Hugo Sinzheimer, *Das Problem des Menschen im Recht* (1933b)

Compressed translation of: `Das Problem des Menschen im Recht'. Inaugural lecture, 6-11-1933, Professor of Sociology of Law, University of Amsterdam. Groningen 1933 (31 pp). [The original can be accessed by way of the List of publications on this site]. Reprinted in: *Arbeitsrecht und Rechtssoziologie*: gesammelte Aufsätze und Reden (2 vol.s). Ed. by Otto Kahn-Freund & Thilo Ramm; Schriftenreihe der Otto Brenner Stiftung nr 4. Frankfurt/Köln: Europäische Verlagsanstalt 1976, vol. II, p. 53-69.

Note of translator: There are several reasons why a translation of an 80 years old text by a German law professor into English is no easy job. Let me mention two of them. First, Hugo Sinzheimers oratory style of exposition finds expression in short sentences and an abundance of repetitions in only slightly different words. Probably adequate to his contemporary audience but not easy of digestion to a 21st-century reader. Therefore, the text has been compressed by connecting sentences, but the structure of the exposition has been left basically intact. In case of doubt about its meaning, please consult the original or the reprint. Second, the English language is no easy receiver of the German-Idealistic talk in terms of (singular) essences and substantives where the first would have used adjectives and more practice-related (plural) terms. Please note that 'man' in the text is almost always the translation of the categorical noun 'der Mensch'. References to the page-ends in the original publication and in the reprint are included in footnotes. [Robert Knegt]

The Problem of Man in Law

[Exordium of this inaugural lecture: not reproduced here]

We all know the Roman jurist's phrase that all law is there for the sake of man, a phrase of programmatic significance. However, when we look closer, a question of deep significance remains open: what is man? This is by no means a superfluous question; on the contrary it is the elementary, decisive question of law as such. Roman law itself, for instance, can only be understood if one clearly understands that the concept of man was in no way a unitary concept. According to Roman law not everyone was 'man'; some of them were merely things. The same goes for a large portion of medieval law where a unitary concept of man was also lacking.

Indeed: how law is being designed depends on its basic conception of man. It is the secret regulator of the momentary system of law. I remind of the nowadays almost forgotten words of *Friedrich Carl Savigny* who founds his system of law by arguing: "The composition of legal institutions that has been proposed here, is based upon their most inner essence, i.e, upon their organic connection with man's essence to which they inhere. All[1] other properties of them have to be considered as comparatively subordinated, and as not fit for grounding the whole system of law."[2]

This has in no way changed since the idea of the 'equality of all that wears a human face' has dissolved all legal differences between men. Still man remains the fundamental problem of law. Man is infinite, able to be determined in many ways; not one of them, whatever its scope, is able to cover

[1] End of page 5 of original publication.
[2] *System des heutigen römischen Rechts* [System of Current Roman Law] , vol. I, 1840, p. 386 (translation RK).

him completely. He changes in time and space. Ever new[3] unpredictable external changes, but also internal sources appear that no one of us can foresee. So if man as such, equal as he is in every man, is standing at the gate of the recent development of law, then this does not end the history of law; perhaps its history only starts with law assigning validity to every man in the same way. Only now appear, on this basis, the profound changes that determine the conception of man in law and that put their mark on the recent development of law since Enlightenment.

So, if I choose the problem of man in law to be the subject of this lecture, I am primarily led by the thought of the fundamental importance of this problem for legal science, secondly also by the special occasion that has called me to this position. When one has the honour to speak for the first time to a new academic circle, a self-evident topic is the task of the new branch of science that one is called to work on. It could indeed seem to be necessary to justify the insertion of the sociology of law in the academic branches of legal science[4] by a special exposition of her significance. I will refrain from such an abstract justification, convinced as I am that the task of a new branch of knowledge appears most clearly in its concrete works. If this is correct, then the choice of the theme is also justified by its special aptness to show, in its exposition, the particularity of the socio-legal way of thinking.

