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## PLATO ON JUSTICE AS VIRTUE - A SAFEGUARD AGAINST A STATIC METAPHYSICS OF BEING AND A POSTMODERN MEANING-RELATIVISM?

**D F M Strauss**

*University of the Orange Free State*

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### Opsomming:

*Die kontemporêre wetenskaplike klimaat vertoon die beeld van toenemende disintegrasië - 'n fragmentasie wat sekerlik nie los te maak is van die modernisme/postmodernisme debat nie.*

*Alhoewel Plato se soeke na die vermeende (bo-sinnelike) statiese wese van dinge gevoed is deur 'n spekulatiewe metafisika wat langs antropologiese weg selfs 'n fundering wou bied vir sy siening van die ideale staat, berus sy wysgerige refleksie op belangrike insigte wat dwarsdeur die geskiedenis van die filosofie 'n rigtinggewende rol sou bly speel. Veral sy kennisteoretiese insig dat konstansie die basis vorm van veranderlikheid moet vermeld word; indien die "eie wese" van iets inherent veranderlik (d.w.s. nié konstant nie) was, sou dit onkenbaar wees.*

*In hierdie bydrae word ingegaan op die onderliggende Eleatiese agtergrond van Plato se ideëleer alvorens daar oorgegaan word tot 'n herwaardering van sy siening van geregtigheid as een van Plato se deugde. In hierdie konteks word enersyds aangetoon dat Plato in laaste instansie bloot 'n konstitutiewe regsopvatting ontwikkel (regsharmoniëring en die wering van juridiese eksesse) en andersyds geargumenteer dat die kern-insig in die aard van konstansie as basis van verandering 'n moontlikheid open om die ankerlose relativisme van 'n gefragmenteerde postmodernistiese aanpak te bowe te kom.*

### Introduction

One can compare the position Plato occupies within Greek philosophy with that of Thomas Aquinas in Medieval philosophy and Immanuel Kant in modern philosophy. While there is a growing reaction against a traditional search for *universal essences* in what is nowadays referred to as *postmodernism* it is striking that those who embrace this postmodern climate of fragmentation find themselves "united" (!) in their urge to point out that the hegemony of "universal reason" with its "metanarratives" (Leotard) no longer illuminates the way ahead.

Appleby *et. al* distinguishes three metanarratives as targets of postmodernism: (i) "the subject or rational human agent," (ii) "the notion of secular salvation or progress," and (iii) "science in its broadest sense, including an entire constellation of philosophical and metaphysical foundations" (Appleby, 1996:387).

Although what is mentioned here is a reaction to what became known as the *modernism* of the Enlightenment, key elements of the latter show continuity with the thought of Plato. In order to highlight this we have to start with Plato's epistemology.

### Plato's underlying epistemological concern

It is well-known that Plato wrestled with our experience of *identity* in a sensory world of *change*. Particularly under the influence of Cratylus (a pupil of Heraclitus) Plato transformed the views of Parmenides. These two lines of thought converged and materialised in Plato's search for *reliable knowledge* of things in the empirical world of *change*.

The leader of the conversation in his dialogue Cratylus argues that *if* one accepts the *constant flux* of things there would be no basis for accepting we really(!) *know* anything. As soon as one claims that something in the world of the senses is *known* - whatever it may be - it already *changed*, with the implication that the *new form* taken on is no longer truly grasped!

It is well known that Plato gave a speculative answer for this problem. He accepts as constant basis of all change the so-called *super-sensory Ideas* (ideal static forms). Every changeable entity possesses a *unique essence* (*αὐτὸ τὸ εἶδος*). This *essence* could only be grasped by our *understanding* since it is contained in an elevated (transcendent) *realm of Ideas*. He thus wishes to acknowledge that the so-called essence of things could not also be subject to *continuous change* (cf. his youth dialogue: *Cratylus* 439 c - 440 a).<sup>1</sup>

In *Phaedo* Plato explains that that which is invisible (and constant), can only be thought about rationally, while that which is visible (and changeable), can only be observed through the senses. When the soul investigates without the mediation of the body, it is directed at the world of the pure and eternal, immortal and unchanging, constant and equally natured things (79d). The soul exhibits the greatest similarity to the divine, immortal, conceivable,

simple indissoluble, constant and "self-identical," while the body bears the greatest similarity to the human, mortal, multivarious, non-conceivable, dissoluble and never-constant (80b: 1-6).

