1930-III:16 ff.). This distinction runs parallel with that between a given (constant) principle and the multiple ways in which it can be positivized (constructed) in unique historical circumstances (“construit”).

### The complexity involved in the concept of a norm or principle

The basic distinction between aspects and entities does not provide us with the intellectual tools needed to characterize the complex nature of a principle. We may focus on any particular aspect but we are then at most confronted with its analogical interlinkages with other aspects (retroactions and anticipations). We may also direct our attention to concrete societal entities (normed social collectivities such as the family, state or business enterprise). In both cases we have to account for modal and typical principles. In addition and distinct from modal concept of function and type con-

12 The dynamic process of disclosure, taking place on what we shall designate below as the *norm side* of the normative aspects, shows that we should not identify *constancy* with something *static*. A brief account of disclosure and references to a more extensive discussion of it is found in Strauss (2009:318).

13 Derrida does comprehend the constitutive meaning of physical force for an understanding of the jural aspect (law): “Applicability, ‘enforceability’, is not an exterior or secondary possibility that may or may not be added as a supplement to law. It is the force essentially implied in the very concept of justice as law, of justice as it becomes law, of the law as law [*de la loi en tant que droit*]” (Derrida 2002:233).

14 “By contrast it is here important that these values inherently display the tendency to be realized” (“Dagegen ist hier wichtig, daß den Werten die Tendenz zur Realisierung immanent ist” – Hartmann, 1926:154 ff.). “If a value is to be realized, and an aim to be achieved, then this goal must first be acknowledged and as such be posited. That is to say, that the value must first be positivized” (“Soll aber ein Wert realisiert, ein Ziel erreicht werden können, so muß das Ziel zunächst erkannt und als solches gesetzt werden. D.h., daß der Wert zunächst positiviert werden muß” – Hartmann 1926:160 ff.; see Horneffer 1933:105).

cepts, we have to acknowledge *modal total concepts* that are constituted by the *simultaneous* incorporation of terms derived from multiple, uniquely differing, aspects. The concept of a principle or a norm is an instance of such a modal totality concept.

Surely there is much more involved in the concept of a norm or principle than merely acknowledging the *freedom of choice* and *accountability* it presupposes. It is also completely insufficient to characterize a norm merely in terms of what is *desireable* – a characterization often used in the description of *values*. What is at stake is to proceed with an analysis of the meaning of normativity in such a way that the *constitutive contribution* of various aspects are explicitly highlighted.

Since the ontic order of modal aspects commences with the numerical which is then followed by the spatial, kinematic, physical, and so on, an analysis of the nature of principles should start with these foundationaal aspects – keeping in mind that the normative status of principles entails the possibility of norm-conforming as well as antinormative human (individual and collective) actions.

Without an awareness of the meaning of number it would be impossible to identify a multiplicity of principles. Everyone of them serves as starting-point for *normed* actions. However, such a norming *unitary* point of departure has its own universal domain which cannot be limited to one or a few places – it has to be *universal* in its scope. The notion of *universality* clearly explores our spatial intuition, because it claims that wherever we are (at whatever *place*) the appeal of the principle under consideration is present (an instance of *simultaneity*). Furthermore, such a universal starting-point cannot itself be variable for then it lacks *constancy*. Our insight into the nature of principles is varying, but this does not apply to the nature of principles themselves.

When we start with the numerical aspect the switch to every subsequent aspect adds something more. A principle (*one*), serving as the starting-point of human actions, obtains a closer determination when its *universality* is additionally affirmed (with an appeal to the aspect of space). Another closer determination is introduced when the kinematic intuition is added in the specification that a universal point of departure is *constant*.

The contribution of the first three modal aspects therefore “authorizes” us to state that the following three features are indispensable for an understanding of a principle: a principle is a (i) *universal*, (ii) *constant* (iii) *starting-point* for human action. These hall-marks are not pulled together at random, for we have argued that they are derived from the three most basic ontic (functional) traits of reality, namely the modes of *number*, *space* and the *kinematic* aspect of uniform movement.

*To summarize:* Every principle is *distinct*, *one* amongst *many others* (number). It is *universal* (derived from our spatial awareness of *everywhere*). And finally the term *constancy* makes an appeal to the kinematic meaning of uniformity (persistence or constancy).