The theme still needs to be fixed in a particular way. A legal order has different tasks; here we only look at its task to allow man a human existence. Solving the problem of existence of man is what the rules of law are destined to aim at. My exposition restricts itself to gaining insight in the solution of this problem by law and, therefore, to make clear how the legal conception of man influences this solution. This determines also the scope of the material to be observed: civil law, labour law, and economic law, the latter understood as the law that intends to unify the individual economic subjects. If we take these fields together under the perspective that I have indicated, we observe in them a change of the concept of man and, in conformity with this, a change of orders of human existence. I want to expose this change, try to recognize the reasons for this change, and finally touch on the question of the meaning of this change.[5]

I.

The basis of the legal conception of man and his order of existence is civil law; we have to start from there in order to recognize the changes that have[6] occurred in both other fields. We have to focus on their principal, basic forms and to disregard the multiple deviations and mixtures that, in the course of time, have occurred on these fields.[7]

1. Man, as he appears in civil law, is not real man but a generic type, defined by a characteristic common to all, a metaphysical one: the assumption that man belongs to a spiritual realm which is

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[3] End of page 53 in reprint.
[4] End of page 6 of original publication.
[5] End of page 54 in reprint.
[6] End of page 7 of original publication.
[7] [original footnote 2;] So it is the 'pure' civil law, the 'pure' labour law etc. that is here presupposed, law that meets its own principles. That these principles are historically liable to deviations … should not keep us from constructing their image after these principles, not after their momentary positive contents. Such a 'construction' of an ideal image is necessary if the task is to highlight the changes that have occurred in a legal order. Regarding the justification and necessity of such a method cf. Max Weber, 'Die „Objektivität" sozial-wissenschaftlicher und sozialpolitischer Erkenntnis' [The ‚Objectivity' of Socialscientific and Sociopolitical Knowledge] , in the *Gesammelte Aufsätze zur Wissenschaftslehre*, 1922, p. 146f, i.p. p. 190f.

independent from external determinations, and therefore autonomous. In this conception of man everything that does not meet this characteristic, that belongs to the reality of man, has been excluded as not essential.

Such an essence necessarily implies freedom. A being removed from all determination, capable of self-determination, is free. It is an abstract freedom, related, not to reality, but to the essence of man that lies outside of reality. His actual situation has no influence on this essence, neither changes nor cancels it. Whether a man is rich or poor, lord or servant, has no impact on this essence. His situation is contingent and therefore disregarded in civil law. Because this freedom is abstract, it is unlimited – where indeed would the limit be to man conceived as an essence and teared away from all reality? The freedom of civil law is without material limits: all goods of the earth are equally available to all. It is without collective limits: man is conceived as an individual secluded from all others. It is without personal limits: no man is[8] subjugated to another. Man is, to quote Hegel,[9] "infinite personality".

The position of civil law regarding the problem of man's existence[10] is thus clear: it starts from the essence of man, not from his real situation, and presupposes man as a free being. Its order is one of freedom that meets man's essence, disregarding his real situation.

a) Freedom defines the mode of human existence. Civil law does not recognize a certain reality of human existence, it is satisfied with a human capacity to shape its own existence. The only security that civil law offers to human existence, is the guarantee of freedom. Only freedom is an 'innate right', alle others are 'acquired rights'. Whether one actually acquires them or not, is indifferent to civil law.[11] It considers its responsibility fulfilled if it recognizes man's freedom, it takes no further responsibility for a concrete existence of man. "Civil constitution", Kant declares, "is only the legal state by which every man's due is just assured but not really determined".[12] In the history of civil law we find many attempts to extend the fundamental rights of man to a real content, to associate man to a specific existence, but all attempts to do this have failed.[13]

b) Freedom further defines the ground of human existence which is man's will. Civil law ties all legal consequences relevant to man's existence (with a few exceptions) only to man having willed them. The acquisition of the external goods[14] that together constitute his material existence is bound to his will. The relations required for this acquisition are created by his will. They are constructed in such a way that their object is only man's will, his "free actions", but not man himself. This theory of will ignores all that is, beyond his will, required for its legal operation, and cuts out everything that stands