### The anthropological basis of justice

In *Politeia*, Plato expanded his anthropological conceptions by dividing the soul into three parts - the rational (*logistikon*), the spirited (*thumoeides*), and the appetitive (*epithemètikon*). This threefold conception of the soul provided the basis for his theory of the state and laid the foundation for his understanding of the first three cardinal virtues distinguished by him. According to him, *wisdom* (*sophia*) is the virtue of the rational part of the soul, *courage* (*andreia*) that of the spirited part, while *temperance* as virtue represents - under the rule of the rational part - the union of the *thumoeides* and the *epithemètikon*. *Justice* as general virtue embraces the former three and thus also has a bearing on the ideal state as a whole (cf. *Politeia*, 433A-C). Justice prohibits the transgression of the legal domain of the different parts of the soul, i.e. it commands avoiding any legal excess - and this also applied to the three estates within the state (cf. *Politeia*, 443 ff.).

It should be mentioned here that what in Latin was designated as Aristotle's doctrine of *iustitia commutativa* and of *iustitia distributiva* is already present in Plato's thought. Lucas mentions *Politeia* 558C where Plato rejects the application of equality to equals and unequals alike (1980:76). Van Zyl also mentions the *Laws* (757A-E) where Plato distinguishes between "arithmetical" and "geometrical" equality:

*namely that determined by measure, weight and number ("arithmetical" equality) and that which "dispenses more to the greater and less to the smaller, giving due measure to each according to its nature" ("geometrical equality"), which Plato himself terms "political justice" (politikon dikaion) and describes (at 757D) as "the natural equality given on each occasion to things unequal" (Van Zyl, 1991:53 note 142).*

Looking back at Plato's theory of the state and of the role of justice as virtue one certainly cannot deny that its supposedly *static* nature did not withstand the test of time - both with regard to philosophical reflection and with respect to the actual subsequent history of state-formation. Therefore, instead of questioning his valuable insight that change can only be detected on the basis of something constant - a key-distinction which has had a lasting effect in the Western legacy

of science and scholarship - one should rather examine the question: What caused the rigidity in Plato's conception of static forms of being?

We have noted that Plato realised that *change* can only exist on the basis of *constancy*. Without an underlying element of *continuity*, change cannot be detected to begin with. Unfortunately, this positive insight suffered from the after-effect of the *static metaphysics of being* coming from the school of Parmenides. Let us briefly look at this metaphysics of being in an attempt to see how it came about.

### The genesis of a static metaphysics of being

The interest of the Pythagoreans in the *form* of figures (including form-congruence/uni-form-ity) apparently stimulated the proof of Pythagoras' familiar theorem, namely that in any rectangular triangle the square of the diagonal side equals the sum of the squares of the two rectangular sides. According to Euclides' *Elements*, the original arithmetical proof of the theorem of Pythagoras is founded in the congruence of figures. Hippasus of Metapont (450 BC) probably already discovered that this proof is not generally valid, since it proceeds from the presupposition that the ratios of all line stretches stand in relation to one another as integers, i.e. can be represented in the form  $a/b$  where  $a$  and  $b$  are normal natural whole numbers). The *pentagram*<sup>2</sup> convinced Hippasus of the falsity of this presupposition (cf. Von Fritz, 1945:242-264).

The simplest example of an irrational number is the oblique side of a rectangular triangle where both the rectangular sides measure 1.

Apparently a proof of the fact that the square root of the number 2 is irrational was already known to Pythagoras. In his dialogue *Theaitetos* (147D) Plato mentions that Theodoros, a Pythagorean, had proven further irrationalities.<sup>3</sup>

The nature of irrational numbers, which cannot be explained in terms of the *relation* (ratio, logos) between two whole numbers (integers), was the core of the crisis in Pythagorean mathematics. Only when Greek mathematics is understood in terms of the deepest motive active at the root of all Greek thought, does it become clear why this discovery was experienced as so central a crisis.

The *formative* and *delimitative* function of number was undermined by this discovery of irrational numbers (*incommensurability*), since it appeared that the *formatively-delimited oblique side*, e.g. of a rectangular triangle with two rectangular sides with a length of 1, in itself (from an arithmetical perspective) contained an *infinite* (unlimited) series. In other words, in this case the *apeiron* abrogated the delimiting function of the *peras*! To avoid this consequence, all algebraic problems<sup>4</sup> were translated into *spatial* terms - hence the geometricization of mathematics.<sup>5</sup> The directing motive of Greek thought, namely the motive of the *limited* and *unlimited* (*transient* and *intransient*, or, in Aristotelian terms; the motive of *form* and *matter*), therefore integrally determined the entire *direction* of Greek mathematics!<sup>6</sup>

The discovery of irrational numbers constitutes the first foundational crisis of mathematics. To overcome this crisis Eudoxos devised a method which approached the modern differential and integral calculus, but due to an excessive adherence to the *spatial* perspective the most important discovery had to wait until the 17th century A.D.

