

THE PHENOMENOLOGY OF ADOLF REINACH:

CHAPTERS IN THE THEORY OF KNOWLEDGE AND LEGAL PHILOSOPHY

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## ABSTRACT

The thesis expounds, analyzes, and evaluates Adolf Reinach's philosophical work and his role in the development of early phenomenology. Reinach's ontological and epistemological assumptions are clarified through an analysis of his theories of states-of-affairs, intentionality, and judgments, first developed by Reinach in reference to judgments and subsequently utilized in his analysis of ethical and legal questions. A critical exposition and evaluation of his legal philosophy focuses attention on the analysis of "social acts", "determinations", and the distinctions between the moral and legal spheres. It is found that Reinach's philosophical position can be adequately understood and evaluated only as a whole. Confusions in the literature dealing with Reinach's legal philosophy indeed appear to have arisen precisely through lack of attention to its theoretical structure. Arguments are presented for various qualifications and extensions of Reinach's position. An annotated bibliography and the first English translation of excerpts from Reinach's unpublished manuscripts are provided.

## SOMMAIRE

La thèse interprète, analyse et évalue l'oeuvre philosophique d'Adolf Reinach et son rôle dans le développement de la jeune phénoménologie. Les suppositions ontologiques et épistémologiques de Reinach sont élucidées à travers une analyse de ses théories des états de choses, de l'intentionnalité et des jugements, d'abord développées par Reinach pour les jugements et subséquemment utilisées dans son analyse de problèmes éthique et juridique. Une analyse et une évaluation de sa philosophie juridique se concentrent sur l'analyse des "actes sociaux", "déterminations", et les distinctions entre les sphères morale et juridique. On constate que la position philosophique de Reinach ne peut être convenablement comprise qu'en étant considérée comme un tout. Précisément, il semble que la confusion dans les écrits consacrés à Reinach vienne d'un manque d'attention à la structure théorique. On présente des arguments pour qualifier et prolonger la position de Reinach. On y trouve également une bibliographie annotée et la première traduction anglaise d'extraits des manuscrits inédits de Reinach.

## PREFACE

Adolf Reinach, whose articles contain some of the clearest and most thorough analyses from the early period of phenomenology, was a central figure in the development of this philosophical movement. He has been referred to as "the phenomenologist among phenomenologists," "the phenomenologist in itself and as such" (Hedwig Conrad-Martius),<sup>1</sup> and as the "evil demon" of phenomenology (H. L. Van Breda),<sup>2</sup> all superlatives of a sort which indicate that Reinach is a figure to be reckoned with in phenomenology.

Reinach's academic and philosophic work was done within the span of remarkably few years. He received the doctorate in 1905 four years after entering university at the age of seventeen and qualified for appointment as a lecturer, four years later, in 1909. Four years subsequent to this, in 1913, his magnum opus in legal philosophy, "Die apriorischen Grundlagen des bürgerlichen Rechtes," was published. By the end of 1917 Reinach was dead. He was a gifted thinker, whose work is of intrinsic philosophic interest quite apart from its relation to the development of phenomenology and whose early death may be regarded as a profound loss to philosophy.<sup>3</sup>

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<sup>1</sup>Foreward, Adolf Reinach, Was ist Phänomenologie? (Munich: KÜsel, 1951), p. 7.

<sup>2</sup>Oral communication, April, 1969.

<sup>3</sup>The reader may wish to refer to Appendix IV, for an English translation of the memorial article by Edmund Husserl, "Adolf Reinach," Kantstudien, XXIII (1919), 147-49, which contains Husserl's assessment of Reinach's philosophic work.

Reinach's work is virtually inaccessible to the English-speaking philosopher. Herbert Spiegelberg's book, The Phenomenological Movement: A Historical Introduction, offers in a brief sketch the only introduction to Reinach's philosophic work as a whole available in English. The 1914 lecture "Über Phänomenologie," of which there are two English translations, is the only piece of writing by Reinach which has been published in English. The section on Reinach in John Oesterreicher's book, Walls are Crumbling, deals primarily with Reinach's religious thought and, due to Oesterreicher's generous use of conjecture, is of dubious critical value.

In German publications there has been, by comparison, far more discussion and criticism of Reinach's work, particularly of his legal philosophy. Reinach's legal philosophy has also been discussed in French, Spanish, and Italian publications. Alexander von Baeyer's dissertation (1969) provided the most complete bibliography and résumé of criticism of Reinach's work available up to that time, although once again emphasis was placed on his legal philosophy.

The following dissertation is designed to provide the English-speaking philosophic community with a critical introduction to Adolf Reinach's work. An account of critical reaction to Reinach's work and of research influenced by it is also given. It is hoped that this dissertation may thus serve as a useful study and research tool.

The "Historical Introduction" gives a fuller view of Reinach's academic life than has been available previously and should help the reader to understand why Reinach's impact on the development of early phenomenology was so much greater than might have been expected from the short duration (five years) of his teaching career and his young age (thirty-four years) at the time of his death.

Chapter I, "Philosophical Introduction," sketches the broad outlines of the relationships between the work of Husserl and Reinach, attempts to present Reinach's general view of the nature and task of phenomenology and then introduces the specialized problem with which the central chapters are concerned--the interplay of Reinach's theories of states-of-affairs, intentionality, and judgments. This is not only a thread sustained throughout Reinach's writings, but also a problem in the theory of knowledge whose significance in the early Göttingen phenomenology is analogous to that of Husserl's theory of constitution in the Ideen and subsequent writings.

Chapter II, "States-of-Affairs," sketches the development of the use of the term "states-of-affairs" and then discusses Reinach's theory of states-of-affairs and the problems generated or left unresolved by that theory.

Chapter III, "Intentionality," and Chapter IV, "Judgments and Propositions," also develop their topics historically and critically. The last section of Chapter IV attempts to clarify some of the questions arising from Chapters II-IV. It is asked whether states-of-affairs are "a priori," and whether the fundamental assumption that the structure of thought and language correspond to the structure of objectivity is defensible.

Chapter V is concerned with Reinach's legal philosophy. Section A is devoted primarily to a description of his legal philosophy. The range of critical reaction to Reinach's legal philosophy in the literature is indicated in the notes. Section B examines Reinach's method for concrete analysis of problems in philosophy of law. Reinach's analysis of the distinction between the moral and legal spheres, the analysis of

"social acts," the analysis of "promises," and the analysis of positive Law as the product of "determinations" or "enactments" (Bestimmungen), are the principal subjects. The comparison of Reinach's analysis of "social acts" with the "linguistic analytic" treatment of performatives, linguistic and non-linguistic, may contribute to dialogue between practitioners of the phenomenological and analytic approaches. Section C attempts to evaluate the significance of the threefold theoretic structure of states-of-affairs, intentionality, and judgments, considered in the previous chapters, for Reinach's legal philosophy and ethics. The controversy over synthetic and analytic judgments is discussed. Section D contains an assessment of the over-all strong and weak points of Reinach's legal philosophy.

Chapter VI, "General Evaluation of Reinach's Work," attempts to identify what is of present interest and lasting value in Reinach's work.

Appendix I, an evaluation and comparison of the two English translations of Reinach's 1914 Marburg lecture, "Über Phänomenologie," is offered to the English-speaking reader as an aid in reading these translations. Appendices II and III contain English translations based on the Nachlass of the unpublished Reinach piece, "On the Phenomenology of Premonitions" (Zur Phänomenologie der Ahnungen), and of the two unpublished sections of his fragment on the philosophy of religion. Edmund Husserl's memorial article, "Adolf Reinach," (Kantstudien, XXIII (1919), 147-49) is given in an English translation, also for the first time, in Appendix IV.

The key sources for this work are, of course, the published philosophic work of Reinach and the unpublished Reinach Nachlass. The

University of Göttingen retains no Reinach letters or manuscripts although the Archives there do include his "Lebenslauf" among the records concerning Reinach's Habilitation (process of qualifying for the rank of lecturer). This "Lebenslauf" contains a useful biography, particularly in respect to his academic training.

Dr. E. Avé-Lallemant, Munich, kindly provided me with access to numerous relevant materials in his personal possession. These include a copy of the Reinach Nachlass, letters written by Reinach to Theodor Conrad (Nachlass T. Conrad), untranscribed notes of Reinach lectures taken by Margrete Ortman (Hamburg), an account of the early period of phenomenology by Theodor Conrad (Nachlass T. Conrad), and the Protokolle of the Göttinger Philosophische Gesellschaft for the winter semester 1912/13. Dr. E. Avé-Lallemant also allowed me to read the early sections of his own manuscript, "Phänomenologie und Realität," which provide a valuable addition to the discussion of the history of the early phenomenological period.

The Reinach Nachlass (for details see bibliography) contains only notes and short essays from the World War I period. All other notes, letters, and papers were destroyed by his wife, Anna Reinach, before her emigration from Germany prior to World War II. It should be regarded as possible, however, that some materials may still exist in the possession of Reinach's personal friends or their heirs and may eventually be given to appropriate libraries and archives.

I wish to thank Miss Corinna Delkeskamp, Mag. phil., University of Bonn, and Dr. H. G. Senger, University of Cologne, for their insightful and painstaking help in the correction of the translations in the Appendices; Professor Manfred Moritz, Lund University, and Dr. Alexander

von Baeyer, Stuttgart, for sending me copies of their unpublished work; Professor Herbert Spiegelberg, Washington University, St. Louis, for his encouragement; Giovanna Fox, Montreal, for her assistance in translating sections of Norberto Bobbio's L'indirizzo fenomenologico nella filosofia sociale e giuridica; Professor H. L. Van Breda, Louvain, whose remarks first directed my attention to Reinach's work; and Professor Raymond Klibansky, who not only recognized the potential of the subject for a dissertation and suggested that I pursue it, but also provided me with patient and thoughtful guidance throughout the period of the preparation of the manuscript.

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ABBREVIATIONS

"Absolute", <u>GS</u>	Adolf Reinach, "Das Absolute," Section 1 of "Bruchstück." Cited as it appears in the <u>GS</u> , pp. xxi-xxxvi.
aGbR, <u>GS</u>	Adolf Reinach, "Die apriorischen Grundlagen des bürgerlichen Rechtes." Cited as it appears reprinted in the <u>GS</u> .
"Ahnungen"	Adolf Reinach, "Zur Phänomenologie der Ahnungen," in "Aufzeichnungen, 26 Juli 1916-3 Oktober 1917," <u>Nachlass Adolf Reinach</u> .
ARP	Alexander von Baeyer, "Adolf Reinachs Phänomenologie: Untersuchungen zum Verhältnis von phänomenologischer Forschung und Geschichtlichkeit."
Avé-Lallemant, PR	Eberhard Avé-Lallemant, "Phänomenologie und Realität."
"Bruchstück"	Adolf Reinach, "Bruchstück einer religions-philosophischen Ausführung", in "Aufzeichnungen, 26 Juli 1916-3 Oktober 1917," <u>Nachlass Adolf Reinach</u> .
Edith Stein, <u>Leben</u>	Edith Stein, <u>Aus dem Leben einer jüdischen Familie</u> .
"EupF"	Carl Stumpf, "Erscheinungen und psychische Funktionen."
<u>GS</u>	Adolf Reinach, <u>Gesammelte Schriften</u> .
Idea	Edmund Husserl, <u>The Idea of Phenomenology</u> .
Idee	Edmund Husserl, <u>Die Idee der Phänomenologie</u> .
<u>Ideen I</u>	Edmund Husserl, <u>Ideen zu einer reinen Phänomenologie und phänomenologischen Philosophie</u> , Vol. I.
<u>JfPupF</u>	<u>Jahrbuch für Philosophie und phänomenologische Forschung</u> .
KAH, <u>GS</u>	Adolf Reinach, "Kants Auffassung des Humeschen Problems." Cited as it appears reprinted in the <u>GS</u> .
"Lebenslauf"	Adolf Reinach, "Lebenslauf."

- Letter(s) AR to TC      Adolf Reinach, "Letters to Theodor Conrad and Hedwig Conrad-Martius."
- LI                      Edmund Husserl, Logical Investigations.
- LK                      Bertrand Russell, Logic and Knowledge: Essays 1901-1950.
- LU<sub>1</sub>                    Edmund Husserl, Logische Untersuchungen, 1st ed.
- LU<sub>2</sub>                    Edmund Husserl, Logische Untersuchungen, I-II.1, 5th ed., II.2, 4th ed.
- NU,GS                 Adolf Reinach, "Zur Theorie des negativen Urteils." Cited as it appears reprinted in the GS.
- OKRW                 Franz Brentano, The Origin of the Knowledge of Right and Wrong.
- PN,GS                 Adolf Reinach, "Paul Natorp, Allgemeine Psychologie nach kritischer Methode." Cited as it appears reprinted in the GS.
- PRS                    Edmund Husserl, "Philosophy as Rigorous Science," in Phenomenology and the Crisis of Philosophy.
- PVES                 Franz Brentano, Psychologie vom empirischen Standpunkt. Vol. I.
- RE                     David Michael Levin, Reason and Evidence in Husserl's Phenomenology.
- RVK,GS                Adolf Reinach, "Die obersten Regeln der Vernunftschlüsse bei Kant." Cited as it appears reprinted in the GS.
- Spiegelberg, PM      Herbert Spiegelberg, The Phenomenological Movement: A Historical Introduction.
- T. Conrad, Bericht.      Theodor Conrad, "An die Münchner Phänomenologengruppe von 1953/54," (Bericht).
- TE                     Franz Brentano, The True and the Evident.
- ÜA<sub>2</sub>                    Alexius Meinong, Über Annahmen. 2nd ed.
- ÜB,GS                Adolf Reinach, "Die Überlegung; ihre ethische und rechtliche Bedeutung." Cited as it appears reprinted in the GS.

- ÜP,GS Adolf Reinach, "Über Phänomenologie." Cited as it appears in the GS.
- VUSE Franz Brentano, Vom Ursprung sittlicher Erkenntnis.
- WB,GS Adolf Reinach, "Über das Wesen der Bewegung," Cited as it appears in the GS.
- Wm. Schapp, "Husserl" William Schapp, "Erinnerungen an Husserl," in Edmund Husserl 1859-1959: Recueil commémoratif publié à l'occasion du centenaire de la naissance du philosophe.
- "ZEdW" Carl Stumpf, "Zur Einteilung der Wissenschaft."

Claim of Originality

The whole of the following thesis is original except where otherwise noted, as, for example, in cases of quotation and reference to published and unpublished sources.

## Historical Introduction

Adolf Reinach, a son of the manufacturer Wilhelm Reinach, was born on December 23, 1883 in Mainz. The family was Jewish. Reinach lived and studied in Mainz until he entered university in Munich in the Fall of 1901. In Munich he studied philosophy and psychology under the direction of Theodor Lipps.<sup>1</sup> Reinach studied in Berlin during the summer semester of 1903.<sup>2</sup>

In 1902 and 1903 the Akademisch-Psychologischer Verein, a club organized by older students of Lipps and led primarily by Johannes Daubert<sup>3</sup> and Alexander Pfänder<sup>4</sup>, became the forum in Munich for discussion of Husserl's Logische Untersuchungen.<sup>5</sup> Lipps unsuccessfully defended his own work before the club and the result was a stampede of Lipps' students

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<sup>1</sup>The psychologist whose work is important both in itself as it develops the art of descriptive psychology and for the understanding of the formulation of Husserl's attack in the Logische Untersuchungen on "logical psychologism" (the doctrine whereby laws of logic are based on psychological laws).

<sup>2</sup>Adolf Reinach, "Lebenslauf", copied by Dr. Alexander von Baeyer from University (Göttingen) records concerning Reinach's Habilitation;--cited henceforth as "Lebenslauf".

<sup>3</sup>Johannes Daubert was an older student of Lipps who never finished his formal studies and though he wrote manuscripts and saved them, published nothing. Herbert Spiegelberg, The Phenomenological Movement: A Historical Introduction, Phaenomenologica, Vols. V and VI (2nd ed.; The Hague: Martinus Nijhoff, 1965), p. 171;--cited henceforth as Spiegelberg, PM.

<sup>4</sup>See Spiegelberg, PM, pp. 173-192.

<sup>5</sup>Edmund Husserl, Logische Untersuchungen (2 vols.; Halle: Max Niemeyer, 1900-1901),--cited henceforth as LU<sub>1</sub>.

Logische Untersuchungen (I, II.1, 5th ed.; II.2, 4th ed.; Tübingen: Max Niemeyer, 1968), Reprinted from the 2nd edition;--cited henceforth as LU<sub>2</sub>.

Logical Investigations, trans. by J. N. Findlay (2 vols.; London: Routledge and Kegan Paul);--cited henceforth as LI.

to a closer study of Husserl's work.<sup>1</sup> In January of 1904 Reinach reported to Theodor Conrad that he was working exclusively on Husserl.<sup>2</sup> Reinach and Alfred Schwenninger had been among the first to follow Daubert into study of the Logische Untersuchungen. Theodor Conrad then took the Logische Untersuchungen up at Reinach's suggestion and under its influence soon transferred his attention from physics and mathematics to philosophy.<sup>3</sup> During the summer semester of 1904 Husserl himself spoke before the club in Munich.<sup>4</sup>

On December 20, 1904, Reinach received the doctorate in philosophy under Theodor Lipps, his secondary subjects (Nebenfächer) being criminal law and history.<sup>5</sup> His dissertation<sup>6</sup> was concerned with the concept of cause in criminal law and though it is not at all noteworthy for any application of phenomenological methods (but rather belongs squarely in the Lipps tradition), it demonstrates the same attention to detail and clarity of description characteristic of Reinach's later work.

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<sup>1</sup>Spiegelberg, PM, p. 171.

<sup>2</sup>Adolf Reinach, Letter to Theodor Conrad, dated January 22, 1904, in "Letters to Theodor Conrad and Hedwig Conrad-Martius," Untranscribed, Nachlass T. Conrad, in the possession of Dr. E. Avé-Lallemant, Munich. Letters from this group will henceforth be referred to as: Letter(s) AR to TC, date(s).

<sup>3</sup>Eberhard Avé-Lallemant, "Phänomenologie and Realität," Author's typewritten manuscript, p. 33; (Comment based on oral reports of Alfred Schwenninger and Theodor Conrad);--Manuscript cited henceforth as: Avé-Lallemant, PR.

<sup>4</sup>Spiegelberg, PM, p. 172 and p. 174.

<sup>5</sup>"Lebenslauf".

<sup>6</sup>Adolf Reinach, Über den Ursachenbegriff im geltenden Strafrecht (Leipzig: Barth, 1905).

The "first secession" of the Lipps students, as it has been called,<sup>1</sup> took place during the summer semester of 1905. Reinach, Daubert, Schwenninger, and Dr. Weinmann were among this first group.<sup>2</sup> Husserl gave lectures during this semester on the theory of judgments and the general history of philosophy.<sup>3</sup> Theodor Conrad recalled that the reaction of the Munich students to the Husserl they found in Göttingen was that of astonishment; his position differed in important points from that of the Husserl whose work they had studied in Munich.<sup>4</sup>

Reinach's personal reaction is best seen in the following excerpts from a letter to Theodor Conrad during this period:

....I am very satisfied with the stay in Göttingen. I have already written to you how nice Husserl is to us. My scientific expectations have been more than met... I cannot assert that my philosophic convictions have undergone any fundamental changes. Long before Göttingen I had indeed already, like all of us, been pointed in a different direction by Husserl, Natorp, Kant, Plato; all that I have experienced since our separation could only strengthen me in that. The most beneficial thing Husserl can provide is the cautious and thorough method. Daubert has that in common with him; and exactly in this respect I feel myself a bit a sinner.

In the beginning I had great yearning for Lipps and Munich. Everything in Göttingen was so strange and new; and the desire to work was lacking completely. That luckily soon changed... We Munichers meet together often... two to three times a week Husserl brings us together...

Next semester I come back to Munich. My heart has been of course very undecided: on the one side Husserl, on the other Lipps, you, Geiger, Munich. And the issue has been decided by Jurisprudence. I must spend at least three semesters in Munich before

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<sup>1</sup>Avé-Lallemant, PR, p. 34, n.3 (oral report of Alfred Schwenninger); and, Gerda Walther, Zum anderen Ufer: Vom Marxismus und Atheismus zum Christentum (Remagen: Otto Reichl, 1960), p. 379.

<sup>2</sup>Avé-Lallemant, Ibid.,

<sup>3</sup>Ibid., n. 4.

<sup>4</sup>Theodor Conrad, "An die Münchner Phänomenologengruppe von 1953-54," (Bericht), typewritten, Nachlass T. Conrad in the possession of Dr. E. Avé-Lallemant, Munich, p. 4;--cited henceforth as: T. Conrad, Bericht.

my examinations; but I must take my examinations soon, so that as fast as possible I can tell a few law students in a lecture that there can be no poorer thing on earth than a lawyer who is merely a lawyer..<sup>1</sup>

In preparation for the state examination in law Reinach returned to Munich in the Fall of 1905 and remained there until the Fall of 1906 when he went to Tübingen.<sup>2</sup> The practical aim of gaining a means of livelihood more dependable than philosophy, rather than solely the desire to master a single science in preparation for philosophic work,<sup>3</sup> probably motivated him to complete his legal studies. While in Tübingen Reinach clearly longed to return to the study of philosophy and to be with the Munich philosophical circle.<sup>4</sup>

In June 1907, after the state law examination, Reinach went again to study in Göttingen, the semester then being half over.<sup>5</sup> It was during

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<sup>1</sup>Mit dem Göttinger Aufenthalt bin ich sehr zufrieden. Wie nett Husserl mit uns ist, habe ich Ihnen schon geschrieben. Meine wissenschaftlichen Erwartungen sind mehr als erfüllt worden... Dass meine philos. Überzeugungen irgendwie fundamentale Veränderungen erlitten hätten, kann ich nicht behaupten. Lange vor Göttingen war ich ja schon von Husserl, Natorp, Kant, Plato aus, wie wir alle, in eine andere Richtung gewiesen worden; alles, was ich seit unserer Trennung erfahren habe, konnte mich darin nur bestärken. Das Heilsamste, was Husserl geben kann, ist die vorsichtige und gründliche Arbeitsweise. Die hat Daubert mit ihm gemein; und gerade in diesem Punkt fühle ich mich ein wenig als Sünder.

Nach Lipps und München hatte ich am Anfang grosse Sehnsucht. Alles in Göttingen war so fremd und neu; und Arbeitslust fehlte überhaupt. Das hat sich dann glücklicher Weise bald geändert... Wir Münchner kommen hier viel zusammen... zwei- bis dreimal in der Woche vereinigt uns Husserl. ...

Im nächsten Semester komme ich wieder nach München. Mein Herz hat allerdings sehr geschwankt: Auf der einen Seite Husserl, auf der anderen Lipps, Sie, Geiger, München. Und den Ausschlag gegeben hat die Jurisprudenz. Ich muss mindestens drei Semester vor meinen Examen in München verbringen; mein Examen aber muss ich bald machen, schon damit ich möglichst schnell ein paar juristischen Studenten vortragen kann, dass es kein ärmeres Ding auf Erden geben kann, als einen Juristen, der nur Jurist ist. ... Letter AR to TC, June 16, 1905.

<sup>2</sup>"Lebenslauf".

<sup>3</sup>"Lebenslauf".

<sup>4</sup>Letters AR to TC, late 1906 or early 1907 to Munich, and April 23, 1907 to Göttingen.

<sup>5</sup>"Lebenslauf".

this summer semester that the split between the Göttingen and Munich views of phenomenology to which Conrad referred in his Bericht<sup>1</sup> first became clear.<sup>2</sup> Husserl delivered five lectures from April 26th to May 2nd which introduced the phenomenological reduction, the pure phenomenon, a variety of types of immanence and transcendence, and the theory of constitution.<sup>3</sup> Both this further development in Husserl's work beyond the stage of the Logische Untersuchungen and the relative isolation of the Munich group before this semester probably contributed to the dismay of the "immigrant" students.<sup>4</sup> The situation was such that Reinach wrote to Conrad in the Fall of 1907 in the following vein:

... I should tell you about Daubert?... I have told him much about Göttingen and he was very much in agreement about all our problems, especially our attitude towards Husserl. He is of the opinion--which lies completely in your direction--, that one can really doubt, whether real phenomenology, as one pursued it in Munich, has its root with Husserl.

He is not adverse to Husserl's plan to edit treatises. Only he much fears all too great dissensions ...<sup>5</sup>

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<sup>1</sup>See above, p. 3.

<sup>2</sup>Avé-Lallemant, PR, p. 42.

<sup>3</sup>Edmund Husserl, Die Idee der Phänomenologie, Fünf Vorlesungen (1907), ed. by Walter Biemel, Vol. II of Husserliana, ed. by H.L. Van Breda (The Hague: Martinus Nijhoff, 1950),--cited henceforth as Idee. The Idea of Phenomenology, trans. by William P. Alston and George Nakhnikian (The Hague: Martinus Nijhoff, 1970),--cited henceforth as Idea.

<sup>4</sup>It was at the end of this semester that the satirical "Phaenomenologenlied", was composed by Alfred von Sybel. See, Alwin Diemer, Edmund Husserl: Versuch einer systematischen Darstellung seiner Phänomenologie (Meisenheim am Glan: Anton Hain, 1956), p. 38.

<sup>5</sup>"...Von Daubert soll ich Ihnen erzählen?... Ich habe ihm viel von Göttingen erzählt und er war mit all unseren Problemen sehr einverstanden, besonders mit unserer Stellungnahme zu Husserl. Er meint - was ganz in Ihrer Richtlinie liegt - , dass man eigentlich bezweifeln könne, ob die eigentliche Phänomenologie, wie man sie in München betreibt, bei Husserl ihre Wurzel habe. Dem Plane Husserls, Abhandlungen herauszugeben, ist er nicht abgeneigt. Nur fürchtet er sehr all zu grosse Unstimmigkeiten. ..." Letter AR to TC, Munich to Bergzabern.

Wilhelm Schapp, from the perspective of having been a student in Göttingen as early as 1905, speaks of the "Invasion from Munich" in 1907. The Munich group clearly made their presence well felt and Schapp speaks of discussions taking place with them day and night. To him they seemed "far more advanced" than the Göttingen students and seemed to lack the latter's "unquestioning belief." Schapp remembers Reinach to have criticized Husserl for his turn towards the Neo-Kantian position of the Marburg School.<sup>1</sup>

Theodor Conrad recalls that the Munich students of Lipps had welcomed the methods directed to the objective by Husserl in the Logische Untersuchungen rather than any particular doctrine or his concern with phenomenology as a science.<sup>2</sup> The phenomenological reduction thus met with opposition insofar as it was seen as leading toward entanglement with problems of the theory of knowledge and its subjective basis, and away from a direct approach to the objective.<sup>3</sup>

It is not clear whether Reinach shared Conrad's attitude toward problems in the theory of knowledge. His Lebenslauf for the Habilitation emphasizes that his studies with Husserl were in logic and the theory of knowledge. This question will be brought up later in connection with Reinach's philosophic writings. At this point, one needs primarily to understand the desire of many of the former students of Lipps and early students of phenomenology to "get on" with the business of description of essences rather than to be drawn or "side-tracked" into criticism of the epistemological basis for such research, particularly since this criticism

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<sup>1</sup>Wilhelm Schapp, "Erinnerungen an Husserl", in Edmund Husserl 1859-1959: Recueil commémoratif publié à l'occasion du centenaire de la naissance du philosophe. Phaenomenologica, Vol. IV (The Hague: Martinus Nijhoff, 1959), p. 20;--cited henceforth as Wm. Schapp, "Husserl".

<sup>2</sup>T. Conrad, Bericht, p. 3.

<sup>3</sup>Ibid., p. 5.

appeared to many of these students as a reversal to the subjectivism, and even psychologism, from which they had been granted a reprieve by the Logische Untersuchungen.

The Göttinger Philosophische Gesellschaft<sup>1</sup> was formed at this time and led at first by Theodor Conrad. Problems in philosophy of language and judgments were among the main topics initially discussed. Conrad<sup>2</sup> and Schapp report that the first topic taken up in the Göttingen discussions was that of the connection of word and meaning, concept and object (Gegenstand), Schapp being under the impression that these discussions were but continuations of those begun in Munich.<sup>3</sup> Theodor Conrad recalled that the object-state of affairs (Gegenstand-Sachverhalt) problematic (a topic of debate previously in the Munich Lipps seminar) involved the attempt to determine the unique sphere of the object-state of affairs as opposed to that of judgments.<sup>4</sup> Thus the Göttinger Philosophische Gesellschaft, involving many former Lipps students, with their particular topics of interest and reading of the Logische Untersuchungen, was a new and potent force in the group of students forming around Husserl at this time.<sup>5</sup>

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<sup>1</sup>The precise date when this name was adopted is unclear. Professor Spiegelberg gives 1910 as the year when the meetings became formalized (PM, p. 170), while Theodor Conrad uses the name as though it referred back to 1907 (see T. Conrad, Bericht, p. 6).

<sup>2</sup>T. Conrad, Bericht, p. 6.

<sup>3</sup>Wm. Schapp, "Husserl", p. 21. It is probable that Theodor Conrad's "Sprachphilosophische Untersuchungen," I. Teil, Archiv für gesamte Psychologie, XIX (1910), 395-474, is representative of some of these early discussions. Reinach's "Zur Theorie des negativen Urteils", Münchener Philosophische Abhandlungen (Lipps-Festschrift), (Leipzig: Barth, 1911), 196-254, contributes to discussion of the Gegenstand-Sachverhalt problematic mentioned above.

<sup>4</sup>T. Conrad, Bericht, p. 6.

<sup>5</sup>The only written record of these meetings known still to exist is

Reinach qualified for the position of lecturer (Privatdozent) in the university in Göttingen in 1909 with a work entitled "Wesen und Systematik des Urteils."<sup>1</sup> This work itself is no longer extant, but the comments made on it by Edmund Husserl, Baumann, and G. E. Müller, and retained in the Archives of the University of Göttingen, indicate that its theses correspond to those of the first part of the "Zur Theorie des negativen Urteils" (1911).<sup>2</sup>

The years 1911-13 were marked by a steady flow of publications of works by Reinach. "Kants Auffassung des Humeschen Problems" (1911)<sup>3</sup> and "Die obersten Regeln der Vernunftschlüsse bei Kant" (1911)<sup>4</sup> are in part articles on historical problems, but approach these problems by means of an investigation of the relations of the a priori, the necessary and the universal, to states-of-affairs (Sachverhalte) and concepts. "Zur Theorie des negativen Urteils" (1911)<sup>5</sup> develops a theory of negative and positive judgments as

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the Protokolle for the winter semester, 1912/13. In this semester they were led by Jean Hering and the subject was the VI Untersuchungen. See: "Protokolle der Göttinger Philosophischen Gesellschaft", winter semester 1912/13, Untranscribed notes taken by Margrete Ortman, Hamburg. In the personal possession of Dr. E. Avé-Lallemant, Munich.

Edith Stein comments that when she first came to Göttingen for the summer semester 1913 the original founders of the Gesellschaft no longer participated, including Jean Hering who had returned home to Strasbourg to study for his Staatsexamen; Aus dem Leben einer jüdischen Familie (Freiburg: Herder, 1965), p. 171;--cited henceforth as: Edith Stein, Leben.

<sup>1</sup>"Lebenslauf".

<sup>2</sup>Alexander von Baeyer, "Adolf Reinachs Phänomenologie: Untersuchungen zum Verhältnis von phänomenologischer Forschung und Geschichtlichkeit," Dissertation, Faculty of Philosophy, University of Bern, (Munich: Mikrokopie, 1969), p. 145, n. 12.

<sup>3</sup>Zeitschrift für Philosophie und philosophische Kritik, CXLI (1911), 176-209. Reprinted in the Gesammelte Schriften (Halle: Max Niemeyer, 1921);--cited henceforth as it appears in the Gesammelte Schriften, as KAH,GS.

<sup>4</sup>Kantstudien, XVI (1911), 214-233. Reprinted in the Gesammelte Schriften (Halle: Max Niemeyer, 1921);--cited henceforth as it appears in the latter as: RVK,GS.

<sup>5</sup>Münchener Philosophische Abhandlungen (Lipps-Festschrift), (Leipzig: Barth, 1911), 196-254. Reprinted in the Gesammelte Schriften (Halle: Max Niemeyer, 1921); cited hereafter as it appears in the latter as NU,GS.

"convictions" and "assertions" about states-of-affairs (Sachverhalte). In the course of the article Reinach's theories of states-of-affairs (Sachverhalte) and intentionality are also developed. "Die Überlegung; ihre ethische und rechtliche Bedeutung" (1912)<sup>1</sup> is of significance for legal philosophy and ethics in its demonstration of the complex nature of reflection and the quite diverse implications of reflection in various situations. The immediate context for this discussion was the use by German law of the time of reflection or premeditation as a criterion for distinguishing murder and man-slaughter. "Die apriorischen Grundlagen des bürgerlichen Rechtes" (1913)<sup>2</sup> has as its central thesis the notion that there are a priori<sup>3</sup> legal truths which are presupposed by positive law. This is the best known and most widely discussed of Reinach's works.

Husserl's Ideen I, which like Reinach's "Die apriorischen Grundlagen des bürgerlichen Rechtes" appeared in 1913 in the first volume of the new Jahrbuch für Philosophie und phänomenologische Forschung,<sup>4</sup> created a storm of protest among the Göttingen students. Edith Stein recollected that the "young phenomenologists" then in Göttingen were "all realists" and could not follow Husserl in this development which seemed to them a turn backwards to idealism.<sup>5</sup> At first thought it may appear surprising that Ideen I came as such

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<sup>1</sup>Zeitschrift für Philosophie und philosophische Kritik, CXLVIII (1912), 181-196, CXLIX (1913), 30-58. Reprinted in the Gesammelte Schriften (Halle: Max Niemeyer, 1921);--cited henceforth as ÜB,GS.

<sup>2</sup>Jahrbuch für Philosophie und phänomenologische Forschung, I (1913), 685-847. Reprinted in the Gesammelte Schriften (Halle: Max Niemeyer, 1921);--cited henceforth as it appears in the latter as aGbR,GS.

<sup>3</sup>a priori not in the Kantian sense, but rather due to essential connections (Wesenszusammenhänge) which entail an ontological universality and necessity.

<sup>4</sup>The plan to prepare a publication of articles was an old one. See above p. 5, last sentence of quote from Letter AR to TC. Reinach was one of the original co-editors.