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[8] End of page 8 of original publication.
[9] „unendliche Persönlichkeit"; [original note 3:] *Grundlegung der Philosophie des* Rechts [Fundaments of the Philosophy of Law] (Sämtl. Werke, ed. by Herm. Glockner, vol. VII, p. 266, § 185).
[10] End of page 55 in reprint.
[11] [original note 4:] Significantly Savigny (op. cit. p. 369) speaks of the free actions, recognized in positive law, that lead to the acquisition of property "the recognition of which leads to the possibility of riches or poverty, both without any limit."
[12] [original footnote 5:] *Metaphysische Anfangsgrunde der Rechtslehre* [Metaphysical Fundaments of Jurisprudence], Kant Werke, ed. by Ernst Cassirer, vol. VII, p. 59, §9.
[13] [original note 6:] See i.p. Anton Menger, Des Recht auf den vollen Arbeitsertrag [The Right tot he Full Produce of Labour], 2nd ed., 1891, i.p. p. 12, 23f, 30 note 2, and further the interesting expositions in Ernst Swoboda, *Des allgemene bürgerliche Gesetzbich im Lichte der Lehren Kants* [The Civil Code in Light of Kant's Doctrine], 1926, p. 96f.
[14] End of page 9 of original publication.

behind this will and influences it. According to its conception of man, civil law views man as a free being, and therefore law should just validate his act of freedom.

c) Freedom, finally, defines the form of human existence, which is property. Property connects freedom to man's possession of goods.[15] Through property all moments of freedom are being realised. Property mediates material freedom by guaranteeing man's disposal of the goods required for his life and labour. Property mediates individual freedom by making this disposal dependent of his decision only. Property, finally, mediates personal freedom by making man dependent of himself only, which ultimately means that the real free man of civil law is independent man. This view finds its classical expression in the legal doctrine of Kant.[16] What makes man into a citizen of the state, he argues, were not only freedom and quality but the independence that is only there when man "has command of himself (*sui juris*) and therefore has a property that supports him". If this condition is lacking, if man's existence depends on the discretion of someone else, not on his own rights and forces, then he would be no member of the (political) community. Within this conception, man who has nothing but his labour power can be no holder of an existence of his own. Kant[17] is clear about this: "The journeyman of a merchant or craftsman, the servant – anyone who does not have his own business but is for his subsistence forced to be at the disposal of others, lacks civic personality, and his existence is, so to speak, merely inherent." Kant does not consider this lack as one of law, as long as the metaphysical essence of man remains untouched that "allows him to reach every level of a status, to which his talent, his diligence and his fortune can bring him". This makes clear that civil law will not secure a definite social order but only statutory actions of individuals, without consideration of the material consequences. These consequences are only empirical, contingent, and therefore impervious to a 'statutory' comprehension.[18]

2. A complete change in the legal conception of man, and by that in the construction of his order of existence, is effected by labour law. It is based on a new view of man, completely different from that of civil law. While civil law derives this view from a concept of man presupposed to be given, labour law orients it to his real situation and introduces an order built upon this reality. The new view is based upon a complete turn in legal thought, comparable to what *Bacon* has done in physics by

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[15] End of page 56 in reprint. [original note 7:] In a striking formulation by Lorenz von Stein: "Possession as such shapes man into the special, independent and free personality of real life as from his conceptual personality, the concrete individuality as from the abstract one"(*System der Staatswissenschaft* [System of Science of State], 1856, vol. 2, p. 156).

[16] End of page 57 in reprint; [original footnote 8:] *Metaphysische Anfangsgrunde der Rechtslehre*, p. 120f §46; *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis* [On the dictum: This may be true in theory but is no good for practice], Bd. VI, p. 375f, 378. Cf. Wilhelm Metzger, *Gesellschaft, Recht und Staat in der Ethik des deutschen Idealismus* [Society, Law and State in the Ethics of German Idealism], 1917, p. 98, which argues that Kant's exposition makes clear that he "must have thought of his legal subjects not as all persons as such, but only as well established *patres familias* with a house, land and staff, who have something to defend"(see also ib., p. 89-90). These words clarify the sociological significance of the civil law conception of freedom, that already inspired the young Marx to talk of a 'private law of Property' and a 'private law of non-property' (*Debatten über das Holzdiebstahlsgesetz* [Debates on the Law against the Theft of Brushwood][, Marx-Engels Gesamtausgabe, ed. commissioned by the Marx-Engels-Institute, vol. I, p. 266f, 275).