Apart from the contribution of Zeno's B Fragment 3 to our understanding of the nature of the spatial whole-parts relationship, we find statements in Anaxagoras regarding the nature of spatial continuity which are still relevant today. He says:

*In that which is small there is no smallest, since there always exists something smaller. That which is can never cease to exist through further division, no matter how far we continue this division (B Fr.3). And since no smallest can exist, it can also not insulate or contain itself, but must, as in the beginning, exist with everything else (B Fr.6).*

This simultaneous existence suggests the coherence of spatial continuity which includes all (material) things - a continuity which is not, however, the co-ordination of discrete (separated) parts, as if separated with an axe (B Fr.9).

With these characterisations, Anaxagoras reaches forward not only to the view of Aristotle, but even to the position of intuitionist mathematicians in the 20th century (namely Brouwer and Weyl).<sup>7</sup> In Anaxagoras' course of thought it is clear that the infinite should not be understood only externally as spatial extension without limits, but also internally (i.e. inwardly) as infinitely divisible spatial extension.

Without exploring the implications of this shift from a numerical to a spatial perspective further in this context, it must be clear that the first foundational crisis of mathematics gave birth to the static metaphysics of being exemplified in the philosophy of Parmenides and his school and further developed in Plato's theory of ideal forms.

Within the domain of natural scientific reflection the orientation to a spatial point of entry to explain reality exerted a surprisingly long influence. Descartes<sup>8</sup> and even Kant<sup>9</sup> still thought that the 'essence' of matter is to be found in *extension* alone. The idea that matter is infinitely divisible - a central property of spatial continuity - lasted even longer. By the end of the 19th and the beginning of the 20th century, however, the following distinction turned out to be necessary: that between *mathematical space* and *physical space*. Whereas the former - in a purely *abstract* and *functional* perspective - is both *continuous* and *infinitely divisible*, *physical space* is neither *continuous* nor *infinitely divisible*. Because it is bound to the *quantum structure* of energy it cannot be subdivided *ad infinitum*. Energy *quanta* indeed represent the *limit* of the divisibility of energy.

### **How is it possible to employ spatial terms metaphysically?**

It does seem as if different aspects of reality allow for a twofold exploration of the peculiar meaning a particular may assume. The first and unproblematic use of spatial terms, for example, pertains to their functional application to genuine spatial relations. Concrete entities always function, amongst others, in the aspect of space - and therefore do have *spatial properties*. Terms like *dimension*, *magnitude* (distance, surface, volume), and so on - when employed to describe the way in which concrete entities function within the spatial aspect - could be said to be used in a *conceptual* way. A concept in this sense combines a multiplicity of universal features into the unity of the said concept. If a "square" is defined as having four *right angles* and as being demarcated by four equi-distant *sides*, then the two universal properties of *having right angles* and *having sides* are united in that concept. *Spatial continuity* implies *coherence* and vice versa. Something continuous does not allow gaps between any of its parts, all the parts are *connected* in the sense of constituting a *coherent* whole. This formulation, using the spatial terms *continuity*, *connectedness*, *coherence* and the *wholepart* relation, is dependent on the validity of the spatial timeorder of simultaneity. If the parts of a continuous whole are not simultaneously *present*, the coherence of the whole would be cancelled.

Given this basic meaning of space, another avenue is left open for philosophical reflection; one can expand the meaning of spatial terms to apply beyond the limits of the spatial aspect! The kind of knowledge entailed in this expansion of the meaning of spatial terms is not conceptual in the strict sense of the term. In fact, it *transcends* the limits of concept-formation. The German term *Grensbegriff* may be appropriate here, on condition that is taken to indicate concept-transcending knowledge. Another option is to speak about *idea-knowledge* as an indication of knowledge surpassing the *limits* of conceptual knowledge.<sup>10</sup>

*Remark: It is helpful to define any epistemology only acknowledging (universal) conceptual knowledge as rationalistic. By contrast, the epistemological stance denying the nature of universality and stress the uniqueness, individuality and contingency of reality alone, may be defined as irrationalistic.*

Parmenides and his school explored the meaning of space by expanding the meaning of the spatial terms they used. They were not interested in a *geometrical* analysis of the way in which different entities function within the spatial aspect. Much rather, they simply used these spatial notions to develop their metaphysical theory of *being*. Nevertheless, in doing this, they at the same time discovered and used fundamental features of spatial extension (for instance the implied whole-part relation).