<sup>5</sup>Edith Stein, Leben, p. 174.

a shock to many of Husserl's students. Roman Ingarden provided some explanation for their reaction in his account of lectures given by Husserl preceding the publication of Ideen I. Ingarden remembers the lectures on logic to have concealed Husserl's long dissatisfaction with the point of view of the Logische Untersuchungen, and given the impression that it was only necessary "to set forth the structure of the single logical objectivities, which was not yet accomplished in the Logische Untersuchungen."<sup>1</sup> Husserl's lectures in 1911 on ethics and value theory were based on those of the winter semester, 1908/09.<sup>2</sup> The seminars and lectures were virtually the only source for a student to find out what Husserl had been thinking since the Logische Untersuchungen<sup>3</sup> and Ingarden notes that these were too hard for the average student.<sup>4</sup> Nor were Husserl's lectures or seminars accessible to one who had not already been introduced to phenomenology and we may assume that such an introduction, until 1913, would have consisted of reading the Logische Untersuchungen and talking with advanced students, many of whom were active in the Philosophische Gesellschaft. Moreover, Ingarden asserts that there was a "realistic tone" to Husserl's lectures and seminars, even the lecture in the summer semester, 1913, on "Nature and Mind", which was projected as the core of Ideen II.<sup>5</sup>

Meanwhile Reinach had also been giving lectures and exercises with a "realistic tone" in which Jean Hering, Alexander Koyré, Hedwig Conrad-Martius, Edith Stein, Rudolf Clemens, Hans Lipps, and Alex Rosenblum, either had taken or were taking part.<sup>6</sup> The Philosophische Gesellschaft continued

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<sup>1</sup>Edmund Husserl, Briefe an Roman Ingarden: Mit Erläuterungen und Erinnerungen an Husserl, ed. by Roman Ingarden, Phaenomenologica, Vol. XXV (The Hague: Martinus Nijhoff, 1968), p. 108.

<sup>2</sup>Ibid., p. 110.

<sup>3</sup>Ibid., p. 112.

<sup>4</sup>Ibid., p. 111.

<sup>5</sup>Ibid., p. 113.

<sup>6</sup>Ibid., p. 113.

to provide a forum for "realistic phenomenology."

Roman Ingarden made the following comments about Adolf Reinach as a teacher:

When I think back on the Göttingen study years, I cannot leave the figure and effect of Adolf Reinach unmentioned. His short teaching activity indeed had lasting impact, for in the last years before the First World War the young phenomenologists rallied around him. He was a good teacher and above all the brilliant leader of the philosophical exercises. In the "Exercises for Advanced Students" he himself always outlined a central problem which was then worked on in the course of the school year. The most interesting and instructive seminar in the last year of his activity was dedicated to the problems of movement. The formulations of the problems he gave were clear and sharp, the answers he gave to the participants in the exercises were clearly, precisely, and briefly expressed, the refutations with which he defended his position were striking, he knew how to present examples which were vivid and convincing. And what was especially valuable was the fact that he had the capability to immediately understand and place in the correct context of the problem our often awkwardly formulated questions or assertions. The course of the discussions was left to the participants, Reinach himself functioning apparently simply as the custodian so that one did not go astray. But he was actually the heart of the joint work, the active mind, opening up in a creative attitude new ways and aspects of research, who never lost his activity, his grip in difficult situations, his presence of mind. Thus one was brought through him to the attitude of creative philosophizing and one could rejoice in participating in the development of a new philosophy, though one was in fact merely a philosophizing child.<sup>1</sup>

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<sup>1</sup>Wenn ich an die Göttinger Studienjahre zurückdenke, so kann ich die Gestalt und die Wirkung Adolf Reinachs nicht unerwähnt lassen. Seine kurze Lehrtätigkeit hatte doch dauerhafte Wirkungen gehabt, da sich um ihn in den letzten Jahren vor dem ersten Weltkriege die jungen Phänomenologen scharten. Er war ein guter Lehrer u. vor allem glänzender Leiter der philosophischen Übungen. In den "Übungen für Fortgeschrittene" hat er stets selbst ein Zentralproblem entworfen, an dem dann im Laufe des Schuljahres gearbeitet wurde. Das interessanteste u. lehrreichste Seminar war in dem letzten Jahre seiner Tätigkeit den Problemen der Bewegung gewidmet. Klar u. scharf waren die von ihm gegebenen Problemformulierungen, klar, präzise u. kurz gefasst waren die Antworten, die er den Teilnehmern der "Übungen" gab, schlagend waren die Zurückweisungen, mit denen er seinen Standpunkt verteidigte, lebendig u. überzeugend die Beispiele, die er anzuführen wusste. Und was besonders kostbar war, war der Umstand, dass er die Fähigkeit hatte, unsere oft ungeschickt formulierten Fragen oder Behauptungen

This view of Reinach is supplemented by Edith Stein's comment that Reinach was Husserl's right hand and the "connecting link" (Bindeglied) between Husserl and the students, because Reinach was an excellent judge of others while Husserl was quite helpless in this respect. A friend had advised her that when one came to Göttingen one went first to Reinach, who then took care of everything.<sup>1</sup>

Three volumes of notes made by Margrete Ortman from Reinach's lectures indicate a traditional range of subjects. The lecture on Kant, winter semester, 1910/11, dealt with various works. In the winter semester, 1911/12, there was a lecture on "Freedom of the Will" in which the problem was dealt with historically, as well as exercises on Descartes. The notes on his "Introduction to Philosophy" (summer semester, 1913) are perhaps of the most interest in relation to phenomenology. The topics discussed were: a) inner and outer perception, b) problems in constitution of objects with reference to Plato, Descartes, Hobbes, Locke, Hume, Kant, and Schopenhauer,

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sofort richtig zu verstehen u. in den richtigen Problemzusammenhang hineinzustellen. Der Gang der Diskussionen war den Teilnehmern überlassen, Reinach selbst fungierte anscheinend bloss als der Hüter, dass man nicht auf Abwege geriet. Im Grunde aber war er das Herz der gemeinsamen Arbeit, der lebendige, gerade in schöpferischer Einstellung neue Forschungswege und Aspekte eröffnende Geist, der seine Aktivität, sein Zugreifen in schwierigen Situationen, seine Geistesgegenwart nie verlor. So war man durch ihn in die Einstellung schöpferischen Philosophierens gebracht u. man konnte sich der Teilnahme am Werden einer neuen Philosophie erfreuen, so sehr man doch in Wirklichkeit ein philosophierendes Kind war." Ibid, pp. 113-114. Reinach's notes for the "exercises for advanced students" on movement, mentioned here by Ingarden, formed the basis of the work on movement in the Gesammelte Schriften (Halle: Niemeyer, 1921)--(henceforth referred to as: GS). Edith Stein, who participated in these exercises and later edited them for the GS, found Reinach's notes to be worked out in far greater detail than she had anticipated from the spontaneous appearance of his delivery of them.

<sup>1</sup>Edith Stein, Leben, p. 172.

c) judgments and knowledge (up to the Neo-Kantians), d) logic, e) ethics.<sup>1</sup>

In January, 1914, Reinach gave a lecture in Marburg entitled "Über Phänomenologie" in which he chose to demonstrate the phenomenological method rather than give a discursive definition of phenomenology.<sup>2</sup> This lecture must have been short and lively and the brilliance of the published version gives the reader some clue of Reinach's talents as lecturer. It differs from his work designed expressly for publication in that it takes up a great diversity of phenomena in rapid order rather than focusing on a few related ones and analyzing in greater and greater detail.

With the beginning of World War I much changed. Reinach need not have gone into the army, at least initially when younger people were available, but promptly enlisted as a volunteer and trained in Mainz. He had planned to use the influence of General von Gründell (retired, who had come to study phenomenology in Göttingen) to gain entrance into the Army if his age had kept him out.<sup>3</sup> His subsequent disillusionment with the war is characterized by his reference in May 1916 to the war as "this monstrous event".<sup>4</sup>

Reinach remained active in editorial work on the Jahrbuch during the war. His ability to understand and interact well with others, which had shown itself in Göttingen, remained. In misunderstandings between former

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<sup>1</sup>Adolf Reinach, Lectures on Introduction to Philosophy, summer semester 1913 (3 vols.), on Kant, winter semester 1910/11 (1 vol.), on Freedom of the Will and Exercises on Descartes, winter semester 1911/12 (1 vol.), according to untranscribed notes taken by Margrete Ortmann, Hamburg. In the possession of Dr. E. Avé-Lallemant, Munich.

<sup>2</sup>First printed in GS (1921), reprinted as "Was ist Phänomenologie?" (Munich: Kösel, 1951).

<sup>3</sup>Edith Stein, Leben, p. 213.

<sup>4</sup>Letter AR to Anna Reinach, May 23, 1916, GS xxxvii.

students and colleagues he functioned as a peacemaker, his main expressed concern being less for personal differences than for the fate of phenomenology.<sup>1</sup>

During the war his attention turned to the philosophy of religion. By birth Jewish, Reinach received a Protestant baptism during a visit home from the front.<sup>2</sup> The letters to Anna Reinach, his wife, and the selection from his fragments concerning the philosophy of religion, "Das Absolute", printed in the Gesammelte Schriften, give some idea of the direction this work might have taken.<sup>3</sup> There are in addition two unpublished sections from "Bruchstück einer religionsphilosophischen Ausführung" dealing with the "Structure of Experience" and "Sceptical Reflections", and a small collection of notes.<sup>4</sup> Reinach's continuing interest in the theory of knowledge is demonstrated in the well-written but unpublished two-page piece entitled "Zur Phänomenologie der Ahnungen" (On the Phenomenology of Premonitions) dated July 1916 in Embagneux.<sup>5</sup>

Husserl, in the Nachruf in the Kantstudien after Reinach's death November 16, 1917, remarked at length on the high quality and fundamental nature of the research published by Reinach.<sup>6</sup> A memorial address delivered

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<sup>1</sup>Letters AR to TC and H. Conrad-Martius, November 5 and September 10, 1915.

<sup>2</sup>Spiegelberg, PM, p. 172

<sup>3</sup>GS, Einleitung, xxviii-xxxvii.

<sup>4</sup>"Aufzeichnungen, 26 Juli 1916-3 Oktober 1917": including "Zur Phänomenologie der Ahnungen," "Bruchstück einer religionsphilosophischen Ausführung," and "Notizen". Typewritten manuscript compiled by Anna Reinach from Reinach's papers, Nachlass Adolf Reinach. An English translation of the two unpublished sections from the "Bruchstück" is made available for the first time below in Appendix III.

<sup>5</sup>Ibid.. An English translation of "Zur Phänomenologie der Ahnungen" is made available for the first time below in Appendix II.

<sup>6</sup>Kantstudien, XXIII (1919), 147-149. See Appendix IV below for a translation of this article.

in Göttingen December 31, 1917, remarks that Reinach could see clearly where others saw only "thin threads like from spider webs".<sup>1</sup> In the analysis of a thing or concept he could:

see into its finest wrinkles and richest depths, and a wealth of thoughtful and deep observations of life flowed through this intuition of essences. Such evenings were always highpoints in the life of our Gesellschaft, for everyone an edifying no less than exhausting pleasure. 'The beginning of Philosophy is wonder.' These words of Plato, which he used to like to quote, then truly came to pass.<sup>2</sup>

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<sup>1</sup>"Seelenworte zum Gedächtnis Adolf Reinachs", Memorial address delivered 31 December 1917 in the name of the Göttinger Graeca. Typewritten manuscript from Nachlass Hedwig Conrad-Martius, Bayrische Staatsbibliothek, Munich.

<sup>2</sup>"in seine feinsten Falten und reichsten Tiefen sehen, und diese Wesensschau war durchströmt von einer Fülle nachdenklicher und tiefer Lebensbeobachtung. Solche Abende waren immer Höhepunkte im Leben unserer Gesellschaft, für alle ein ebenso erhebender wie anstrengender Genuss. 'Der Anfang der Philosophie ist das Staunen.' Dieses Wort Platos, das er gern zu zitieren pflegte, wurde dann zu wahren Ereignis." Ibid.

## Chapter I

### Philosophical Introduction

#### a) Husserl and Reinach.

There are numerous points of explicit reference and affinity between the six investigations of the Logische Untersuchungen, which introduced phenomenology to Reinach, and Reinach's own writings. Central in general importance for Reinach's work are: 1) Husserl's use of a general procedure of investigation in which a zig-zag pattern of analytic clarification, systemization, analytic clarification, etc., dominates, thus establishing a precedent for the analysis and clarification of concepts as well as the analysis and clarification of essences and essential or a priori laws, later adopted by Reinach and other phenomenologists as a procedural method, 2) development of a priori laws (such laws had first been discovered by Carl Stumpf)<sup>1</sup> as the objective grounds for a systemization of essences, and 3) the introduction in the Sixth Investigation of many of the specific topics later investigated in greater detail by Reinach in his treatise, "Zur Theorie des negativen Urteils".

Husserl's lectures on internal time-consciousness,<sup>2</sup> given first in 1905 and then amended from 1905 to 1910, are of interest in connection with Reinach's studies on movement.<sup>3</sup> The lectures Husserl gave on axiology

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<sup>1</sup>LI, II, pp. 435-442.

<sup>2</sup>Vorlesungen zur Phänomenologie des inneren Zeitbewusstseins, Edited by Martin Heidegger (Halle: Max Niemeyer, 1928).

<sup>3</sup>"Über das Wesen der Bewegung," in the Gesammelte Schriften (Halle: Max Niemeyer, 1921). (Henceforth cited as WB,GS).

are of importance for both the legal and ethical philosophy of Reinach. The 1907 lectures on the "Idea of Phenomenology" were greeted with dismay by Husserl's students and Reinach's letter to Theodor Conrad, quoted above,<sup>1</sup> indicates that he felt Husserl had taken an abrupt turn in his development of phenomenology. There is, however, no clear evidence that Reinach repudiated either Husserl's introduction of the phenomenological reduction or his increasing attention to analysis of the processes of consciousness. In these, as in all other issues of interpretation, Reinach must be allowed to speak for himself through his writings. It is not acceptable simply to repeat comments which have been made about Reinach's position on such issues; there has been a strong tendency among critics simply to assert the existence of a yawning gulf between the position of Reinach and that of the Ideen and then to use Reinach as either an ally or as a straw-man. It is clear from the quotation below, as also from the Third and Fourth studies of the Logische Untersuchungen where the notion of eidetic sciences is developed, and from the comments in the Ideen about "regional ontologies",<sup>2</sup> that throughout this period Husserl continued to regard the study of the general essences of objectivities of any kind as phenomenological.

What it means, that objectivity is, and manifests itself cognitively as so being, must precisely become evident purely from consciousness itself, and thereby it must become completely understandable. And for this is required a study of consciousness in its entirety, since according to all its forms it enters into possible cognitive functions. To the extent, however, that every consciousness is 'consciousness-of', the essential study of consciousness includes also that of consciousness-meaning and consciousness-objectivity as such. To study any kind of objectivity whatever according to its general essence (a study that can pursue interests far removed from those of

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<sup>1</sup> See above, p. 5.

<sup>2</sup> Ideen I, pp. 37-38, p. 166.

knowledge theory and the investigation of consciousness) means to concern oneself with objectivity's modes of givenness and to exhaust its essential content in the processes of 'clarification' proper to it. Even if the orientation is not that which is directed towards the kinds of consciousness and an essential investigation of them, still the method of clarification is such that even here reflection on the modes of being intended and of being given cannot be avoided. In any case, however, the clarification of all fundamental kinds of objectivities is for its part indispensable for the essential analysis of consciousness, and as a result is included in it, but primarily in an epistemological analysis, that finds its task precisely in the investigation of correlations. Consequently we include all such studies, even though relatively they are to be distinguished, under the title 'phenomenological'.<sup>1</sup>

In concluding these general comments on the relationships between the work of Husserl and Reinach particular attention should be given to the fundamental aspects of consciousness which Husserl identifies in the passage quoted above as subjects for study. In this context Husserl speaks of "consciousness-meaning," "consciousness-objectivity," and "an epistemological analysis, that finds its task precisely in the investigation of correlations." In other contexts Husserl stated the basic problem for investigation in different terminology with different emphases, but the problem in its starkest form--the nature of the relationship between consciousness and being--remains the same. The problems of the relationship of states-of-affairs, propositions, and intentionality, Reinach's treatment of which is given detailed attention in the central chapters of this dissertation, are aspects of this fundamental problematic of the relationship between consciousness and being.

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<sup>1</sup>"Philosophie als strenge Wissenschaft," Logos, I (1910-11), 289-341. "Philosophy as Rigorous Science," trans. and ed. by Quentin Lauer, in Phenomenology and the Crisis of Philosophy, Harper Torchbooks (New York: Harper and Row, 1965, pp. 69-147) pp. 90-91; --cited henceforth as PRS.

b) Reinach on phenomenology.

The lecture<sup>1</sup> given by Reinach on phenomenology in Marburg in 1914 is perhaps the best introduction available to Reinach's particular phenomenological position. As there is an acceptable published English translation<sup>2</sup> there is no need here for a lengthy explanation of its contents. Certain key theoretical points, however, may be identified.

Reinach regarded phenomenology not as a system of statements and truths but primarily as a method of philosophizing. The aim in the face of any philosophic problem was to learn to see the essential characteristics of the subject rather than to circumscribe it in definitions. Analysis of the meaning of words and concepts was only a first step towards this analysis of the essences of the things themselves. Analysis of essences was in turn regarded as only a means to the discovery of essential laws. Essential laws, unlike any facts or factual connections about which sensible perception gives us information, were, according to Reinach, a priori and thus one of the most important subjects in philosophy. Reinach found the sphere of the a priori to have been subjectivized and arbitrarily restricted to a few areas in the past. He, by contrast, regarded the a priori as objective.<sup>3</sup> Knowledge of final a priori connections was to be grounded on the intuition of these a priori connections themselves.

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<sup>1</sup>Adolf Reinach, "Über Phänomenologie," in the Gesammelte Schriften (Halle: Max Niemeyer, 1921), pp. 378-405. Reprinted as Was ist Phänomenologie? (Munich: Kösel, 1951). Cited henceforth, as it appears in the Gesammelte Schriften as ÜP,GS.

<sup>2</sup>Dallas Willard, "Concerning Phenomenology," Personalist, L (1969), 194-221. See below, Appendix I, for an evaluation of the two English translations of this lecture.

<sup>3</sup>See pp. 40-58, 76-81, 89-94, 116-21, 145-49, 176-239 below, on the ontological use of the term "a priori".

- c) The central problem: the relationship of states-of-affairs, intentionality, and judgments.

Phenomenology, though somewhat less so in its later developments, is open to the charges of being epistemologically naive, of lacking adequate criteria for a priori and eidetic judgments, and of having for the most part neglected the demand for a critique of evidence. These charges are well founded. It is not the case, however, that this situation arose from a simple disregard of the problems of the theory of knowledge. Husserl certainly cannot be said to have overlooked their significance; he returned repeatedly to questions concerning the possibility, grounds, limits, and nature of knowledge, of experience, and therefore of the relationship of consciousness and being. One of the key motivations for the gradual development of his phenomenology seems indeed to have been dissatisfaction with each of his attempts to dissolve these problems.

The delight of at least some students in the phenomenology of volume I of the Logische Untersuchungen seemed to lie in large part in the release it provided from "subjectivism" and the presumed lack of need for further concern with questions of the theory of knowledge.<sup>1</sup> In Reinach's writings, however, the questions of the relationship between consciousness and being, subjectivity and objectivity, acts of knowing, the formulations of knowledge, and the nature of the evidence for them, are fundamental. Reinach's theoretical approach to these questions, which focused on knowing, judgments, and the states-of-affairs to which they intentionally refer, was not identical with that of Husserl, but it is clear that they both regarded these questions seriously.

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<sup>1</sup>See above, p. 6 and T. Conrad, Bericht.

States-of-affairs were that which Reinach regarded as a priori in the primary and characteristic sense, that to which judgments and acts of knowing intentionally refer, and that which is to be evident. In examining the relationship of Reinach's theories of states-of-affairs, judgments, and intentionality, we thus will be both examining the grounds of Reinach's analyses of specific topics and examining one approach, within the context of early phenomenology, to the problems of the relationship of consciousness and being.

There are a few points in Reinach's writings where the elements of states-of-affairs and propositions appear to be confounded although Reinach himself emphasized the importance of distinguishing the spheres of the ontic and the logical. One of our tasks will be to identify such points of confusion and to evaluate their significance. Fundamental to Reinach's theoretical position is the "correspondence" of concepts and objects, and of the structure or "necessary ordering connections" of language and objectivity. In one instance Reinach claims that conditions of correspondence between judgments and objectivity are required in order for an intentional act to occur. The implications and meaning of this statement are problematic, and thus reaffirm the need to question the nature of ordered relations of essences and of meaningful propositions, as well as the adequacy of the criteria for evidence and self-givenness. Whether intentionality, as discussed by Reinach, can perform the function required by his theories of states-of-affairs and judgments must also be considered. In all these questions the tendency to circular forms of argumentation must be, at the very least, recognized, if it cannot be avoided by

an adequate grounding of the argument.

If we assume we can "know" a greater or lesser circle of "reality" and/or "objectivity", then in order to explain what we mean by "know" we must clarify the nature of the objectivity which we claim to "know", "how" we know it, and what relation the "structure" of our modes of thought and expression bear to the "structure" of objectivity. The first criterion used to evaluate and interpret Reinach's work is that of compatibility and consistency. This was one of Reinach's own working criteria and it is this which makes inevitable the fundamental circularity found in his position, and to some degree, in all non-sceptical philosophy. The second criterion is that of evidence--regarded by Reinach, as by many others, as a means of breaking out of circular argumentation. At some point, quite apart from the question whether his theories form a well-functioning, integrated explication of the relationship of consciousness and being, in respect to those aspects of the relationship with which his work is concerned, it will be necessary to examine the evidence for what Reinach takes to be self-given and his notion of evidence itself.

Within the context of the analysis in the following chapters of Reinach's theories of states-of-affairs, judgments, and intentionality, attention will be given to the problems of the a priori, evidence, the distinction between analytic and synthetic judgments, the notion of the structure of language as reflecting that of objectivity and/or vice/versa, and the roles of intentionality. At numerous points comparisons with linguistic analysis will be of interest, as will comparisons with other phenomenological and pre-phenomenological theories. The implications of Reinach's theoretical position are to be examined as they appear in the

analysis of specific topics in his writings, in the work of those he influenced, and in extrapolations which will attempt to retain the spirit of Reinach's intention. It is states-of-affairs, regarded by Reinach as the intentional correlates of acts of knowing and of all judgments and as that which is a priori in the primary sense, which will be the focus of the next and first systematic chapter.

## Chapter II

### States-of-Affairs

a) The term "states-of-affairs" (Sachverhalte).

The fundamental philosophic assumptions on which Reinach bases his theory of states-of-affairs and the adequacy of that theory are the central subjects of this chapter. The questions in response to which Reinach's theory of states-of-affairs was developed, as well as significant aspects of the theory itself, emerge from the philosophic context created by the work and mutual influence of Brentano, Meinong, Mally, Ameseder, Stumpf, and Husserl. A question common to all these philosophers concerned the nature and status of the referents of judgments. The terms "states-of-affairs", "Objektiv", "Dass-Sätze", and "judgment-content" were all used in their diverse formulations of the problem. Distinct ontological and epistemological assumptions accompanied these terminological differences. Study of this terminology and the philosophic context within which its use developed should aid in the clarification of Reinach's own terminology and fundamental assumptions. We shall therefore set forth a brief sketch of those aspects of the work of Brentano, Stumpf, Meinong, and Husserl, relevant to Reinach's use of the term "states-of-affairs" (Sachverhalte).

In 1874 Brentano regarded the representation (Vorstellung) of objects as the fundamental mental act.<sup>1</sup> A judgment was said to be the act of "accepting" or "rejecting" not a proposition, fact, or states-of-affairs,

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<sup>1</sup>Franz Brentano, Psychologie vom empirischen Standpunkt (Leipzig: Duncker und Humblot, 1874), I, p. 104;--cited hereafter as PVES.

but an object presented in a representation.<sup>1</sup> Brentano continued to adhere to this basic position, although the precise sense of "object" underwent reinterpretations closely related to developments in his theory of judgments.<sup>2</sup>

In 1889 Brentano argued in support of the correspondence theory of truth in a modified form,<sup>3</sup> having found that in the case of true negative judgments there was no correspondence in the traditional sense between the judgment and reality.<sup>4</sup> Likewise the theory appeared inadequate for judgments not applying to things as such.<sup>5</sup> Brentano therefore took "entity" to signify any thing (res) or non-thing. It is this stage of Brentano's thought which is most closely related to the work of Stumpf, Meinong, and Husserl.

Brentano's letters and essays after 1900, however, reject this position on the correspondence theory and the inclusion of irrealia, states-of-affairs, and objectives among "entities". Things, realia, objects in the strong sense, were now affirmed as the ultimate referents of all

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<sup>1</sup>Ibid., p. 266, p. 276, pp. 288-89. Franz Brentano, Vom Ursprung sittlicher Erkenntnis (Leipzig: Duncker und Humblot, 1889), p. 16;--cited hereafter as VUSE.

<sup>2</sup>Carl Stumpf claimed that Brentano had asserted in his logic lectures in the 1870's that a specific judgment-content corresponds to the judgment, is to be distinguished from the content (Materie) of representation, and is expressed in "Dass-Sätze" ("that"-propositions), or in "substantivierten Infinitiven". Stumpf remarks that Bernhard Bolzano had spoken of the "Satz-an-sich" in the same sense. Carl Stumpf, "Erscheinungen und psychische Funktionen," Abhandlungen der preussischen Akademie der Wissenschaften, IV (1906), p. 29;--cited hereafter as "EupF"). See also, The True and the Evident, ed. R.M. Chisholm (London: Routledge and Kegan Paul, 1966), p. 21;--cited hereafter as TE); trans. of Brentano's Wahrheit und Evidenz, ed. Oskar Kraus (Leipzig: Felix Meiner, 1930).

<sup>3</sup>TE, p. 18. See Chapter IV below on Brentano's theory of judgments.

<sup>4</sup>Ibid., p. 19

<sup>5</sup>Ibid., p. 20.

conscious acts. Thus in a letter (March, 1901) to Anton Marty, Brentano asserts for example: "there is nothing universal in the things: the so-called universal, as such, is only in the one who is thinking."<sup>1</sup> And later: a name, in the logical sense, is a name only if it denotes something.<sup>2</sup> Likewise: "only things...can be thought."<sup>3</sup>

In the cases of the "non-being of a golden mountain," the "impossibility of a round square", Brentano now found that: "we are here confronted only with a figure of speech, which leads to the fiction of new beings and which so deceives us with respect to our psychological activities that we believe we are judging affirmatively when in fact we are denying something."<sup>4</sup> These and related questions to which we will refer in later chapters formed the focus for much debate between Brentano and his former students, and for much of Reinach's work on states-of-affairs and the theory of judgments.

As early as 1888, Carl Stumpf--like Meinong and Husserl, a former student of Brentano--acknowledged a role in the theory of judgments for states-of-affairs as the contents to which our acts of judgment refer.<sup>5</sup> These states-of-affairs were to serve a logical function intermediary between the phenomenon judged and the act of judging. Stumpf regarded them as logically dependent on acts of judging though they were to be distinguished from the act of judging as such. States-of-affairs, like all other "formations" (Gebilde) such as concepts, Inbegriffe, and values, all of which were subjects for the neutral pre-science "eidology", were

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<sup>1</sup> TE, p. 64

<sup>2</sup> Ibid., p. 71.

<sup>3</sup> Ibid., p. 67.

<sup>4</sup> From a letter to Anton Marty, 2 Sept. 1906, Ibid., p. 83. See below, p. 84 and pp. 111-113, for notes on Brentano's analysis of these figures of speech.

<sup>5</sup> "EupF", p. 30.

said to be formed or deduced (in the sense of erschlossen) by the mind, rather than given to it.<sup>1</sup> Thus all Gebilde are said to be logically dependent on psychic functions. Yet as the content of an actual judgment - a state-of-affairs could be real, though only because of the immediately knowable facticity of the functions of which it was the content.<sup>2</sup>

Appearances and functions, however, were immediately given to the mind.<sup>3</sup> Therefore, appearances (Erscheinungen)--whether primary, those given to us in immediate sense experience, or secondary, those whose images occur in our memory--were said by Stumpf to have real objective correlates that were logically independent from psychic functions.<sup>4</sup> In these respects Stumpf's position retained a strong affinity with that of Brentano, who by this period refused to recognize any sort of independent "reality" for "fictitious entities".

Stumpf recognized, as did Brentano, that individuals are always described by means of general concepts, but then proceeded to distinguish objectivity and reality, using a wider sense for the former as all that about which we think and talk. Thus all "formations" (Gebilde), including concepts and states-of-affairs, although "logically dependent on psychic functions", are "objective" in Stumpf's sense. Stumpf emphasizes that his position does not coincide with Platonism, for in his sense objectivity (Gegenständlichkeit) does not always amount to reality.<sup>5</sup> The sphere of beings (Seienden) was regarded as extending beyond that of independent real entities and including any object (Gegenstand) of a true judgment.<sup>6</sup>

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<sup>1</sup>Ibid., pp. 30-32 and Carl Stumpf, "Zur Einteilung der Wissenschaft," Abhandlungen der preussischen Akademie der Wissenschaften, V (1906), pp. 32-33:--cited hereafter as "ZEdW".

<sup>2</sup>"ZEdW", p. 32.

<sup>3</sup>Ibid., p. 5.

<sup>4</sup>"EupF", p. 32.

<sup>5</sup>Ibid., pp. 5-10.

<sup>6</sup>Ibid., p. 83.

"Phenomenology"<sup>1</sup> was for Stumpf the first of the "neutral pre-sciences". Its task was the study of the appearances and their immanent structural laws (immanente Strukturgesetze). The laws of the structure of appearances were independent from those of the psychic and were said to stand there before us as something objective (Objektiv) that we have only to recognize and describe (not produce or construct). Stumpf's emphasis on the laws of the structure of appearances is similar in tone to Reinach's emphasis on essential structural laws.<sup>2</sup>

But it is in "eidology", not phenomenology, that states-of-affairs, and all other "formations" (Gebilde), are to be studied by Stumpf. States-of-affairs are logical entities dependent on psychic functions, yet objective in Stumpf's sense and real insofar as they are the content of an actual judgment. The structural laws of states-of-affairs are said to govern the sequence and conclusions of acts of judgment.<sup>3</sup> Stumpf emphasizes that the structural laws of states-of-affairs are not the result of any psychological necessity. The rules governing premises and conclusions are thus not causal laws of psychological processes, but structural laws of states-of-affairs to which a logical necessity pertains.

The third neutral pre-science was the "doctrine of relations" (Verhältnislehre), the study of the relational concepts (Verhältnisbegriffe). Relational concepts--distinct from appearances and functions, but not mental creations or constructions--are given in and with appearances and functions or formed, deduced (in the sense of erschlossen), from these.<sup>4</sup> Stumpf--

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<sup>1</sup>For the history of the use of the term "phenomenology", see Spiegelberg, PM, pp. 1-19. For Stumpf's use of it as compared with Husserl's, see also "ZEdW", p. 35.

<sup>2</sup>"ZEdW", pp. 28-30.

<sup>3</sup>Ibid., p. 33, p. 50.

<sup>4</sup>Ibid., p. 37.

like Husserl and Reinach--regarded the use of induction to obtain a priori laws from empirical matters-of-fact as impossible. The distinction between contingent individual matters-of-fact (empirical) and necessary a priori laws of essence is common to all three<sup>1</sup>--Stumpf, in fact, in his study of the structural laws of phenomena had first discovered some of the favorite examples of material a priori essential laws.<sup>2</sup>

The work of Alexius Meinong points in yet another direction. Meinong distinguished two modes of being: existence and subsistence (bestehen). Existence was the mode of being of beings (particular, actual, things--Soseienden) such as "this piece of paper". Subsistence was the mode of being of essences or of the characteristics of beings.<sup>3</sup> The referents of judgments and assumptions were said to be not actual beings but subsistent or non-subsistent "objectives" (Objektive).<sup>4</sup> Objectives were ideal objects and therefore (like numbers)<sup>5</sup> were without "having" being in the narrower sense, i. e., existing.<sup>6</sup> From Rudolf Ameseder, Meinong adopted the following way of expressing the distinct nature of objectives: They had being (in the wide sense) and were being, while objects merely had being.<sup>7</sup> This turn of phrase has not been of much help, however, in clarifying the nature of objectives.<sup>8</sup>

<sup>1</sup>Ibid., pp. 51-52

<sup>2</sup>See above, p.16, nt. 1.

<sup>3</sup>"Über Annahmen (Leipzig: J. A. Barth, 2nd ed., 1910), pp. 71-80;-- cited henceforth as UA<sub>2</sub>. Bestehen has been translated as "subsistence" for lack of a better English equivalent. The sense of the term is clarified through use in the following pages. "Subsistence" in any case never implies existential being. "Existence" and "subsistence" are distinct modes of being.

<sup>4</sup>Ibid., p. 44, p. 46.

<sup>5</sup>Ibid., p. 63, p. 74.

<sup>6</sup>Ibid., p. 72

<sup>7</sup>Ibid., p. 61.

<sup>8</sup>See below, p.56, nt. 1, for notes on Reinach's comments on this manner of speaking.

The assertion of the independence of being and being-so-and-so (Sein and Sosein)<sup>1</sup>, however, did allow Meinong to assert the subsistence of objectives such as the "non-being of the round square", the "round square" being a non-existing object,<sup>2</sup> and the non-subsistence of objectives such as the "blackness of this particular piece of (white) paper". The subsistence of an objective is independent from the existence of its object. Both types of objectives are of significance for the analysis of negative judgments and their referents; they were the means by which Meinong could explain how non-existent objects could serve as objects for judgments about their non-existence.

One motive for distinguishing between the object as existing and the essence or nature of the object as subsisting was to provide some kind of ontological status for the objective correlates of all our thoughts. "Being directed to something" (auf etwas Gerichtetsein) was said to be the characteristic of the psychological. The referents of representations and of judgments and assumptions were objects and objectives, respectively, Meinong--a realist but not a reist--was not willing to follow in the steps of Brentano. Nor was his position what we will call the "agnostic" ontological position of Stumpf who regarded universals, values, concepts, and states-of-affairs, all "formations" (Gebilde), as logically dependent on psychic functions and, in a curious circular argument, "real" insofar

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<sup>1</sup>Principle due to Ernst Mally, "Untersuchungen zur Gegenstandstheorie des Messens", in Untersuchungen zur Gegenstandstheorie und Psychologie, ed. Alexius Meinong, (Leipzig: J.A. Barth, 1904). See also Alexius Meinong, "Untersuchungen zur Gegenstandstheorie", in Ibid., pp. 1-50; trans. Isaac Levi et al. as "The Theory of Objects", in Realism and the Background of Phenomenology, ed. R. M. Chisholm, (Glencoe, Illinois: The Free Press, 1960, pp. 76-117).