[17] End of page 10 of original publication.

[18] '"gesetzmäßigen" Erfassung' [in original; footnote 9:] "The concept of external law rises fully from the concept of freedom in the external relations of people to one another; and has nothing to do with the goals that all people naturally have (aiming at bliss), and the prescription of means to get there: so that the latter also therefore must not get mixed up in the grounds that define these laws."(*Über den Gemeinspruch*, o.c., p. 373).

breaking away from scholastics and creating empiricism as a new way of thinking. An abstract philosophy of law[19] deriving its concept of man and his order of existence from Reason, was replaced by a materialistic philosophy of law, in particular represented by *Locke*, that 'does not have a rationalistic regard of man from the angle of pure will (…), but a sensualistic regard from the angle of his total sensual existence".[20]

This turn is in both cases prompted by a profound motive of thought. Empiricism in physics regards knowledge of reality as a means to get complete control of nature for humanity. In the same way the aspiration of materialistic philosophy of law is to grasp the social reality of man, and thereby to shape the social forces that determine this reality in such a way that man will be liberated from the blind play of social forces, and will find a new secured existence. Labour law is therefore rightly called a social law. This 'social' has a historical character, it counters the social effects of pure civil law, in order to redesign law in such a way that these effects will not destroy or distress human existence.[21] In this way the empirical,[22] that the philosophy of civil law deems to be inaccessible to a legislative grasp, becomes the basis of a new legal design. If man is an empirical being, his essence may be transformed by transforming the conditions that determine him. This opens the way to interventions in the life process of humanity that used to be closed off by the reign of absolute principles.

The task of labour law differs therefore from that of civil law which focuses on an equality of essence[23] and ignores man's reality. Labour law renounces this essence and rather finds in man's reality the basis for its design. Labour law goes beyond this essence: law should recognize 'real man' whose existence presents a certain measure of realism. The concept of man is thereby extended beyond his abstract value to his real existence. Labour law builds upon man's reality, not by merely accepting and legally recognizing it, but by reshaping it, by intervening in the natural course of the life process that had up to now only been regulated by abstract civil law, by replacing a given reality by a new legal reality. This is the special historical achievement of modern labour law, reached by profound turns of thought and hard combat.

Labour law starts from the reality of man as a class being.[24] Class is based on the separation of capital from labour power, and the resulting diversity of life situations between capital owners and workers. This separation is not a result of a legal ordinance, but of the lively dynamics of the abstract principle of freedom of civil law. Its consequence is the dependency of man, who needs goods but has no control over them. Man as a class being is not free but dependent. While man of civil law is limitlessly free, man of labour law[25] is restricted: *materially*[26]: he has only access to the goods of the earth if the possessor of the means of production makes them available; *collectively*: his conditions of life and

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[19] End of page 11 of original publication.
[20] [original footnote 10:] Stahl, *Die Philosophie des Rechts* [Philosophy of Law], 3d ed., 1854, vol. I, p. 316f.
[21] [original footnote 11:] Basically all law is 'social' in that it orders the coexistence of humanity. The purpose of calling law 'social' is only to indicate a special tendency of this type of law: countering certain social effects that result from existing law, and trying to regulate social life in a new way. Recently the concept of 'social law' is being reserved to a certain source of law; that law that is created by the social forces themselves (cf. Georges Gurvitch, *L'Idée du Droit Social* [The Idea of Social Law], Paris 1931). Gurvitch regards in particular the collective agreement as an example of it. (cf. Gurvitch, *Le Temps Présent et l'Idée du droit social*, Paris 1931, i.p. p. 27f).
[22] End of page 58 in reprint.
[23] End of page 12 of original publication.
[24] 'Klassenwesen'.
[25] End of page 13 of original publication.
[26] Italics 3x added by translator.