In his work on *Matter and Infinity in the Presocratic Schools and Plato*, Sinnige correctly points out that Parmenides' description of *being* has been bound up to a high degree with "spatial images" (1968:38). The two-directional use of any modal-functional point of entry was also clearly sensed by him. It is fairly clear that Parmenides gives us two distinct descriptions of *Being*. The first of these, according to Sinnige, is intended to be understood in a *metaphysical* sense: Being is determined in all respects (B Fr. 8 verses 26-42). The second is formulated in cosmological terms: Being is a spatial whole, kept in balance from within and not bordered upon by another Being (vs. 4249). The two descriptions overlap to a certain extent, which means that most terms have at the same time "a metaphysical and a spatial connotation" (1968:86). The "metaphysical" description mentioned by Sinnige (vs. 26-42) corresponds to verse 4 where the key-idea is; *not subject to change (atremes)*, and it is intended to deny all movement to *Being*, for the concept of *Being* itself implies *immutability* - our thinking represents a perfectly determined static reality or else it could not be called

thinking (cf. Sinnige, 1968:33). Evidently, here we are also confronted with *static spatial terms*, be it in a *metaphysical idea context*. Parmenides indeed used spatial notions in order to develop his metaphysical *idea of being*.

Not only did this static (spatial) metaphysics of being impact on Plato's theory of ideas and his view of justice as virtue, since it also dominated medieval philosophy and its distinct understanding of the "chain of being" - with God as the *ipsum esse* at the top of the hierarchy.

The answer to the question posed in this paragraph; how is it possible to employ spatial terms metaphysically? is therefore: When spatial terms are used metaphysically they are not employed as concepts, but as concept-transcending ideas. In the case of Parmenides and Plato this metaphysics created a *rationalistic* legacy stretching through the middle ages way into "modernity." And it is against this static rationalistic metaphysics of being and immutability that "postmodernity" reacts. Postmodernism, amongst other concerns, denies the existence of "immutable essences."

### **Plato: A safeguard against a static metaphysics of being and a postmodern meaning-relativism?**

As far as the *rejection* of a static (rationalistic) metaphysics of being is concerned we certainly take side with postmodernism. However, the crucial question remaining is: Can we follow the postmodern emphasis on change at the cost of constancy?

We want to argue - and in doing so fall back upon the crucial insight of Plato in this regard - that postmodernism uproots itself in its unqualified reliance on *change*. In conclusion, we want to return once again to the notion of *justice* in order to illustrate how liberating it is not to fall prey to making a choice between constancy and change, since the former is the condition for the meaning of the latter.

One may distinguish between *constitutive* structural elements within the meaning of jural relationships - presupposed in every possible legal order - and *regulative* structural elements which only come into view when the meaning of legal relationships is deepened and disclosed (opened up). Plato's understanding of *justice* actually only pertains to constitutive elements within the functional structure of the jural aspect - it for the foundational moments of *harmonising*



through *avoiding what is excessive* (the jural presupposes the economic and aesthetic aspects).<sup>11</sup>

In our everyday, pre-scientific thinking, for example, there is no tendency to achieve an *economy of thought* - something typical of scholarly reflection. In this case we can say that the meaning of logical thinking is deepened, disclosed, or opened up by the meaning of the economic aspect. Similarly, in an undisclosed exchange economy, goods are traded on their face-value without making an appeal to *economic trust* (faith - to be certain about that which is not observed). Money economies, on the contrary, are fully dependent upon the presence of economic trust - evidenced in *debt*. In the phenomenon of *debt* the meaning of the economic aspect is opened up and deepened by pointing towards the fiduciary aspect of reality (the aspect of faith).<sup>12</sup>

We now return to the jural aspect and to the meaning of justice. The death sentence refers to a disclosed principle of criminal law. It requires that the punishment should fit the crime (taking into account *fault*, both in terms of *intent* and *negligence*).<sup>13</sup> This principle of punishment relevant to fault is a *deepened* legal-ethical principle of *justice*, fundamentally different from the strict responsibility for outcomes evident in undisclosed legal systems (e.g. the talio-principle in the Old Testament, known as the "eye for an eye" or "tooth for a tooth"-principle). In the *talio*-principle the ethical aspect of moral love had not yet deepened the meaning of the jural aspect of reality, since the attitude of the actor was neglected, and only the consequences of the act were taken into account. In an ethically deepened, or disclosed legal system the death penalty can only be considered as an application (positive expression) of the underlying principle of *punishment according to fault*. Other applications of the same principle could be, e.g. life imprisonment or an even shorter term, depending on the degree of mitigating circumstances which may be present.