<sup>2</sup>See Ibid., pp. 9-11 regarding the controversy about "false" and "impossible" objectives and its relation to Russell's theory of descriptions.

as they were the content of a "true" judgment.

The two types of objectives above, corresponding to the non-existent objects, "this black piece of white paper" and "the round square", involve two distinct issues: the existence of objects and the relation of attributes to their objects. A third type of objective would be that involving a relation between two or more objects. These three types of objectives, if subsistent, correspond to ontological connections of increasingly "higher order". Meinong does in fact speak in this manner and regards the primitive founding level as consisting of all the real objects, the higher levels, ideal, as successively founded first on the real objects and then on one another--a hierarchic order.

Reinach's principal criticism of Meinong's concept of the Objektiv was that it contained in a yet undistinguished form both the concepts of proposition (Satz) and state-of-affairs (Sachverhalt).<sup>1</sup> Meinong's use of the terms "true" and "false" in reference to objectives was understandable to Reinach only as a result of this confusion of propositions and states-of-affairs.<sup>2</sup> Meinong's reference to the proposition as an Objektiv formulated in words<sup>3</sup> was in Reinach's view insufficient.<sup>4</sup> In spite of these points and the many others on which Reinach differed with Meinong's position, the work of the latter was of major significance for Reinach's treatment of states-of-affairs. It was indeed in opposition to Meinong (and to Brentano and Husserl in part) that Reinach's theories of states-of-affairs, propositions, and judgments seem to have taken form.<sup>5</sup>

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<sup>1</sup>NU, GS, p. 82.      <sup>2</sup>Ibid., p. 85.      <sup>3</sup>UA<sub>2</sub>, p. 100.      <sup>4</sup>NU, GS, p. 82.

<sup>5</sup>Über emotionale Präsentation (1917) may in turn have been influenced by the developments in the notion of Wertfühlen and Wertverhalte by Husserl, Scheler, etc.. Dignitive and Desiderative, like Objektive, bear strong similarities to states-of-affairs.

Chapters III and IV will refer to Meinong's position on intentionality, evidence and judgments.

States-of-affairs were among the objective referents to be studied by what Husserl, in the Logische Untersuchungen, called formal ontology. Like Meinong's objectives, Husserl's states-of-affairs were regarded as that which is asserted in a judgment,<sup>1</sup> can take on modalities--such as possibility,<sup>2</sup> and can be contradictory.<sup>3</sup> States-of-affairs were also said to subsist (bestehen) rather than exist.<sup>4</sup> In the course of the Logische Untersuchungen clarity about the nature of states-of-affairs is only gradually attained, as is natural in the course of actual analysis. Reinach observes that Husserl, like Meinong later, had made the error in volume I of using the terms "true" and "false" in relation to states-of-affairs, but dropped this usage in Volume II when the distinction between propositions and states-of-affairs had become clear.<sup>5</sup>

The simple setting forth of these similarities between Meinong's objectives and Husserl's states-of-affairs, however, does not give an adequate sense of the role of states-of-affairs as seen in the Logische Untersuchungen. For instead of being concerned with developing a theory of objects, a primarily ontological enterprise, Husserl emphasized the essential correlation of the structure of the subjective and objective<sup>6</sup> and consequently, unlike Meinong, gave equal, if not greater, attention to the analysis of the logic of propositions and, of course, to the

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<sup>1</sup>LI, p. 60, p. 288, p. 581, pp. 611-12, etc.      <sup>2</sup>Ibid., pp. 61-63.

<sup>3</sup>Ibid., p. 121.

<sup>4</sup>Ibid., p. 121, p. 769

<sup>5</sup>NU,GS, p. 85. See LI, p. 121 for "not-both-being-the-case", (Nichtzusammenbestehen).

<sup>6</sup>This correlation was later developed (see Ideen) in terms of the parallelism between noetic and noematic.

analysis of intentionality with which Meinong had had only a limited concern.

The first mention of states-of-affairs in the Logische Untersuchungen places it in a central position; it is identified by Husserl, in section six of the Prolegomena, as that whose being or not-being<sup>1</sup> is inwardly evident in knowing in the narrow sense, and assumed, surmised, and believed in the wider sense of knowing.<sup>2</sup> But in his treatment of normative sciences,<sup>3</sup> propositions and their forms, rather than states-of-affairs, are the subject, and with one exception<sup>4</sup> the referents of these propositions are not called states-of-affairs, but are referred to in terms of thing-property and subject-predicate relations and conditions. Thus the term "states-of-affairs" does not have at this point the appeal for Husserl which it later had for Reinach.

In opposition to psychologism Husserl asserts that the view, that no judgment is correct in which the same state-of-affairs is at once affirmed and denied, expresses the "insight that contradictory propositions are not both true, that the states-of-affairs corresponding to them cannot both coexist,"<sup>5</sup> are "objectively incompatible",<sup>6</sup> and "logically incompatible".<sup>7</sup> Similarly our apodeictic consciousness of necessity is said to express insight into its objective correlate, the law that "S is P". In this law expressions such as, "S is necessarily P" and "S's being P is

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<sup>1</sup>This is an example of the undistinguished usage to which Reinach referred. A stronger one is found on p. 63 (LI), where Husserl uses the term "real being". LI, p. 769 (see below p. 37) indicates that Husserl at times used "truth" and "being" as the broadest of terms for the two spheres of the intentional and the objective. See also LI, p. 151.

<sup>2</sup>See LI, p. 587 for wish, question, etc. See also LI, p. 608.

<sup>3</sup>LI, pp. 81-89.

<sup>4</sup>LI, p. 88.

<sup>5</sup>LI, p. 119.

<sup>6</sup>LI, p. 121.

<sup>7</sup>LI, p. 131.

grounded on a law", find their objective equivalent.<sup>1</sup> The law referred to here will later be said to be grounded in a necessary state-of-affairs. Husserl has not yet introduced the distinction between contingent matters of fact and necessary a priori essential connections in terms of states-of-affairs.

The central position of states-of-affairs is overt in the paragraph clarifying the relation between truth and inner evidence. Adequate perception is identified as something being given as itself and as we meant it. Likewise, that which is judged in a judgment--a state-of-affairs, whether singular or general, empirical or ideal--is given as itself present. Inner evidence for all experiences of primal givenness is a seeing, a grasping of the self-given ("true"!) state-of-affairs, or the experience of the agreement between meaning and what is itself present, meant--the self-given state-of-affairs.<sup>2</sup>

Interconnections of things and truths are given together a priori and are mutually inseparable, the latter being the necessary correlate of the former. The state-of-affairs is said to "contain" an object as the bearer of such and such properties or the term of such relations, etc. Through "ideational abstraction" the truth, rather than the state-of-affairs, becomes the apprehended object, and thus the ideal correlate of the act of knowledge.<sup>3</sup> Knowledge of necessary truth is grounded as knowledge of

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<sup>1</sup>Ibid., p. 153.

<sup>2</sup>Ibid., pp. 194-95. "Meaning" and "meant" are used here, not with reference to Frege's distinction between Sinn and Bedeutung, but in the sense of Meinen, an intentional relation. See below, pp. 99-103.

<sup>3</sup>Ibid., pp. 225-27.

necessary states-of-affairs.<sup>1</sup> State-of-Affairs, like Object, is one of the pure, formal, objective categories. As such it is a mere concept, independent of the particularity of any material of knowledge, and that under which all the states-of-affairs that specifically appear in thought must be ordered.<sup>2</sup> The laws grounded in the pure formal objective categories are in themselves theories.<sup>3</sup>

In the introduction to volume II Husserl states that: "all thought and knowledge have as their aim objects or states-of-affairs."<sup>4</sup> "Reflection" must be practiced upon the acts which intend objects and on the meaning-content rather than naively positing the existence of these objects. The tendency to slip from this "unnatural attitude of reflection", necessary for pure description, back into the naive attitude; to forget that the objectivity described "has undergone a change of sense, in virtue of which it now belongs to the sphere of phenomenology",<sup>5</sup> must be guarded against. Another key aspect of Husserl's position, strongly tied to the practice of the "unnatural attitude", is his demand for "freedom from presuppositions".<sup>6</sup>

The theoretical significance of states-of-affairs, which was occasionally asserted in volume I, is actually reflected in the analyses of volume II. The "motivational" unity of our acts of judgment is said to have as its objective correlate the objective connection of states-of-affairs.<sup>7</sup> Husserl, like Stumpf and later Reinach, regarded states-of-affairs, as Meinong regarded "objectives", rather than objects, to be that

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<sup>1</sup>Ibid., pp. 227-28.

<sup>2</sup>Ibid., p. 237.

<sup>3</sup>Ibid., p. 238.

<sup>4</sup>Ibid., p. 253.

<sup>5</sup>Ibid., pp. 255-56.

<sup>6</sup>Ibid., pp. 263-66.

<sup>7</sup>Ibid., pp. 270-71. Compare with analogous position of Stumpf, see pp. 26-29, above.

which stands in relations of ground and consequent.<sup>1</sup> Two interpretations of statements of the form "S is P" are presented: that the subject of the statement is the object "S", or that "the whole state-of-affairs is the object of the statement as an analogue of the object a name names." Husserl does not argue in favor of either interpretation.<sup>2</sup>

"Idealism" is interpreted by Husserl as a theory of knowledge which recognizes the ideal or "specific", the essence of the species, as having objective status alongside the real or individual as a condition for the possibility of objective knowledge.<sup>3</sup> This use by Husserl of "objective" in the wide sense is the same as is found in Reinach's discussion of ideal objectivities. The distinction has evidently been overlooked by those critics who have labelled Reinach's phenomenology as realistic in the sense corresponding to the narrower sense of objective where only that which is "real" may be said to be "objective" and thus all that is said to be "objective" is regarded as "real". The simple unqualified use of the terms "real", "objective", "ideal", "idealism", and "realism", is far from unequivocal.

In the entire third study, dealing with independent and non-independent objects and the a priori essential laws relevant to them, Husserl mentions states-of-affairs only twice.<sup>4</sup> The same tendency, i.e., to speak in terms of essential connections rather than necessary states-of-affairs, is found in Reinach's writings in those contexts where he is not also concerned with contingent states-of-affairs.

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<sup>1</sup>LI, pp. 271-73, see Ibid., p. 324 for inferences and propositions, premises and conclusions.

<sup>2</sup>Ibid., pp. 288-89.

<sup>3</sup>Ibid., p. 338.

<sup>4</sup>Ibid., p. 444, p. 445.

The fourth study, on a priori laws of meaning, mentions states-of-affairs only once<sup>1</sup> as one of the senses in which the term "object" is to be understood.

In "On Intentional Experiences and their 'Contents'", the fifth study, Husserl explicitly sets forth the relation of many of the types and levels of objectivity and meaning which had been analyzed in the preceding studies. The distinction between the objective reference of an entire act and of its constituent partial acts, which presupposes the earlier discussions of simple and complex meanings and objectivities, involves the notion that the act of judgment, the meaning-intention, and its objective reference, the state-of-affairs, are complex and can be meaningfully analyzed into their constituent parts. A state-of-affairs is said to be "an appearance emergent out of subject and predicate, or out of antecedent and consequent".<sup>2</sup> This manner of speaking is found in Reinach's writings also and, here as there, it reflects an unfortunate usage which blurs the distinction between the nature of propositions and the nature of objectivities, real or ideal.

The first section<sup>3</sup> of the sixth study contains many distinctions important for the analysis of objectivity, intentionality, knowing, and judgments. The clarification of various senses of "being" and "truth" involves a fuller view of the role of states-of-affairs than had previously been set forth. Husserl rejects the narrow use of the terms "truth" and "being" as referring to judgments, propositions or states-of-affairs (their objective correlates), and to absolute objects (not states-of-affairs) respectively,<sup>4</sup> and instead applies the term "truth" to acts and

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<sup>1</sup>Ibid., p. 517.

<sup>2</sup>Ibid., p. 581.

<sup>3</sup>Section 1, Chapter 1, Study 6.

<sup>4</sup>LI, p. 768.

their moments, and the term "being" to the corresponding objective correlates. Within these broad meanings Husserl then will allow narrower concepts, such that "being" would concern the being of absolute objects while states-of-affairs would be said to "subsist", and "truth" would be limited to the ideal adequation of a relational act (predication as opposed to absolute assertion) to the corresponding adequate percept of a state-of-affairs.<sup>1</sup> Reinach was later to remark that it was only in this section that Husserl finally achieved clarity about states-of-affairs.<sup>2</sup>

In the sixth chapter<sup>3</sup> Husserl makes it clear that objective correlates of categorial forms are not real moments, not objects of possible sense perception. An example of this ideality is found in the relational being expressed in predication. The concept of being in this sense has its source in our categorial intuition of some state-of-affairs.<sup>4</sup> States-of-affairs are higher order objects constituted in synthetic acts, in founded acts.<sup>5</sup> Husserl regarded states-of-affairs as limited to that which is constituted in relational acts. Disjunctions and conjunctions are synthetic forms, distinct from states-of-affairs, which may unite states-of-affairs in yet higher-order objects.<sup>6</sup> In the terminology of the Ideen states-of-affairs are to be referred to as noematic.

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<sup>1</sup>Ibid., pp. 768-69.

<sup>2</sup>LI, Section 39, Chapter 5, Study 6, pp. 765-770. Questions of interpretation of Reinach's own intention in his statements regarding states-of-affairs will therefore be resolved in the following pages by reference to Investigation VI whenever it is relevant.

<sup>3</sup>Chapter 6, Study 6.

<sup>4</sup>Ibid., pp. 780-84.

<sup>5</sup>Ibid., pp. 784-93.

<sup>6</sup>Ibid., pp. 798-99.

## b) Reinach's theory of states-of-affairs and its problematic aspects.

Reinach envisioned philosophy as a discipline whose aim was the evident knowledge of being in the widest sense. He abhorred the techniques of construction and reduction and regarded self-givenness of objectivity as the ground of knowledge. Knowing, however, is only one of the many possible intentional relations to objectivity and has a precise meaning for Reinach. Knowledge is not knowledge in Reinach's sense unless it has a discursive form--that such-and-such is so-and-so--although this form reflects not the framing of a definition but rather the adequate intuition of objective connections. Thus we perceive objects, feel them, take pleasure in them, but to know is not to know an object but rather a state-of-affairs. States-of-affairs may be either necessary or contingent. In a necessary state-of-affairs the predicate<sup>1</sup> is grounded in the essence(s) of the subject-object(s). Reinach calls this relationship of grounding and being grounded an "essential connection" (Wesenszusammenhang). In contingent states-of-affairs there are no necessary essential connections. The necessity and generality pertaining to a necessary state-of-affairs both derive from the "essential connection", as does its a priority.<sup>2</sup> Essential connections are therefore the subject of knowledge which is regarded as being as final, irrespective of time and change, as its subjects are free of change. This presupposes a particular view of the nature of essences and their relations to their exemplifications as well

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<sup>1</sup>Note unfortunate usage, like that found in LI. See above, p. 37, for comment on usage in LI.

<sup>2</sup>Examples: that "3 is greater than 2" is regarded by Reinach as a necessary state-of-affairs; that "my chair is sitting next to the wall" would be called a contingent state-of-affairs.

as of the intuiting of essences. In the context of Reinach's work, however, a far-reaching significance pertains to states-of-affairs and essential connections simply by virtue of their being that of which knowledge is possible.

It should be clear from the preceding section<sup>1</sup> that Reinach by no means originated the term "states-of-affairs", nor, as is clear from his own careful notes regarding its use by Stumpf and Husserl and the use of the term "objective" by Meinong, did he make any claim to have done so. In Reinach's writings, however, states-of-affairs undergo a careful analysis, vastly enriching the concept. In the process of this analysis Reinach took a position in opposition to that of Meinong and, in certain respects, to that of Husserl. Underlying his treatment of states-of-affairs, in connection with the various problems dealt with in his articles, was the conviction that states-of-affairs--not the objectivities that are elements of states-of-affairs, nor judgments and knowledge which have intentional reference to states-of-affairs--are a priori in the primary sense. It was his belief that the "fundamental significance of states-of-affairs for the most important philosophic problems would set itself forth ever more strongly."<sup>2</sup>

Modal and Material Necessity. -- Reinach's discussion of modal and material necessity in the latter part of the article on "Kant's Interpretation of the Humeian Problem"<sup>3</sup> makes explicit the importance Reinach attached to states-

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<sup>1</sup>See above, pp. 24-38.

<sup>2</sup>KAH,GS, p. 6, nt. 1. See also pp. 40-50, below, on the use of "a priori" as an ontological term.

<sup>3</sup>KAH,GS, pp. 1-35.

of-affairs. In this article Reinach examines Kant's interpretation of Hume's treatment of causal laws. Though the problem is superficially historical, Reinach takes this as an opportunity to analyze causal and mathematical propositions in terms of essential connections and necessary states-of-affairs. This article thus serves as an introduction to Reinach's treatment of states-of-affairs, though many of the distinctions made here can be better understood and stated in terms of the terminology developed in later articles. The problematic aspects of his treatment of this topic and its interpretation demonstrate the need for further clarification, also provided to some degree in his later articles.

Reinach identifies two key assumptions in Kant's argument:

1) in examining the causal propositions Hume was putting one possible case of synthetic a priori judgments to question, and 2) Hume regarded mathematical propositions as analytic and therefore a priori.<sup>1</sup> But, Reinach insists, though Kant's criteria for the a priori are objective generality and objective necessity, independent of experience, Kant left these criteria, which Reinach does not regard as constitutive for the a priori,<sup>2</sup> ungrounded.<sup>3</sup>

According to Reinach's analysis, formal and material general causal laws, and single causal laws, all involve necessity.<sup>4</sup> Reinach cites the following examples of these laws: 1) (Formal general)--"That which begins to exist must have a ground for its existence", or "Any new existence or change of an existent must have a cause," 2) (Material general)--"Fire produces warmth", and 3) (Single)--"This fire here and now

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<sup>1</sup>Ibid., p. 3.

<sup>2</sup>Ibid., p. 7, nt. 2.

<sup>3</sup>Ibid., pp. 5-6.

<sup>4</sup>Reinach remarks that he is concerned only with the significance of these laws, not with their correctness.

produces warmth." These three types of causal "laws" express necessary states-of-affairs, ones in which an "objective necessity" pertains to the whole state-of-affairs on the ground of an "essential connection" between the "subject and predicate".<sup>1</sup>

In the proposition "all color is necessarily extended" (example from the non-causal sphere) the matter referred to belongs to the sphere of the sensible-reals, while the necessity expressed has nothing to do with this sphere and the "material" content would be in no way altered if this necessity, "modal" rather than "material", were left unexpressed. In cases of causal necessity the modal necessity must be clearly distinguished from the specifically causal, i.e., the causal connection of two events.<sup>2</sup> A relation of simple temporal succession between A and B is distinct from the stronger causal relation between A and B. The latter presupposes the former, but is fundamentally different in "material" content. In contrasting these two distinct cases with that of the state-of-affairs, that " $2 + 2 = 4$ ", where only a modal necessity pertains and remarking that the addition of an overt assertion of necessity in this case (that " $2 + 2$  necessarily = 4") still refers to the same state-of-affairs,<sup>3</sup> Reinach appears to be pointing to a fundamental difference between the relations of events, i.e., of empirical entities in succession, and ideal states-of-affairs. The latter quite evidently are the case (better--"subsist")<sup>4</sup> or not, in accordance with their ideal necessity or impossibility,

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<sup>1</sup>KAH,GS, pp. 24-25. Here is yet another example of the unfortunate use of the terms "subject" and "predicate" borrowed from the sphere of propositions. Reinach notes that though there may be certain differences in the necessity involved in the three cases he will not take up that question.

<sup>2</sup>Ibid., p. 26.

<sup>3</sup>Ibid., p. 27.

<sup>4</sup>See above, pp. 29-30, 32, 38.

whereas the former are qualified in addition by both ideal and empirical possibility.

Reinach observed that causal necessity is expressed in the predicate, while modal necessity is expressed in the copula, thus determining the whole state-of-affairs. It is clear that causal necessity is not regarded as determining a whole state-of-affairs. It should be possible, however, for us to clarify the implications of this distinction for the constitution of the state-of-affairs itself.

In the proposition, "Any new existence or change of an existent necessarily presupposes a cause," a modal necessity is expressed. Reformulating the notion of "cause" expressed here, Reinach obtains the proposition "Any new existence or change of an existent necessarily presupposes an event which stands in a necessary connection with it," in which the modal and causal or, as Reinach says, "material" necessity, are both expressed. Likewise by reformulating the proposition, "fire necessarily produces warmth," the proposition "fire necessarily stands in a necessary connection with warmth," is produced, expressing both the modal and "material" necessity.<sup>1</sup> Reinach makes it clear that the modal necessity of a state-of-affairs is ideal even in the case where its terms (better, "elements") are sensible reals.<sup>2</sup> Likewise, because of this strict distinction between the two forms of necessity, Reinach finds that Hume's scepticism about objective material necessity pertains to the empirical sciences, but not to mathematics or any other science insofar as it involves only modal necessity.<sup>3</sup> Nor, in Reinach's view,

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<sup>1</sup> Ibid., p. 28.

<sup>2</sup> Ibid., p. 32.

<sup>3</sup> Reinach insisted on the importance for the empirical sciences of distinguishing the empirical and essential connections of the objectivities which were their subject, PN, GS, pp. 372-73. Precedent for this point of view is found, of course, in Stumpf and Husserl.

does Hume's scepticism about objective modal necessity alter the a  
priority of mathematical propositions.

The confusions which lie in this analysis of modal and material necessity and its interpretation can be unraveled to a large degree by 1) distinguishing "material" in the sense used in this article, as a synonym for "causal", from "material" in the sense contrasted to "formal", and 2) by referring to cause and effect relations as relations of two states-of-affairs. This analysis of cause and effect, is also found in the Logische Untersuchungen and corresponds to Meinong's analysis of cause and effect as a relation of two objectives. The interpretation of this article and of the significance of the distinction made between modal and material necessity is further confused by reading Hedwig Conrad-Martius' comments on it<sup>1</sup> and by the fact that Reinach is dealing in terms of the terminological preferences of Hume and Kant as well as his own.

It is best to start again and identify all these sources of confusion at their root. A necessary state-of-affairs is necessary whether or not I grasp it. The necessity in this case is an immanent moment of the state-of-affairs. Contingent states-of-affairs are those whose contrary is possible. The distinction is not simply that I can think both that "this apple is bigger than that pear" and "this apple is not bigger than that pear", though (usually) not "3 is smaller than 2". Rather the distinction is grounded in the natures of these objects. That "3 is greater than 2" is due to an "essential connection" (Wesenszusammenhang), the groundedness of the predicate in the essences of the objects, "3" and "2".<sup>2</sup> The relative size of pears and apples, however, is not a function

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<sup>1</sup> GS, XIII-XVI.

<sup>2</sup> KAH,GS. pp. 4-5.

of their essences.

The proposition, "red and orange are similar", was regarded by Hume as an "idea-relation" in which "similarity" is grounded in the natures of red and orange.<sup>1</sup> Reinach, in turn, calls the referent of this proposition a necessary objective state-of-affairs in the sense defined above and notes that it is clearly synthetic. Hume's question of whether the causal relation of two objects is a relation of ideas, is the source in this context of the modal/ material dilemma. In an "idea-relation" (Hume), or a necessary and synthetic state-of-affairs (Reinach), the "predicate" is conditioned by the compared ideas (Hume) or grounded in the essences of the objects (Reinach). A causal relation, if it were to be regarded as an idea-relation, would involve the groundedness of one idea and the predicate in the other idea. The groundedness of an idea and predicate in another idea cannot be grasped and thus known through the perceptual observation of the lone idea, let alone through simple visualization (independent of experience) of the idea, as is/ said to be the case for knowledge of necessary states-of-affairs (Reinach) and idea-relations (Hume). The effect and the causal relation are thus seen not to be "contained" in the cause in a manner analogous to Kant's sense of the analytic as would be the case if causal relations were a special type of idea-relation. Nor is the predicate (the causal relation) grounded in the essences of the "cause" and "effect" as would be the case for an ordinary idea-relation. It is thus clear that causal relations are neither necessary states-of-affairs (Reinach) nor idea-relations (Hume).<sup>2</sup>

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<sup>1</sup> Ibid., p. 10.

<sup>2</sup> Ibid., pp. 10-14.

Hume observed, moreover, that a causal relation involves a necessary connection in the successive existence of two objects and thus, unlike an idea-relation, is not existence-free. The existence of the cause is a condition of the existence of the effect and the causal relation.<sup>1</sup> In Reinach's later articles these same points are made in relation to states-of-affairs. Causal relations are not states-of-affairs but relations of states-of-affairs. This is clear simply from the definition of the existence of an object as a state-of-affairs and the observation that a cause is not an object, simply, but an event ("ein dingliches Geschehen").<sup>2</sup> And finally, a necessary state-of-affairs, ideal, is like an idea-relation in being regarded as independent of exemplification by particular existent objects.

Hume's matters-of-fact correspond to Reinach's contingent states-of-affairs, as idea-relations were seen above to correspond to necessary states-of-affairs. Thus both Hume and Reinach distinguish the spheres of the empirical and a priori. Moreover, Reinach finds that Hume's idea-relations, structures in which a predicate is grounded in the nature of the related ideas, indicate that Hume was aware of what Reinach refers to as essential connections, the foundation of the a priori, and that generality and necessity, Kant's criteria for the a priori, are direct consequences of Hume's determinations. Reinach thus concludes that Hume and Kant had the same concept of the a priori in view though each dealt explicitly only with certain distinct aspects of it, the former regarding it as subjective, the latter as objective.<sup>3</sup>

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<sup>1</sup>Ibid., p. 15.

<sup>2</sup>See Ibid., p. 28 and NU,GS, pp. 82-84.

<sup>3</sup>Ibid., pp. 6-7. Reinach seems to be almost inviting confusion here regarding the concept of the a priori.

Reinach supplements Hume's view that the opposite of an idea-relation is "impossible"<sup>1</sup>--Reinach finds this to be a determination of the conceptual level alone--with the view that this conceptual impossibility of the contrary of an idea-relation is grounded in the objective necessity and impossibility of states-of-affairs.<sup>2</sup> An impossible state-of-affairs "is" one whose "predicate" is incompatible with the essence(s) of the objects. The opposite of a matter-of-fact (Hume) and of a contingent state-of-affairs (Reinach) is always possible or rather not impossible.<sup>3</sup>

Reinach identifies two notions of "contradiction" used by Kant and Hume and suggests that Kant's misinterpretation of Hume resulted in part from confounding Hume's notion of incompatibility, an ontic incompatibility of predicate and subject grounded on an essential contradiction, applicable only to synthetic judgments, with his own notion of ("logical") contradiction in analytic judgments.<sup>4</sup> Reinach finds no evidence in Hume's writings for Kant's claim that Hume regarded mathematical propositions as analytic. The notion of "idea-relation" (Hume) may appear at first to imply that propositions (Sätze) are grounded in concepts. Yet "idea" in Hume's sense has, in fact, as little to do with "concept" in Kant's sense, Reinach observes, as Hume's view that the predicate is

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<sup>1</sup>Hume suggests that we consider a "mountain without a valley" to be impossible because we cannot visualize such a mountain.

<sup>2</sup>Ibid., pp. 14-18.

<sup>3</sup>Ibid., p. 19. Likewise, since we can conceive of the lack of causal connections Hume finds that it is "not impossible" that there are no causal connections.

<sup>4</sup>Ibid., pp. 19-20. See below, Chapter V, for discussion of analytic and synthetic judgments.

conditioned through the construction of the idea has to do with Kant's notion that the predicate of an analytic judgment is "contained" in the subject-concept.<sup>1</sup> Had Kant been consistent in his argument he would have had to call "red and orange are similar" an analytic judgment also.

Reinach observes, however, that this would have been absurd since it is instead a typical example of a synthetic judgment. Reinach suspects that Kant's view, that Hume regarded mathematical statements as analytic, is the result in part of the limitation of Kant's attention to Hume's discussions of mathematical idea-relations in the "Enquiry Concerning Human Understanding".<sup>2</sup>

Reinach's own usage of the terms "analytic" and "synthetic" encompasses the distinctions made by Locke, Hume, and Kant. In addition Reinach argues that these distinctions are to be regarded as being grounded in objective states-of-affairs. As for the "a priori", "analytic" and "synthetic" are regarded as originally ontological terms referring only secondarily to judgments about states-of-affairs. Both terms identify the nature of the essential connection obtaining in a necessary state-of-affairs. "Analytic" refers to the connection of an essence with itself, or an essential part with the whole, thus retaining Kant's notion of the predicate being "contained" in the subject. "Synthetic" refers to the connection of a predicate or relation with the essences in which the predicate or relation is grounded (but not "contained"). In his later work Reinach shows little interest in "analytic" states-of-affairs. This is probably due in large measure to his view that essences are irreducible objective elements which can be known only in connection

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<sup>1</sup>Ibid., p. 8.

<sup>2</sup>Ibid., pp. 9-11.

with one another and thus only in "synthetic" states-of-affairs. Study of "analytic" states-of-affairs would coincide with, or come dangerously close to, the attempt, which Reinach denounced, to define essences.

With a grasp on the above distinctions the difference between modal and material necessity can be clarified. Reinach compares the causal connection "event B follows event A necessarily" with the essential connection "moment B necessarily follows moment A". The types of necessity involved are "material" (better: "empirical" or simply "causal") and "modal", a priori, or essential, i. e., in this latter case, the result of the groundedness of the predicate in the essences of the two objects respectively. The relation of two states-of-affairs is said to be necessary in the first case, a state-of-affairs itself in the second. The arguments presented above are rendered intelligible by this formulation of the distinction between modal and causal necessity; it is now clear that a reference to causal necessity is a reference to the necessary causal relation of two events, that is, two states-of-affairs. The strict dependence on existence that thus pertains to causal necessity is seen to be the characteristic which marks it as an empirical non-ideal relation.<sup>1</sup> Reinach regards it as clear that though Hume did not clearly distinguish between the two forms of necessity his attention was focused on what Reinach has identified as material necessity and not, as maintained by Kant, on the necessity mathematical and causal propositions

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<sup>1</sup>It might be assumed that the referent of a judgment of causal necessity is a contingent state-of-affairs of higher order, say of the second degree, constituted by a non-essential (thus purely empirical) relation of two states-of-affairs. It is not clear at this point whether this view is in accordance with Reinach's theory of states-of-affairs, but the question will be raised again later in this chapter in anticipation of the need for referents of complex propositions and judgments to be discussed in Chapter IV.

have in common, i.e., modal necessity.<sup>1</sup>

The above gives an interpretation of Reinach's distinction between modal and material necessity quite different from that provided by Hedwig Conrad-Martius in the introduction to the Gesammelte Schriften (pp. xiii-xvi). The first remarks she makes about the article, to the effect that Reinach has shown Kant's interpretation of Hume to involve the confounding of logical and ontic categories, are valuable. The statements (see p. xv) that modal and material necessity are relations of two states-of-affairs and of two objects respectively, are, however, simply not in accordance with Reinach's position. Likewise her claim, that it is implicit in the article that modal necessity is grounded on material necessity, is not substantiated by any remarks in the paper. This claim is particularly misleading because of the extensive use by Reinach in the article of the term "material" in the sense of "causal". It is to be remembered that Reinach, like Husserl, maintained a strict distinction between the empirical and ideal spheres and strongly rejected attempts to obtain a priori laws through induction from particulars of the empirical sphere. Conrad-Martius' claim that it is clear that no modal necessity can subsist objectively for itself, which was to follow from the above, is likewise misleading and unsubstantiated by the article.

Object and Objectivity. -- Reinach's analysis of objects and objectivities is of significance for clarification of his theory of states-of-affairs. The parallel aspect -- the analysis of the concepts of these objects and objectivities -- is of similar significance in connection with his theory of judgments and propositions and will be discussed in Chapter IV. In the

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<sup>1</sup> Ibid., pp. 29-32.

article<sup>1</sup> devoted to examination of Kant's views on rules governing valid reasoning, Reinach comes to the conclusion, in opposition to Kant, that judgments are ultimately never made about concepts, but rather, immediately or mediately about objects or objectivities. The judgment about "this particular tree" has as its immediate subject a determinate single object. Judgments "about" concepts ("tree") have as their ultimate, though mediate, subjects, all objectivity insofar as it falls under the given concept.<sup>2</sup> Moreover, Reinach later asserts that the concept "triangle" in the statement, "This is a triangle," refers to the essence (Wesen) of the object (Gegenstand), what it is, (Was es ist).<sup>3</sup>

Individual objects, whether physical (and thus material, extended, colored, etc.) or psychic, are said to "exist". They have a certain duration in time and therefore a beginning and an end in time. "Tree in general", like the number "2", has none of these characteristics. Yet Reinach maintains that they are not "nothing", because we can make valid positive and negative statements about such objectivities (Gegenständlichkeiten).<sup>4</sup> "Ideal objectivities"<sup>5</sup> is the term Reinach chooses to use to refer to these "entities" in order to distinguish them clearly from real particular objects. Ideal objectivities are then divided into two groups: those to which there corresponds an unbounded set of individual objects (examples: "tree in general" and "all particular trees") and

<sup>1</sup> RVK, GS, pp. 36-55.

<sup>2</sup> RVK, GS, pp. 48-49.

<sup>3</sup> Ibid., p. 54.

<sup>4</sup> Ibid., p. 43. This is one of the points where Reinach clearly appears to presuppose a correspondence of the structure of language and thought with the structure of objectivity. The sense and relation of this point of view to Reinach's work in general will be examined below.

<sup>5</sup> ideelle, not ideale, see Ibid., p. 44.

those to which no such set corresponds. The latter (such as "2", "4", and propositions) are said to be themselves individual. Thus while all real objects are individual, ideal objectivities may be individual or "general".<sup>1</sup>

Reinach counters his earlier statement, that ideal objectivities are not "nothing", by raising the question, left unanswered in this context, of whether and in what sense one can speak of ideal objectivities as having "an existence outside consciousness."<sup>2</sup> This question is later raised again and in part resolved by claiming a mode of being for ideal entities which is not existence in the sense of real being, but "ideal existence".<sup>3</sup> However, Reinach always maintained that knowing, by essence, does not involve the creation or production of a being, but rather its discovery.<sup>4</sup> This implies at the very least some strong form of independence from consciousness for ideal objects and objectivities.

Reinach remarks that he has dealt only with generalities of

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<sup>1</sup>In his article entitled "Bemerkungen über das Wesen, die Wesenheit und die Idee," (JfPupF IV, 1921), pp. 495-543, Jean Hering sets forth a detailed series of distinctions between Wesen, Wesenheit, Idee, Allgemeinheit, and Gattung. The article was based on notes taken in discussions in courses with Husserl and Reinach in 1913. Many of the distinctions made by Hering do not appear explicitly in Reinach's articles, but appear to be in general accord with his position.