To appreciate what is here at stake, we have to highlight the difference between the *elementary basic concepts* of the scholarly disciplines and their *compound* or *complex basic concepts*. The former are capturing the coherence between those aspects delimiting the fields of investigation of the various special sciences and the other aspects of reality (retrociatory analogies). For example, although the term *constancy* has its original seat in the kinematic aspect, it returns *analogically* within the physical aspect, as could be seen from the expression *energy-constancy*. Similarly, although the term

causality (cause and effect) reflects the core meaning of the physical aspect, the science of law employs the (analogical basic) concept of *jural causality*.<sup>15</sup>

In the case of an *elementary* or *analogical basic concept* only *two* aspects are observed in their inter-modal coherence, although an analysis of the meaning of any elementary basic concept is dependent upon a complex analysis, using terms from more than one aspect.

### **Moving beyond the dualistic opposition of causal and noncausal**

The examples of normative causality given in the last footnote fundamentally questions the familiar dualistic opposition of causality and normativity, because it mentioned examples of *normed causality*.

When Turner pays attention to the normativity of law as a paradigm case (Turner 2010:66 ff.) he pays attention to neo-Kantianism, without distinguishing between the two schools of thought – the Marburgh school (Cohen, Natorp, Cassirer, Kelsen) and the Baden school (Windelband, Rickert, Weber). It is important to take into account that the former mainly returned to the primacy of the science ideal, whereas the latter amended the primacy of the personality ideal. The former school of thought gave rise to the idea of a *pure theory of law* (*reine Rechtslehre* – Kelsen) – as if concept formation within the discipline of law can proceed in isolation from the non-jural aspects.

Turner correctly explains that Kelsen advanced a pure theory of law which is stripped of all *causal* elements. He writes that the challenge of a sociological account of the law “pushed Kelsen to formulate a conception of the pure normativity of the law, by which he meant a science of law purified of causal considerations” (Turner 2010:68). The physical *law of causality* applies to whatever happens factually. Yet, according to Kelsen, the decisive question is not whether our actions are caused by our will, but rather whether or not the will is *causally determined* (Kelsen 1960:100). And in line with the modern science ideal Kelsen indeed considers it undeniable that the human will is objectively determined by the law of causality.<sup>16</sup>

For Kelsen the law of causality belongs to the domain of *factuality* (*Sein / is*). By contrast, to the domain of the *Sollen* (ought / normativity), he ascribes the feature of *Geltung* (*validity*). He mentions as an equivalent to this term the expression “in Kraft” (“in force”)<sup>17</sup> and he holds that all statements of the discipline of law are not assertions belonging to the “is” (*Seinsaussagen*), since they have to be assertions of what “ought to be” (*Sollaussagen*). He also holds that the statement: a particular legal norm is *in force* means the same as: “a particular jural norm is valid.” The key terms here are those of *validity* and *being in force*. They are clearly derived from the *physical aspect* where causes and effects have their original modal meaning. Validity points at having an effect (being valid), and effect is intimately connected to the *cause* of such an effect.

The irony of this approach is therefore immediately evident, for in order to escape from the determinism entailed in physical causality (the causal law), recourse is taken

15 In fact every discipline which find its field of investigation delimited by one of the normative modes employs its own distinct concept of causality. Just contemplate the relationship between premiss and conclusion (*logical causality*), or *historical causes* and *effects*, or *social causality*, and so on.

16 “Mitunter leugnet man zwar nicht, daß der Wille des Menschen, wie alles Geschehen, tatsächlich kausal bestimmt ist, ...” (Kelsen 1960:98). “Da die objective Bestimmtheit des Willens nach dem Gesetze der Kausalität nicht geleugnet werden kann, ...” (Kelsen 1960:99).

17 “daß die Aussage: eine bestimmte Rechtsnorm ist ‘in Kraft’ (‘in force’) dasselbe bedeutet wie: eine bestimmte Rechtsnorm steht in Geltung, ...” (Kelsen 1960:82).

to the idea that the domain of “Sollen,” being totally separate from the domain of “Sein,” is characterized merely by “Geltung.” Yet the term *Geltung* is synonymous with the terms *Kraft* (German) and *force* (English) – and both have no other *source domain* than the *physical* function of reality. Once energy operates it *causes* particular *effects* (causality) in the exercise of physical forces. *Validity* as being-in-force therefore belongs to the same aspectual domain as what became known as the physical and therefore it is just as antinomic as the (neo-)vitalistic claim that living entities are characterized by an *immaterial*, vital *force*(!), since the term *force* is derived from a “material” (i.e. *physical*) context.