Other *deepened* principles of justice operative in disclosed legal systems are, for example, the principle of *equity*, of good faith (*bona fides*), of the *dignity of the human person*. Disclosing the meaning of the jural aspect thus opens up regulative legal-ethical principles of justice. This deepened meaning of the jural aspect cannot be grasped conceptually - it can only be approximated in terms of idea-knowledge as defined above.<sup>14</sup>

The fundamental distinction required to side-step the one-sidedness of a static metaphysics of being/essence/immutability on the one hand and a historicistic meaning relativism over-emphasising change on the other hand is therefore that between *constant* underlying principles and their *variable* applications in *historically unique circumstances*. Of course, we do not want to claim that our *insight* in what is supposed to be constant is itself withdrawn from our place in history and the on-going dynamics of meaning-disclosure! But conceding this does not entail levelling the foundational coherence between constancy and change.

### Concluding remarks

Plato indeed paved the way to side-step rationalistic and irrationalistic modes of thought by highlighting the foundational coherence between *constancy* and *change* - albeit that, by and large, in his own thought he did fall back into a rationalistic metaphysics of being. In its reaction to rationalism postmodernism, unfortunately, discarded the baby with the bath water. This explains the lack of historical awareness present amongst those who adhere to the contemporary claims of postmodernity.<sup>15</sup>

In a different context (cf. Strauss, 1996) I have argued that "postmodernity" and its supposed "new" features are actually "old" ones. Its key historicistic claims can be traced to their roots in post-Kantian Romanticism and its lingual emphasis was anticipated by nominalism since its very inception (cf. Ockham and Hobbes), and was also suggested by Jacobi, Hamman and Herder even before the end of the 18th century!<sup>16</sup> The key-figure in the genesis of the linguistic turn, in so far as we may see it as an attempt to overcome the limitations of concept-formation with respect to what is unique, contingent and individual, Wilhelm Dilthey, actually lived the greater part of his life in the 19th century. His distinction between natural scientific explanation and hermeneutical understanding is recently echoed in the mentioned work of Appleby *et al* ("Knowledge and Postmodernism in Historical Perspective"). In the *Introduction* to the mentioned work it is said that we experience a new spiritual framework marked by a "shift" away from "documentation to interpretation, away from reconstructing a chain of events to exploring their significance". They continue: "Using a conceptual shorthand, we could say that *meaning* has replaced *cause* (the italics are mine - DFMS) as the central focus of attention" (Appleby 1996:1).

To be sure, what is called postmodernity merely constitutes a new power concentration of the irrationalistic side of *nominalism*.

**Remark:** *The perplexing fact is that nominalism comprises both rationalism and irrationalism: in respect of the typical structure of entities, nominalism does not accept any conditioning order (universal structures) for, or any orderliness (universal structuredness) of such entities. Every entity is strictly individual. In terms of our distinction between rationalism and irrationalism, nominalism surely represents an irrationalistic view of the nature of entities, since every individual entity is completely stripped of its universal orderliness (law-conformity) and conditioning order. This characteristic applies to both moderate nominalism, viz. conceptualism (Locke, Ockham, Leibniz and others), and to extreme nominalism, that rejects all general and abstract ideas and only accepts general names (Berkeley and Brentano). This irrationalistic side of nominalism, however, does not exhaust its multifaceted nature, because universals are acknowledged fully within the human mind, at least as general words in the case of Berkeley's and Brentano's extreme nominalism. This restriction of knowledge to universals is typical of rationalism in the sense defined by us. Therefore, it is possible to see nominalism as being simultaneously rationalistic in terms of the universals - concepts and words - in one's mind, and irrationalistic in terms of the strict individuality of entities outside one's mind.*

What currently passes as a postmodern attitude - under the spell of the disintegration and fragmentation caused by it - is actually rooted in this basic *nominalistic* orientation which even pre-dates modernity - in the sense of the 18th century Enlightenment!