<sup>2</sup>RVK,GS, p. 44.

<sup>3</sup>The Russell of logical atomism is not willing to allow this option, asserting instead that particulars, sense-data, are the only real entities and all other "entities" are logical constructions. Earlier, Russell had asserted that: "being is a general attribute of everything, and to mention anything is to show that it is," (Principles of Mathematics, para. 427), a position not equivalent to that of Meinong, though it is often said to be, nor, of course, to that of Reinach.

<sup>4</sup>PN,GS, p. 374.

concrete unities, such as triangles, men, trees, etc., and not with general qualities such as triangular, red, etc. Reinach suggests that the latter may lie on a different level. The analysis of states-of-affairs, such as the "being-b of A", in the article on negative judgments contributes to the clarification of general qualities, though Reinach makes no overt mention of the relation of the two topics.

The objects and objectivities with which the preceding paragraphs dealt were Gegenstände and Gegenständlichkeiten, not Objekte. Thus it is clear that Reinach is concerned with entities under the aspect of being correlates of a grasping act, an intentional act. The term "object" in the sense of Gegenstand is further clarified in the article on Paul Natorp's definition of psychology.<sup>1</sup> It is in the third sense of Gegenstand as that which is foreign to the "I", transcendent to the consciousness, rather than that which belongs to the "I" as a function, state-of-being, act or subjective experience (i.e., all that which can be executed by and in the "I"), which Reinach intends by his use of the term. A tree which appears to the "I" in an hallucination and the unicorn which is the subject of a dream are also transcendent in this sense.<sup>2</sup>

States-of-affairs subsist.-- The question of whether and in what sense ideal objectivities may be said to have an existence outside consciousness was posed by Reinach in his article criticizing Kant's view that judgments

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<sup>1</sup>Ibid., pp. 351-376.

<sup>2</sup>Ibid., pp. 364-65. See LI, p. 866, for the example of a tooth-ache where "the perceived object is not the pain as experienced, but the pain in a transcendent reference as connected with the tooth." Husserl observes that error may also be involved as in the case where the pain appears to come from a sound tooth.

are made about concepts.<sup>1</sup> States-of-affairs, Reinach maintains, are completely different in nature from objects whether real or ideal, (for example: things, tones, experiences, or numbers, propositions, and concepts, respectively).<sup>2</sup> Among the main characteristics which result from this difference in nature are that states-of-affairs, unlike real or ideal objects, can stand in relations of cause and effect and of ground and result, be negated, and take on modalities.<sup>3</sup>

Real objects are said to exist and ideal objects to exist ideally.<sup>4</sup> States-of-affairs subsist (bestehen). The concept of states-of-affairs in no way includes its subsistence as an essential moment, just as the existence of an object is distinguished from the object. Thus certain states-of-affairs, such as, the "being-gold of a mountain", and the "being-round of a square" do not or cannot subsist.<sup>5</sup> The fundamental difference between states-of-affairs and objects is that when a state-of-affairs does not subsist the contrary state-of-affairs necessarily subsists and vice-versa, while for non-existing objects there is no corresponding objective existent.<sup>6</sup> Reinach does not claim to have produced a conclusive definition of states-of-affairs and, in fact questions whether it is possible to do so for "such final objective structures" as states-of-affairs and things. This point of view is in accord with his view that essences can be grasped only as they are given together with their essential connections, only in the medium, so to speak,

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<sup>1</sup>RVK,GS, pp. 36-55; see above Chapter II, section b, Object and Objectivity.

<sup>2</sup>NU,GS, p. 82.

<sup>3</sup>Ibid., pp. 82-85.

<sup>4</sup>Ibid., p. 85, nt. 1.

<sup>5</sup>Ibid., p. 85.

<sup>6</sup>Ibid., p. 86. This characteristic of states-of-affairs will be seen to be of key significance for Reinach's theory of judgments.

of essential laws.

Reinach thus does not claim a real existence for states-of-affairs, but he does assert that the denial of the objective subsistence of states-of-affairs in general is the contrary-to-sense position of absolute scepticism in the theory of knowledge. The laws of states-of-affairs are said by Reinach to be in fact the foundation of most of the traditional logical laws governing propositions and judgments.<sup>1</sup> Here Reinach can be said to be trying to win "believers" in the validity of the law of contradiction over to support of the analogous law of states-of-affairs. We must supplement Reinach's position by asserting that many states-of-affairs actually require a many-valued logic. This is clearly the case for those states-of-affairs which take on modalities in the range between necessary and impossible, and for states-of-affairs of values.<sup>2</sup> This view is in fundamental agreement with Reinach's point that the laws of logic must be grounded in the nature of the subject matter, the objective states-of-affairs to which propositions refer.

Reinach insists that the being "in" a state-of-affairs, such as the "being-b of A", is not to be confounded with the mode of being of the state-of-affairs, the subsistence or non-subsistence of the state-of-

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<sup>1</sup> Ibid., p. 113.

<sup>2</sup> The development of deontic, modal, imperative, tense, and action logics, and logic applicable to a specific subject matter such as law, is reviewed by G.H. von Wright in "The Logic of Practical Discourse," Contemporary Philosophy, ed. Raymond Klibansky, (Firenze: La Nuova Italia Editrice, 1968), vol. 1, pp. 141-167. Von Wright illustrates the difficulties which early attempts to discuss denotic relationships involved with references to Husserl's LU, part I, 1900, and E. Mally's Grundgesetz des Sollens: Elemente der Logik des Willens, Graz, 1926.

affairs itself.<sup>1</sup> This is clarified by considering the relationships whereby the subsistence of the "being-b of A" is coordinated with the non-subsistence of the "not-being-b of A", though in the case of the non-subsistence of the "being-b of A" the coordinate state-of-affairs is the subsistence of the "not-being-b of A". A state-of-affairs such as the "not being-b of A" is called a negative state-of-affairs and is said by Reinach to subsist in the same sense and with the same objectivity as any positive state-of-affairs.<sup>2</sup> Like Stumpf and Husserl, Reinach regards the sphere of the objective to include, but be greater than, that of reality. A subjective interpretation of the negativity of states-of-affairs is found to be neither necessary nor possible.<sup>3</sup> In connection with his explication of the constitution of negative and positive states-of-affairs Reinach emphasizes that the term "constitution" is not to be misunderstood as implying that states-of-affairs themselves are produced by constituting acts. The proper sense of "constitution"--including the various functions--is rather as the means by which a state-of-affairs is built up by and for "meaning" (Meinen). "We know," Reinach asserts, "that the negative states-of-affairs, just like positive states-of-affairs, subsist whether or not they are represented, known, believed, meant and asserted by anyone."<sup>4</sup>

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<sup>1</sup>NU,GS, p. 91. For this reason Reinach regards the assertions of Meinong, UA<sub>2</sub>, p. 61 and Ameseder, "Beiträge zur Grundlegung der Gegenstandstheorie", Untersuchungen zur Gegenstandstheorie und Psychologie, ed. Alexius Meinong, (Leipzig: J. A. Barth, 1904, pp. 51-120), p. 72, that the "Objektiv" "is Being and has Being" (Sein ist und Sein hat) as highly misleading.

<sup>2</sup>NU,GS, p. 93.

<sup>3</sup>Ibid., p. 93.

<sup>4</sup>Ibid., p. 104, see below pp. 58-59 and Chapters III and IV on "constitution", "meaning", and "functions".

Negative and positive objective states-of-affairs either subsist or not and it is the resultant four alternatives--subsistence of a positive state-of-affairs, non-subsistence of a positive state-of-affairs, subsistence of a negative state-of-affairs, and non-subsistence of a negative state-of-affairs--which form the basis for Reinach's classification of the types of judgments.<sup>1</sup>

The existence (or non-existence) of an object is a state-of-affairs. Assertions, such as "x exists", are assertions of the subsistence of states-of-affairs. An assertion is a judgment by virtue of the act of asserting "x exists" as opposed to simply saying "x exists", which could also be a conjecture. The same state-of-affairs can be the content of a variety of intentional acts--belief, knowledge, doubt, question, etc.<sup>2</sup> We therefore consider it to follow immediately from Reinach's position that the full objective referent of a judgment in the strict sense (whether a conviction or an assertion) is not simply the state-of-affairs, positive or negative, but the state-of-affairs together with its subsistence or non-subsistence. It is only in this way that it is possible to maintain that a distinct objective referent corresponds to each of the four types of judgments identified by Reinach. It is necessary to make this claim in order to support Reinach's claim that the laws of traditional logic are

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<sup>1</sup>See Chapter IV, below, for discussion of Reinach's theory of judgments.

<sup>2</sup>As for Russell ("Logical Atomism", in Logic and Knowledge, Essays 1901-1950, ed. Robert Charles Marsh, (London: George, Allen and Unwin, Ltd., 1956), p. 220, hereafter cited as LK), belief is not of objects, but rather "that so and so, etc." Belief propositions were troublesome for Russell, particularly after his exclusion of the "subject" or "act" as a constituent of a presentation ("On Propositions", in LK, p. 305), and his rejection of "Brentano's view that mental phenomena are characterized by 'objective' reference", (p. 306). A comparison of logical atomism and early phenomenology provides strong arguments for the value of the concepts of "intentionality" and "constitutive acts" for attempts to clarify the nature of relationships of consciousness and being, (see below, pp. 63-65).

actually founded in the laws of states-of-affairs.

Well-formed states-of-affairs. -- Reinach does not use the phrase "well-formed states-of-affairs", but it is useful in expressing his point that states-of-affairs, as they are constituted for meaning (Meinen) in assertions, cannot be simply thrown together in arbitrary fashion out of any elements whatsoever, but rather only in accordance with determinate laws of constitution.<sup>1</sup> It is the form, not the content of the state-of-affairs, which is described by these laws. A state-of-affairs of the form "the being-b of A" must be constituted out of elements of the forms A and b. These essential elements may be supplemented by elements unessential for the formal constitution of the state-of-affairs.<sup>2</sup> Though it may at first glance appear that this is a case where Reinach argues that the structure of objective states-of-affairs corresponds in a one-to-one relation to the structure of language used to refer to states-of-affairs, this is not the case. According to Reinach it is strictly within the sphere of meaning (Meinen) and therefore of assertions, not in the sphere of knowing convictions (erkennende Überzeugung), that the concept of function, required for constituting any state-of-affairs more complex than "the being-b of A," has its place. Thus, while a single state-of-affairs is set forward in the assertion "A is b and c" by means of the connecting function, in the sphere of knowing conviction-- where no connection is constituted--two states-of-affairs are represented. Reinach asserts, however, that the role of the functions is founded and justified on the objective states-of-affairs and their objective relations.

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<sup>1</sup>For an analogous point see Russell, "On Propositions", 1919, in LK, on non-interchangeability of relations and terms.

<sup>2</sup>NU,GS, p. 111.

Only when an objective negative state-of-affairs subsists may a negation function act within the sphere of meaning in reference to this state-of-affairs. There may be certain problems<sup>1</sup> of detail here. An assertion involving a function, for example, is said to be grounded on the objective relations of states-of-affairs by means of, or mediated by, a knowing conviction. In knowing convictions, however, the functions have no role although more than one state-of-affairs may be represented. It is clear, however, that Reinach is by no means arguing for a "grammatical" objective structure, but rather making use of the constitutive activities of intentionality. The pitfall of one-to-one correspondence is to be avoided in attempts to interpret and extend his position. As an aid to avoiding confusion, states-of-affairs will henceforth be referred to as either "constituted" or "objective". This distinction for the most part is not made explicit by Reinach in his writings and can only be inferred from the context in which each individual state-of-affairs is discussed, as we shall do in accordance with the distinctions clarified above.

Husserl had been straightforward in his rejection of a "picture-analogy" whereby the complexity of meanings reflects the complexity of the objects presented by these meanings.<sup>2</sup> His treatment of the a priori laws governing combinations of meanings was developed, not in terms of states-of-affairs as they are constituted for meaning (Meinen), but in terms of ideal forms of independent logical propositions--"this tree is green", "this S is P".<sup>3</sup> A comparison of this discussion with the

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<sup>1</sup>See below, Chapter III, on "meaning".

<sup>2</sup>LI, pp. 494-95.

<sup>3</sup>Ibid., pp. 511-13.

position of Reinach presented above shows, on the one hand, the fundamental significance of Husserl's work for Reinach's position and, on the other hand, provides many examples of the manner in which Reinach both reformulated and developed more fully certain aspects of Husserl's phenomenology. Thus while Reinach attempted to provide specific analyzes of negation, conjunction, etc.--a project suggested in the Logische Untersuchungen--he does not pursue this analysis within the context of developing a pure logical grammar as envisaged by Husserl. Reinach's attention is turned to this problem--that of functions--only because their clarification is required for the development of an adequate theory of judgment. His point of reference is, in the end, always the objective states-of-affairs. This strongly directs the course Reinach's analysis takes. Husserl considers the incompatibilities involved in both the combinations "a man and is"<sup>1</sup> or "King but or like",<sup>2</sup> and "a round square".<sup>3</sup> Reinach, however, evidences concern only with the latter--which Husserl in the context of pure logical grammar had referred to as a meaning which "itself exists"<sup>4</sup>--presumably because only for such a meaning can the question of the nature of its objective referent even arise.

Negative States-of-Affairs. -- A key characteristic of states-of-affairs (particularly for the theory of judgments) is that they, unlike objects, can take on negation. Reinach asserts that there are no negative objects or qualities corresponding to the negative linguistic abbreviations used in the judgments "the rose is not red" and "the non-smokers enter any

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<sup>1</sup>Ibid., p. 517.

<sup>2</sup>Ibid., p. 522.

<sup>3</sup>Ibid., p. 523.

<sup>4</sup>Ibid., p. 517.

section." In both cases the complete reference is rather to a negative state-of-affairs,--"the rose is something that is not red," and "those people who do not smoke enter any section."<sup>1</sup>

Going beyond Reinach's position, we may argue that the role in these judgments of the phrases referring to negative states-of-affairs is similar to that which Reinach attributed to concepts. Concepts, logical elements, were said to set forth the universality of objectivity under which a particular object was to be grasped. In the case of reference to objective negative states-of-affairs we find the universality of objectivity involved to be set forth by means of the negation of some constituted positive state-of-affairs. The objective negative state-of-affairs, such as the "not-being b of A", may be then referred to in a judgment, not by a concept, but by a phrase of the form "that A is not b". A self-sufficient assertion can be made about this objective negative state-of-affairs, such as--"It is the case that A is not b", or, as is seen above, a phrase referring to the objective negative state-of-affairs may perform the function, within a more complex statement, of a "negative concept". There can be no negative concepts, as such, for concepts refer to unbounded sets of particular objects and we accept Reinach's view that there are no negative objects. Analogously, we argue that there are no negative qualities. Yet, the information conveyed in a statement of the type, "This x is a y' and 'y is not z'", or "'This rose is a thing' and 'the thing is not red'", may be more or less precise depending upon the number of alternatives there are to the elements negated--(for example: "today is not Monday" conveys more

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<sup>1</sup>NU,GS, p. 115.

information in this sense than the statement "this month is not November").

Reinach's comments to the effect that objects and essences are knowable only within states-of-affairs and essential connections suggest that it is possible, again going beyond his position, to argue that all concepts of "unitary entities", including "smoker", "lion", and "rose", etc., are logical abbreviations whose full objective referent is not simply an unbounded set of particular objects falling under that concept, but rather an unbounded set of particular objects falling under that concept insofar as they are "subject" elements of objective states-of-affairs. Likewise in response to Reinach's question about general qualities,<sup>1</sup> we suggest that concepts of general qualities (redness, squareness, evenness, etc.) are logical abbreviations whose full referents are the unbounded sets of particular qualities falling under those concepts respectively insofar as they are the "predicate" or "predicate elements" of objective states-of-affairs.

Reinach's statements about states-of-affairs include one asserting that many positive and negative states-of-affairs may be grounded in the same thing-like unitary complex (dingliche Einheitskomplex) or subsisting fact (Tatbestand).<sup>2</sup> Though both negative and positive states-of-affairs "subsist in the same sense and with the same objectivity" our

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<sup>1</sup>RVK,GS, p. 55.

<sup>2</sup>NU,GS, p. 85. Reinach does not use the term "Tatsache" but rather the term "Tatbestand." See also NU,GS, pp. 79, 81, 88, and 89. The mode of being of facts, in this sense, is apparently subsistence. The subsistence of a fact is dependent on the existence or non-existence of empirical things and their properties just as the subsistence of a state-of-affairs is a function of the subsistence or non-subsistence of essential connections. Thus the levels of "founding" and "foundedness" are in the end clearer than the precise labels Reinach intends to use for the various modes of being. See below, pp. 76-81.

knowledge of negative states-of-affairs is derivative, being based on knowledge of contrary positive states-of-affairs. There is no objective element corresponding to the categorial element "not"<sup>1</sup> and thus the list of states-of-affairs which can be simply "read off" from objectivity contains only positive states-of-affairs.

Russell set forth the analogous view that sensible facts are always positive.<sup>2</sup> Although a detailed comparison of logical atomism and early phenomenology is beyond the scope of this thesis, certain similarities and differences in the work of Russell and Reinach are of particular interest. Russell's and Reinach's claims, for example, that there are negative facts and negative states-of-affairs, respectively, were both made in response to the problems surrounding objective reference of negative and false propositions. Russell admits negative and positive facts, but not what he calls "false facts". Thus for any fact there were said to be two corresponding propositions--one positive and one negative--only one of which is true by reference to the fact,<sup>3</sup> whereas Reinach's subsisting and non-subsisting negative and positive states-of-affairs made possible a one-to-one correspondence between a state-of-affairs and a true or false, positive or negative proposition. Negative facts allowed Russell to explain what happens when you make a positive assertion that is false and made possible the analysis of molecular propositions as truth functions of atomic facts.<sup>4</sup> Reinach's contention

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<sup>1</sup>An important problem of intentionality lies hidden here. See below, Chapter III.

<sup>2</sup>"On Propositions", in LK, p. 317.

<sup>3</sup>LK, p. 187.

<sup>4</sup>"Logical Atomism, 1918, in LK, p. 287.

that the subsistence of a positive state-of-affairs entails the non-subsistence of the corresponding negative state-of-affairs, etc., was paralleled in part by Russell's assertion that there is always one fact of a pair of correlated facts but not both. Reinach would have accepted the view that the term "not" in a proposition corresponds to no objective element but is rather a symbol for an ultimate and irreducible difference between negative and positive facts or states-of-affairs.<sup>1</sup>

Negative facts and propositions continued to provide Russell with problems, however. All "word propositions," whether or not they contained the term "not", were themselves regarded as positive facts though some were verified by positive objectives, others by negative objectives. The mediate stage between a "word proposition" and the facts referred to was the "image proposition" which contained no duality of content corresponding to positive and negative facts but was rather believed or disbelieved.<sup>2</sup> This was awkward as it followed a rejection of "subject" or "act" as constituent of a presentation<sup>3</sup> and of belief as consisting in a multiple relation of the subject to the objects constituting the objective.<sup>4</sup> Russell himself noted that the resulting gulf between the content and the objective made it doubtful in what sense we can be said to "know" the objective.<sup>5</sup>

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<sup>1</sup>"On Propositions," in LK.

<sup>2</sup>Ibid., p. 317.

<sup>3</sup>Ibid., p. 305.

<sup>4</sup>Ibid., p. 306.

<sup>5</sup>Ibid., p. 307. See also, above, pp. 52, 57, 58, and below pp. 68, 73, for other comparisons with Russell's position.

Reinach's phenomenology could claim to deal with many of the questions over which logical atomism stumbled by virtue of the functions performed by intentionality and the variety of constitutive acts of consciousness. The value of the concepts of "intentionality" and "constitution" for Reinach's attempts to clarify various relationships of consciousness and being will become more apparent in the following three chapters.

A key distinction between objects and states-of-affairs, according to Reinach, is that the latter take on negation while the former never do. Our interpretation regards this difference between states-of-affairs and objects to be grounded in the fact that the relational being expressed in predication--often by the copula--is not independent of the state-of-affairs but is founded in the objective connection of the elements of an objective state-of-affairs.<sup>1</sup> Negation of an objective state-of-affairs is thus a negation of this objective connection, the "relational being". Relational being is the ideal objective correlate of the categorial form "being" in the copulative sense. In a judgment it is precisely this categorial "being" and thus the whole constituted state-of-affairs which can be negated.<sup>2</sup>

The use of the term "not" as a means of "pushing away" a non-essential element--as in "the car was not driven fast", where the non-

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<sup>1</sup>The subsistence, on the other hand, of states-of-affairs--like the existence of objects--is in no way included in the concept, "State-of-Affairs", or in the concepts of individual states-of-affairs.

<sup>2</sup>This interpretation presupposes Husserl's discussion of the ideality of categorial forms, one of which is "relational being"; see LI, pp. 780-84.

essential element is "fast",--is distinguished from negation by Reinach. This may be applied to the "negation" of causal judgments, left unclarified by Reinach, as are causal judgments as such, by arguing that in the case of a judgment referring to a causal relation--an empirical non-essential relation of two states-of-affairs--it is the necessity qualifying the predicate (the causal necessity) which is "pushed away". Either this or some similar explanation must be applied to the "negation" of causal relations and relations of ground and result for these are relations of two states-of-affairs, whereas the negation function effects only an individual state-of-affairs.

An alternative would be to regard a constituted causal relation as a higher order and, of course, contingent state-of-affairs and the corresponding objective causal relation as an empirical relation of two states-of-affairs. Take the case "A is the cause of B", where "A" and "B" are understood to be successive temporal events which are both in the past. At the most primitive level there are simply the two states-of-affairs--"the existing of A", "the existing of B". In fact this is not the most primitive level; for, as events, "A" and "B" both involve processes such that a more accurate statement might involve "the becoming-z of A", etc. In the following we shall nevertheless use the shorthand "the existing of A".<sup>1</sup> As successive temporal events in the past they stand in an essential connection by virtue of the essence of time itself. A possible expression of this connection, containing the above states-of-affairs as objective elements in a higher order state-

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<sup>1</sup> A more literal formulation would be "the being-existing of A" and "the being-becoming-z of A". Although that formulation would maintain the parallel with the form of the general case, "the being-b of A", it has been avoided as it is awkward.

of-affairs, is "the being-before the existing of B of the existing of A". The constituted causal relation asserts that given the subsistence of the objective state-of-affairs "the existing of B", the objective state-of-affairs "the being before the existing of B of the existing of A", necessarily subsists. And since, as noted previously, the subsistence of a state-of-affairs is no more included in its concept than the existence of an object is included in its concept, the negation of the constituted causal relation is merely a negation of the necessity of the subsistence of the state-of-affairs, not a negation of the state-of-affairs. The negation of the constituted causal relation could then take some form such as: "If the existing of B subsists, then the being-before the existing of B of the existing of A does not necessarily subsist."

Modality.--Reinach refers to degrees of probability and possibility as "modality". The "being-b of A", a state-of-affairs, not an object, may be possible or probable. As in the case of negation an object cannot take on modality, though the existence of the object, the state-of-affairs, "the existing of A", can. Reinach states that this difference is grounded in the essence of the respective forms of objects and states-of-affairs.<sup>1</sup> Extending his remarks, it can be argued<sup>2</sup> that since

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<sup>1</sup> My interpretation of Reinach's position on modality differs fundamentally from that given by Irmgard Habel, (Die Sachverhaltsproblematik in der Phänomenologie und bei Thomas von Aquin, (Regensburg: Josef Habel, 1960), p. 53): that modality is related to the subsistence of a state-of-affairs only as it is meant in a judgment, only as it is grasped. Moreover, Habel's entire approach to the "states-of-affairs problematic" differs from mine. Terminological differences between early phenomenologists, which are, of course, not to be passed over, assume too major a role in her interpretation with the result that the context within which they arose and the problems which they were intended to clarify are lost from sight. Habel's tendency to overlook precedents for certain of the "original" distinctions made by Hedwig Conrad-Martius may have resulted in part from this emphasis on terminological differences.

<sup>2</sup>As above, pp. 65-66, for negation.

modality apparently qualifies "being"--which in the case of the existence of an object is not included in the concept of the object and in the case of the subsistence of a state-of-affairs is not included in the concept of the state-of-affairs--the only being which it is possible for modality to qualify in a constituted state-of-affairs is the relational being expressed in predication and founded in the objective modality of the connection of the elements of the objective state-of-affairs.<sup>1</sup>

In his discussion of the probability (modality) of the existence of an object, i.e., of a state-of-affairs,<sup>2</sup> Reinach does not associate this topic with elements involved in the non-existence of a golden mountain (contingent) and of a round square (necessary) or the non-subsistence of the "being-gold of a mountain" (contingent) and of the "being-round of a square" (necessary). Not only are the distinctions involved in these examples, presented by Reinach as though they were distinct, closely related, but the two extremes, necessity and impossibility, are actually the ideal limits of probability. These ideal limits pertain only to states-of-affairs containing an essential a priori connection--as in the case of the round square--and are clearly excluded by the contingent nature of states-of-affairs which contain non-essential connections. In not associating the ideal limits with the probability

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<sup>1</sup>See Hedwig Conrad-Martius, Das Sein (Munich: Kösel, 1957), pp. 19-31, for another attempt to clarify the "being" immanent to states-of-affairs.

<sup>2</sup>Compare with Russell who regarded existence and modality as properties of propositional functions, not of individuals and propositions. ("Logical Atomism", in LK, p. 231-32).

of which they are the limits it might be said that Reinach is merely being consistent in maintaining a strict distinction between the empirical and a priori, the real and ideal, realms. However, from the above it is seen that necessity, probability, possibility, and impossibility belong to the same category--we may still call it modality--just as negation in general belongs to one category even though the implications of the laws stating its relationships are weaker for states-of-affairs containing non-essential connections than for those containing essential connections.

Reinach claims that the non-subsistence of a state-of-affairs entails the necessary subsistence of the contrary state-of-affairs. This point can be granted immediately for states-of-affairs involving essential connections. It is clear that it also holds for contingent states-of-affairs, and thus for those involving probability as well as for any other state-of-affairs which by nature of its subject--such as values--admits of degrees. A comparison of the following statements we have set forth to illustrate various cases indicates, however, that the implications of the necessary relationships of the subsistence and non-subsistence of negative and positive states-of-affairs are not equally strong for our knowledge of every state-of-affairs.

It is not the case that today is Monday.  
It is the case that today is not Monday.

It is not the case that  $3 \leq 2$ .  
It is the case that  $3 \neq 2$ .

It is not the case that today is not Monday.  
It is the case that today is Monday.

It is not the case that  $2+2=5$ .  
It is the case that  $2+2 \neq 5$ .

It is not the case that this number is odd.  
It is the case that this number is not odd.

It is not the case that  $x+y \neq z$ .  
It is the case that  $x+y=z$ .

It is not the case that this number is not odd.      It is not the case that  $x+y=z$ .  
 It is the case that this number is odd.      It is the case that  $x+y\neq z$ .

It is not the case that the next card will probably be a Jack.  
 It is the case that the next card will probably not be a Jack.

It is not the case that the next card will probably not be a Jack.  
 It is the case that the next card will probably be a Jack.

The above pairs of statements regarding subsisting and non-subsubsisting states-of-affairs (the order of each pair, of course, is not relevant since each member of a pair entails the other) provide varying amounts of information. In all the cases involving non-subsubsistence of positive states-of-affairs and subsistence of negative states-of-affairs the question of what positive state-of-affairs does subsist is, strictly speaking, left unanswered--even for the case of the subsistence of the "not-being-odd-of-a-number" or of the "not-being-less-than-or-equal-to-two-of-three". This is more obvious for the subsistence of the "not-being Monday of today". The amount of information conveyed in each of these three cases and all others of this type depends on the context and our knowledge of it. Within the standard arithmetic framework we are quick to add to the above--"therefore the number is even," and "therefore three is greater than two." The reader has probably already done this and may even now be shaking his head over these "trivialities". If so he must stop and note that he was assuming "that numbers are either even or odd" and "that any number is either greater than, less than, or equal to any other number." Likewise the subsistence of the "not-being Monday of today," only when taken together with the subsistence or non-subsubsistence of certain other negative or positive states-of-affairs, can

entail the subsistence of a positive state-of-affairs which in turn can be the objective referent of a statement of the form, "It is the case that today is ---".

Nor do we find the cases involving the subsistence of a positive state-of-affairs and the non-subsistence of a negative state-of-affairs to be always more conclusive, though those such as the subsistence of "the being odd of this number" and "the being Monday of today", immediately provide what was asked for above--the subsistence of a positive state-of-affairs. The inconclusive cases of this type are precisely those involving probability or possibility--modality between the two ideal limits. Like all cases of the type above these cases require knowledge of certain other subsisting or non-subsisting positive and negative states-of-affairs, if knowledge of the subsistence of a positive state-of-affairs, which can be the objective referent of a statement of the form--"the next card will be a ---," is to be achieved.

In the necessary subsistence of "the being three-sided of a triangle", a state-of-affairs involving an essential connection, taken together with the simple subsistence of the "being red of this rose", the possible subsistence of the "being gold of a mountain", the probable subsistence of the "being a Jack of the next card", and the impossible subsistence of the "being round of a square" (a state-of-affairs involving essential contradiction), we have exhibited examples of the range of modality. We find necessary states-of-affairs to be characterized in addition by the fact that it is possible to apply negation to either the state-of-affairs, its subsistence, or both, without doing violence to either the sphere of ideal meanings or implying basic change in the

structure of objectivity, as long as simple, possible, or probable states-of-affairs and thus the subsistence of states-of-affairs between the ideal limits alone is involved. The two ideal limits, necessity and impossibility, are governed by stricter laws than the simple, possible, or probable. These laws are grounded in the objective essential connections of the states-of-affairs to which they pertain.<sup>1</sup>

Relations and states-of-affairs. --Reinach states quite clearly that states-of-affairs are not relations and defends his position by an

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<sup>1</sup> See Roman Ingarden, Der Streit um die Existenz der Welt, II/1, (Tübingen: Max Niemeyer, 1965), pp. 292-315, for a valuable discussion of "negative states-of-affairs". Ingarden argues (p. 293) that to deny the "seinsautonome Bestehen der negativen Sachverhalte" would produce great difficulties for the understanding of the principles of ontology and logic; the principles of contradiction and the excluded middle presuppose at least the possibility of the subsistence of negative states-of-affairs. Reinach's claim that there is no ontological distinction between negative and positive states-of-affairs is examined (pp. 300-315). Ingarden finds it correct that negative states-of-affairs cannot be "read off" (are not "ablesbar"), but wishes to know why. In the case of the state-of-affairs referred to by the judgment "A is not b", A is, Ingarden asserts, "seinsautonom", while "b" is not but could be. Rather, "b" is here the pure intentional correlate of an act of thought. Therefore, Ingarden concludes, negative and positive states-of-affairs are not on the same level of being. Yet the negative state-of-affairs is not a "reine ens rationis" (Duns Scotus); for when "A is not b" is true there is some fact (Tatsache) to which it corresponds. Ingarden therefore speaks of the negative state-of-affairs as having a side of the "seinsautonome Sein" in itself and claims that the degree to which negative states-of-affairs are made overt is a reflection of the level of interest of the knowing subject. Ingarden approaches this topic again by asking, whether a negative state-of-affairs can be a cause of a result: "Wie kann etwas 'wirken', was nicht da ist?" (p. 312). The ensuing discussion points to the diversity of negative states-of-affairs which can be coordinated with a single positive state-of-affairs and finds the former to be of meaning for the knowledge of objects (Gegenstände). Ingarden concludes that there are many cases, other than negative states-of-affairs, of higher layers built on seinsautonom objectivities though these layers are not seinsautonom in the same sense. This indicates to Ingarden that the concept of Seinsheteronomie is not "empty" but has an essential application in various situations.

The work of Roman Ingarden is representative of many of the

analysis of the judgments "A is inherent in B" and "A is similar to B".<sup>1</sup> The "being-similar of A and B" is a state-of-affairs, but could also be regarded as a "relation". Reinach finds the term "relation" to be ambiguous. Left and right, above and under, as well as being-left and being-under, may all be called "relations". Reinach regards the last two examples--only these are states-of-affairs--as fundamentally different from the first four. Left is said to be related to being-left as red is to being-red.

The ambiguity of the term "relation" allows five interpretations: 1) A state-of-affairs is never a relation and a relation is never a state-of-affairs; 2) All relations are states-of-affairs; 3) All states-of-affairs are relations; 4) All states-of-affairs are relations and conversely; 5) Some states-of-affairs are relations and some relations are states-of-affairs. Reinach eliminated the first and second interpretations with the examples above of "being-left" and "left" respectively. Three and four are eliminated by the example of "the being-red of a rose"--a state-of-affairs which is not a relation. States-of-affairs of only one term--"being-red", "being-smooth",--are even more striking examples. Such one term states-of-affairs can be believed and asserted in judgments of the form "it is warm", "it is smooth".<sup>2</sup> The fifth interpretation

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tendencies and interests of the early Göttingen phenomenology in a more fully developed form. He was evidently cognizant of the later work of Husserl but himself chose to pursue questions with an ontological focus. A comparison of the work of Ingarden with that of Reinach, Hering, Scheler, and Husserl from the Göttingen period would therefore be of value for any attempt to assess the potential of the so-called "realistic" branch of phenomenology.

<sup>1</sup>NU,GS, p. 90.

<sup>2</sup>Compare with Russell: the content of a belief may in some cases be a simple image, not of the form "that...", though "important" beliefs are always of the latter form ("On Propositions", in LK, p. 307).

alone was not eliminated. Reinach observes that if relations were never states-of-affairs then they could not be judged, save insofar as they were contained as objective elements in states-of-affairs--such as the "being-similar of A and B".<sup>1</sup>

Reinach believed that the old question of the essence of the impersonal judgment could be solved at one stroke by means of reference to the one-term states-of-affairs.<sup>2</sup> When we say, "it is warm", the warmth can be said to belong to the wind blowing from the south, for instance, but need not be. Reinach maintains that it would be a construction of the worst sort to claim that the warmth must be connected to the "surrounding space", to the "totality of being", or to the "chaos", for these would then also have to be perceived in order to ground the statement "it is warm". Rather "warmth" alone is all that need be perceived, the "being-warm" is what is known, and it is this one term state-of-affairs to which the judgment, "it is warm", refers. "Being-warm" has all the characteristics of states-of-affairs (it can be negated, take on modalities, etc.). Yet as a simple "being-so", and not the "being-so of some object", it is distinct from other states-of-affairs.<sup>3</sup> Reinach asserts that the judgment "it is warm" cannot refer to the "situation" which we call warmth, for a "situation" is clearly not a state-of-affairs. Moreover, he has maintained that by essence a judgment refers to a state-of-affairs. He shows that "warmth" is an ambiguous term applying both to a situation and a state-of-affairs by means of analysis of the distinction between pleasure (or any other feeling) referring to

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<sup>1</sup>NU,GS, p. 92, see below Chapter IV.      <sup>2</sup>NU,GS, p. 92.