working are determined by the collective economic forces; *personally*: due to his lack of means of production, he is subjected to the direction of him who controls them.[27] The discipline of labour law thus differs in that it encounters man as a dependent being, and this difference has led to a complete change in man's form of existence in the labour legislation of all developed countries:

a) This change concerns the *character*[28] of human existence. The fundamental right of labour law is not abstract freedom but a definition of man's real existence that secures the satisfaction of certain of his material needs. Labour law does not secure abstract rights but a certain concrete state of human existence. *Kant* restricted the task of the state to 'giving everyone his due'; *Fichte* objected and added to this 'instituting him in his property and only thereupon to protect him in this'. Its basic value[29] is real man in a certain reality of his existence.

b) This change concerns the *ground* of human existence. Instead of the 'pure' will of civil law, disengaged from all the empirical conditions, it is just these conditions that set a standard for labour law. Labour law connects legal consequences, not to man's will, but to his situation which requires their interference. Social insurance covers the workers, whether they want to be insured or not. Collective labour law applies to them, even when they do not know about it or resist its rules.

c) This change, finally, concerns the *form* of human existence. All legal consequences that labour law connects to situations in order to improve them, can be reduced to one idea: man should control certain areas of life without being proprietor. He ought to have rights because he is human. We call these rights of dependant man 'humanity'.[30] This right to an own real existence cuts through the 'inherence' that *Kant* regarded as the nature of dependency. It covers external goods like medical care, sick pay, disability benefits. It covers a certain position towards collective powers in trade. It covers[31] vital forces that should be precluded from certain encroachments in the labour process. Every legal discipline has[32] a centre from which all single competences flow; in civil law this is property, in labour law humanity. Also property as a legal institution has entered human consciousness relatively late, as one recognized unity in a multiplicity of distinct relationships. No wonder that we have not yet fully recognized humanity as such a centre of law. Yet looking back at the – nowadays blocked - development of labour law, we recognize a fundament upon which a legal construction arises. Labour law has completed its mission by creating a new form of existence of dependent man.-

However, this law has still developed within the individualistic frame of civil law. Labour law presupposes the order of persons of civil law; it does not dissolve it, but only reshapes certain of its social effects. Our times progress beyond labour law and rattle the civil law order of persons itself. We thus come upon the last area of law we have to pass through, but we are not yet able to see the details. First steps, immature, but we see tendencies, a law that develops, and we all stand amidst revolutionary processes that appear to produce a new image of man with new forms of existence.

3. In civil law as well as in labour law man exists for himself. Apart from the state there is nothing collective above him. Although the collective had already penetrated labour law, it was only a part of

[27] End of page 59 in reprint.
[28] Italics 3x added by translator.
[29] End of page 14 of original publication.
[30] "das Menschentum".
[31] End of page 60 in reprint.
[32] End of page 15 of original publication.

collective social forces, the regulation of which served only their arrangement[33] into special collective circles, in particular of trade. The collective restricted its scope to certain objects related to the labour relationship. Economic law[34] strives beyond this, to arrange not only those involved in labour relations into a whole, but fundamentally all economic forces. It extends the whole to all economic activities; its ultimate tendency is to comprise all economic forces into one commonwealth, different from the state also in its object of regulation, therefore in its treatment of men and in its construction with its own regulators. Historically, though, this is a communalisation only comparable with the development of the state as from private dominion to an objective law of the whole. Therefore economic law is not the law of individual economic actors in their distinct mutual relationships, but the law of[35] this special commonwealth and of the relationship of all economic forces to it.

This tendency towards economic unity is without doubt one of the strongest of our times. Whether in Bolshevism or in Fascism, in National-Socialism or Marxism, in a planned economy or in a society of rank and order, everywhere we find the same stream that hits the dams of the civil law order of persons and looks for a burst towards a new economic commonwealth.

In this type of law man is no longer an individual, neither a class being, he is only a communal being[36], part of a whole – leaving open the question whether this community is that of a nation or of nations. As a communal being man is not free in the sense of the individual freedom of civil law. The freedom of economic law is the freedom of the whole from the individual. The dependency in labour law, of individuals from individuals, does not exist any longer. In economic law there is only membership, in which not only workers take part but also employers, and in the end all other economic forces.