The aim is to arrive at an understanding of the “norm” that, in its *validity*, is separated from physical operations, without realizing that the term *validity* is indeed itself derived from the physical function of reality. On the one hand, Kelsen emphatically argues that, since the *validity* of the norm is a “Sollen,” which is not a “Sein,” its *validity* must be distinguished from its operation (*Wirksamkeit*). On the other hand, he promotes the operation of the legal order to be the condition (*Bedingung*) of *Geltung* (Kelsen 1960:82).

The neo-Kantian dualism between is and ought led Kelsen to a position in which he wanted to say something “purely” in legal or jural terms, separated from the inherent causality of the realm of *Sein*. But since also the jural aspect of reality can only reveal its meaning through its coherence with other aspects, it turned out to be impossible to avoid the causal physical analogy within the structure of the jural aspect, as it is present in the way in which Kelsen unwittingly coined the analogical concepts *jural validity* and *jural being-in-force*.

Furthermore, as a serious legal positivist, Kelsen distances himself from natural law theories. But once again, his conception of the “Grundnorm” (*Basic Norm*) had to surrender to the enemy by accepting a (pre-positive) starting point serving as the “ultimate reason for the *validity* (!) of all the legal norms forming the legal order”:

It is a “basic” norm, because nothing further can be asked about the reason for its validity, since it is not a posited norm but a presupposed norm. It is not a positive norm, posited by a real act of will, but a norm presupposed in juridical thinking, i.e. a fictitious norm – as was indicated previously. It represents the ultimate reason for the validity of all the legal norms forming the legal order.

Only a norm can be the reason for the validity of another norm (Kelsen 1991:255).

Unless the antinomic dualism between *Sein* and *Sollen* is rejected, on Kelsen’s standpoint no single *jural fact* could be established. For example, stealing something has no *jural* meaning apart from the application of *jural norms*. A burglary as (factual) material delict causes loss and this specific jural effect also cannot be established apart from the application of jural norms. This means that jural normativity inherently contains a physical analogy and therefore cannot ever be divorced from the inter-modal coherence between the jural aspect and (one of) its foundational aspects, namely the physical mode.

Moreover, the domain of civil private law (common law) is presupposed in recognizing this legal fact, for such an infringement of a property right enables one to speak of *unlawfully laying claim to what rightfully belongs to the legitimate owner*. In this account, the nature of jural causality once again is inherently normatively structured – suggesting that we should not try to avoid speaking of causality within the domain of

law, but rather that we should account for the difference between *physical causality* and *jural causality* in order to avoid all kinds of antinomies. When the science of law naturalistically defines a human action as a *willed muscle movement*, no *omission* will be possible. Not switching a train signal to unsafe when one had the *obligation* to do it, and therefore not moving a single muscle, may cause a train accident in a *jural* sense, which explains why legal practice speaks of an action both as a *comission* and as an *omission*.

### Further exploring the nature of compound basic concepts

Jural causality represents an elementary (analogical) basic concept of the discipline of law. But we have argued above that the concept of a jural principle or norm is more complex, because any meaningful definition of it is constituted by terms derived from multiple modal aspects.

We already identified the terms derived from the first three aspects. They actually helped us to understand the *pre-positive* meaning of a principle, because in their ontic universality and constancy principles do not display any *validity* since they are not yet *in force*. The Dutch and Afrikaans term “beginse!” literally indicates a *point of departure* or a *starting-point*. If one only has the starting point of a line, the line itself should be envisaged as an *extension*, moving ahead from the point of departure. And it is only through this “moving ahead” that the starting-point given in a principle can be embodied within concrete reality. Since describing such a starting-point had to use terms derived from the first three modal aspects, captured in their reverse order by the statement that a principle is a constant, universal point of departure for human action, the next modal aspect which has to be taken into account is the *physical aspect*.