<sup>3</sup>Ibid., p. 118.

objects (warm drink) and situations (warmth) and pleasure referring to the state-of-affairs which is the objective correlate of the statement, "it is warm". This ambiguity is regarded as explaining the tendency to erroneous interpretations of impersonal judgments as references to situations rather than to states-of-affairs. Situations cannot take on modalities, be negated, etc. Judgments involving modalities, negations, etc., therefore can be understood only if they refer to states-of-affairs and not to situations.<sup>1</sup> Simplified, the argument runs: we make impersonal judgments, all judgments are about states-of-affairs, therefore impersonal judgments are about states-of-affairs. The argument, as such, is sound but only if it is indeed the case that all judgments are about states-of-affairs. Arguing more positively emphasis must be given to Reinach's implicit point--that situations, like objects, ground states-of-affairs but are not states-of-affairs.<sup>2</sup>

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<sup>1</sup>Ibid., pp. 119-120.

<sup>2</sup>Brentano had also discussed judgments of this form in his review (in the Wiener Zeitung, Nov. 13 and 14, 1883; reprinted as an appendix to VUSE, 1st ed.; see for English translation, OKRW, pp. 98-108) of Franz Miklosich's Subjektlose Sätze (Vienna: Braumüller, 1883) (subjectless propositions). Brentano regarded arguments that the subject referred to was Zeus, or Chaos, as absurd and supports Miklosich's general position. Brentano found it preferable, however, not to call these propositions "subjectless propositions" or "predicate propositions" as this might lead to the assumption that they are a type of stunted subject-predicate propositions, but rather "simple propositions" or "existential propositions". In the Psychology Brentano had argued that every judgment (his later view claimed this only for truly unitary or simple judgments) could be expressed without loss of meaning in the form of a subjectless proposition or, as he preferred to call it, an existential proposition.

Reinach's argument included stating that the second term of the one term state-of-affairs is somehow "present" (vorhanden) but need not be grasped in the judgment. We find the function of "it", in the statement "it is warm", to be analogous to the function of categorial elements such as "all", "that", "this", etc., which are used within a context and serve to provide a "view" (Fassung) of the universality of objectivity to which reference is being made. Concepts and categorial elements, insofar as they both function in this manner, bear a strong similarity to one another which may be of relevance in clarifying the nature of their intentional reference.<sup>1</sup>

Reinach's ontology. --The use of the phrase, "Reinach's ontology", should not be allowed to mislead; none of Reinach's writings contain an explicit or comprehensive statement of the ontological assumptions involved in his position. To a large extent his methodological position would have rendered such a statement premature, for he had by no means completed the range of work he presumably would have wished to examine in formulating such a statement. We can sketch, however, an outline of the ontological assumptions which appear to underlie his work.

Reinach was a realist. That characterization alone, however, is also misleading. A diagram of his world could be given the following form: First--and it is for this reason we have said that Reinach was a realist,--there are the real individual objects whose status as real entities is completely independent from their being the intentional correlates of conscious acts. These objects exist and have a beginning

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<sup>1</sup>See Chapter IV, below, for development of this interpretation. See also Husserl, LI, pp. 314-20, pp. 682-87, and Reinach, UP,GS, p. 391.

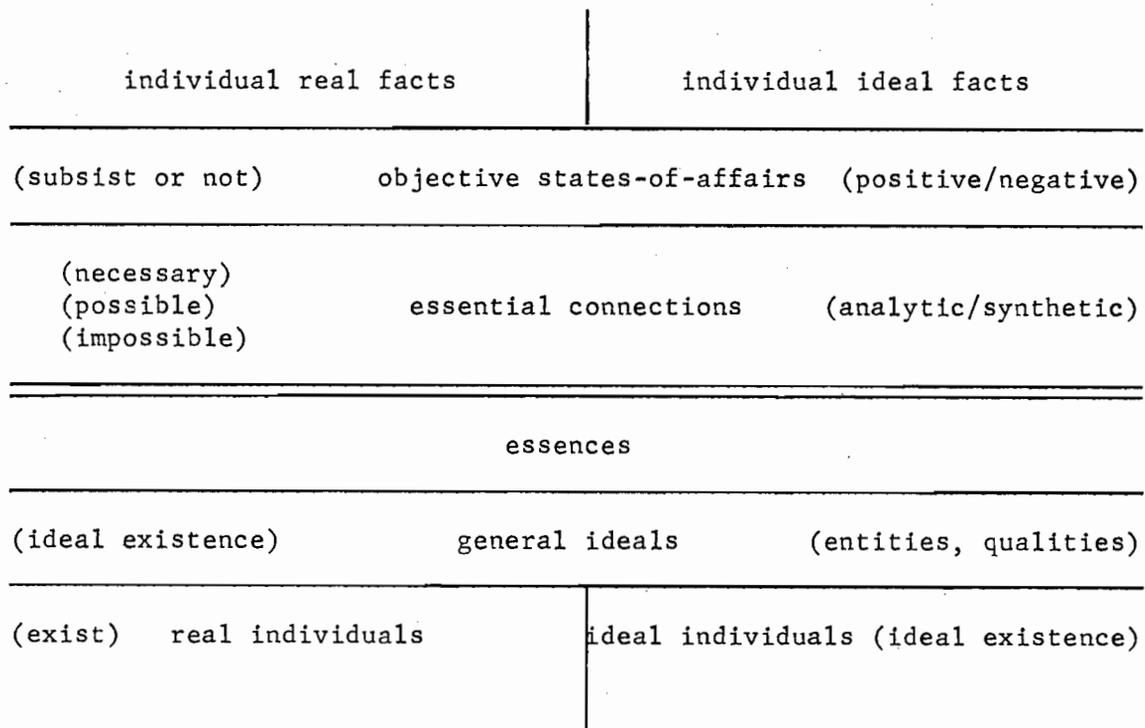
and an end in time. Events, situations, and causal relations, all real, are all founded on the existence and alteration of these real objects. To this point we have been entirely in the empirical realm.

Now let us take the case where real objects are the intentional correlates of conscious acts. On the one hand an analysis of the nature of this intentional relation is required. For the most part it can be analyzed as an empirical relationship involving acts and processes. More of that is to come in the following chapters. Reference to another realm of objects, however, is also involved in this analysis. The status of the referents of the concepts by means of which we think and talk about real particular objects and their relationships must be identified. Judgments, beliefs, and so forth are not, in Reinach's view, about concepts, but instead about objects, objectivities, and (we have argued) qualities. To those objects and objectivities about which we can make meaningful positive and negative statements, though they are not real individuals, Reinach attributes "ideal existence". Both the number "2" (individual) and "tree in general" (general) exist ideally. Reinach never makes the status of general qualities, such as "red" and "triangular", clear. We suggest that they too should be said to exist ideally, for they function on the same level as ideal objects and objectivities in relation both to essences and to states-of-affairs.

Reinach maintains that these entities (and qualities) exist ideally, are objective, and are independent in this objective, ideal existence, of consciousness. He thus forges a path mid-way between an unmitigated realism, for which all objectivities are real, and idealism in which consciousness creates and sustains its objects in existence.

His position is distinct as well from that of Stumpf who had qualified the latter position yet still asserted the logical dependency of Gebilde on psychic functions. We referred to Stumpf's position earlier as that of the agnostic--meaning in this instance among other things being unwilling to say with Reinach: "they are independent of consciousness", and instead reserving judgment on the issue by stating: "they are real insofar as they are the objects of a true judgment."

For Reinach objectivity thus includes both ideal and real existents. By attributing to both kinds of existents a status independent of consciousness Reinach avoids idealism and scepticism. An objective ground for judgments about objects other than real individuals is maintained. How one can come to know other than real individuals is a distinct question. The completed diagram is given below.



Below the double line we have all the objective elements; above, all the

objective connections, relations, and facts<sup>1</sup> resulting from the combination of these objective elements. Moving away from the line in both directions, correspondingly successive "founding" and "founded" levels are passed through. To each of the general ideal objectivities there corresponds an unbounded set of the individual real and ideal entities. We have argued as well that to each of the general qualities there corresponds an unbounded set of real particular ones. The general ideal entities and qualities are not to be regarded as consisting of the unbounded set to which they correspond; presumably there are general ideal entities such as "unicorn" and "round square" even though each of these correspond to an empty set of individuals, in fact and by necessity, respectively. Separation of general and individual retains the order of "founded and "founding".

Each of the entities and qualities, real or ideal, has an essence. Reinach does not identify any mode of being for essences though it is clear they are objective and non-temporal. We are of the opinion that the reason was not a desire to distinguish essence and existence in traditional fashion, but rather reflected Reinach's insistence that it is impossible to grasp essences without imposing arbitrary definitions save in the medium of essential connections.

Connections between the relevant essences correspond to each and every real or ideal connection of real and ideal entities and qualities. Like essences, essential connections are not said to "exist", "to be", or "to exist ideally". Yet the connection is the objective correlate of the

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<sup>1</sup>See above, p. 62 on Reinach's use of the term "fact".

ideal "relational being", expressed in predication, and the whole essential connection including the essences connected is said to found a state-of-affairs that in turn subsists or does not subsist.

The diagram is over-simplified and we will not attempt to improve upon it, believing that such attempts are doomed to failure by the nature of the problem. It serves, however, to illustrate certain aspects of Reinach's position. One is the above-mentioned levels of "founding" and "foundedness". To these hierarchic ontological relationships there correspond those of knowledge. Moreover, to know is not to know an object, but that the object is so-and-so. Thus knowledge about all of the entities below the double line--essences, general entities and qualities, real and ideal individuals--is obtained only through knowledge of the facts, states-of-affairs, and essential connections into which these objective elements enter. Yet more precisely it is states-of-affairs that are known and thus only indirectly can facts, to which there may correspond many states-of-affairs, and essential connections, which ground states-of-affairs, be known.

Concepts and constituted states-of-affairs are the means by which we think and talk about objects and the objective states-of-affairs into which these objects enter as elements. General objectivities (including qualities) and objective states-of-affairs lie at one level removed from the individual objects and facts. It is no coincidence that general concepts and constituted states-of-affairs lie at one level removed from self-given individual objectivities and facts. In the following two chapters we shall present many such parallels in the structures of

intentionality, objectivity, propositions, and judgments. Not an idealist, not a sceptic, Reinach regarded evident knowledge as grounded in the self-givenness of objectivity. Parellels in structure such as those found above both result from Reinach's view of the nature of evident knowledge and, once established, serve to sustain and explicate that same view.

### Chapter III

#### Intentionality and Evidence

The last chapter was concerned with Reinach's response to the questions: "What do we know?" and "To what do judgments refer?". This chapter will ask how we have access to objects, states-of-affairs, and essential connections; what is the nature of the relationship of consciousness to being; what is "self-givenness"; how are states-of-affairs constituted for "meaning"; and what constitutes evidence. The work of Brentano, Meinong,<sup>1</sup> and Husserl is of significance in connection with these questions, as it was for those of the last chapter, for their work was a source for Reinach both of fundamental method and unanswered or inadequately answered questions.

#### a) Brentano and Husserl.<sup>2</sup>

In 1874 and for many years thereafter Brentano regarded what

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<sup>1</sup>See above, pp. 29-32.

<sup>2</sup>The scope of the dissertation permits only a sketch of the development of the notion of intentionality. There are available more articles dealing with the topic than there are for states-of-affairs; See: Herbert Spiegelberg, "Der Begriff der Intentionalität in der Scholastik, bei Brentano und bei Husserl", in Philosophische Hefte, ed., Maximilian Beck, V (1936), pp. 72-91. In English see R. M. Chisholm, ed., Realism and the Background of Phenomenology (Glencoe, Illinois: The Free Press, 1960); Aron Gurwitsch, "Towards a Theory of Intentionality", Philosophy and Phenomenological Research, XXX (1969-70), 354-67; Aron Gurwitsch, "On the Intentionality of Consciousness", Studies in Phenomenology and Psychology (Evanston: Northwestern University Press, 1966), pp. 124-40; and James C. Morrison, "Husserl and Brentano on

he then called "intentional inexistence" as the common characteristic of all psychic phenomena in contrast to all physical phenomena.<sup>1</sup>

"Intentional inexistence" signified the perceptibility of an object in inner consciousness, consciousness being defined as any psychic appearance insofar as it had a content.<sup>2</sup> Representations, providing the content, were basic to all psychic acts and phenomena for "nothing can be judged, nor can anything be desired, nothing can be hoped for or feared, if it is not represented."<sup>3</sup> The full implications of the distinction between psychic and physical phenomena emerge with Brentano's claim that psychic phenomena alone can be immediately and adequately grasped as self-evident. Psychic phenomena were distinguished into three fundamental classes--representation, judgment, and affectivity--each characterized by a distinct type of intentional relation. Though judgment and affectivity in general were said to be open to error, Brentano claimed that some judgments and affective acts were based on self-evidence rather than on habit or instinct.<sup>4</sup> Affective acts were not to be regarded as cognitive<sup>5</sup> though they were based on the cognitive acts of representation and judgment.

The intentional relation to an object was perhaps the richest

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Intentionality", Philosophy and Phenomenological Research, XXXI (1971), 27-46. For a non-historical approach to intentionality see, R.M. Chisholm, Perceiving: A Philosophical Study (Ithaca: Cornell University Press, 1957) and Aron Gurwitsch, The Field of Consciousness (Pittsburgh: Duquesne University Press, 1969).

<sup>1</sup>PVES, I, pp. 115-118.

<sup>2</sup>PVES, I, p. 181.

<sup>3</sup>Ibid., p. 104; see also OKRW, p. 14.

<sup>4</sup>OKRW, pp. 18-22.

<sup>5</sup>PVES, I, p. 312.

and most influential of the ideas developed by Brentano and at the same time one of the most easily misunderstood.<sup>1</sup> As early as 1889 Brentano stressed that something represented as an object need not be actual.<sup>2</sup> The nature of the correlation between thoughts, concepts, "contents" of consciousness, and their referents was problematic however. A fragment from around 1902 asserts a correlation between the-thinking-of-a-horse and the horse-as-something-which-is-thought-about. By 1905 Brentano had come to regard this correlation as merely linguistic, not conceptual.<sup>3</sup> In 1889 the content of an idea had been regarded as having a mental existence,<sup>4</sup> while in 1905 Brentano insisted that what we think about is the object (horse) and not at all "the object of thought" in the sense of contemplated horse.<sup>5</sup> In a letter to Anton Marty, Brentano explains that the term "immanent object" had been meant to distinguish the object of thought (horse), which may or may not exist, from object (res) in the unqualified sense.<sup>6</sup> In the case of the "immanent object" its being an object, however, is merely the linguistic correlate of the person experiencing having it as object, i.e., his thinking of it in his experience.<sup>7</sup> During this same period Brentano was pursuing the closely related battle against "the infinite multiplication of entities."<sup>8</sup>

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<sup>1</sup> See below, Chapter IV, on Brentano's use of the intentional relation in his analysis of judgments. It is only through such analysis that the richness of the concept of intentionality can be fully grasped.

<sup>2</sup> OKRW, p. 14.

<sup>3</sup> TE, pp. 26-67, p. 154, nt. 29. Brentano was by 1905 giving careful attention to the analysis of linguistic forms.

<sup>4</sup> TE, p. 42.

<sup>5</sup> Ibid., p. 77.

<sup>6</sup> Ibid., pp. 77-78.

<sup>7</sup> Ibid., p. 78.

<sup>8</sup> Ibid., p. 86.

Brentano's treatment of the topic of evidence was of major importance for the development of the Husserlian doctrines of direct and apodeictic intuition and evidence; Brentano affirms the lack of rational grounds for claiming that a judgment is immediately evident.<sup>1</sup> Ultimately the experience of insight itself is the only referent by which to justify claims of evidence.<sup>2</sup> This is essentially the view of evidence found in Husserl's writings. Brentano states: "any judgment which is thus seen by one person to be true is universally valid; its contradictory cannot be seen to be evident by any other person; and anyone who accepts its contradictory is ipso facto mistaken."<sup>3</sup> He emphasizes, however, that this "awareness of something being true for everyone" does not imply "an awareness of a universal compulsion to believe."<sup>4</sup> This point of view is also found in Husserl's arguments against "psychologism".<sup>5</sup>

It is the aspect of referring to an object or being directed to an object, rather than the immanence of the object in the intending consciousness, which has been important for phenomenology. Although Husserl

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<sup>1</sup>OKRW, p. 20.

<sup>2</sup>OKRW, p. 20, p. 78.

<sup>3</sup>Ibid., p. 80.

<sup>4</sup>Ibid., p. 80.

<sup>5</sup>See Oskar Kraus' Introduction and Notes to Brentano's Wahrheit und Evidenz for a comparison of the work of Brentano and Husserl on these and related topics. It was the opinion of Kraus that Husserl never went beyond the stage of Brentano's Psychologie (PVES) of 1874 in questions in the theory of knowledge, see TE, pp. 146-47. Both Husserl and Brentano, however, at later stages of their work than Kraus here cites, distinguish between being in the sense of truth and being in the sense of being a thing. There thus continue to be strong parallels between significant aspects of their work after the 1874 edition of Psychologie (PVES) and the early lectures.

continued to enrich his analysis of intentionality, the Logische Untersuchungen and Ideen I contain all the distinctions clearly presupposed by Reinach's writings. In the Logische Untersuchungen Husserl made his position in contrast to that of Brentano clear, further expanding the notion of "manner of reference" in his recognition of essential differences in intentional relation;<sup>1</sup> dispensing with "immanent intended objects", truly immanent contents, which render an intention possible, not themselves being intentional;<sup>2</sup> retaining representation as the ultimate, though not always immediate, basis for all acts;<sup>3</sup> and admitting that not all psychic content is intentional<sup>4</sup> as, for example, the sensed visual field which contains many parts not intended.<sup>5</sup>

The distinction between the object and the object as it is intended allows for a variety of distinct intentions of the same object.<sup>6</sup> Intentional essence also can be differentiated, however, by "act quality", in addition to "act matter" and "semantic essence".<sup>7</sup> Husserl's analysis of simple and complex acts and intentional objects, and the recognition of founded and founding acts and their respective ("higher and lower order") objective correlates<sup>8</sup> is of great importance for Reinach's work, as is the notion of intentionality "constituting" its intentional objects. The distinction between simple intending and fulfilled intending lays the foundation for the identification of the goal of absolute knowledge as the

<sup>1</sup>LI, pp. 554-55.

<sup>2</sup>LI, pp. 557-60.

<sup>3</sup>Ibid., p. 598

<sup>4</sup>Ibid., p. 385.

<sup>5</sup>Ibid., p. 556.

<sup>6</sup>Ibid., p. 578; this view had previously been set forth by Brentano in PVES.

<sup>7</sup>Ibid., pp. 586-87, 597-98, 601. etc.

<sup>8</sup>Ibid., pp. 580-81.

adequate self-presentation of the object of knowledge<sup>1</sup> and the development of the notion of levels of knowledge.

The claim of apodeictic evidence for the self-givenness of the essential in adequate intuition has been highly problematic for phenomenology. The Logische Untersuchungen (1st ed.) and Reinach's Marburg lecture, "Über Phänomenologie", both have been said to contain a naive theory of evidence.<sup>2</sup> Be this as it may, the work of the early phenomenologists does display a high level of sensitivity to problems of evidence, illusion, error, and to the influence of practical interests on beliefs, decisions, judgments, actions, etc. They recognized both the inadequacy of the evidence for most of what we usually claim to "know" and the significance of the role of knowledge of essences and of essential connections for our knowledge of particulars, however, inadequate that knowledge might be, as well as for our ability to communicate meaningfully with one another regarding these particulars. It is easy to see how within this position the avoidance of total scepticism could appear to demand the possibility of absolute knowledge, in the ideal case, of essences and essential laws. Husserl did not allow the case to rest with its treatment in the Logische Untersuchungen, but pursued the question of the nature of phenomenological criteria for a priori and eidetic judgments and in the Cartesian Meditations recognized the need for a critique of apodeictic evidence.

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<sup>1</sup>Ibid., p. 720.

<sup>2</sup>David Michael Levin, Reason and Evidence in Husserl's Phenomenology (Evanston: Northwestern University Press, 1970), p. 33--cited hereafter as RE, and Alexander von Baeyer, "Adolf Reinachs Phänomenologie: Untersuchungen zum Verhältnis von phänomenologischer Forschung und Geschichtlichkeit" (Dissertation, Faculty of Philosophy, University of Bern, Munich: Mikrokopie, 1969), p. 19--cited hereafter as ARP;--respectively.

Recent criticism indicates a wide-spread dissatisfaction among phenomenologists with the notions of adequacy, self-evidence, "apodeictic", etc. Winthrop claimed to have only the "faintest glimmerings"<sup>1</sup> of what is meant by the concept of "adequacy" and called for a study of the constitution of error in the phenomenological reduction. Levin has given these issues a sustained treatment and calls for recognition of the hypothetical nature of "a priori" and "necessary" knowledge, hypothetical because dependent on "the nature of a human consciousness who dwells in the world".<sup>2</sup> Like Gardies,<sup>3</sup> Levin can conceive of "the philosophically significant eidetic possibility of a different meaning for the transcendent world", and of "the possibility of a consciousness which, as structured eidetically in critical knowledge, may be very different from the familiar."<sup>4</sup> Early phenomenologists would probably find strong traces of "psychologism" in these comments. Levin qualifies his criticism by remarking that eidetic consciousness is "a mode of consciousness with a very special title and dignity" whose evidence is "so constituted that doubt relative to the present, temporally determinate evidential state-of-affairs would be unwarranted, even absurd."<sup>5</sup>

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<sup>1</sup>Henry Winthrop, "The Constitution of Error in the Phenomenological Reduction", Philosophy and Phenomenological Research, IX (1948-49), 741-748.

<sup>2</sup>RE, p. 169.

<sup>3</sup>Jean-Louis Gardies, "La philosophie du droit d'Adolf Reinach," Archives de Philosophie du Droit, X (1965), 17-32.

<sup>4</sup>RE, p. 170.

<sup>5</sup>Ibid., p. 200. See also, Herbert Spiegelberg, "Phenomenology of Direct Evidence," Philosophy and Phenomenological Research, II, pp. 427-56.

b) Intentionality and Evidence in Reinach's work.

This section will attempt to identify Reinach's contributions to the theories of intentionality and evidence. The standard for evaluating his position will be the degree to which it provides an adequate explanation of the manner in which judgments can be grounded on knowledge of objective states-of-affairs. Attention will be directed particularly to the distinction between assertions and convictions, the analysis of the act of "meaning" (Meinen), and the relation between language and intentionality. The distinction between grasping something objectively given and taking a position to that object will be seen to be of fundamental significance for the various reflective processes whose aim is the achievement of insight and the production of an assertable judgment.

Evidence.--Reinach's remarks on evidence include making the distinctions between mediate and immediate, and positive and negative evidence,<sup>1</sup> as well as the related observation that the type of evidence has an essential relation to the type of objectivity known. Thus, for example, states-of-affairs containing essential connections can be grasped as necessary with indisputable evidence, while the necessity of causal relations is not evident.<sup>2</sup> There is no final absolute evidence for claims of real existence. Perception of motion, for example, is regarded by Reinach as providing neither absolute evidence nor the lack thereof, but rather an "evident indication" of its actual existence, which does not, however, guarantee the existence of motion. The fact that we can intuitively visualize motion, on the other hand, gives us absolute

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<sup>1</sup>See below, pp. 121-34.

<sup>2</sup>KAH, GS, pp. 12-13.

evidence of its existential possibility. The same evidence is given for the possibility of the existence of a golden mountain, the impossibility of a colored tone, and the possibility of the existence of God. It is as impossible to show the existence of motion to be impossible by essence as it is to show the existence of God to be necessary by essence. Claims of real existence may thus be supported, but not guaranteed, by perception.<sup>1</sup>

Reinach argues that lack of final evidence is not a mark of all empirical knowledge; final evidence pertains to statements of the form, "I see a house", though not to the statement "there stands a house". The

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<sup>1</sup>See pp. 409-412, in Adolf Reinach, "Über das Wesen der Bewegung", in the Gesammelte Schriften (Halle: Max Niemeyer, 1921), pp. 406-61;-- cited henceforth as WB,GS. Edith Stein prepared this text for publication on the basis of Reinach's notes and notes from the seminar on the topic in which she and Roman Ingarden (see pp. 11-12, above), among others, took part. Reinach did not complete his study of the problem and the work was by no means left in final form. In its published form it contains an analysis of continuity and the essence of the traversing of space, the results of which are then applied to Zeno's paradoxes. Although the discussion is not complete, its central points, as drawn together by Edith Stein in her concluding note, allow for the following argument: A motion is a continuous process, which cannot be thought of as a series of single processes set together. The space which is traversed in an unbroken motion is a continuum. Therefore, to overtake the hare, Achilles must perform not a series of tasks, but only one task (unless it is prescribed that he must stop at intervals, which is quite a different matter). Such a continuous motion involves the passing of infinitely many points. Alexander Koyré, in his article dedicated to Reinach, "Bemerkungen zu den Zenonischen Paradoxien", (Jahrbuch für Philosophie und phänomenologische Forschung V, 1922, pp. 603-628), noted that, as shown by Reinach, the elements relevant to dissolving Zeno's problems were infinity and continuity, and that these problems were to be found in all areas in which these two elements play a role. Reinach's analysis of continuity is also used by Edith Stein in her discussion of the continuum of qualities formed by feeling-states (Beiträge zur philosophischen Begründung der Psychologie und der Geisteswissenschaften", in Ibid., 1-283, p. 30). The analysis of continuity is also referred to by Hedwig Conrad-Martius ("Realontologie", I. JfPupF, VI (1923), 159-333, p. 210), and by Kurt Stavenhagen in reference to heard tones as a secondary temporal continuum (Person und Persönlichkeit: Untersuchungen zur Anthropologie und Ethik, ed. by Harald Delius, Göttingen: Vandenhoeck und Ruprecht, 1957, p. 51.).

evidence for some a priori knowledge is mediate; not all a priori knowledge can itself be intuited, but instead must be derived from those final connections intuitable in themselves. Reinach vigorously opposed all attempts to ground final a priori connections on facta which can themselves be grounded only through the former<sup>1</sup> and insisted that essential laws are never to be assumed.<sup>2</sup> Reinach regards the attempt at a clear and articulate grasping of objects to be open to all the possibilities of illusion that any knowledge involves.<sup>3</sup>

In the discussion of the essence of motion Reinach observed that it is self-evident that all motion requires a bearer. However, Reinach asserts, this "ontic" proposition may not be confused with the "noematic" proposition, which Linke<sup>4</sup> derived from it, that "motion can only be given to us as motion of something moving". Ontic connections cannot be transferred without further ado to the acts in which the elements of this ontic connection are grasped. I can speak of motion and "mean" motion without at the same time meaning something which moves.<sup>5</sup> This section is significant in relation to Reinach's position on questions of knowledge and evidence, for it may be interpreted as a statement that there is no necessity for essential (ontic) connections to be given to us in our intuition of an objectivity.

Although Reinach's remarks about the great difficulty of achieving adequate intuition and his caution in the course of concrete analysis indicate great sensitivity to problems of evidence, the results of his

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<sup>1</sup>UP,GS, p. 399.

<sup>2</sup>Ibid., p. 403.

<sup>3</sup>Ibid., p. 405.

<sup>4</sup>Paul F. Linke, "Phänomenologie und Experiment in der Frage der Bewegungsauffassung," Jahrbuch für Philosophie und phänomenologische Forschung, II (1916), 1-20.

<sup>5</sup>WB,GS, pp. 425-426.

analysis are immediately thrown into question on two grounds in addition to those mentioned above. The free variation of essences is to result in evident insight into a priori essential connections, but there is no methodological standard for determining an end or a range for this theoretically infinite process of variation. Interest, experience, and unexamined pre-judgments, may all influence the range of variation as, of course, phenomenologists of this period were by no means unaware. Secondly, insofar as the intuiting of essences and essential connections in any way presupposes other less adequate forms of givenness, such as the perception of real objects, the insight gained through intuition becomes hypothetical. These points of criticism will also be of relevance in evaluating Reinach's ethical and legal philosophy.

Givenness of objectivity. -- Reinach states that objects are seen whereas the states-of-affairs containing these objects are known, not seen, in a new and distinct act. Likewise, in any form of perception (hearing, smelling, feeling, etc.) and in any categorial intuition the objects are first grasped and then on the basis of these "representations" (Vorstellungen), the state-of-affairs, whose elements these objects are, may be known (erkannt) by means of a new and distinct act. The type of representation differs according to the type of object represented, but there is only one type of act of knowing a state-of-affairs. Objective states-of-affairs may also be visualized, (as in the case of a remembered representation). Visualization of a state-of-affairs is based on visualized, not represented, objects and things.<sup>1</sup> Reinach suggests that

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<sup>1</sup>NU,GS, pp. 87-88.

there may also be perception of subsisting objective states-of-affairs (though, it is to be inferred, not of non-subsisting states-of-affairs) though he does not wish to discuss this point.<sup>1</sup> It appears unlikely that he would have been able to argue for this point while maintaining the strict distinction between states-of-affairs ("the being-red of this rose") and the things ("this red rose") in which those objective states-of-affairs are grounded.

The act of knowing (erkennen), distinct from all other ways of relating intentionally to states-of-affairs, is fundamental for Reinach's theory of judgments as the means for grounding convictions on objective states-of-affairs.<sup>2</sup> Even in the case where an objective state-of-affairs, previously known, is now merely visualized as grounding an identical conviction, the act of knowing remains, though mediately, the means by which the conviction is founded on objective states-of-affairs. Reinach emphasizes that knowing is distinct from all judgments, both assertions and convictions. Unlike convictions, knowing does not admit of degrees of certainty.<sup>3</sup> Lack of certainty may lead to the formation of a doubt, also an intellectual position-taking, as is a conjecture. Reinach states that one may see a "bicycle-rider" approaching and form a judgment to this effect, based on an act of knowing, even when the "bicycle-rider" turns out actually to be a cow.<sup>4</sup> This example serves to assure us that Reinach is by no means presuming to have eliminated problems of error and illusion.

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<sup>1</sup>Ibid., p. 89.

<sup>2</sup>Reinach's treatment of the formation of positive and negative convictions will be discussed in Chapter IV. It should be noted, however, that the notion of "position-taking", fundamental to his theory of the formation of convictions, is an intentional relation, a manner of being intentionally related to an objective state-of-affairs.

<sup>3</sup>Ibid., pp. 89-90.

<sup>4</sup>Ibid., p. 90, nt. 1.

It would seem appropriate to give somewhat more attention than Reinach does to both the question of the degree of evidence of what is grasped in knowing (erkennen) and to the question of illusion and error in the acts of representation (perceptual and categorial) and visualization of the elements of states-of-affairs. Inability to eliminate illusion and error in the latter respect would appear to entail either denying that acts of knowing, insofar as they are founded on representative and visualizing acts, grasp objective states-of-affairs with evidence, or admitting the hypothetical nature of the evidence pertaining to objective states-of-affairs grasped in acts of knowing. The degree of evidence in knowing must be "essentially connected" with the level of certainty of the intellectual position taken to what is known in the ideal case.

The pure "I" as the "bearer of experience".--In an article criticizing Paul Natorp's General Psychology<sup>1</sup> Reinach clarified the notions of "appearance", "object", and "subjective experience", all of which are of significance for interpreting the sense in which Reinach uses the term "intentional relation".

Central to Natorp's position was the view that since the psyche is subjective and can never be an object (Objekt), psychology is not an objective science. The moments of consciousness in Natorp's sense are: 1) content, where content is taken in its widest sense as all that of which there is consciousness, 2) the "I", and 3) a relation of the "I" and

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<sup>1</sup>Adolf Reinach, "Paul Natorp, Allgemeine Psychologie nach kritischer Methode", Göttingische gelehrte Anzeigen, 1914, No. 4. Cited as it appears reprinted in the Gesammelte Schriften (Halle: Max Niemeyer, 1921, pp. 351-376) as PN,GS.

the content. But the "I" can never be a "content", it can never be "in" consciousness, it can never be an object (Gegenstand) of thought. We have only a reflection, as in a mirror, of the "I", of consciousness. The pure "I" is neither a fact, nor an existent, nor a phenomenon, but rather the ground of all facts and all appearances. Therefore the pure "I" and the pure relation to the "I" is not a problem for psychology, but the ground and prerequisite of all psychological problems. The only field of research for psychology is therefore the content of consciousness itself, all that in general of which one is conscious.<sup>1</sup>

In opposition to this position Reinach asserts that it is grounded in the essence of cogitations in the widest Cartesian sense that they can come to execution only as subjective experiences of an "I", (just as no real movement is possible unless something moves). Observation of subjective experience, as such, leads us to the pure "I" as the necessary "bearer" of experience. The pure "I" is in each subjective experience and as such can come to self-givenness for us at any time. This, Reinach asserts, is what Descartes had in mind when he referred to the cogito as the starting point of our knowing. The pure "I" is not the empirical person, nor a thing with characteristics; it does not exist in the sense of a "real existent" and is not a fact in the sense of "real facts". Rather, the pure "I" is unique and its being is given to us with irrefutable evidence, in contrast to the being of the outer world of perception. Although he admits that Natorp may be correct that no explanation of the pure "I" is possible, Reinach regards its clarification as both possible and needed.<sup>2</sup>

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<sup>1</sup>Ibid., pp. 351-56.

<sup>2</sup>Ibid., pp. 356-57.