In keeping with this, in economic law the solution of the problem of existence is fundamentally different from that in both other legal orders. In economic law there is only one existence: that of the whole in which all forces are brought together, to which all productivity is dedicated. It follows that there is, in this idea of economic law, no guarantee of individual human existence. There is no place for individual self-determination, at least in production. But also the legally ordered real existence is at least problematic for this type of law. What of it falls to an individual will always be a reflex, not a right. The existential question for the individual will condense in the question who will be allowed to participate in the economic process and where he will stand. This also determines his ground of existence: neither his will, nor his situation, but his function. What he does, gives and takes, is not his but belongs[37] to the whole. He is shaping the world according, not to his will but to the task assigned him. Private property is overarched by a kind of collective property, i.e. the[38] economic goods that are required for the whole are no longer controlled by a summation of individuals but by organized actions, determined, not by the need of proprietors, but by the representation of the economy as a unity. What particular forms of this will develop themselves, cannot be juridically foreseen.

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[33] End of page 16 of original publication.
[34] 'Wirtschaftsrecht'.
[35] End of page 61 in reprint.
[36] End of page 17 of original publication
[37] End of page 18 of original publication.
[38] End of page 62 in reprint.

II.

All legal orders produce differences in the shape of man, and therefore in the legal order of his existence: man's general contours in civil law, his real existence in labour law, his social nature in economic law. How to account for this change? By referring, not to abstractions but to concrete developments in man's life process. These developments find their origin in social situations in which the kernel of human personality is affected, and man tries to keep this kernel alive by rearranging social relations.[39] It is the eternal argument between man's signification and being, between determining and being determined. It is therefore a dual development: an objectively given external one, consisting of the problematic situations and the pressure they put on man; and an[40] internal one, within man himself. It is man's contradiction of the external situation, the power used for his human self-realization. Change comes about only if both, external cause and internal motive for activity, are present.

This working between the external and internal, between something given and its contrary, explains the particular dialectics of the change of law. Law does not simply express the social, as an effect of it, but shapes it in a way contrary to what is socially given, and thus elicits a counter-effect. We can see this dialectics clearly in the change of the concept of man. Civil law has developed in contradiction of the feudal society to which it opposes its undifferentiated concept of man. Labour law has developed in contradiction of the effects that the abstract[41] character of civil law has brought about. It does not put up with these effects but reshapes them by procuring man a certain sphere of life that civil law is not able to secure. Economic law opposes the haphazardness of the economy that questions all human existence, and tries to organize a whole in which man hopes to find his livelihood.[42] This connection explains the historical character of the concept of man. The content of the development, elicited by historical facts, responds to human needs aroused by these facts. In these concepts man does not realize an absolute ideal[43] of man but only separate aspects of man, as required by the momentary historical constellation.

How does this factual development transform into legal form? This is a fundamental problem of sociology of law which leads us to a gate that may once open to a theory of legal change that would be required, not only to penetrate into the interior of law, but also to develop it thus that it answers to the forces that support it. I must restrict myself to some indications.

1. The development is, at first, only an instinctive motion, a purely natural human act. External social powers and false forms threaten his existence, instinctively he rears, resists the inimical, seeks liberation from what he perceives to be inhuman.

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[39] [original note 12:] We herewith depart from the basic idea of the social theory that Lorenz von Stein has formulated in almost all his works.

[40] End of page 19 of original publication.

[41] End of page 63 in reprint.

[42] [original footnote 13:] How this dialectics is profoundly grounded in man's essence is shown by Max Scheler in his little book 'Die Stellung des Menschen im Kosmos' [Man's position in the Cosmos] , 1928, i.p. p. 62/3: "Consciously or unconsciously man executes a technique that one could qualify as the tentative suspension of reality. Animals live completely in concrete reality (…); to be human means to throw a forceful 'no' at this kind of reality."

[43] End of page 20 of original publication.