We noted that this aspect concerns physical inter-actions having certain effects and therefore embodies the relation between cause and effect (causality). It is noteworthy to mention that Heisenberg describes *determinism* as follows: “If one interprets the word causality in such a strict sense, one also speaks of determinism and means by it that there exist laws of nature determining univocally from the present the future condition of a system” (Heisenberg 1956:25).<sup>18</sup> Indeterminism believes that the entire concept of causality must be discarded. In order to avoid both these extremes one can say: *nothing happens without a cause – but what the effect of a specific cause may be need not be fixed in advance*. This formulation grants determinism that the concept of a *cause* is meaningful and should not be discarded, as claimed by indeterminism; and it grants indeterminism that the *effect* need not be fixed in advance (just think of the half-value of radio-active elements), thus highlighting the untenability of determinism in this regard.

Only when the explanatory power of terms derived from the physical aspect are added to our analysis of the compound basic concept “principle” is it possible to account for *making* principles *valid* or of the *enforcement* of principles. Once a universal, constant starting-point has been made valid, it obtained a positive shape, a concrete form. Therefore, prior to its *being made valid* it displays its *pre-positive* form. Yet it is only human beings who can give a positive form to pre-positive principles. Therefore human intervention is required if pre-positive principles are made valid. The validity of a positivized principle shows that it holds, that is in force.

18 “Wenn man das Wort Kausalität so eng interpretiert, spricht man auch von ‘Determinismus’ und meint damit, daß es feste Naturgesetze gibt, die den zukünftigen Zustand eines Systems aus dem gegenwärtigen eindeutig festlegen.”

Once the involvement of human beings is recognized, we can proceed by exploring modal terms derived from the post physical aspects as well. What we have in mind are terms derived from the biotic, sensitive, logical-analytical, historical and sign modes. To account for the *positive form* of a principle we need to employ terms coming from these other aspects.<sup>19</sup>

Consider human desires and feelings (will – the sensitive mode), accountability (manifest in the normative contrary of norm-conforming or antinormative actions), a competent organ (the biotic and the cultural-historical) and interpretation (the lingual). From the cultural-historical aspect of formative control (power/competence) we actually derive the general idea of a principle and its application, its *positivization*.

We are in a position to attempt a nuanced articulation of the way in which a principle can be described in the light of the foregoing considerations:

A principle is a universal, constant starting-point, that can only be made valid (enforced) by a competent organ with an accountable free will enabling a norm-conforming or antinormative positivization of the (ontically) given point-of-departure in the light of an adequate (or inadequate) interpretation of the unique historical circumstances in which the principle concerned is applied.

Surely human beings, in their individual and collective societal actions are always guided by norms and humans constantly give shape to basic principles. This at once also explains why humans, functioning in diverse societal relations, do not cease to be norm-oriented – for in these instances they have to observe *collective societal norms*. When a just state acts in the pursuit of public justice, it has to observe collective norms (embedded in the ontically given type law for being as state – as further explained below). Moreover, when a just state strives to secure and protect basic rights, it assumes a task that could be performed in a better or worse manner.

### **Modal and typical norms**

At this point we have to introduce another distinction already alluded to above, namely that between *modal* and *typical* norms. Modal norms (similar to *modal laws* within the natural aspects of reality) are universal in scope without any restriction or specification. Individuals as well as societal collectivities all function alike within all the normative modal aspects, including the logical-analytical, the cultural-historical, the sign mode, the economic aspect, the aesthetic function, the jural, moral and certitudinal.

For example, individuals as well as families, states and business enterprises have to observe economic considerations of frugality. From a universal modal economic perspective this entails that the contrary *economic-uneconomic* applies across board. It means that the scope of economic norms is applicable to whatever functions within it (all classes of entities). Type-laws, by contrast, are specified and therefore they apply to a *limited class* of entities only. They display a *specified universality*. The normative principle (structural principle or type-law) for being a state is universal in that it applies to *all* states, but it is *specified* because it applies to states *only* and not to all possible classes of entities. What Korsgaard designates as *practical identities* refers to the multiple social roles anyone can assume (see O'Neill 1988:viii, and Korsgaard 17-18, 117-118, 128, 174-178). The normativity involved in these multiple identities are

<sup>19</sup> When one proceeds further up the order of normative aspects, each next one adds another modal term to its specific compound concept of modal normativity.

instantiations of normative societal type-laws which specify the modal universality of the various norming modal aspects.