In Reinach's view the grasping, as such, of the "I" cannot make the "I" into a "Not-I", and if the subjectivity of the "I" implies that it cannot be grasped, a petitio principii is clearly involved. The two concepts of object (Objekt and Gegenstand) are ambiguous. The first (Objekt), by reference to the construction of something, sets what is not so constructed over against it as the non-objective (Nichtgegenständliche). It is the second (Gegenstand) which refers to something as the correlate of a grasping act. This distinction is important here, for in grasping itself the "I" is both the bearer and the end point or correlate (thus Gegenstand) of the grasping act. Reinach sees no logical difficulty here, and therefore, unlike Natorp, no difficulty involved in the possibility of the "I" grasping itself. To Natorp's insistence that each relation has two terms, Reinach replies that this is true, but that the intentionality of consciousness is not a relation in the sense of equality, difference, etc.<sup>1</sup>

In accord with his view that psychology is not an objective science, a science of objects (Objekte), Natorp had asserted that the relation of the "I" to a content cannot be made objective (gegenständlich) any more than the "I" can be made objective. Reinach wishes to know how it is possible for us to talk of the relation of the "I" to its content if this relationship cannot be "objectified", just as earlier he had asked the same question about the possibility of talking about the "I". He asserts, in opposition to Natorp, that seeing and hearing are examples of functions executed in the subject, for which an intentional relation to determinate types of objects (Objekte) is essential. Moreover, he

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<sup>1</sup>Ibid., pp. 357-58.

continues, we can be conscious of functions (like seeing), but need not be.<sup>1</sup>

Reinach observes that another problem for Natorp lies in the terms "content" and "object" (in the sense of Gegenstand). Natorp identified these terms with "presenting" and "representing" consciousness. This distinction is too fluid to be of use in clarifying the concept of psychology. Reinach therefore analyzes some of the senses in which these terms are used in psychology and philosophy. In the first case "object" refers to all that which is intended as such by the subject, while "content" is all that which is in consciousness or there for consciousness, without being "intended". In this case, anything in the world which can be intended can be an object and, moreover, that which is now a content can become an object in an instant.<sup>2</sup>

In the second case the sense of the terms is associated with the opposition between an object and the appearance of that object. Whenever we perceive, this distinction is relevant, as, for example, in our ability to see only one part of a box at once, not the whole, including the back-side. Reinach admits that the problem of clarifying the essence of appearances of objects is a difficult one. He finds it erroneous, however, to regard the appearance of the object as a separate object, which is then thought to stand over against the original object in a relation of equality, similarity, or dissimilarity. The result of this is that the appearance, falsified to an object, is regarded as the end-point of perception, with a separate role outside consciousness. This in turn, Reinach asserts, leads to senseless discussions as to whether the conclusion based on the

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<sup>1</sup>Ibid., pp. 359-61.

<sup>2</sup>Ibid., pp. 362-63.

"perceived" appearance of the "unperceived" object is correct or not, although in truth the object itself is what is perceived and appears to us in determinate and changing ways. These ways of appearing indeed "set forth there" the object for us, but are normally not the end-point of the grasping consciousness. Reinach emphasizes that in the moment in which we are intentionally directed to an object we have a consciousness of it, not of its ways of appearing as such, and even less of the connections of these ways of appearing to that which is appearing itself.<sup>1</sup>

The third case is often found in assertions of the absolute contrast of the two, i.e., of "content" and "object". Thus if "content" is said to be all that belongs to the "I" as a function, state-of-being, act, or subjective experience (i.e., all that can be executed by and in the "I"), then "object" can be said simply to be all that is foreign to the "I", transcendent to the consciousness.<sup>2</sup>

Reinach suggests that it is in the third sense of "object" (Gegenstand) and "content" (which is not a relative and changing opposition as it is for the first, and in a different way for the second sense), that the distinction lies which can be used to properly limit the field of psychology. The object (Objekt) of psychology is, Reinach asserts, content in the third sense. The laws grounded in the pure essences of perception, representation, judgment, will, etc., determine the sphere of an absolutely unique science, rational psychology. The relation of empirical and rational psychology is thus similar to that of natural science and geometry.<sup>3</sup>

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<sup>1</sup>Ibid., pp. 363-64.

<sup>2</sup>Ibid., pp. 364-65.

<sup>3</sup>Ibid., pp. 365-66.

Representation and meaning. --An "intentional" relation to an objectivity is essential to both convictions and assertions. The distinction between these two kinds of judgments--convictions and assertions--, first made by Reinach, is fundamental for his theory of judgments. Reinach developed this distinction in detail and found it to entail numerous differences in intentionality. Among these, the distinction between representation (Vorstellung) and meaning (in the sense of referring to, pointing at, Meinen),<sup>1</sup> both intentional, is fundamental. The intentionality of a subjective experience entails that it has a "direction towards" objectivity which is somehow "present" ("vorhanden") for the consciousness. Not all intentional acts involve representation (Vorstellung), though the term "representation" does refer to many intentional acts--including perception, memory, phantasy, indeed any intentional act in which something is "set before" me. Reinach finds an example of a non-representative intentional act in the act of saying a list of names while meaning (Meinen) each of the objects in turn to which the names refer. The objects named could be represented in a distinct act, but need not be. The act of

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<sup>1</sup>Spiegelberg ("Über das Wesen der Idee: Eine ontologische Untersuchung," Jahrbuch für Philosophie und phänomenologische Forschung, XI (1930), 1-238) gives a sketch of the various senses in which the term "meaning" (Meinen) has been used by phenomenologists and non-phenomenologists. He is undoubtedly correct that Reinach's sense of "meaning" is not clear. This very lack of clarity leaves it open to interpretation. Spiegelberg suggests that "in jedem Falle setzt alles sinnvolle Meinen ein vermeintliches anschauliches Kennen des gemeinten Gegenstandes voraus und ist auf dieses intentional bezogen," (p. 123). Spiegelberg finds it possible to regard Reinach's sense of "meaning" to be that of a Meinen directed at nothing. We argue instead that Meinen, as used by Reinach, is intentional and does presuppose some sort of intuitive knowledge of the meant object. The intentional correlate actually given in the act of Meinen itself, however, appears to be limited to a mere "that" or "something" as the correlate of the unfulfilled constituted meaning (Bedeutung). A mere "that" or "something" is, in any case, not "nothing".

meaning is not used here in Husserl's sense<sup>1</sup> and thus does not involve a turning toward the object, for this would presuppose the representation of the meant object. In defense of this distinction Reinach notes that we can speak of a row of objects, referring to them in an act of meaning, but a new act, that of representation, is required before we can turn towards them and observe them. In representation there are "essential connections" between the type of representative act and the type of objective referent, (colors are seen, tones are heard, etc.). There are no such distinctions for the act of meaning; rather all meant objectivities are simply meant.<sup>2</sup>

Reinach emphasizes that meaning and representation are distinct acts. Either act may occur first and they may often overlap in occurrence as a result of the punctual nature of meaning and the enduring nature of representation. According to the circumstances an object that is at first merely represented may later be grasped in an act of meaning or an object that is at first simply meant later may be given in an act of representation.<sup>3</sup>

The presence or absence of intuitive fulfillment has no relation to Reinach's distinction between meaning and representation. Reinach finds it doubtful that there are any absolutely unintuitive acts of representation. They could not, in any case, be equated with an act of meaning in his sense.<sup>4</sup> Representation, unlike intuiting, admits of no degrees and, in the case of sensible representation, for example, can

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<sup>1</sup>LU<sub>1</sub>, II, p. 129f.; LU<sub>2</sub>, II/1, pp. 129-130; LI, I, p. 356-57.

<sup>2</sup>NU, GS, pp. 63-68. It is the observation that all meant (in Reinach's sense) objectivities are simply meant without distinction as to type, not the assertion of essential connections between types of representative acts and objective referents, which is original.

<sup>3</sup>Ibid., p. 66.

<sup>4</sup>Ibid., p. 68.

include that which cannot be intuited (for example, the back-side of a box). In all sensible perception of things an aspect of the representation is always unintuited. The sense of "meaning" used by Husserl pertains to the way in which we meant this unintuited aspect together with the intuited aspect of the representation of the box. "Meaning", in Reinach's sense, can be seen superimposed on the above situation, where we have a representation of a box, by speaking with understanding the sentence "the back-side of this thing is...".<sup>1</sup>

An act of meaning (providing a reference to the object), though not one of representation, is found by Reinach to be required by all assertions. In an assertion, as such, that about which I make an assertion is not present to me, and is not visualized by me, though I may represent it in a distinct act. Assertions are grounded on convictions and convictions, in turn, are grounded by acts of representation. But, in a conviction which endures when we have turned away from the state-of-affairs with which it is concerned, the reference to the objective state-of-affairs need not continue to be mediated by a representation of that state-of-affairs. Reinach does not wish to pursue an analysis of the intentional reference involved in this last case, but he does remark that there are many possible intentions towards the objective, representation and meaning being only two among these.<sup>2</sup>

The sphere of judgments is divided by the distinction between representation and meaning into two spheres: assertions, which refer to the objective in acts of meaning and may or may not be accompanied by intuition; and convictions, which grow out of more or less intuitive acts

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<sup>1</sup>Ibid., pp. 68-70.

<sup>2</sup>NU,GS, pp. 72-74.

of representation. Acts not based on convictions founded on representation are not judgments in any strict sense but rather a somewhat vague "knowing about".<sup>1</sup>

The act of meaning and the specific moment (in the sense of aspect, not of time) of assertion are also to be distinguished within an assertion, the former serving to relate the latter to the state-of-affairs in which it is necessarily founded. The act of meaning is said to take on the qualifications reflected in the statements "is A b?" and "A is b". The case of "is A b?" is not given central treatment by Reinach, but it is clear that he attempts to absorb Husserl's "act-quality" distinction.<sup>2</sup> It appears that an adequate treatment of the distinction would require not merely qualification of the act of meaning, but also replacement of the "moment of assertion" by a "moment of questioning", etc., for questions and all the other types of speech-acts neglected by Reinach. Reinach devotes much attention to the distinction between assertions and convictions and to the point that assertions do not involve representation. In this context, however, he neglects the relation whereby assertions, if authentic, are necessarily originally founded on convictions. This relation of foundedness allows many assertions to be made from habit or on the basis of a remembered conviction and is recognized as being of significance later in this same article by Reinach in the more detailed discussions of the formation of convictions and assertions.

The distinction made by Reinach between acts, like representation and meaning, in which we grasp an object in "having" or "aiming" and

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<sup>1</sup>Ibid., p. 74.

<sup>2</sup>Ibid., pp. 59-62.

those experiences like convictions, striving, expectations, etc., in which we "take a position to something" is a highly useful one. The attempt referred to above--to make a place for the distinction between questions and assertions within the sphere of assertions (in the generic sense) by assigning this role to the act of meaning--was part of Reinach's response to the general problem of explaining the nature of the constitution of assertions of convictions. Convictions can take on a rich variety of forms in reference to an identical state-of-affairs in virtue of being "position-takings". Ideally the sphere of assertions should include a similar variety. Reinach's theory of assertions is too restricted, however, to provide a solution to this general problem without making certain extensions.<sup>1</sup>

Assertions.--Reinach maintains that assertions must always be based on positive convictions, never negative ones, for it is the essence of assertions that they assert what is believed. A negative conviction (a disbelief that "A is b") must be changed into a positive conviction in the contrary state-of-affairs ("the not-being b of A") before an assertion ("A is not b") can be made. Thus within the terms of his analysis no direct assertion of the negative conviction of a positive or negative state-of-affairs can be made.<sup>2</sup> Many statements, however, not of the form "A is b" or "A is not b",<sup>3</sup> do function as assertions and thus

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<sup>1</sup>We will return to the problem of the constitution of assertions in the following sections.

<sup>2</sup>Examples of negative convictions of positive and negative states-of-affairs, respectively: "It is not the case that the ball is red", and "It is not the case that the ball is not red." Reinach, of course, does not provide examples of assertions of negative convictions because he maintains that there are no such assertions.

<sup>3</sup>"The ball is red," and "The ball is not red", are assertions of positive convictions of positive and negative states-of-affairs, respectively.

may be said to contain a "moment of assertion". Among these are to be included not only those of the form "It is not the case that..." and "It is the case that..." expressing negative convictions and positive convictions in a more explicit form (where the phrase "it is the case that" corresponds to subsistence of the objective state-of-affairs), but also statements involving expressions referring to objective modality. Likewise, it is possible to formulate more complex assertions in reference to higher order states-of-affairs, including those whose elements involve belief, disbelief, doubt, fear, wishes, desires, as well as any other "subjective states-of-affairs" regarded as transcendent. Such assertions would have the characteristics attributed by Reinach to assertions except that they would not all be based on "positive convictions", in the sense identified for that term by Reinach, though they would all be assertions of what is believed.

Another example makes our arguments clearer. A disbelief that "A is b" is called a negative conviction by Reinach and must, in the terms of his analysis, be transformed into the positive conviction, the belief, that "A is not b" if it is to be asserted. The view suggested in opposition to Reinach is that the original disbelief that "A is b" is equivalent to a belief that "it is not the case that A is b", which is immediately assertable. This extension of Reinach's work would permit a more adequate theory of assertions. Without this extension the sphere of assertions is unrealistically impoverished.<sup>1</sup>

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<sup>1</sup>See p.121, nt.2, below, for an argument that the transformation of a negative conviction in a positive state-of-affairs into a positive conviction in a negative state-of-affairs, as suggested by Reinach, may in some cases result in an erroneous assertion.

A significant and characteristic difference between assertions and convictions is seen in the nature of the intentional relation to their objective correlates.<sup>1</sup> In convictions the objective correlate, the state-of-affairs, is grasped as given as a whole in an act of knowing, while in an assertion the elements of the state-of-affairs are meant one after another in succession in a series of acts. The objective unity of the elements of the objective state-of-affairs grounds the unification of the series of acts of meaning into a collective meaning. A series of categorial forms have their place in building up this collective meaning in and for consciousness. This view is in accord with his earlier statement that no intentional act passes to any objectivity unless on both sides necessary "ordering connections" (Zuordnungsverhältnisse) are present as a result of the subsistence of essential connections between the consciousness that formulates judgments and the objectivity to which these judgments refer.<sup>2</sup> This view presumably would hold, however, only for the case of the correct judgment and rests on the assumption that consciousness is somehow capable of formulating "ordering connections" which do indeed correspond to those of objectivity. The validity of this assumption reduces to the question of whether the "ordering connections" of constituted states-of-affairs, which form the content of our judgments, actually correspond to those of objectivity. The occurrence of erroneous judgments, which also involve "intentional acts"

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<sup>1</sup>Reinach analyzed in detail only spoken assertions, yet suggested that there are also inner, non-spoken assertions. Hermann Ritzel, "Über analytische Urteile: Eine Studie zur Phänomenologie des Begriffs," Jahrbuch für Philosophie und phänomenologische Forschung, III (1916), 253-344, was of the opinion that "meaning" in Reinach's sense pertains to "silent assertions".

<sup>2</sup>NU,GS, p. 77.

passing to "objectivity", gives the lie to the above flat statement and suggests instead that all authentic judgments, correct or not, are the result of the belief that the "ordering connections" of the constituted state-of-affairs correspond to the "ordering connections" of the objectivity referred to by the judgment.

Meaning and Functions. --It was in Reinach's analysis of the negative assertion ("A is not b") that the constitution of categorial forms by means of various functions in the sphere of meaning, to which reference has been made above, received detailed attention. "And", "but", "also", "not", are all words without objective referents in the sense in which "tree", "Peter", "ball", etc., have objective referents. Reinach regards the use of the word "and" in speech as the execution of the function of connecting or grasping together whereby the distinct elements are meant as connected together. The totality (Inbegriff) constituted for meaning by the connecting function is not a spatial or temporal unity. Nor, Reinach insists, is it to be confounded with synthetic apperception in which we grasp as a unity the objectivity represented; the "and"-function belongs to the sphere of meaning in which nothing is represented. The totality (Inbegriff), "A and B", constituted by the function, can be represented in a distinct act at any time, and then grasped or known as that which was constituted as connected in meaning (Meinen).<sup>1</sup>

The negation function operates on one objectivity, rather than two as in the case of the connecting function. Moreover, this one objectivity is not an object, but rather an entire constituted state-of-affairs that is negated through the medium of the negation of the copula.<sup>2</sup>

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<sup>1</sup>Ibid. pp. 101-103.

<sup>2</sup>Ibid., p. 103.

The negative state-of-affairs is constituted in and for consciousness through the performance of the negation function. Insofar as a negative state-of-affairs is objective its subsistence or non-subsistence is independent of any consciousness which performs constituting functions. "Constitution" as used here implies only that the negative state-of-affairs is presented in and for the act of meaning by means of the negation function, that the negative state-of-affairs is constituted in and for consciousness in this manner, and not that the negative objective state-of-affairs itself is "produced".<sup>1</sup> As in the case of the "and"-function, here there is also a distinction between representing and meaning, the function (negation) and what is constituted by the execution of that function (a negative state-of-affairs), and between the execution of the function and the representation of what is constituted by the execution of the function.<sup>2</sup>

The negation-function, as is the case for the other functions, is not limited to constituting assertions, but rather has its place in constituting all negative states-of-affairs for meaning. And thus while Reinach uses examples of statements involving negation that are not assertions to emphasize the distinct roles of the moment of assertion and the negation function in judgments, it appears feasible to extend his discussion of the constitution of states-of-affairs in and for meaning, which he limited to the objects of positive convictions, for statements of all forms. It may be presumed that he did not choose to do this because it lay outside the sphere of his set problem.

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<sup>1</sup>Ibid., p. 104.

<sup>2</sup>Ibid., p. 104.

Reinach maintains that the functions "and", "or", "but", etc., belong to the sphere of meaning alone and thus have no role in convictions. The assertion "A is b and c" is said to set forth one state-of-affairs by virtue of the "and"-function. The knowing conviction, however, on which this assertion is based, grows on the basis of the representation of two distinct states-of-affairs, "A is b", "A is c". Reinach maintained that a state-of-affairs is correctly constituted as involving a function only when this function corresponds to an objective characteristic of the state(s)-of-affairs that form(s) the objective correlate.<sup>1</sup>

Comparison of the "and"-function and the negation function points to an important difference between many objective and constituted states-of-affairs. Negative states-of-affairs are said to subsist with the same objectivity as positive states-of-affairs. A negative objective state-of-affairs belongs to the same ontological level as a positive objective state-of-affairs. An objective negative state-of-affairs is not a negated positive objective state-of-affairs. Correspondence between a constituted negative state-of-affairs and an objective negative state-of-affairs requires only that the negation function is performed only in constituting a state-of-affairs whose objective correlate is a negative state-of-affairs. In the case of the "and"-function the objective correlate is not a single state-of-affairs, but two or more distinct states-of-affairs. The constituted state-of-affairs is synthetic. Correspondence requires that the "and"-function be performed only when its

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<sup>1</sup>Ibid., p. 112; See above pp. 105-106, for discussion of an analogous argument that a judgment presupposes the presence of "ordering connections" in consciousness corresponding to those of objectivity.

use, resulting in the constitution of a higher-order state-of-affairs, is grounded in the states-of-affairs forming the objective correlate.

In the sketchy form in which Reinach allowed the distinctions between meaning and representation to remain, it is difficult to evaluate them. A far more detailed discussion than is provided by Reinach of the complex of intentional processes required from the stage of sense perception to the stage of making an assertion would, of course, be desirable. Yet it must be recognized that the functions are of the greatest importance for his theoretical position; they are the means by which negation, conjunction, disjunction, causal relations, and deductive relations can be grounded in objectivity and yet can be constituted for consciousness in forms which theoretically correspond strictly to the primitive elements and connections of objectivity. An adequate theory constructed along the lines of Reinach's analysis would make use of his distinction between the performance of a function and the representation of the state-of-affairs constituted by this performance.<sup>1</sup> Acts of knowing could then be directed at the constituted state-of-affairs. The latter could thus be compared with the corresponding objective state(s)-of-affairs and be evaluated as to its adequacy.

Alexander von Baeyer remarked<sup>2</sup> that Reinach was the first to recognize the problem of the relation of language and intentionality. The distinctions Reinach made regarding meaning (Meinen), in his sense, indeed may be regarded as being the result of his attempt to provide an

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<sup>1</sup>Nor does Reinach discuss the nature of our representation of states-of-affairs constituted by the performance of a function though he does say that we can grasp represented objectivity as a unity in synthetic apperception. See above, p. 106, and NU,GS, pp. 101-102.

<sup>2</sup>ARP, p. 55, p. 171, nt. 15.

articulated formulation of the relationship between language and intentionality. Moreover, in respect to the analysis of meaning (Meinen), in Reinach's precise sense, claims of originality are scarcely disputable. The work of Brentano, Marty, and Husserl from this period, however, also contains many passages relevant to the problem of the relationship of language and intentionality. The problem in its general form was a contemporary one, not first discovered by Reinach. Comparison of their work on the theory of judgments with that of Reinach serves to illustrate this point.<sup>1</sup>

Reinach's writings contain no detailed treatment of the manifold intentional processes. His discussions of the formation of convictions<sup>2</sup> and the intellectual and practical processes of reflection<sup>3</sup>, however, do offer a source for determining whether the distinctions he did develop with respect to intentionality are consistent with the view he presented in more general terms of the over-all process of forming a judgment, achieving an insight, and taking a position. These questions will be returned to in Chapter IV.

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<sup>1</sup> See Chapter IV, below.

<sup>2</sup> NU, GS, pp. 75-85 and 87-94.

<sup>3</sup> UB, GS.

## Chapter IV

### Judgments and Propositions

In this chapter Reinach's theory of judgments is to be evaluated as a correlate of his theories of states-of-affairs and intentionality. The critical approach taken is therefore concerned not with the adequacy of his treatment of judgments in some absolute sense, but rather its adequacy within the framework set forth by the theories of states-of-affairs and intentionality. Only if the three theories are found to be mutually consistent and sustaining will it be asked whether Reinach's fundamental assumptions are defensible and whether the resultant three-fold structure is adequate as an approach to the problem of the nature of the relationship of consciousness and being. As for the previous two chapters, the work of Brentano, Meinong,<sup>1</sup> and Husserl is of significance as the source for many of the problems considered by Reinach and as a means for evaluating Reinach's originality.

a) Brentano and Husserl on the theory of judgments.

Brentano rejected the view that judgments involve connection and separation. He found the proposition "A is" not to involve the connection of "A" with existence or the predication of existence, but merely recognition of the object "A". It was therefore clear to Brentano that predication does not belong to the essence of any judgment.<sup>2</sup> Moreover,

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<sup>1</sup>See above, Chapter II, pp. 29-32.

<sup>2</sup>PVES, pp. 276-78.

the concept of existence was said to arise from inner experience and be applied to judgments only in an afterthought.<sup>1</sup> Brentano argues that judgments of all forms can be transformed without loss of meaning into existential judgments--regarded by Brentano as the fundamental form. For Brentano this reducibility confirmed his view that the distinction between representations and judgments is not that the contents of the two are simple and complex, respectively. Rather, in terms of content he found no distinction. Questions, denials, and affirmations may have the same object. An object that is the content of a representation can be the content of a judgment. The difference between representation and judgment lies instead, Brentano asserts, in the manner of relating to the object.<sup>2</sup>

In The Origin of the Knowledge of Right and Wrong Brentano qualifies the above view by observing that only "simple" judgments can be reduced to judgments of the existential form. In such a case the existential judgment can express a judgment only equivalent to the compound judgment, not the latter as such.<sup>3</sup> So-called "double judgments" were among those resisting reduction. Brentano now regarded these judgments as ones in which something is first accepted as existing and then of this thing, something is affirmed or denied. Simple existential judgments, however, in confirmation of his view that judgments do not involve combination and separation, are "subjectless propositions" or propositions of only one term, without any division into so-called "subject" and "predicate".<sup>4</sup>

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<sup>1</sup>Ibid., p. 279.

<sup>2</sup>Ibid., pp. 280-90.

<sup>3</sup>OKRW, pp. 57-8.

<sup>4</sup>OKRW, pp. 106-108, see also TE, p. 156, nts. 36 and 37.

The concepts of existence and non-existence are said to be correlates of the concepts of the truth of affirmative and negative simple judgments. To say an affirmative judgment is true is regarded as the same as to say that its object is existent.<sup>1</sup> This view is found in the work of his students and, of course, Reinach's work. Although Brentano later rejected this interpretation of the relation between the truth and the existence of judgments and their referents respectively, the basic distinction here, between being in the sense of truth and being in the sense of thing, is an important and lasting one for his position. In a letter to Anton Marty in 1906, Brentano clearly rejected treatment of this correlation as one between "the being of A" and the correctness of the judgment "A is". Instead he wished to say, simply, "In the case A is and someone says that A is, he judges correctly."<sup>2</sup> This position is in accord with the view Brentano had by then developed that "the being of A" is a fictitious entity.

In the Logische Untersuchungen Husserl adhered to the correspondence theory of truth. Thus, for example, in opposition to "psychologism" Husserl asserted that the view that no judgment is correct in which the same state-of-affairs is at once affirmed and denied, expresses the "insight that contradictory propositions are not both true, that the states-of-affairs corresponding to them cannot both co-exist,"<sup>3</sup> are "objectively incompatible,"<sup>4</sup> and "logically incompatible."<sup>5</sup> Apodeictic consciousness of necessity is said to express insight into objective laws.<sup>6</sup>

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<sup>1</sup>OKRW, pp. 60-61.

<sup>2</sup>TE, p. 84.

<sup>3</sup>LI, p. 119.

<sup>4</sup>LI, p. 121.

<sup>5</sup>LI, p. 131.

<sup>6</sup>LI, p. 153.

Interconnections of things and truths are given together a priori and are mutually inseparable, the latter being the necessary correlate of the former. Through "ideational abstraction" the truth, rather than the state-of-affairs, becomes the apprehended object, and thus the ideal correlate of the act of knowledge.<sup>1</sup> Knowledge of necessary truth is grounded as knowledge of necessary states-of-affairs.<sup>2</sup> Likewise the "motivational unity" of our acts of judgment is said to have as its objective correlate the objective connection of states-of-affairs.<sup>3</sup>

All acts of judgment are said to be based on at least one representation. Complex judgments--act-complexes--are ultimately founded on many representations.<sup>4</sup> Here, as in the analysis of meaning-intention and states-of-affairs, it is argued that acts of judgment can be meaningfully analyzed into their constituent parts. Analogies between Husserl's analyses of simple and complex objectivities, meaning-intentions, and acts of judgment, both support the correspondence view of truth and at the same time result from the working assumption that it is a valid view.

The whole of the fourth chapter of study five is of significance in relation to Reinach's treatment of judgments.<sup>5</sup> Husserl here clarifies the relationships between types of propositions and judgments in terms of differences in intentional essence referring to the same objective state-of-affairs.<sup>6</sup> The ideal laws which Husserl discovers here, such as that

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<sup>1</sup>LI, pp. 225-27.

<sup>2</sup>LI, pp. 227-28.

<sup>3</sup>LI, pp. 270-71. Compare with analogous position of Stumpf, see above, pp. 26-29.

<sup>4</sup>LI, pp. 622-24.

<sup>5</sup>LI, Study 5, Chapter 4.

<sup>6</sup>The role performed by intentionality enabled phenomenologists to analyze the belief propositions which were so awkward for logical atomists.

it is a priori inconsistent that propositions containing positing names should be true and that existential judgments which correspond to such names should be false, have analogies among the ideal laws concerning the relations of states-of-affairs. This becomes self-evident within the context of Reinach's work, but is not explicit in the Logische Untersuchungen. The mutual influence of Reinach and Husserl on these and related topics can be determined only approximately on the basis of a comparison of the two editions of the Logische Untersuchungen, Ideen I, Erfahrung und Urteil, and the as yet unpublished lectures on judgments,<sup>1</sup> with Reinach's writings.<sup>2</sup> It is impossible in this instance, as is often the case with the early period of phenomenology, to identify the origin of many notions within the development of a single topic. It is possible, however, to suggest that the paragraph added in the 2nd edition of the Logische Untersuchungen<sup>3</sup> concerning the mediacy of nominal attribution and the derivation of the nominal object from the corresponding state-of-affairs "which has an intrinsic priority as regards authenticity,"<sup>4</sup> as well as the lengthy addition<sup>5</sup> concerning the relations of synthetic and thetic acts and the ultimate reference to simple act-members, may, at least in part, have been added in response to Reinach's treatment of propositions and judgments as being grounded on states-of-affairs.<sup>6</sup>

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<sup>1</sup>An edition is being prepared by Ursula Panzer, Cologne.

<sup>2</sup>A thorough comparison of Husserl's and Reinach's theories of judgment is beyond the scope of this dissertation.

<sup>3</sup>See middle of section 35, Chapter 4, Study 5.

<sup>4</sup>LI, p. 630.

<sup>5</sup>See section 38, Chapter 5, Study 5.

<sup>6</sup>See below for discussion of these chapters of the LI, and their relation to Reinach's work.

b) Reinach's theory of judgments.

Reinach's theory of judgments presupposes his theory of states-of-affairs, states-of-affairs being the intentional correlates of acts of knowing and that which is evident and a priori in the primary sense. Historically the negative judgment had been one of the more problematic forms of judgment and serves as the main focus for much of Reinach's work on the theory of judgments. In the process of his analysis Reinach clearly rejects the claims that negativity is not objective, that judgments are affirmations or denials, and that judgments refer to objects, as well as Brentano's divergence from the correspondence theory. The differences between their two positions are all ultimately grounded in their distinct ontological assumptions.

Almost all of the distinctions which Reinach made with regard to the various types of judgments and propositions, the nature of the evidence for them, the logic required by them, and the processes by which they are formulated and constituted as judgments and potential assertions, respectively, are said to be grounded in the nature of the objective states-of-affairs to which they refer. Strictly speaking, this entails regarding all epistemological and logical terms as being primarily ontological. In the ideal case this would indeed actually hold true. However, as will be seen below from reference to the articles on reflection, motion, premonitions, and religious experience, whose topics all lead to an enrichment of Reinach's theory of judgments and their formation, in actual practice this view apparently represents only an ideal limit to be approached to some degree. Thus, for example, as we argued above, an authentic judgment, correct or not, is the result of the belief that the

"ordering connections" of the constituted state-of-affairs correspond to the "ordering connections" of the objective state(s)-of-affairs referred to by the judgment, the belief that the judgment is indeed a founded judgment.<sup>1</sup> A judgment may be incorrect or not fully evident and yet serve to ground other intentional relations and states-of-being of the "I".

Premonitions and the intellectual and practical reflection required to ground ethical decisions are among the cases dealt with by Reinach which demonstrate that his basic theory is of relevance for analysis of the problematic types of judgments. The following pages will be concerned first with the basic and simpler aspects of judgments and their formation and will then turn to religious experiences, ethical decisions, and premonitions. The latter involve both a wider sense of "knowing" than the traditional one and a related change in the type of objective state-of-affairs known.

Concepts and categorial elements. --This topic was first discussed in detail by Reinach in the article<sup>2</sup> examining Kant's view that the two propositions, 1) "A characteristic of a characteristic of a thing is a characteristic of the thing itself," and 2) "That which contradicts the characteristic of a thing contradicts the thing itself," are the general rules for all rational conclusions.<sup>3</sup> In order to avoid arguments which themselves depend on rules of inference and thus would be ungrounded, Reinach appealed to immediate evidence to show that there are cases for

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<sup>1</sup>See above Chapter III, pp. 105-106.

<sup>2</sup>RVK, GS, pp. 36-55.

<sup>3</sup>Ibid., p. 37. See LI, pp. 168-69 for Husserl's critique of these rules.

which Kant's rules are not valid. For example:

"This tree is green,"	"No color is a living thing,"
"Green is a color,"	"This dog is brown,"
therefore,	therefore,
"This tree is a color."	"This dog is not a living thing." <sup>1</sup>

The observation that the "characteristics" of things include qualities, membership in a class, qualities of the class(es) of which the thing is a member, and membership in classes of classes, led Reinach to reformulate Kant's general rules in the following provisional way: 1) "A class characteristic or a characteristic of the construction of a class characteristic is also a characteristic of the thing itself," and 2) "A class characteristic or a characteristic of construction of a characteristic of construction is never a characteristic of the thing itself."<sup>2</sup>

Reinach observed that while the statement, "The lion has a mane," holds when it is an individual to which reference is made, absurdities result when the predicate is taken to state a characteristic of the concept, "lion". Kant's view that judgments, such as "the lion has a mane," are made about concepts, as such, is thus thrown into question. Whereas Reinach found there to be no problem in knowing valid predicates for ideelle individuals, there are problems surrounding knowing whether a predicate applies to an ideelle generality, or to the individuals of the coordinated set, or to both. This is the problem underlying the example of the "lion's mane", above. Through analysis of various types of statements Reinach determines that in judgments about single objects ("this particular tree") the subject is a determinate single object,

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<sup>1</sup>RVK, GS, pp. 38-39. The reader may observe that these syllogisms are invalid because "is" is used here in two distinct ways. Reinach's concern, however, is focused immediately on the nature of the objects to which reference is made.

<sup>2</sup>Ibid., pp. 40-41.

while in judgments "about" concepts ("tree"), the subject is simply all objectivity insofar as it falls under the given concept. Both types of judgments thus have real objective subjects though the reference to them is in the one case immediate and in the other case mediate.<sup>1</sup>

The rules of inference must be modified a second time. Reinach states: 1) "That which is valid for the whole of that which falls under a concept is also valid for each individual which falls under this concept," and 2) "That which is invalid for the whole of that which falls under a concept is also invalid for each individual which falls under this concept."<sup>2</sup> In closing Reinach emphasized the importance for philosophy of an understanding of the unique nature of concepts and their relations to single objects, and pointed to errors or lack of clarity regarding concepts in the work of Husserl, Erdmann, Locke, Berkeley, and Aristotle.<sup>3</sup>

In the context of the article sketched above it is made clear that just as objects and objectivities are the elements of states-of-affairs, concepts and categorial elements are the elements of propositions. Concepts and categorial elements bear a strong similarity to one another insofar as they both function to provide a "view" (Fassung) of the universality of objectivity to which reference is being made. This interpretation of categorial elements is in accord with Reinach's discussion of quantity (Anzahl)<sup>4</sup> as analogous in function to the elements "all", "only", "some". Categorial elements such as these are not themselves predicable, but presuppose a predication of the objectivity

<sup>1</sup> Ibid., pp. 42-49.

<sup>2</sup> Ibid., p. 50.

<sup>3</sup> Ibid., pp. 51-55.

<sup>4</sup> UP,GS, p. 391.

whose universality they limit. One says not "five trees", or "all A", but rather "five trees are green," "All A is b," unless, of course, the context is clear and the statement "All A" is in answer to such a question as "how much of A is b?" Objective elements as such do not correspond to categorial elements. The role of categorial elements is limited to the constitution of states-of-affairs for "meaning", though their functions must be founded in objective states-of-affairs.