2. Soon the instinctive turns into a spiritual motion, the natural act into a natural law action. Man seeks after justification of what he wants, seeks to base it upon a demand of general validity. The redundant question whether there is such a thing as natural law has been answered long ago by history. Up to now every fundamental change of law has been accompanied by notions of natural law; they are a necessary link in its development. The 'nature' in natural law is that of man who rises against his reality. In the great epochs of history natural law provides the human fight for justice with its goal and direction. The contradiction, risen from the life instincts of man, becomes spiritual in natural law, which thus wins time and again an importance that surpasses its origins.[44] By expressing the transitory in a form of general validity, natural law not only inflames[45] its own times but also acts upon later situations by way of the general values that it represents, when these values are being called upon once more. Think of how the values of freedom and equality, part of bourgeois natural law, have reappeared in completely altered situations, and been advanced to found claims originally not foreseen.

3. As from this instinctive drive and this spirit, the development proceeds into social consciousness; from the natural and natural law action into a social action. A new concept of man may be carried by some individuals, but acquires a revolutionary power only when it comes alive in the mass of people, when it is picked up by their social needs and acquires a social stamp. Karl Marx appropriately noticed in his criticism of Hegel's philosophy of law: "It is not sufficient that the idea urges for its realisation, reality should urge itself to ideas." Sincere 'untimely' ideas, just carried by individuals, do not lack value; they are, on the contrary, indispensable. They awake when their time has come. Think of the fate of the Stoa in which a general notion of man woke up for the first time but reached its constitutive social power only in the times of Enlightenment, when the rising bourgeoisie found in this notion an expression of its situation.

4. The last stage of the development is reached in political action, in the organisation and functioning of powerful bodies that should realise human claims. A new concept of man[46] requires recognition also by forces inimical to it, a recognition may often only be expected if new power relations force them to do so. Against the old idea of legal change due to a silent working of the Spirit of the People[47] or of the Idea of Justice, power has been accepted as an indispensable moment of the realisation of law. Prof. Scholten underlines this in his "Gedachten over macht en recht" [Thoughts about law and power]. There is not only 'power in law' but also 'power against law'''. "For, however nice it may sound: there be no power without law, we see that again and again in society … power asserts itself against law, and law itself recognizes it again."[48] This does not mean that new foundations of law[49] could only come about by force. Power and (physical) force are not identical. Power is every external form of really affecting the will. A power striving for a fundamental change of law can realize itself peacefully, without forcefully breaking old law.[50] This possibility depends, not

[44] End of page 64 in reprint.
[45] End of page 21 of original publication.
[46] End of page 22 of original publication.
[47] 'Volksgeist'.
[48] [original footnote 14:] Beschouwingen over Recht [Observations about Law], 1924, p. 100f, i.p. p. 108.
[49] End of page 65 in reprint.
[50] [original footnote 15:] Power has a multiform make-up, comprising many forces. A special role is for the psychological impression that it makes. 'Belief' inm the necessity of change often is the driving force behind the further development also of fundamental bases of law. So when E. Levy, "Les fondements du droit"

only on the development of forces, but also on a legal order's provision of safety valves allowing for a realignment of power relations. The power in question is certainly not only that of the state; non-state bodies often affect changes of law at least as much. Think of the power of coalitions, the effects of which are at the base of a much of labour law development[51], or of that of cartels, with a comparable effect in economic law.

The result: If we find different concepts of man[52] in different legal orders, this is not only due to a change in legal concepts, but to a complicated life process realised by man in history. Recognizing the dependency of legal thought on this process does not diminish the task set to legal thought; on the contrary, it gets a larger and more profound significance. The lawyer appears as a necessary link in a development that gets its shape by his action, and in which he significantly participates.

III.

If we consider legal orders with different concepts of man as a whole, we see that historical differences in the legal expression of man have an inner coherence: in my view, the shape of man rises before us in ever greater fulness, and so the scope of humanity protected by law expands.