Perhaps the most important feature of modal norms is that they can be discerned through an analysis of the analogical links between the various aspects of reality, because, as we have noted, within all modal aspects we find a strict correlation between their law sides (norm sides) and their factual sides. In order to identify modal norms one therefore has to analyze the inter-modal coherence on the law side of the normative aspects of reality and the other aspects.

### **Discerning modal norms**

We argued that the possibility of discerning modal norms or principles is given in the inter-modal coherence between any normative aspect as it comes to expression in the retrocitations and anticipations on its norm side. The well-known contrary *legal-illegal* presupposes the normativity of the jural aspect and analogically reflects the meaning of the logical principle of non-contradiction.

Let us begin our discussion of modal norms by looking at the analogy of the economic aspect within the jural aspect as it is explained by Dooyeweerd in an article on the *modal structure of jural causality*.

The economic analogy in the legal relation of balance concerns the economical handling of legal means and interests of others within the context of alternative possible choices a person is free to pursue. Every excessive, every unrestrained exploration of one's own legal interest, within legal life, is an interrupting causal intervention in the legal balance of interests against which the legal order reacts with restorative legal consequences. The driver of a car, who, when another car approaches from a side-street, continues driving on a road that gives the first-mentioned motorist the right of way, does not cause the subsequent accident when the same driver had no reason to expect that the other motorist would not yield. However, if the first motorist still continues to drive on, while having had the opportunity to stop in time after realizing that the other driver had disobeyed the traffic rules, then the loss-causing effect should also be imputed to the former's act since it is in conflict with the *principle of jural economy* (I am italicizing – DS) and constitutes as such an excessive pursuit of one's own legal interest. (Dooyeweerd 1997a:65).

The picture may be reversed when we focus on an anticipation within the economic aspect of which we are well aware in our everyday experience. Modern money economies are guided by the principle of *economic trust* – and when this trust fades an entire economic system may suffer, as was amply demonstrated by the international economic crisis of 2008 (compare the position of ENRON). Although he does not operate with a theory of modal aspects, Jacques Derrida places *credit* against the background of economic trust (faith). He acknowledges the universality of "faith" by stressing that "faith is absolutely universal" (Derrida 1997:22) and then, with reference to credit [as economic trust] he states:

There is no society without faith, without trust in the other. Even if I abuse this, if I lie or if I commit perjury, if I am violent because of this faith, even on the economic level, there is no society without this faith, this minimal act of faith. What one calls credit in capitalism, in economics, has to do with faith, and the



economists know that. But this faith is not and should not be reduced or defined by religion as such (Derrida 1997:23).

In societies where the meaning of economic life is not yet opened up through anticipatory analogies, *economic trust* in the sense of *credit* is absent. Within such societies, an *exchange economy* is found.<sup>20</sup>

Another example will explore a few elements of the retrocipatory and anticipatory analogies within the cultural-historical aspect. The kinematic analogy within the cultural-historical aspect, which at once reveals its own foundational coherence with the spatial aspect, is found in the norm of historical continuity. The struggle between *progressive* and reactionary tendencies in history may result in the antinormative options of *revolution* or *reaction*. But when the norm of *historical continuity* prevails, these extremes are turned into norm-conformative *reformation*.

Likewise, when the meaning of the cultural-historical aspect is deepened and disclosed through its anticipatory analogies, the first element of deepening the meaning of the historical aspect is found when the awareness of what is *historically significant* materializes in *inscriptions, monuments, written historical accounts*, and so on. The latter serve as *sources* for the historian. The difference between what is historically significant and what is insignificant is made possible by the anticipatory coherence between the cultural-historical aspect and the sign mode. Cultures in which this anticipatory moment is not yet disclosed do not, strictly speaking, participate in world history, as Hegel already realized.

We may now proceed with a more encompassing analysis of modal norms.