Reinach recognizes not only concepts of individual real physical and psychic objects, but also of ideal objectivities. Ideal objectivities may be general, as in the case where an unbounded set of individual objects (for example: "all particular trees") corresponds to it, or individual, as in the case where the corresponding set has only one member (examples: "2", and all propositions). All three kinds of concepts of entities serve to set forth the universality of objectivity under which a particular is to be grasped. We argued above,<sup>1</sup> in an extension of Reinach's position, that such concepts are logical abbreviations whose objective referents are the unbounded sets of particular objects falling under the concepts insofar as they are "subject" elements of objective states-of-affairs, and that concepts of qualities are, analogously, logical abbreviations whose full referents are the unbounded sets of particular qualities falling under those concepts respectively insofar as they are the "predicate" elements of objective states-of-affairs. It is in any case not irrelevant whether analysis is directed at the clarification of concepts or the discovery and clarification of essences and essential connections, for within Reinach's theoretical framework,

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<sup>1</sup>Chapter II, p. 62.

concepts are derivative and secondary and, insofar as they are adequate, are based on essences and essential connections.<sup>1</sup>

Formation and classification of negative and positive convictions.--

Reinach recognized two forms of negative judgments in the sense of conviction (not assertion, for which there was said to be only one form):

- 1) Negative conviction (disbelief in) of a positive state-of-affairs, and
- 2) Positive conviction (belief in) of a negative state-of-affairs.<sup>2</sup> Both

of these two forms of conviction presuppose and are coordinated with positive convictions of positive states-of-affairs. The presuppositions required for formation of these negative judgments are distinct from those

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<sup>1</sup>Compare with Charles Taylor's assertion that "when we refine our concepts we are at the same time projecting a model of the thing concerned, we are making clear its 'essence'. Correspondingly the only way to clarify an essence is to criticise the concepts we use to describe it, and one of the best ways to accomplish this is to study the many uses of the corresponding word which are unclear to us. The method of phenomenology and that of linguistic analysis are, therefore, properly understood, quite compatible," ("Phenomenology and Linguistic Analysis", Aristotelian Society Supplementary Volume XXXIII, 1959, pp. 108-109), and A. J. Ayer's observation that phenomenologists and linguistic analysts are close in practice for "Whatever phenomenologists may think they ought to be doing, what the best of them in fact do is to study concepts at work. They try to discover what is essential to a given concept by seeing what is common to the situations to which it typically applies," (Ibid., p. 121.). Chisholm, however, appears to differ with Taylor and Ayer for he suggests that linguistic analysis is open to much of the same criticism as was directed at psychologism by phenomenologists insofar as linguistic analysis regards the formulation of truths of logic to be true in virtue of "the rules of language" or "the way in which we use words," R. M. Chisholm, Theory of Knowledge, (Englewood Cliffs, N. J.: Prentice-Hall, 1966), p. 79. The issue ultimately under contention here is whether phenomenology can and/or did actually study ontological relationships.

<sup>2</sup>Transformed into assertable statements these convictions have the respective forms: 1) It is not the case that A is b, and 2) It is the case that A is not b. Both 1 and 2 may be equivalent to "It is the case that A and not b." Reinach apparently believed the convictions corresponding to 1 and 2 to be equivalent. However, if "A is b" is taken to mean  $A \equiv b$  then it is to be noted that, not  $(A \equiv b) = \text{not } ((A \text{ implies } b) \text{ and } (b \text{ implies } A))$ , which  $= ((A \text{ and not } b) \text{ or } (b \text{ and not } A))$ . This example indicates first that: 1 and 2 above are not always logically identical; and second that study is required of whether there are various types of negative states-of-affairs corresponding to the various types of "is".

required for positive judgments. Knowledge of positive states-of-affairs and the resulting positive convictions are built on sensible perception of things. Negative states-of-affairs cannot be known in this way nor can negative convictions thus arise; only positive states-of-affairs can be "read-off" from objectivity.

Reinach explains the process of formation of the negative conviction of a positive state-of-affairs such as "the being-yellow of the rose" in the following manner. First an intellectual position-taking (such as positive conviction, conjecture, doubt, question, etc.) towards the state-of-affairs is required. Sensible perception of the thing which the state-of-affairs concerns must then give rise to "knowing" a conflicting state-of-affairs ("the being red of the rose") with positive evidence. The grasped conflict provides negative evidence for the original state-of-affairs--"the being-yellow of the rose"--and on the basis of this negative evidence grows the negative conviction in the original state-of-affairs. Reinach regards knowing the conflicting state-of-affairs and grasping the conflict as the foundation (Fundament) of the negative judgment.<sup>1</sup>

Positive convictions of negative states-of-affairs, the second case, can be explained only in a manner which overcomes the problem of the impossibility of grasping negative states-of-affairs immediately. No negative state-of-affairs can be "read off" from representations of real and ideal objects. Reinach's explanation of the process of formation of such convictions is that first an intellectual position-taking towards the negative state-of-affairs is required, that is, the subject's interest must somehow be turned towards the negative state-of-affairs. Reinach

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<sup>1</sup>NU,GS, pp. 94-95.

claims that this is possible once we have a negative conviction of a positive state-of-affairs.<sup>1</sup> Assume that the judgment to result from the process is the positive conviction that 3 is not less than 2, a negative state-of-affairs. As in the first case a positive state-of-affairs must be grasped with positive evidence. Here, however, there is not merely a conflict, but rather a necessary connection of the two states-of-affairs. The subsistence of the negative state-of-affairs is necessarily connected with the subsistence of the immediately grasped positive state-of-affairs--the being greater than 2 of 3. The positive conviction of the negative state-of-affairs is grounded with positive evidence on knowing the positive state-of-affairs and grasping this necessary connection.<sup>2</sup> We find that a consequence of the requirement of necessary connections is to limit the subjects of this type of judgment.<sup>3</sup>

Reinach regards the negative conviction of a negative state-of-affairs as a doubly negative judgment requiring both an intellectual position-taking to the negative state-of-affairs and the knowledge of a positive state-of-affairs. As in the case of the formation of a negative conviction of a positive state-of-affairs the two states-of-affairs are in conflict, but this conflict is that of the stronger form, contradiction. Reinach remarks that the formation of negative judgments based on chains of premises and conclusions, rather than on immediate knowledge and

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<sup>1</sup>Reinach notes that psychologically the two are so closely related as to be interchangeable. We doubt that this is always the case. The footnote above, p. 121, suggests that the nature of the states-of-affairs in question must be considered.

<sup>2</sup>NU, GS, pp. 95-96.

<sup>3</sup>See below, pp. 124-25, for our argument in support of this point.

evidence, as is the case above, is different. In the remainder of this section we shall argue that many more negative judgments arise from inference than from immediate knowledge and evidence, and thus are not formed in the manner presently under discussion, than it appears from a first reading of Reinach's comments.<sup>1</sup>

Reinach summarizes the epistemological presuppositions, not the psychological presuppositions, of these cases of immediate knowledge and evidence in the following manner. Any positive conviction of a positive or negative state-of-affairs presupposes its positive evidence. Any negative conviction of a positive or negative state-of-affairs presupposes its negative evidence. Positive evidence of a negative state-of-affairs presupposes the positive evidence of a positive state-of-affairs necessarily connected with that negative state-of-affairs. Negative evidence of a positive or negative state-of-affairs presupposes the positive evidence of a conflicting positive state-of-affairs, which in the stricter case of negative evidence of a negative state-of-affairs must conflict by contradiction. All these relations are regarded by Reinach as a priori essential connections requiring further study.<sup>2</sup>

Reinach does not comment on the nature of the formation of the positive convictions of negative states-of-affairs of different modalities. We argued in the section above on modality<sup>3</sup> that the distinctions between necessary and contingent states-of-affairs entail corresponding distinctions in the evidence required to ground a given judgment. Quite

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<sup>1</sup>In ÜB,GS, p. 139, Reinach himself remarks that examples of the types of intellectual and practical reflection involving only immediate evidence are rare. See below pp. 126-34, for Reinach's comparison of mediate and immediate judgments.

<sup>2</sup>NU,GS, p. 97.

<sup>3</sup>See above, Chapter III.

apart from questions of modality, however, is the following example of a judgment which cannot be grounded in the immediate manner discussed by Reinach in this context.

Let us assume that the resultant judgment is to be the positive conviction of the negative state-of-affairs, "the being not yellow of the rose." This negative state-of-affairs cannot be immediately grasped. Assume the rose (a real individual rose) is red. The positive state-of-affairs, "the being red of the rose", can be immediately grasped and thus known with positive evidence. The subsistence of this positive state-of-affairs cannot be said to be necessarily connected with the subsistence of the negative state-of-affairs "the being not yellow of the rose"; the subsistence of a positive state-of-affairs is necessarily connected only with the non-subsistence of the corresponding negative state-of-affairs--in this case with "the not being red of the rose." Reinach stated that positive convictions of negative states-of-affairs presupposed positive evidence of a positive state-of-affairs necessarily connected with the negative state-of-affairs. These conditions cannot be fulfilled for a positive conviction of "the being not yellow of the rose."

Similarly, negative convictions of positive states-of-affairs require positive evidence of "conflicting" positive states-of-affairs and negative convictions of negative states-of-affairs presuppose positive evidence of contradictory positive states-of-affairs. Judgments which do not or cannot fulfill these conditions must be grounded, if at all, through inferences.

It is open to question whether the example Reinach chose for the case of positive convictions of negative states-of-affairs--the necessary connection of the "not being less than 2 of 3" with the "being greater

than 2 of 3"--is actually any more clearly "necessary" than the "being yellow of a rose" and the "being red of a rose" is clearly a "conflict"--the example for the negative conviction of a positive state-of-affairs. At the very least it must be admitted, apart from all claims of immediacy, that in the first case it is assumed that 3 is either greater than, or less than, but not equal to 2, and in the second case that "the being any given color of the rose" excludes the possibility of the rose being any other color. Certain assumptions and inferences, however "immediate" or "self-evident" they may be said to be, are thus involved even in these cases.<sup>1</sup>

Higher-order and mediate judgments. Reinach finds the act of asserting to be that which makes a statement a judgment as such rather than a mere conjecture. Only states-of-affairs constituted for meaning (Meinen) in accordance with determinate laws of constitution can be asserted. These laws of constitution are said to be founded and justified on the objective states-of-affairs and their objective relations. The reader may find it useful to refer to Chapter II, above,<sup>2</sup> concerning "well-formed states-of-affairs", the role in judgments of phrases referring to objective negative states-of-affairs, the nature of negation in judgments, negation of causal judgments, modality and relational being in constituted states-of-affairs, and one term states-of-affairs and impersonal judgments, as well as the section in Chapter III, above,<sup>3</sup> on "assertions". Although this material "belongs" in the present chapter it was presented earlier to aid understanding of closely related problems regarding objective states-of-affairs

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<sup>1</sup>See below, pp.126-34, for Reinach's comparison of mediate and immediate intellectual and practical judgments.

<sup>2</sup>pp. 58-76.

<sup>3</sup>pp. 103-106.

and intentionality.

Disjunctions and conjunctions had been said by Husserl to unite states-of-affairs in yet higher-order objects by means of synthetic acts.<sup>1</sup> Reinach used the terms "higher-order" and "synthetic acts" very little in his own treatment of disjunctions and conjunctions, devoted primarily to analysis of the role of functions. We find, however, no indication that Reinach disagreed with Husserl's treatment of the topic.<sup>2</sup>

Causal judgments were given a somewhat problematic treatment by Reinach in the early article dealing with Kant's interpretation of Hume. The discussion of the objective correlates of causal judgments in Chapter II above,<sup>3</sup> to which the reader may wish to refer, attempted to reinterpret the distinctions made by Reinach in that article in the terms of his later theories of judgments and states-of-affairs.

The formation of mediate judgments is dealt with by Reinach primarily in the article on the ethical and legal meaning of reflection (Überlegung).<sup>4</sup> Reinach's aim in this article was to examine the foundation of various uses of the presence and absence of reflection as criteria for the assigning of praise and reproach.<sup>5</sup> Reinach observed that meritorious acts are usually held in less merit when they are not preceded by reflection, and in even less merit when performed only "after long reflection", whereas a reproachable act is judged more severely when it is preceded by reflection. A negative value was placed on reflection.

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<sup>1</sup>LI, pp. 798-99.

<sup>2</sup>See pp. 108-109, above for comparison of the "and"-function and the negation function which clarifies Reinach's use of the term "synthetic".

<sup>3</sup>See pp. 40-50.

<sup>4</sup>UB,GS, pp. 121-65.

<sup>5</sup>Ibid., pp. 121-122.

by German criminal law of the time, which used it as the criterion for determining whether the penalty for causing another's death should be six months in jail or death. His critique of this process is preceded by an analysis of the process of reflection.

It is this article as well as the short pieces on premonitions and religious experience which reveal Reinach's ability to bring distinctions on the theoretical level to bear on problems of the practical sphere without descending into dogmatism. The gulf between the ideal and real realms is not lessened thereby, but it is seen that the results of his analysis of the ideal realm can be utilized to provide a theoretic framework for critical examination of some of the most problematic issues of the practical sphere.

Reflection, according to Reinach's analysis, is a teleological process whose last stage, save in the cases where the process is not fulfilled, is always the taking of a position by the reflecting agent. The position taken as a result of intellectual reflection may be one of conviction, conjecture, indifference, or doubt. Every intellectual position is necessarily taken to a state-of-affairs. The theme of reflection, its intentional correlate, stands in close relation to the state-of-affairs to which a position is taken. In the simplest cases these two intentional correlates are identical. Reflection may also have conflicting states-of-affairs as its theme. The final taking of a positive position to one of these states-of-affairs at the same time entails the taking of a negative position to the others.

Reinach found the reflective process to be given unity through

the inner attitude of the "I" aiming at insight. It is the act of stopping to question with its "enduring preparedness" to obtain an answer, which allows the "I" to enter upon a process of reflection. Thus, for example, bewilderment about a state-of-affairs, a passive state, can be broken off by the inner posing of a question that can, but need not, in turn lead to reflection, an active process. As in the case of assertions it is the inner act, the moment of questioning in this case, which is essential, and not the words in which the question or assertion can be expressed. The inner act and the speech-act are to be distinguished. Though insight is the aim of reflection it is not always the result.<sup>1</sup> It is clear that Husserl's analysis of the intentional relations of the consciousness to its intentional correlate(s) is presupposed here.

Reinach analyses the reflective process itself in the following manner. The essence of reflection, as such, is characterized by the achievement of a determinate endpoint (the taking of a position) from a determinate starting point (the stopping to question). The means by which this process is achieved are secondary and only delineate distinct types of reflection. Representation has no essential role within the process of reflection, though it may convince us, independent of the reflective process, of the existence in the world of the state-of-affairs that is the theme of the reflection, or it may aid us in grasping the state-of-affairs in question.

Reinach distinguishes various types of reflection. What he calls the first type involves only immediate evidence. The theory of judgment

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<sup>1</sup>Ibid., pp. 122-26.

set forth in the article on negative judgments is limited to this first type. Reflective processes of the first type may involve visualization of the state(s)-of-affairs in question as an aid, in the senses mentioned above, but even the most complete visualization cannot provide insight into the state-of-affairs in question.

An example of a reflective process of the "second" type is consideration of the question of whether a friend will come to visit. In this case, as was not the case for the first type--requiring immediate insight into the content already present in the intentional correlate,<sup>1</sup>--the information available to the reflective process must be augmented. Augmentation occurs, for example, if I remember that the friend had promised to come, but that he is quite absent-minded.<sup>2</sup> Other grounds for believing that he will or will not come may also occur to me. All of these are grasped together in a determinate act of synthetic apperception and depending on the relative weight of the grounds for and against, and on my attitude towards these grounds (this will influence my estimation of their relative weight), the position taken as a result of reflection will be a conjecture, indifference, or doubt, but presumably never a conviction. Such a reflective process may include chains of arguments where each one is itself a reflective process of either type. Thus any insight achieved in one of these intermediary reflective processes may, if it is relevant, then be used to ground the arguments leading to insight about the original theme.<sup>3</sup>

Reinach asserts that the striving, hope, fear, etc., experienced by the agent about the question made the theme of reflection is irrelevant

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<sup>1</sup>It is assumed that the intentional correlate--a proposition or axiom, for example--is understood. Reflective processes to achieve understanding are regarded as a distinct case; Ibid., p. 127.

<sup>2</sup>Ibid., pp. 127-132.

<sup>3</sup>Ibid., pp. 132-35.

for the being<sup>1</sup> of the state-of-affairs in question. Reinach recognizes, however, that there are, in fact, always relations between the agent's interest in the being of the state-of-affairs and the intellectual position taken. One aim of intellectual reflection is to overcome the influence of personal interests, the most insidious of personal interests being those which are unfounded.

Though the ideal aim of reflection is to eliminate the influence of personal interest, in the case of reflection about what one will do, practical reflection--as opposed to intellectual reflection, reflection about what is the case--Reinach finds that it is impossible by essence to eliminate all personal and emotional interest.<sup>2</sup> As the result of reflection about whether one should perform a given act one may decide to do it or not to do it. Failure of the reflective process in achieving a "position-taking" results in the grasping of neither a positive nor a negative intention. In the simplest case the theme of reflection and the intentional correlate of the position taken are identical. The second case involves the choice between two conflicting projects. In the third case, the theme of the reflection is at first unclear. In spite of the strong similarities in many respects between intellectual and practical reflection, they are not to be confused with one another or with the process of reflection itself.<sup>3</sup>

An example of the first type of practical reflection is the

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<sup>1</sup>This use of the term "being" is either an oversight on Reinach's part or a categorical use of the term, for in the NU, GS, where the concept of state-of-affairs is developed, states-of-affairs are said to subsist (bestehen).

<sup>2</sup>Ibid., pp. 135-36.

<sup>3</sup>Ibid., pp. 136-37.

decision to do "x" or not do "x" where the decision is based on the value or disvalue of "x". In this case the evidence is immediate, but visualization of the project may aid in grasping its value or disvalue. The value (or disvalue) may be grasped in varying degrees of evidence from absolute givenness to the absolute lack of givenness. Formation of most practical decisions does not require absolute givenness of the value of the project. This first type of practical reflection is rare, Reinach remarks, as is its analog in the intellectual sphere.<sup>1</sup>

More frequently the project as such is without value and a decision can be reached only through consideration of the circumstances surrounding the project and the presumed value of the ultimate effects of the project. It is significant, Reinach observes, that the first type of intellectual reflection, may be corrected by the second type of reflection. Thus, while a state-of-affairs, given with immediate evidence as being, does not come to be regarded as merely probable due to subsequent reflection about mediate evidence, a project given with immediate evidence as valuable in and for itself may come to be regarded as of disvalue in the light of its anticipated bad consequences (mediate value). Ideally practical reflection can have no end due to infinite chains of possible consequences resulting from any given project.<sup>2</sup>

It is possible, Reinach observes, to grasp what one has to do and yet neglect to do it. He is inclined to believe this can be the case even when the value of the project is given with absolute evidence.<sup>3</sup>

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<sup>1</sup>Ibid., pp. 138-39.

<sup>2</sup>Ibid., pp. 139-141.

<sup>3</sup>UB,GS, p. 142. See Max Scheler, Der Formalismus in der Ethik und die materiale Wertethik: Neuer Versuch der Grundlegung eines ethischen Personalismus, ed. Marie Scheler, 4th ed., in Gesammelte Werke, (Berne: Francke), II (1954), pp. 89-90, for the opposing view that the Socratic

Reinach distinguishes clearly between the grasping of values, that is, the "feeling" (Fühlen) of values, and the "feeling-states" (Gefühle) of the I, such as joy, sadness, fear, etc. The act of value-feeling (Wertfühlen), like any other act of grasping, may attain many degrees of clarity up to absolute self-givenness. Acuteness of eyesight is peripheral to a man's character, but in the acuteness of his "value-feeling" (Wertfühlen) and the feeling-states (Gefühle) grounded in his value-feeling, Reinach says that a man's character documents itself.<sup>1</sup>

The stage in practical reflection in which the agent searches after the probable consequences of a project is found to be indistinguishable from intellectual reflection. But, Reinach asserts, in feeling the value of these consequences and in the feeling-states produced in the individual in reaction to the evidence provided by the value-feeling, the essence of the person is revealed. As was not the case for intellectual reflection, here the personal interest of the agent is essential. The possibility of the illegitimate influence of personal interest remains insofar as the presence of a striving, wish, or inclination for "x" may cause the agent to tend to believe in the value of a project leading to "x". Negative interest, of course, may have the opposite effect, and

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principle, that knowledge of the good determines the will, does hold in the case where a value and its hierarchic range is self-given and thus absolutely evident. Scheler finds, however, that the principle must be qualified for cases of judgments of what is good not based on affective perception of value, for these judgments do not have force to determine the will.

<sup>1</sup>UB,GS, pp. 142-44. Reinach's comment referred to above (p.131), that it is impossible to eliminate personal and emotional interest from practical reflection can be understood properly only in terms of the general view, which he shared with Husserl, Scheler, and von Hildebrand, that it is only through value-feeling that values are known and choices concerning values can be validly grounded.

thus there must be a strong attempt made to set aside the unfounded influence of personal interests.<sup>1</sup>

Subjective interest in a project or its consequences, apart from interest in their value in the sense just discussed, also has a sphere of influence in everyday practical reflection. Reinach states that not to admit this would be to give a false interpretation of practical reflection. But illusions about personal interest are as possible as illusions about its value in and for itself. Truth and falsity are possible in both spheres; there is a true interest of the thing for me just as there is a true value of the thing itself. Confusion of the two spheres evidently results from the unconditional ethical priority often attributed to the value sphere over the interest sphere.<sup>2</sup> Any given process of practical reflection may in fact be concerned in varying degrees with the value of the project and/or the subject's interest in the project. Reinach regards the result of practical reflection to be dependent on the structure of the personality; the latter influences both the knowledge of values and what is judged to be of interest by the subject. Reinach then applies the results of this analysis to the original problem: the use of reflection as a criterion for assigning praise and blame to intentions of the will.<sup>3</sup>

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<sup>1</sup>UB,GS, pp. 145-46.

<sup>2</sup>For discussion of the ethical significance of this last distinction Reinach refers the reader to an unpublished article by Dietrich von Hildebrand. This article later appeared under the title "Die Idee der sittlichen Handlung" in the Jahrbuch für Philosophie und phänomenologische Forschung, III (1916), 126-251.

<sup>3</sup>UB,GS, pp. 146-48.

Ethical and legal judgments concerning reflection.--Reinach observes that an act of service is often regarded as less valuable when it is performed without reflection. A reflecting agent is viewed positively because it is assumed that he felt the value of the act and formed the intention to perform the act on the basis of this feeling and his love for the value. Reinach finds this evaluative practice to reflect the fact that use of one's ability to feel ethical values, and a love of these values, are regarded as being of ethical value in themselves. Thus, while the performance of a valuable project is regarded as valuable, the agent may in addition be regarded positively because he was not deterred from forming the intention to perform the act by reflecting on the aspects of it which were or could be undesirable for him. Reflection is thus found by Reinach to have a symbolic function; its presence is often assumed to be accompanied by value-feeling and the examination of possible consequences. Various deviations can enter in practice, however, and often do, Reinach observes, as is the case when reflection is not accompanied by value-feeling or by examination of the possible consequences of an act. It is also possible to feel the value of a project and grasp its consequences without needing to reflect.<sup>1</sup>

Reinach finds a meritorious act to be commonly regarded as less worthy when it is preceded by long reflection. In this case reflection again has a symbolic function; it is assumed that long reflection can be required only by one who lacks ability to feel value, possesses an insensitive personality, or places his subjective interests above concern with values. A very short period of reflection is taken to imply

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<sup>1</sup>Ibid., pp. 148-50.

the presence of a particularly acute feeling of value, etc. Analogously, a reproachable act is generally regarded as being of greater ethical disvalue when it is executed with reflection. The worst such case is that where the agent grasps the disvalue and in spite of this performs the act. Here also reflection is assumed to have a symbolic character, though the relationship between reflection, value-feeling, and thorough examination of the consequences, is no more a necessary one in this case than it was in the previous ones. The use of reflection as a criterion for evaluating the agent can clearly result, Reinach concludes, in misjudgment in all of these cases.<sup>1</sup>

The fourth and last case considered by Reinach is that of the agent who performs a reproachable act and is more harshly judged because he acted without reflection. This is the first case where reflection is not a symbol, but rather itself an object of evaluation. This case does not contradict what was said about the third case. It is regarded as good that the criminal reflected about the value or disvalue of the project, but this positive judgment is outweighed by the greater negative value found in the fact that the agent, though not unreflecting, still either did not feel the positive or negative value of the project in question, or disregarded the felt value.<sup>2</sup>

Reinach argues that it is unjustified to use the simple presence or absence of intellectual-practical reflection as the criterion in positive criminal law for distinguishing between murder and man-slaughter, because there is no unambiguous correlation between reflection and cold-bloodedness, or between a lack of reflection and rashness, as is clear

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<sup>1</sup>Ibid., pp. 150-51.

<sup>2</sup>Ibid., pp. 152-53.

from the earlier discussion of the ambiguous symbolic function of reflection. Moreover, Reinach shows that in terms of his analysis a reflecting "murderer" can be seen to stand higher, morally and legally, than the unreflecting "man-slaughterer", if the latter's lack of reflection is the result of a disregard of values on principle or of an absolute lack of sensibility to values.<sup>1</sup> It was Reinach's hope that the then anticipated reform of criminal law would consider the injustice involved in using reflection as the criterion for distinguishing between murder and man-slaughter.<sup>2</sup>

In this article Reinach succeeded in portraying the ambiguity of "reflection" which renders it an unsuitable criterion for determining the punishment to be allotted to the person who has caused another's death. The view, which Reinach shared with other phenomenologists, that a person's character or the essence of their personality is documented in their ability to feel value and in the feeling-states grounded in this value-feeling, emerges from the context of ethics, but can have problematic implications for legal philosophy. There is first the question, analogous to that treated above by Reinach for "reflection", of how in any given actual situation it is possible to infer from the "facts" known the extent of the defendant's ability to feel value. Secondly, assuming the first question were solved, which is no small matter due to the ambiguity of all the "facts" which could be used as a basis for inference, there is the question of what valid use this determination could have in coming to a legal decision regarding punish-

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<sup>1</sup>It is open to debate whether or not Reinach meant to include in this "absolute lack of sensibility", cases of actual inability to feel value.

<sup>2</sup>Ibid., pp. 153-165.

ment. Reinach dealt with neither of these two essential questions. Reinach found that the use of one's ability to feel ethical values and a love of such values are generally regarded as being of ethical value in themselves.<sup>1</sup> From this we may infer that Reinach would have agreed that nothing more can be demanded of a person than that they use whatever degree of ability to feel value they may have.<sup>2</sup> Determination of inability to feel the disvalue of the act perpetrated would presumably entail a verdict of not-guilty. The social responsibility of the legal sphere, however, is generally not regarded as ending with the verdict of not-guilty in analogous cases. The agent is not eligible for punishment, yet society demands some assurance either of protection or that the agent is now a "changed man".

Two examples give a more vivid sense of the quagmires into which use of the criterion of "ability to feel value" may lead legal philosophy. The first is the case where jurists formulate sentences for crimes not according to precedent, but through consideration of the defendant's "character". In the most extreme case a minor offence might produce a death sentence if the defendant had been previously convicted of two or three similar offences and was regarded as a chronic offender-- "defective social material". The second example, representative of a social philosophy of a different hue, is the use of indeterminate sentences together with a program of "rehabilitation". Programs of this sort have alternately been hailed as a progressive, liberal, social reform and as an insidious form of "psychological torture" and the enforcement of acceptance (real or apparent) of a selective set of social

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<sup>1</sup> See above, p. 135.

<sup>2</sup> This is not clear; see above, p.137, nt. 1.

norms.

What is the extent and nature of the responsibility of law for the "intelligence" and "sensitivity" of citizens and the norms of society? How, even with the "best" of intentions, can the officials of a legal system emphasizing prevention through "rehabilitation", rather than punishment, avoid the tendency to impose their own norms on prisoners? Heterogeneous societies--culturally and economically diverse--provide the greatest challenge to a legal philosophy aiming at "rehabilitation"; the practice of rehabilitation requires constant reference to norms, and social diversity entails not only a diversity of norms, but a constant challenging of these norms. The possibility of abuse of law as a tool for the perpetuation of one set of norms over another is ever present in any diverse society, but becomes most dangerous in times of social stress, when groups feel themselves threatened by others, or when a messianic value is attributed to any given "normal" pattern. The use of "rehabilitation" may invite abuse of the law insofar as it in practice turns prison officials into legislators who regard as their realms the entire world-view held by their charges. The question of the proper relation of the norms of society and the law of the society is in itself a thorny issue, but within the legal/system itself abuses may arise whenever the social consequences of the means of dealing with individual cases are not in accord with the principles on which the legal system allegedly rests.

Judgments grounded on experience of the Absolute.--The first section of the unpublished piece, "Fragment of a Treatise on the Philosophy of

Religion",<sup>1</sup> is concerned with the Absolute, "the all-containing peak of an infinitely augmentable entity".<sup>2</sup> Reinach admits that this notion of the Absolute is apparently contradictory and attempts to clarify it through a comparison of the experience of the earthly and supernatural realms. Continuity with his earlier work is maintained by analyzing experience of the supernatural in terms analogous to those already developed for the former case. The following excerpt from a letter to his wife clarifies his intentions in writing about religious experience:

23 May 1916

My plan stands clearly before my eyes--naturally it is quite simple. I would like to start from the experience of God, the experience of being sheltered in God and do nothing more than show that from the standpoint of "objective science" one can say nothing against it; disclose what lies enclosed in the sense of that experience and to what extent it may make claim to "objectivity", for it sets itself forth as knowledge, indeed of a unique type, but in the true sense; and finally draw the consequences from this. Such a presentation can give the truly religious person nothing at all. But it can support the undecided who allow themselves to be discouraged by the objections of science, and carry further those for whom these objections bar the way to God. To perform this task in all humility is, I think, today that which is most important, much more important than fighting in this war. For, to what will this monstrous event lead if it does not bring men nearer to God?<sup>3</sup>

In the piece on the Absolute Reinach compared the realms of the

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<sup>1</sup>Adolf Reinach, "Bruchstück einer religionsphilosophischen Ausführung", in "Aufzeichnungen, 26 Juli 1916 - 3 Oktober 1917", Type-written manuscript compiled by Anna Reinach (presumably) from Reinach's papers, Nachlass Adolf Reinach.

<sup>2</sup>Section 1 of the "Bruchstück", the only section to have been published, appears in the introduction to the GS (pp. xxxi-xxxvi), and is cited here as it appears there as "Absolute", GS. Sections 2 and 3 are cited as they appear in the Nachlass (see nt. 1, p.140 above) as "Bruchstück". An English translation of these two unpublished sections is available for the first time below in Appendix III.

<sup>3</sup>This English translation is based on the letter as it appears in GS, p. xxxvii.

earthly and the supernatural in the following manner: In the world, love, goodness, thankfulness, dependence, etc., are always capable of being increased or intensified; but the love and goodness which we ascribe to God cannot be increased; it is infinitely great. Godly love contains the infinite, while earthly love only leads towards the infinite. Both have the same content, but one has it in absolute fullness, the other incompletely. In the acts which men direct to one another a determination of direction can be immanent. It is the essence of "wishing someone well" to be directed "downward",<sup>1</sup> and in the essence of "hate of the more highly placed" to be directed "upward".<sup>2</sup> The position one takes to another person colors the acts directed to this other person.<sup>3</sup> All of these relations become absolute when we direct ourselves towards God. Our position compared to his, an absolute under as opposed to an absolute above, specifies our experiences of him. To "wish him well" or "wish him good" is senseless.

Both formally, and in material content, God is absolutely high. Between the earth and the supernatural world there is an unbridgeable opposition. Insofar as we find an identical essential content here and there, which we may call goodness or love, etc., we may encounter an incomplete image of the supernatural. However, by no intensification can the earthly attain the level of the supernatural. There is no comparison between the two realms, between the love of one human for

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<sup>1</sup>We suggest that it is not the essence of "wishing someone well" to be "directed downward" though we admit the absurdity of presuming "to wish God well". Reinach's remark on this point probably reflects the social structure of his time and place just as our denial reflects our own. This indicates that direction, up or down, is not part of the essence of "wishing someone well".

<sup>2</sup>Unlike the former example, this essence is formulated in analytic terms and is therefore acceptable yet trivial.

<sup>3</sup>With this remark Reinach has broken through to the core of the relationships he has been attempting to analyze and has identified an essential and universal characteristic.

another, however great, and godly love.<sup>1</sup>

The infinity of space or time is unlike that of the supernatural. The former is of an essentially negative type. The earthly is the world of more and less, of nothing and some and many, of becoming and change and passing away; the supernatural is the world of the simple All. The world of "more and less" wears the stamp of the insufficient and incomplete. The Absolute, however, is the climax of the finite and the augmentable, without being reached from it.<sup>2</sup> The intentional correlates of experience of the two realms are thus set forth by Reinach as fundamentally distinct in their natures--so distinct that Reinach requires few rejoinders to render it clear that the experiences he is attempting to analyze are extraordinary.

In the acts in which the supernatural comes to givenness for us there is said to be mirrored in certain ways the absolute fullness of the supernatural. The dependence, love, and thanks, which we feel, insofar as we experience God, are not relative and augmentable, like the relations between men, but of an absolute nature. Thus, assuming we do experience God, earthly experience can contain supernatural content. For if the supernatural is grasped in position-taking acts, an absoluteness of the content of these acts must correspond to the absoluteness of what is grasped. The manner in which this absolute content is felt, however, is relative. In any experience I may or may not be "filled" with the content. The manner in which I experience a content may or may not correspond to what the content "demands". When I know of and

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<sup>1</sup>"Absolute", GS, pp. xxxi-xxxiv.

<sup>2</sup>Ibid., p. xxxiv.

experience a great misery, and indeed, experience it was the great misery that it is, I may yet not experience it in the manner, penetrating deep into all layers of consciousness, which corresponds to its greatness. The weight of the experience is then not as great as the weight of the experienced content. The converse may also occur. It appears doubtful that an experience with absolute weight is possible for men, yet the absoluteness of the experience itself is accessible to us and forms the bridge to the realm of the absolute itself. It is always the case that the absolute object and the absolute content of the experiences are necessarily coordinated.<sup>1</sup>

The process by which we come to knowledge of God is not, Reinach asserts, the same as the process by which we come to knowledge of earthly matters. Although, logically, taking God as a reality is a presupposition for feeling oneself sheltered in God, in the experience of God the former is mediate and the latter immediate. The experience of thankfulness and love are likewise mediate and derivative. This is made clearer through an analogy with perception. When I perceive an object, the relation between perception and the object is not objective to me, though through reflection I can come to the knowledge that I am perceiving. In an experience of my relationship to God, the relationship is not objective for me, but can lead to the knowledge that I am in this relationship.<sup>2</sup>

In the concluding fragment entitled "Sceptical Reflections" Reinach remarks that the nature of the experiences of God of which he has been speaking are so unlike the ordinary experiences of men, so open

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<sup>1</sup>Ibid., pp. xxxv-xxxvi.