This shape starts in civil law with an ideal image of a spiritual being, to which is assigned a priority over all other beings. Man[53] is introduced in law as an absolute basic value, but only as an idea, disregarding his actual situation as well as the social connectedness in which he lives. This shape expands in labour law by incorporating important elements of reality; his metaphysical becomes a real existence. The concept[54] of man is extended: not only an essence but also his existence is now being valued. Economic law further increases the sense of reality by valuing the social existence of man. In civil law he appeared as an isolated being, economic law connects him to a whole, pushing aside individual relations of domination. It incorporates in man his social nature, that neither civil nor labour law had given scope to. The human basic value rises again, by also incorporating his direct connectedness. It looks like a secret law that controls this development: the law of rising concreteness of man in law, as one could call it.

But we also see the forces that realize this rise of man: the forces of freedom and community. The history of the concept of man makes clear that these forces are not necessarily incompatible, but rather internally connected. To the extent that law expands its protection over areas of humanity, it exonerates man from the domination of chaotic forces that he cannot control. So every piece is a piece of gained freedom. By constituting man as a spiritual being, civil law has exonerated him from the world of things, and so freed him from the arbitrariness connected with this grouping. By constituting man as a real existing being, labour law has in so far removed him from the control of the 'free play of societal forces' that it covers essential elements of human existence that would otherwise

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[Fundaments of Law], Paris 1933, views the belief , required or lost by law, as one of the pillars of law and its development, this is sociologically important, although it does not exhaust the problem of legal change.

[51] [original note 16:] Cf. M.G. Levenbach, 'Rechtsvinding en Arbeidsrecht' [Finding law in labour law], in: *Rechtsgeleerde Opstellen*, presented to Paul Scholten, 1932, p. 301f.

[52] End of page 23 of original publication.

[53] End op page 66 in reprint.

[54] End of page 24 of original publication.

been left to chance.[55] Finally, by constituting man just as a social being, economic law aims at removing him from all of the 'free play of societal forces'.

To the extent that areas of humanity are thus made free, the community is expanded and reinforced. Law can only remove man from the chaotic forces of his existence by mobilizing the forces of community. This mobilization is weakest in civil law, where it restricts itself to protecting the human capacity of self-determination. It is stronger in labour law, where the community also stands up for man's practical control of things and forces[56] necessary to his existence. In economic law the community will extend beyond its present limits and become an omnipotence that covers the complete existence of man.

Comprehending the significance of the development of law in this way, we see the basis of a new concept of man. Not that of civil law – the times of abstract individualism are over. Neither that of labour law that only partially covers a population while all of its layers have questions of subsistence in common. Nor that of economic law which includes, by its complete insertion of individuals in the whole, a large danger, as it might destroy the creative power of free personality.

The concept of man that comes up from the idea of its development, gathers the features of all these legal orders without being absorbed by one of them. From economic law it adopts the idea of a direct connectedness of all economic forces in one whole. From labour law it adopts the idea of secured spheres of life and work of individuals within this whole.[57] From civil law, finally, it adopts the idea of independent individual spheres in which man belongs only to himself and to his spiritual powers. Such a concept of man unites all cultural elements generated historically by his legal development since the times of the Enlightenment. Individual and social law are no longer contradictory but part of a uniform system of law, directed towards man and the areas of his humanity. Considering this upcoming concept of man, we are conscious of our rich culture which has put this development in our hands, but also of our responsibility to further and develop with might and main this idea of man.

[Epilogue: only partly translated here:][58]

…. To me it is a pleasure to know that there is, in particular also in the circle of the Faculty of Law, already a valuable tradition for the new branch of sociology of law. I consider it my special task to relate my work to this tradition.[59] … I hope to find your [students'] interest in the special problems of the sociology of law. It is a young science that aims to disclose the inner forces that determine and develop law. Such a science can only prosper when it is, and remains, in touch with the youth. Especially the youth is pervaded by many problems of life that we are all full of, and that cannot be solved without recognizing the inner forces which are active in the youth and have therefore a special significance for future developments…..[60]

[55] End of page 25 of original publication.
[56] End of page 67 in reprint.
[57] End of page 26 of original publication.
[58] End of page 27 of original publication.
[59] End of page 28 of original publication.
[60] End of page 29 of original publication.