*First example: logical principles*

The numerical aspect is foundational to the logical aspect. For this reason we find *numerical analogies* within the logical-analytical aspect. The failure to appreciate this foundational position of the numerical aspect (in an *ontic* sense), tempted Frege, Peano, Whitehead and Russell to reduce the meaning of number to the logical mode, which at once meant that they believed that mathematics ought to be reduced to logic. Quine mentions Frege, who “claimed in 1884 to have proved in this way, contrary to Kant, that the truths of arithmetic are analytic. But logic capable of encompassing this reduction was logic inclusive of set theory” (Quine 1970:66). Weyl goes one step further when he states that mathematics is totally – also according to the logical form in which it operates – dependent upon the essence of the natural numbers and induction (Weyl 1966:52 ff., 71 ff., 86 ff.)

Phrased from the perspective of the analytical mode the nature of analysis, owing to its quantitative foundation, differentiates into *identification* and *distinguishing*. When a mathematician says that  $x$  is different from  $y$  ( $x \neq y$ ), then both the original meaning of number and its analogical recurrence within the logical analytical mode is present. The contribution of the primitive spatial meaning of continuous extension (which is synonymous with the whole-parts relation), is found in the specification acquired by analysis because identification and distinguishing rest upon subdivisions from a given *field, domain* or *totality*.

The numerical analogy on the norm side of the analytical aspect presents itself in the configuration of a *logical unity and multiplicity*. The positive side of this analogy provides the ultimate (modal-analogical) foundation for the *logical principle of identity*

<sup>20</sup> Similarly, the meaning of the jural aspect is not yet disclosed in the practice of a tooth for a tooth and an eye for an eye (*lex talionis*).

(whatever is distinctly identified is identical to itself). Based upon what is distinct the logical principle of contradiction demands that whatever is *distinct* ought not to be considered as being *identical*.

In other words, the numerical analogy on the norm side of the analytical aspect explores the two sides of *unity* and *multiplicity*, and thus serves as the basis of the two most basic logical principles underlying every analytical act of identification and distinguishing. The freedom of choice in the human ability to identify and distinguish can pursue the option to identify and distinguish properly (correctly) or improperly (incorrectly). The former is achieved when acts of identification and distinguishing conform to the logical principles of identity and non-contradiction, while the latter prevails whenever the normative appeal of these principles is violated. The unity and diversity within reality thus make possible all identification and distinguishing – guided by the normative demand to identify A with A and to distinguish A from non-A. Therefore, taking into account their direct ontic foundation, the primary formulation of these two principles may be phrased as follows:

- 1) Identity: Within what is analyzable A is always identical to A.
  - 2) Non-contradiction: Within what is analyzable A is never identical to non-A.
- The act of identification entails an affirmation, and the act of distinguishing entails a denial – affirming that A is A is at once denying that A is non-A. This brings *truth* and *falsehood* into the picture, and therefore makes possible an alternative formulation of these principles in terms of truth and falsity – as done by Copi in his standard *Introduction to Logic*:

The principle of identity asserts that if any statement is true, then it is true.

The principle of contradiction asserts that no statement can be both true and false.

The principle of the excluded middle asserts that any statement is either true or false (Copi 1994:372).

In axiomatic set theory, two classes  $v$  and  $w$  are said to be identical if and only if they have exactly the same members (Lemmon 1968:10). One can also take the equality symbol (“=”) to denote *identity*. Lemmon’s choice is “to take identity as a primitive notion ... and regard it as part of our underlying logical framework” (Lemmon 1968:11). Where equality is understood to denote identity it is also regarded as belonging to the underlying logic (Fraenkel et al. 1973:25). Weyl speaks of logical identity ( $'x = y'$ ) as a two-valued (*zweistellige*) relation (Weyl 1966:19), and later on, in the context of his discussion of automorphisms, he characterizes identity as a one-to-one mapping.

When a mathematician does not accept *infinite totalities* (such as it is the case with intuitionism), the logical principle of the *excluded middle* is not applicable. Of course in the finite case the bifurcation of A and non-A excludes any third possibility. However, in order to ensure the *universal* applicability of this logical principle, the anticipatory idea of infinite totalities must be acknowledged. This idea explores a spatial anticipation within the meaning of the numerical aspect. Therefore, via the (retrociatory) analogy of number within the structure of logical analysis, this principle finds its ultimate foundation in the numerical anticipation to the meaning of space. This justifies the claim that the ontical status of the principle of the excluded middle is found in the fact that it is a *retrociation to an anticipation*! In other words, the meaning of the principle of the excluded middle is in a retrociation from the logical-analytical mode to the arithmetical mode, which in turn anticipates towards the factual spa-

tial whole-parts relation in subjection to and determined by the spatial time order of simultaneity (see Strauss 1991).