## Notes

1. Plato, on account of this theory of the eternal super-sensory unchanging Ideas, has also been presented as the 'philosopher of the Transcendent' Cf. De Vogel, 1968.
2. That is a regular pentagon. The Pythagoreans used a regular pentagon of which the sides were extended to the points of intersection (cf. Moritz Cantor, 1922:178).
3. "Our friend Theodoros was proving to us something about square roots, namely that the sides (or roots) of squares representing 3 square feet and 5 square feet are not commensurable in length with the line representing 1 foot; and he continued thus, taking each case in turn up to the root of 17 square feet."
4. Of course the Greeks did not yet know any algebra.
5. Cf. Boyer, 1956:8ff.
6. P.A. Meijer is of the opinion that the most appropriate indication of the basic motive of Greek philosophy is to be found in the Greek yearning after the *intransient* (cf. 1968:207, and note 15 on p.206). Bos does not see *form* and *matter* as the ultimate driving force of Greek philosophy but prefer to speak about the "titanic meaning perspective" (1986). The tension between *becoming* (e.g. of the seasons) and the underlying quest for *constancy*, however, remains central to this motive. Compare Bos 1994:220.
7. H. Weyl assesses the significance of Greek thought: "Yes, exactly now we are being brought everywhere to return directly to the Greeks in the foundations of mathematics" (1931:1).
8. Descartes says that "the nature of body consists not in weight, hardness, colour, and the like, but in extension alone" (*Principles*, Part 11, IV).
9. He writes: "Thus, if we deduct from the representation of a body what belongs to the thinking of the understanding, viz. substance, force, divisibility, etc., and likewise what belongs to sensation, viz. there still remains something of that empirical intuition, viz. extension and form" (*Critique of Pure Reason*, B:34)
10. Traditionally knowledge is mainly identified with (universal) conceptual knowledge. However, already Aristotle realised that one cannot grasp what is individual conceptually. Consequently he had to introduce, next to his *individual* primary substance a secondary substance as the *universal* (!) form of entities.
11. An extensive analysis of the modal functional meaning of the jural aspect is found in Volumes 8 and 9 of the A Series of Herman Dooyeweerd's Collected Works - to appear in 1999 and 2000 respectively. Dooyeweerd opposes the Platonic-Aristotelian and Scholastic tradition in which law/justice is subsumed under the ethical/moral aspect as one *virtue* amongst others because this legacy (cf. Henkel, 1977:393) negates the uniqueness of *jural* relations - to be distinguished from *moral* relations.
12. The philosophical style of Derrida - known under the title of *deconstruction* - has a remarkable sensitivity for disclose as a deepening of meaning. Just compare what he says in this regard. He first stresses that "faith is absolutely universal" (1997:22) but makes it plain that he distinguishes between the universal structure (also called *messianicity*) and the *mesianic* (particular manifestations of messianicity in *religions* such as Christianity, the Islam or Buddhism). He then remarks: "On the side of messianicity there is faith, no doubt. 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* (I am italicising - DFMS) 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" (1997:23).

13. Following a suggestion of Alan Cameron, the current editor of Dooyeweerd's *Encyclopedia of Legal Science* (it forms part of the Collected Works of Dooyeweerd), we translate the Dutch and Afrikaans word "schuld/skuld" with the word "fault." It could be translated either as "fault" or "guilt." Although, in English-speaking Common Law jurisdictions, "fault" is normally reserved for civil wrongs (*torts*) while "guilt" is used for criminal wrongs, we will capture both these meanings with the term "fault" taken in the mentioned broad sense (not specific to any particular category of legal wrong), encompassing both civil and criminal delicts.

14. When Derrida speaks about *justice* he does that while implicitly alluding to the deepened meaning intended here. He says: "Justice, if it has to do with the other, with the infinite distance of the other, is always unequal to the other is always incalculable. You cannot calculate justice. Levinas says somewhere that the definition of justice - which is very minimal but which I love which I think is really rigorous is that justice is the relation to the other. 14 That is all. Once you relate to the other as the other, then something incalculable comes on the scene, something which cannot be reduced to the law or to the history of legal structures" (1997:17-18).

15. Historicism eradicates the meaning of history: only what is not intrinsically historical in nature can have a history - such as law, art, or economic relationships (making possible legal history, art history and economic history). However, if everything *is* history - as historicism wants to uphold - then there is nothing left that can have a history! Then history lost is very meaning.

16. Herder already called the human being "a creation of language" ("Der Mensch ist ein freidenkendes, thätiges Wesen, dessen Kräfte in Progression fortwürken; darum sei er ein Geschöpf der Sprache!" Herder, 1978:73).

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