The logical *movement* from premiss to conclusion analogically reflects the meaning of the kinematic and physical aspects. The principle of sufficient ground, providing another specification of the physical analogy on the norm side of the logical-analytical aspect, exceeds the confines of the logical aspect, for whereas the principle of non-contradiction cannot tell which one of contradictory statements is true, the principle of sufficient reason points beyond logic to the grounds helping us to decide which one actually is true.

The modal norms of logical differentiation and integration on the norm side of the logical aspect serve as a foundation for the *logical sensitivity* required from *discerning* logical subjects. When, through modal abstraction, a particular modal aspect is identified and distinguished from others, special scientific thought acquires a *logically* integrating *control* or *mastery* over a given knowledge domain – highlighting the cultural-historical anticipation within the logical-analytical aspect and explaining the nature of *systematic* thought. Particularly scientific terminology strives towards a consistent, univocal and therefore un-ambiguous use of its symbols and terms. Deepened logical thinking flourishes in the logical interaction between argument and counter-argument (social anticipation). The principle of thought-economy (Occam's razor) is well-known because it favours thought-economy above tedious and cumbersome arguments. The latter creates logical harmony and is embedded in the required logical justification (the aesthetic and juristic anticipations). The logical integrity with which scholars have to proceed leads to logical trust or logical confidence – which is an indispensable element of argumentative competence, apart from the fact that an axiom is an instance of logical certainty.

*Second example: aesthetic principles*

In Beardsley's standard work on aesthetics basically only three aesthetic principles are identified, namely *unity*, *complexity* and *intensity*. From the perspective of the inter-modal coherence between the various aspects including every analogical moment, the shortcomings of this approach could be demonstrated. In order to assess this view of Beardsley we first have to provide a brief overview of modal aesthetic principles in terms of analogical moments on the norm side of this aspect. These moments disclose the universal modal aesthetic principles to which any work of art has to conform. The type-laws for various kinds of artworks specify these universal modal aesthetic norms.

A work of art ought to display an aesthetic unity amidst an aesthetic multiplicity (numerical analogy). It ought to be structured as an aesthetic whole with aesthetic parts (parts fit within a whole – spatial analogy).<sup>21</sup> These first two modal aesthetic principles underscore that an aesthetic awareness of the nuancefulness or many-sidedness of reality analogically reflects the coherence between the aesthetic aspect and the aspects of number and space. Furthermore, a work of art ought to display aesthetic durability (constancy) (kinematic analogy); it ought to exercise an aesthetic effect (an analogy of the physical cause-effect relation); it ought to display an inherent aesthetic differentiation and integration (biotic analogy); it ought to be aesthetically sensitive to

21 The neo-Marxist view of literature objects to what Bürger calls an organic work closed in itself. Lukács depicts it as realistic and according to Adorno it is ideologically suspect, for instead of rather laying bare the contradictions of contemporary society already the form of an organic work creates the illusion of a beneficial society (see Bürger 1974:120).

the many-sidedness of reality (sensitive analogy); it ought to display an inherent aesthetic consistency (logical-analytical analogy); it ought to take shape within a particular aesthetic style (cultural-historical analogy); in an aesthetic sense it ought to communicate an aesthetic message (sign analogy); in an aesthetic sense it ought to fit into a particular social milieu, it ought to evince an aesthetic “sociality” (social analogy); it ought to avoid whatever is aesthetically excessive (economic analogy); in an aesthetic sense it ought to do justice to the many-sidedness of reality transformed into the aesthetic end-product; it ought to display aesthetic integrity (moral analogy); and finally a work of art ought to be aesthetically convincing, it ought to witness to an element of aesthetic confidence making an appeal to aesthetic trust (fiduciary analogy).

Each one of these modal aesthetic norms could be obeyed or violated – aesthetic activities may be norm-conformative or antinormative, but no work of art can ever avoid the normative appeal of these modal aesthetic principles, although the artistic type-law does specify the manner a work of art functions within the various modal aspects in a typical way.

We now briefly return to the above-mentioned aesthetic principles of Beardsley. From the outset it must be clear that each of his aesthetic norms actually embrace more than one modal aesthetic principle. Beardsley explains the *aesthetic unity* of an art work by asking whether or not it is “well-organized,” whether it is “formally perfect (or imperfect)” and whether “it has (or lacks) an inner logic of structure and style” (Beardsley 1958:462). Being well-(dis-)organized or formally (im-)perfect refers to the cultural-historical analogy within the structure of the aesthetic mode and the same applies to the element of style, while the “inner logic” obviously refers to the logical-analytical analogy. However, the meaning of the norm of aesthetic unity receives its first closer determination from the spatial analogy on the norm side of the aesthetic aspect: aesthetic unity ought to be embodied in an aesthetic coherence binding together all parts into an aesthetic whole. What Beardsley says about complexity utilizes merely analogies from the first three modal aspects (format, contrasts and subtlety). Likewise, the norm of sensitivity is explained by employing analogical elements derived from the physical, biotic and sensitive modes (compare terms such as *vitality*, *forceful*, *vivid*, and *tender*).

### **The in-self-sufficiency of human autonomy**

If human beings can only give shape to pre-positive universal and constant principles, then, as we noted, principles cannot obtain *validity* apart from human intervention. Only human beings can positivize principles in concrete historical circumstances. This view accounts both for the ontic conditions and the active involvement of human agents in the positivization of principles. But there is more at stake.

A distinction ought to be drawn between the principles norming human activities, and the norm-conformative (or: antinormative) ways in which human beings can respond to underlying principles. In the case of societal entities and processes, there is always a difference between “structures for” and “structures of.” For example, the scope of the structural principle for being a state encompasses all past, present and future states, wherever they may be found – whereas any concretely existing state, in being a state, exhibits the reality that it *is* a state. *Being a state* is the universal way in which any particular state shows that it is subject to the structure for being a state, that is, the structural principle norming every state. The modern idea of autonomy, as well as the idea of the *social construction of the world*, reify the human freedom to

positivize. At the same time, it denies the existence of universal and constant principles underlying every human act of shaping and form-giving (positivization).

Anthony Giddens wrestled with these issues in his own way in introducing his theory of structuration in order to emphasize the actuality of temporal societal processes through which such societal structures are produced and reproduced. According to him, a “double hermeneutic” is implied in all forms of sociological theorizing, because the scholar is simultaneously participant and analyst (see Calhoun et al. 2002:222).<sup>22</sup> The acknowledgement of the “subject-dependency” of societal structures explains why Giddens prefers to speak of “structuration” instead merely of “structure.” Structuration embodies the typical human activities of positivizing the type-laws (structural principles) of societal collectivities.

### Concluding remark

Because human beings cannot at once be the conditions for being human and the subjects conforming to these conditions, it is necessary to acknowledge *ontic normativity*. This enables the possibility to discern different kinds of (modal) norms and also provides a way in which we can analyze universal modal norms. Once this is done one can proceed by analyzing the typical way in which the various societal type-laws specify (not: individualize) the universal meaning of modal principles – something exceeding the scope of this article (see Dooyeweerd 1997-III:157-693).

The integral account of modal and typical principles presented in this article transcends the inherent dilemma of all dialectical approaches to normativity (as discussed in the first article on normativity – see Strauss 2011). Within the order of modal aspects those belonging to nature (from the numerical up to the sensory) are not *handicaps*, *impediments* or *obstacles* in the way of human freedom. Rather they form unavoidable, enabling, foundational conditions, necessary for the existence of accountable human freedom. Both norm-conformative and antinormative actions operate on *the basis of* the mentioned foundational conditions and therefore can never (dialectically) be appreciated as a threat to freedom. Just recall the acknowledgment phrased by Jaspers: “Since freedom is only through and against nature, as freedom it must fail. Freedom is only when nature is” (Jaspers 1948:871).

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<sup>22</sup> Turner echoes something of the approach found in the thought of Giddens where he holds that institutions recur and reproduce (Turner, 2010:31).

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