<sup>2</sup>"Bruchstück", pp. 6-7.

to the attacks made on "subjective experiences", that the attempt to formulate the claims of such experiences to validity seems futile.<sup>1</sup>

Kurt Stavenhagen, who drew from these fragments by Reinach on the philosophy of religion as well as from works by Scheler, Pfänder, Geiger, and Otto, in his ontological study of religion, makes the analogy between the act of taking a position in this context and the intellectual position-taking referring to the subsistence of states-of-affairs, discussed earlier by Reinach in the article on reflection.<sup>2</sup> In the context of that article one must also distinguish the position taking of the will, i. e., the grasping of the intention to do or not to do "x", and the taking of a position towards the value or disvalue of a subsisting state-of-affairs. By contrast to these other forms of position taking the one discussed in the fragments concerning religious experience seems to be a position taking of the whole self "towards other selves". Stavenhagen calls it the "personal" position taking.<sup>3</sup> It is clearly a complex act as it presupposes both a view of self and views of others, and moreover, both in its formation and its development and change over time would involve a high degree of interaction with the other types of position taking as well as the changes which they underwent.

Stavenhagen finds that specifically religious position takings, regarded as sources for knowledge, must be seen as "subjective", not verifiable by any demonstrations.<sup>4</sup> This, of course, was precisely the point where Reinach left us in his discussion of religious experiences.

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<sup>1</sup>Ibid., pp. 7-8.

<sup>2</sup>Kurt Stavenhagen, Absolute Stellungnahmen: Eine ontologische Untersuchung über das Wesen der Religion (Erlangen: Philosophische Akademie, 1925), p. 42.

<sup>3</sup>Ibid., p. 42.

<sup>4</sup>Ibid., p. 204.

Subsequently Stavenhagen observes<sup>1</sup> that religious position takings may still be the basis of convictions as discussed by Reinach in the article on negative judgments. This opens the way to analyzing convictions based on religious position takings as a special case of convictions based on "beliefs" as was discussed by Reinach. The short piece on the phenomenology of premonitions (see below) indicates that such an analysis of the way in which "subjective experiences" in fact may serve to "ground" convictions, which in turn may be the basis on which other acts of position taking are performed, is not alien to Reinach's analysis of such phenomena.<sup>2</sup>

Premonitions. --It is the short piece of writing entitled "On the Phenomenology of Premonitions",<sup>3</sup> perhaps more than any other, which allows the present-day reader to understand why Reinach has been called the phenomenologist in and as such; here we see Reinach analyzing something from his every-day world, the world of soldiers at war; premonitions of death.<sup>4</sup> Reinach first establishes that premonitions,

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<sup>1</sup>Ibid., p. 212.

<sup>2</sup>The treatise on the philosophy of religion was left in an incomplete form. For this reason we have chosen to discuss only those issues, such as Reinach's method of analysis and epistemological questions, which bear some relation to his other work, but not, for example, the qualities attributed to the Absolute.

<sup>3</sup>Adolf Reinach, "Zur Phänomenologie der Ahnungen", in "Aufzeichnungen, 26 Juli 1916 - 3 Oktober 1917", Typewritten manuscript, presumably compiled by Anna Reinach from Reinach's papers, Nachlass Adolf Reinach; cited henceforth as "Ahnungen". An English translation of this unpublished piece is made available for the first time below, in Appendix III.

<sup>4</sup>Reinach here makes it clear, as it is not always made clear in his writings, that there is a distinct difference between grasping the intuitive essence of something in itself and acknowledging it only in accordance with the meaning of the word.

like all other experiences, require an objective correlate or state-of-affairs to which they refer. This state-of-affairs, the noematic aspect of the premonition, may also be the content of a judgment or a fear. It is the noetic aspect of the premonition which is problematic.<sup>1</sup> As an act of correctly or incorrectly grasping a state-of-affairs as subsisting, and thus as a source of knowledge in what Reinach calls the "wide" sense, the premonition may ground feeling-states (for example, dismay), striving, resistance, willing, etc., as do other acts of grasping subsisting states-of-affairs. The distinction between grounding and grounded structures, and the relationship between judgments and the act of grasping a state-of-affairs, were analyzed by Reinach in the article on negative judgments for the "narrower" sense of knowledge. By comparison with this narrower or more orthodox sense it is clear that premonitions are not ungrounded convictions, but rather that which may, validly or not, ground convictions. Reinach emphasizes that the strength and inner certainty of a conviction grounded on a premonition--an act in which we grasp, or believe we grasp, a state-of-affairs as subsisting--is in no way inferior to one grounded on acts of knowing in the traditional sense.

Reinach has been accused of holding a naive epistemological position. These charges are to some extent well-founded.<sup>2</sup> Yet it is clear, that Reinach was concerned with epistemological issues in all his writings. The role which he recognized to be in fact often performed by "subjective" experiences--grounding beliefs, convictions, assertions,

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<sup>1</sup>Here and in WB,GS, Reinach begins to make limited use of the terms "noetic", "noematic".

<sup>2</sup>See above, Chapter III, pp. 87-92.

feeling-states, position takings of the will, strivings, and by extension influencing the whole range of practical and intellectual position takings,--was a significant one. He was not so naive as to assert that these "subjective" sources of knowledge in the wide sense could be demonstrated or proven to have real objective correlates or to have these in adequate self-givenness--resort to attempts at "demonstration" or "proof" in the case of ultimates was indeed a course whose validity he strongly denied. He was at the same time, however, not afraid of attempting to grasp the essence of these experiences, as he occasionally accused non-phenomenologists of being, or of admitting the significance of the role they may play in the personal, practical, emotional, social, intellectual, and religious spheres of human experience.

c) The theories of states-of-affairs, intentionality, and judgments.

The first question that might be asked is whether states-of-affairs are that which is a priori in the primary sense. To accept this use of the term "a priori" is to accept a usage opposed to tradition and thus invite some measure of confusion. It is clear, however, that within the framework of Reinach's position the term "a priori" serves well, precisely because of the weight of tradition behind it, to describe the nature of the ontological connections of essences and, secondarily, the nature of acts of knowing and judgments referring to these connections. Reinach wished to make a strong point and ultimately the non-traditional use of the term "a priori" and the resultant shock effect of that usage strengthens his point.

A fundamental assumption throughout Reinach's work is that

the structure of thought and language correspond to the structure of objectivity. This is an assumption with no ultimate defense. It is a common-sense point of view closely akin to an "act of faith". In the absence of counter-examples or other evidence that the assumption is defective it remains a sound philosophic point of view as long as its status as an assumption is not forgotten.

The theory of states-of-affairs--states-of-affairs being that which is a priori in the primary sense and that which serves as the intentional correlate of all acts of knowing and of all judgments--is the most fully developed aspect of Reinach's threefold theory. There are problems relative to the nature of certain higher-order states-of-affairs and relations of states-of-affairs. An example was seen above for the case of the objective correlates of causal judgments. It appears that these are problems capable of solution.

A more serious area of problems is encountered in the theories of intentionality and evidence. These theories must carry the burden of clarifying the relationship of consciousness to being, of acts of knowing to states-of-affairs, and therefore require a fuller development than is overtly given them in Reinach's work. Reinach accepted much of Husserl's work on this topic, introducing distinctions only as these were motivated by analysis. The division of judgments into "assertions" and "convictions" and the accompanying analysis of the former as speech-acts involving acts of meaning (meinen) and function, the latter as grounded on acts of knowing and representation, is an instance of significant and far-ranging distinctions being motivated by such analysis.

There are numerous directions for further development, many of which have been noted in the preceding chapters. Evidence, self-givenness, and free variation of essences, all require further analysis. Reinach remarked on the severe limitations on evidence, that only states-of-affairs containing necessary essential connections can be grasped as necessary with indisputable evidence, that there is no final evidence for claims of real existence, that ontic connections need not necessarily be given to us, that judgments involving immediate evidence are rare, and that the process of practical reflection is theoretically infinite. It is therefore difficult to read his writings with care and in the end find his epistemological point of view naive in the simple pejorative sense.<sup>1</sup> The point of view is far more the common-sense one of proceeding painstakingly with analysis in constant awareness of the high possibility of illusion and error.

The subject of Chapter V, Reinach's legal philosophy, will provide an opportunity for examining the application of his threefold theory to a set of problems in analysis with which he dealt at length. Among the topics to be considered are the method used by Reinach in concrete analysis, the relation this method bears to "linguistic-analytic" methods, and the controversy over synthetic a priori judgments in legal philosophy.

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<sup>1</sup>See above, pp. 87-88 for reference to von Baeyer's charge that Reinach's epistemological point of view was "naive". Further discussion of this question would, of course, presuppose clarification of what the term "naive" may be taken to mean.

## Chapter V

### Legal Philosophy

This chapter, consisting of four sections, presents an analysis and evaluation of Reinach's legal philosophy. Section a is devoted primarily to the description of Reinach's legal philosophy, although it also identifies problematic aspects of his legal philosophy for further analysis and criticism in the following sections. Section b examines Reinach's method for concrete analysis of problems in legal philosophy. Reinach's analysis of the distinction between the moral and legal spheres, the analysis of "social-acts", the analysis of "promises", and the analysis of positive Law (Recht) as the product of "determinations" or "enactments" (Bestimmungen), are the principal subjects. Reinach's treatment of each of these topics is of intrinsic interest quite apart from their relation to his legal philosophy as a whole. The comparison of Reinach's analysis of "social-acts" with the "linguistic-analytic" treatment of "performatives", linguistic and non-linguistic, may contribute to dialogue between practitioners of the phenomenological and analytic approaches.

Section c attempts to evaluate the significance of the theories of states-of-affairs, intentionality, and judgments for legal philosophy and ethics. The controversy over synthetic and analytic judgments-- central to much of the criticism in the past of Reinach's legal philosophy--

is discussed. An attempt is made to clarify the claims and counter-claims of which much of the criticism has consisted, as well as to clarify Reinach's own position and suggest ways in which his own claims and interpretations of their significance may be qualified. The nature of the states-of-affairs with which ethics and legal philosophy are concerned is considered, as is the type of logic required by these states-of-affairs, and the intentional relations and the types of givenness and evidence which are possible for these states-of-affairs. Section d, the conclusion, contains an assessment of the over-all strong and weak points of Reinach's legal philosophy.

a) A description of Reinach's legal philosophy.

Reinach's doctoral dissertation (1905) on the concept of cause in contemporary criminal law is not of direct phenomenological importance, but it does display the level of Reinach's early skill in analysis and description as well as his pre-phenomenological approach to legal problems. The main goals of the work<sup>1</sup> are: 1) a solution of the problem of the legal meaning of the concept of "cause", and 2) a demonstration of the relation of psychology to the problem of clarifying the meaning of the connections of signs or symbols in a legal system. Theoretical and practical legal problems are said to result both from ambiguities in the expression of laws, and from non-equivalence of the intention and expression of laws. Psychology, it is asserted, is applicable to solution of both of these problems when the notion of a psychic regularity or consistency, as discussed by Lipps, is used to

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<sup>1</sup>Adolf Reinach, Über den Ursachenbegriff im geltenden Strafrecht (Leipzig: J. A. Barth, 1905).

evaluate the probable intent of a specific law within a given legal system as a whole. Reinach, following Pfänder,<sup>1</sup> distinguishes two uses of psychology for the clarification of such problems:

1) descriptive analysis, and 2) causal analysis.

Problems of ambiguity of expression are to be solved by reference to psychic consistency. The objective nature of law itself, the main subject for Reinach's later work on legal philosophy, is not discussed here. From the later point of view, the focus in this work is seen to be the clarification of the legal "determinations" or "enactments" (Bestimmungen) of positive Law and the development of guides for their practical interpretation, without regard for what Reinach later referred to as a priori laws (Gesetze) grounded in the essence of Law itself.

The first four chapters of Reinach's dissertation present the inadequacies of the main legal doctrines of causation of the period. The problem is then restated and divided into three aspects: 1) deliberate offenses, 2) negligent offenses, and 3) acts that are offenses in virtue of their ultimate consequences.<sup>2</sup> Reinach's treatment of deliberate offenses is in fact concerned not with the concept of cause involved here, but rather with determining what constitutes a deliberate offense. The will that "x" occur, together with objective grounds for believing that act "y" will lead to "x", and the performance of act "y", are found to constitute "deliberation". This result is then applied

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<sup>1</sup>Alexander Pfänder, Einführung in die Psychologie (Leipzig: J. A. Barth, 1904), pp. 181-185.

<sup>2</sup>Chapter 5.

to produce a definition of negligence. Reinach concludes that for both of these cases any act that is a condition of the result is a cause of this result in the legal sense.<sup>1</sup> In the more difficult third case Reinach concludes that an act followed by a mediated dire consequence is an offense only if the consequence could not have occurred had the act not been performed.<sup>2</sup> In his concluding remarks Reinach emphasizes that the law punishes only those acts over whose "being" and "not-being" the agent has power.

We do not find it clear, however, that the notion of "cause" involved in the first two cases is different from that in the third. Moreover, in all three cases the problem and Reinach's interests seem to lie less with the concept of "cause", as such, than with the notion of legal responsibility. The conclusions about legal responsibility are not, however, always adequate. Just how probable does it need to be, that act "x" will result in event "y", for the agent who chooses to do "x" or not to do "x" to be guilty of a deliberate or negligent offense? The whole result probably would have been happier had the dissertation been recast to coincide more fully with what in fact seem to be Reinach's interests in the problem: analyzing the psyche of the agents.

In the introduction<sup>3</sup> to Die apriorischen Grundlagen des bürgerlichen Rechtes ("The a priori Foundations of Civil Law")<sup>4</sup>, his principal work in legal philosophy and the best known and most widely discussed of

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<sup>1</sup>Chapter 6.

<sup>2</sup>Chapter 7.

<sup>3</sup>aGBR, GS, pp. 166-74.

<sup>4</sup>Ibid., pp. 166-350, see above, p. 9.

all of his writings, Reinach sets forth the distinctions which are to form the foundation for the treatise. Positive Law<sup>1</sup> as a whole is said to develop and change continually in response to changes in moral intuition and the development of economic relations and needs. Positive legal propositions (Sätze) are thus completely different in essence from those of mathematics and may therefore not be spoken of as "true" and "false", but only as "useful" and therefore "right". The proposition, " $2 + 2 = 4$ ", subsists independent of men and time, but legal propositions of today may have no validity in another period in history.<sup>2</sup> Induction can isolate the general underlying argument for positive Law from its single "determinations" or "enactments" (Bestimmungen), but this is also clearly subject to change. Although it may be possible to set forth formal independent laws which Law, insofar as it is Law, must fulfill, such laws would necessarily be strictly formal because Law necessarily has a changing content which reflects its time.<sup>3</sup>

The general contemporary view, Reinach observes, is that it is senseless to speak of legal concepts as having a Being (Sein) independent from the positive legal system. Possession as well as the propositions which rule it are, for example, all generally said to be the products of positive Law and to reflect the attempt of the community to bound and protect the dominion of the individual over things. The rise of exchange of goods and services is generally regarded to have given rise to the interpretation by positive Law of the problem of delayed payment in terms of claims and obligations. The key point to be

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<sup>1</sup>Recht has been translated as "Law" to distinguish it from Gesetz which has been translated as "law".

<sup>2</sup>aGBR,GS, pp. 166-67.

<sup>3</sup>Ibid., p. 167.

seen in this example is that all legal propositions and concepts were generally regarded as the creations of the social factors which produce Law. It was thought to be senseless to speak of the Being of any legal proposition as one which is independent from positive Law.<sup>1</sup>

It was Reinach's view, however, quite opposed to the one just given, that legal structures (Gebilde) do have a Being which is independent both from consciousness and from positive Law. He finds it senseless to refer to specifically legal structures as the creations of positive Law. Nor, he wishes to maintain, are the legal concepts which enter into the legal structures creations of positive Law. It is rather the case that a priori propositions obtain for legal structures. An example of such an a priori proposition is that it is grounded in the essence of a claim (Anspruch), as such, that the claim lapses through an act of waiver. There are many such a priori propositions and Reinach asserts that they are as intuitively evident and independent from consciousness and from all positive Law as the legal structures for which they hold.<sup>2</sup>

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<sup>1</sup>Ibid., pp. 167-69. Karl Haff (See, "Die Bedeutung der Rechtspsychologie für die moderne Rechtsfindung," Archiv für Rechts- und Wirtschaftsphilosophie, XVIII (1924-1925), 133-142) was a firm supporter of this point of view and therefore a critic of Reinach.

<sup>2</sup>aGbr,GS, pp. 169-171. The philosophy of law of Juan Llambias de Azevedo (see, "Eidetics and Aporetics of the Law", in Latin-American Legal Philosophy, by Luis Recaséns Siches et al., trans. by Gordon Ireland et al., 20th Century Legal Philosophy Series, III, Cambridge, Mass.: Harvard University Press, 1948, pp. 403-458.) takes as its primary supposition the independence of Law from consciousness. Husserl, Pfänder, Scheler, N. Hartmann, Reinach, Ingarden, and Wm. Schapp are all referred to in the course of the treatise. The conclusion decides neither for nor against the notion that legal formations or structures have an a priori structure independent of positive Law, but rather puts it forward as a still viable possibility.

Other authors in Spanish whose work takes account of Reinach are Carlos Cossio, Luis Legaz y Lacambra, and Miguel Reale (see "Questionnaire des Archives de Philosophie du Droit," Archives de Philosophie du Droit, VII (1962), 83-167.). José María Álvarez M. Taladriz wrote the introduction to the Spanish translation of Reinach's legal philosophy, Los fundamentos apriorísticos del Derecho Civil, (trans. by José Luis Álvarez,

Reinach emphasizes, to prevent misunderstanding, that he is not asserting that positive legal propositions are a priori. It is, in fact, his view that positive legal propositions are not judgments at all and that the distinction between a priori and empirical consequently has no place in positive legal propositions. Reinach regards legal structures, and the a priori synthetic laws which hold for their essences, to be of the highest philosophic interest, because they involve a previously unrecognized type of object--not physical, not psychical, and yet not ideal (ideell) due to its temporality.<sup>1</sup>

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Barcelona: Bosch, 1934). More recent is the section on Reinach's legal philosophy in Luis Recaséns Siches' Panorama del Pensamiento Jurídico en el Siglo XX, (Mexico: Editorial Porrúa, 1963, pp. 253-265).

<sup>1</sup>aGBR,GS, pp. 171-172. Fritz Schreier interprets Reinach as having meant by this that individual legal objectivities are temporal, but finds this to be the same situation as that of physical and psychic objects; thus Schreier believes all three to be temporal as particulars and timeless as concepts, (Grundbegriffe und Grundformen des Rechts: Entwurf einer phänomenologisch begründeten formalen Rechts- und Staatslehre, Leipzig und Wien: Franz Deuticke, 1924, p. 59.). It is rather our opinion that had Reinach meant this he would have said so.

Gerhart Husserl, unlike Schreier, credits Reinach with having correctly shown for the first time that claims and obligations were a unique type of temporal object, non-physical and non-psychical, ("Zur Lehre von den sog. Doppelwirkungen im Recht," in Recht und Welt: Rechtsphilosophische Abhandlungen, Juristische Abhandlungen I, Frankfurt am Main: Klostermann, 1964, p. 235.). In his first main legal work (Rechtskraft und Rechtsgeltung I, Berlin: Springer, 1925) Husserl commented on the superiority of Reinach's pure intuitive approach to the formalism of the work of Fritz Kaufmann (see, Die philosophischen Grundprobleme der Lehre von der Strafrechtsschuld, Leipzig und Wien: Franz Deuticke, 1929.) and of Fritz Schreier, op. cit.. Husserl regards Reinach's failure to actually reach the end he had set for himself as due primarily to the inadequacy of the material available to him for intuition, which was due in turn to the limitation of his attention for the most part to the current German civil law, and an insufficient use of the method of comparative law. Later phenomenological studies by G. Husserl on possession (a particularly weak point in Reinach's work) may be of interest to those wishing to examine the implementation of these suggestions, (see, Der Rechtsgegenstand: Rechtslogische Studien zu einer Theorie des Eigentums, Berlin: Springer, 1933, and Person, Sache, Verhalten: Zwei phänomenologische Studien, Philosophische Abhandlungen, XXXII, Frankfurt am Main: Klostermann, 1969.).

A a priori legal doctrine is thus found by Reinach to be completely autonomous and independent from positive Law. Although legal structures and a priori legal propositions both subsist independent from positive Law, they are both presupposed by positive Law. Insofar as they are presupposed by positive Law, analysis of their essences is of significance for the positive legal disciplines. Thus, there is, Reinach remarks, often mention in jurisprudence of propositions which are, in fact, not contained in positive Law, but which are yet said to be "self-evident" or "given by the Nature of the thing". Propositions such as these are actually the result of a priori legal doctrine. They are, Reinach asserts, propositions which actually arise from the "Nature" of "the essence" of the concepts in question.<sup>1</sup> Reinach hopes that a priori legal doctrine may help to clarify the history of Law. It is his view that the structure of positive Law can in any case first be made understandable only through the structure of the non-positive (a priori) legal sphere.<sup>2</sup>

In the chapter concerning "claims", "obligations", and "promises",<sup>3</sup> many of the distinctions made in the introduction are given concrete application. Let us assume with Reinach that person A makes a promise to person B. The effect of this promise is to give rise to a "unique connection" between these two persons, which is by essence of some duration yet has an "immanent tendency" to experience an end and a fulfillment. The promise may also expire, be retracted, or disclaimed. The making of a promise is said to give rise to both a "claim" and an

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<sup>1</sup>Whether Reinach can say they arise from the essence of the "concepts" and remain consistent is open to question. A statement that they arise from the essence of the structures in question would seem more appropriate.

<sup>2</sup>aGbr,GS, pp. 173-74.

<sup>3</sup>Ibid., pp. 174-231.

"obligation". These constitute the "unique connection" referred to above. The proposition that "a claim on a given service lapses the moment the service is rendered" is an "a priori synthetic law" grounded in the essence of a claim as such. Reinach regards it as synthetic for he finds it to be in no possible sense "contained in the concept" of a claim that it expire under determinate circumstances, nor would its contrary imply a logical contradiction, as would be the case if it fulfilled Kant's criterion of analyticity.<sup>1</sup> Claims and obligations can also arise from sources other than promises, as, for example, from the taking of something which belongs to another. Reinach's ability to defend this last example presupposes the a priority of "possession", only one of the possible relations of persons and things.

Reinach asserts that it is possible to have knowledge about claims and obligations whether or not they pertain to us directly. Although

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<sup>1</sup>Ibid., pp. 174-77. Julius Kraft found Reinach to have been mistaken in his belief that correct analytic assertions, such as those concerning the lapsing of claims, were a priori synthetic propositions. The assertion that "claims and obligations are grounded in promises as such", is said by Kraft to be trivial, if by "promise" is meant "a binding declaration of will", but false, if only the fact of "a declaration of will" is meant, ("Die wissenschaftliche Bedeutung der phänomenologischen Rechtsphilosophie," Kantstudien, XXXI (1926), 286-296). Reinach himself made the latter point with considerable force, see below, p. 162. Erwin Riezler ("Apriorisches im Recht," Archiv für Rechts- und Wirtschaftsphilosophie, XVII (1924), 264-84.) came to essentially the same conclusion (as did Hans Neisser, "The Phenomenological Approach in Social Science," Philosophy and Phenomenological Research, XX (1959-1960), 198-212, and Nicos Ar. Poulantzas, "Notes sur la phénoménologie et l'existentialisme juridiques," Archives de Philosophie du Droit, VIII (1963), 213-235.) on the basis of a more lengthy analysis of Reinach's legal philosophy, but unfortunately simply confounded Reinach's use of the term "analytic" with that of Kant rather than recognizing that Reinach, going beyond Kant, regarded the "analytic" as grounded in an a priori objective essential connection. This is a relatively common error among critics of Reinach. See below, pp. 196-206.

subjective experience of claims and obligations is possible only for those particular ones which belong to us, Reinach finds that I can also feel myself to be obligated or to have a claim, without an obligation or claim actually subsisting, and conversely. Actual claims and obligations are not merely psychic. They presuppose a bearer and have a determinate content. The content may refer to a conduct or to the realization of a result. Some obligations may therefore be transferred without the consent of the bearer of the claim, (as, for example, when C must pay A the sum of money which B owes A). Yet in all cases there is a correlation between the claim and the obligation.<sup>1</sup>

Reinach regards it as important to distinguish moral duties and rights from legal claims and obligations. Moral rights and duties are never grounded in will directed acts and are consequently not transferable; only what originates in a free act can be abolished in a free act. The difference between the moral and legal spheres is seen in the fact that though we may say "person x has a moral duty to fulfill the obligation he undertook by making that promise", the moral duty mentioned here arises only because the obligation already obtains.<sup>2</sup>

Reinach found all previous definitions of "promises" faulty. In order to ground his own discussion of promises, claims, and obligations, he analyzes the "social act"<sup>3</sup> in general, of which promises are found to be but one type. The key characteristics of the "social act" are its spontaneity and requirement of recognition. Not all acts directed to another person require recognition, nor are all acts requiring recognition

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<sup>1</sup>aGbr,GS, pp. 177-80.

<sup>2</sup>Ibid., pp. 181-84.

<sup>3</sup>See below, pp. 184-96, for an analysis and comparison of Reinach's treatment of "social acts" with "analytic" approaches to "performatives".

directed to another person. A command, however, is an example of an act of a unique type to which the requirement of recognition, as well as spontaneity, intentionality, and direction to another person, are all essential. Social acts are found to have an inner and an outer aspect. The latter can vary while the inner aspect remains the same, but it is only through the outer aspect that a social act can be grasped, that it can fulfill its "notification function". The simple outward mirroring of inner experiences such as shame, scorn, love, fear, etc., in non-will directed ways, is not, Reinach insists, to be confused with social acts, which are, by essence, will-directed. Nor are statements such as, "I am afraid", or "I don't want to do that", to be confused with social acts; these statements are merely outer references to subjective experiences which could have been there without the outer reference. A statement such as, "I have given an order", refers to the social act as a whole, including the outer aspect, that is, the act of verbally giving an order. The act of verbally giving an order may in no case be confused with such a statement referring to the whole social act.<sup>1</sup>

Commands, requests, and communications are all distinct types of social acts. Questions are fulfilled only when they receive an answer, while answers, though they presuppose social acts in the form of questions, require no act in turn. It is clear that these relationships do not hold for apparent questions, requests, or communications (i.e., lies). Reinach finds that the following distinctions serve to distinguish the various types of social acts: 1) simple ones, 2) those which presuppose other

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<sup>1</sup>aGbR, CS, pp. 184-92.

social acts, and 3) those which point to subsequent social acts or other activities. Other distinctions are also possible. It is possible, for example, to place a condition on a social act if that social act in its unconditioned form would have an effect. The social act may be made conditional by making the effect depend on the occurrence of a future event, where that future event is possible but not necessary; any obligation entailed becomes binding at once, though the effect or conduct becomes necessary only with the actual occurrence of the event which had been merely possible at the time of performance of the social act. This relationship and other similar ones are said by Reinach to be grounded purely in the essence of the "social act".<sup>1</sup>

There may be more than one person to whom a social act is directed or by whom it is performed. Social acts may also be performed "in the name of another", but these are distinct from those "in the interest of another". The obligation or claim in the case of a promise would belong, in the first instance, to the person named, not to the speaker, and in the second, to the person making the promise. What Reinach finds noteworthy about all of these cases is what he regards as the strong a priori form of the propositions pertaining to them. He emphasizes that these propositions express immediately intuitible essential connections and are not the creations of positive Law.<sup>2</sup>

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<sup>1</sup>Ibid., pp. 192-97.

<sup>2</sup>Ibid., pp. 197-203. Herbert Spiegelberg points out that social acts and their modifications have wider applications than to legal philosophy; see Spiegelberg, PM, p. 203. Reinach himself remarked, aGbr,GS, p. 174, that the a priori legal doctrine with which he was here concerned was a part of the a priori foundation of all social interchange.

Reinach now turns his attention away from social acts in general and back to an analysis of how claims and obligations arise from promises. Unlike many requests and commands, promises, by essence, require no acceptance. It is rather the case that the person who makes a promise assumes the obligation in the very act of making the promise. No corresponding social act is required to assume a claim. It is thus argued that claims and obligations are grounded in promises as such. All claims as such can be waived, although the case where the promise included the request that the promise be accepted is more complex. Agreement to the request to accept the promise involved the assumption of an obligation. Thus the second party cannot waive his claim on the original promise without first receiving a waiver to do so from the first party. By essence, claims may be waived, but promises cannot be retracted.<sup>1</sup>

Reinach finds Hume's theory of promises unacceptable because promises are simply not equivalent to a will to take on an obligation, motivated ultimately by self-interest. The view of Theodor Lipps, that promises are the making outward of the will to do something in the interest of another, is also unacceptable to Reinach because it does not explain the origin of the obligation. Reinach regards Lipps' theory to be an example of psychologism. It attempts, Reinach asserts, to clarify the objectivity of essential laws of social connections through recourse to subjective experiences which are absolutely irrelevant for the subsistence of these connections. Likewise, the position of Wilhelm Schuppe, who regarded promises as declarations of intentions of will, is found by Reinach to be unable to explain the obligation entailed in making a

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<sup>1</sup>aGBR,GS, pp. 204-212.

promise. Reinach regards Schuppe's error to have arisen from the fact that his theory makes obligation rest on moral duty, which according to Reinach's analysis instead presupposes the existence of obligation.<sup>1</sup>

Reinach recognizes that his view that obligation is grounded in the essence of promises as acts, not in their content, entails the view that an immorality of content cannot effect the essential connection; thus the obligation would remain. There would therefore be two conflicting moral duties with distinct grounds: 1) to fulfill the original obligation, and 2) to prevent its realization. The grounds for these conflicting duties would lie in the original obligation and its content, respectively.<sup>2</sup>

Reinach states that he will give no theory of promises, but only set forth the "simple proposition" that promises as such produce claims and obligations. It is fear of givenness, a curious timidity, or an inability to grasp final intuitables and recognize them as such, Reinach asserts, which has in the past led to an unphenomenologically directed philosophy, with this problem as with many other fundamental ones, to untenable and simply fantastic constructions.<sup>3</sup>

There are many possible person-thing relationships, where "thing" is taken in the widest sense of the word as including everything "usable". Reinach distinguishes physical and legal power: I may exercise one or the other or both. Possession, Reinach asserts, is independent of the existence of positive Law. It is, moreover, grounded in the essence of possession that the bearer has an absolute right to do anything with the "thing" possessed, though that right may be modified by other moral or

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<sup>1</sup>Ibid., pp. 212-226.

<sup>2</sup>Ibid., pp. 226-228.

<sup>3</sup>Ibid., pp. 229-30.

legal duties and obligations. Possession is not primarily a right over a "thing", but rather a relation to the "thing" in which all other possible rights to the "thing" are grounded. This original and grounding relation is not altered even when all rights to the "thing" are ceded to other persons. It is rather presupposed by these ceded rights. Laws governing transfers of property and mortgages are thus regarded as ultimately grounded on this original relation of possession.<sup>1</sup>

Reinach will continue to avoid trying to "define" the concept of rights and obligations, because to define, i.e., what he calls to attempt to clarify something by means of alien elements, is futile.<sup>2</sup> The transfer and ceding of rights are distinct. The transfer of possession involves only a change of the bearer of the relation to the "thing". In response to the problem of the origin of possession Reinach attempts only to make clear a few aspects of a priori doctrine rather than taking up ethical and historical questions related to the problem. Reinach asserts that the fact that I have had a "thing" for ten years does not mean that I possess it, but if I make something from material which "does not belong to anyone else" then I do possess the product. The act of production is what grounds the possession in this instance, not the "work" involved, as such, for there may be much "work" involved in transporting something from one place to another, yet, Reinach asserts, I will still not possess the thing transported. The result of the collective production by more than one person of one "thing" is that they "together" have possession of the "thing" produced. Reinach asserts that he has, by example, shown that it is possible to study the legal origins of possession as it is grounded in laws of essences. To the

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<sup>1</sup>Ibid., pp. 231-50.

<sup>2</sup>See UP,GS and above p. 19.

question of how absolute obligations (corresponding to absolute rights, as of possession) originate Reinach has, as yet, no answer.<sup>1</sup>

Leaving the analysis of "possession" in this incomplete and rather unsatisfactory form, Reinach proceeds to study the essential laws governing the transfer of obligations. He warns of the possibility of being led to false conclusions by our knowledge of what is "customary". "Clear insight" into the a priori essential connections leads Reinach to the observation that transfers may leave the same person addressed in the content (thus person A will still benefit from fulfillment of the obligation). If the transfer is to involve a change in the person addressed that person must agree to the change unless they have already ceded the right of transfer.<sup>2</sup>

In the social act of promises and their immediate legal effects<sup>3</sup> --

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<sup>1</sup>aGbr,GS, pp. 250-264. The treatment given possession is one of the weakest in this treatise. Karl Haff (op. cit.) and Friedrich Bassenge ("Zur Philosophie des Eigentums," Archiv für Rechts- und Sozialphilosophie, XXXI (1937-38), 324-351) are strongly doubtful that possession is a priori at all. Somewhat more positively Edgar Bodenheimer ("Phänomenologie und Rechtsquellenlehre," in Phänomenologie, Rechtsphilosophie, Jurisprudenz, Festschrift für Gerhart Husserl zum 75. Geburtstag, ed. by Thomas Würtenberger, Frankfurt: Klostermann, 1969, p. 90.) remarks that Reinach sometimes went too far in his interpretations of a priori legal propositions, but had indeed laid the foundation for later deeper treatment, as for example in the work of Gerhart Husserl. See above p. 156, nt. 1, for references to the work of the latter on possession.

<sup>2</sup>aGbr,GS, pp. 264-273.

<sup>3</sup>Fritz Schreier (op. cit.) made a new start at the attempt to treat problems of legal philosophy on a phenomenological basis, having found Reinach's approach inadequate. His work was based primarily on the Logische Untersuchungen and the work of Kelsen. Schreier regards social and legal acts as completely distinct, thus rejecting one of Reinach's basic points, and insists that Law cannot constitute itself in social acts, (Ibid., p. 13). Wilhelm Schapp stated that among phenomenologists his position lay closest to that of Reinach, whose work influenced him more than all the others, though he notes that they both had received much of their training from Pfänder and Daubert. In his view, the strongest aspect of Reinach's legal philosophy was the study of acts and the connection

claims and obligations--Reinach finds a legal ability, a "can", to document itself. This legal ability is not further reducible, but rather has its final origin in the legal person as such. This fundamental ability is not transferable. Insofar as it is grounded in the essence of the legal person as such, it is inseparable from that essence; it builds the ultimate foundation which first makes possible the constitution of legal-social relations. There are, Reinach asserts, in addition three types of rights and obligations which the person cannot transfer: 1) moral ones which are grounded in the essence of the person as such and are inseparable from it; 2) moral ones which spring from determinate objective situations in which the person is involved and which cannot be separated from the person so long as these situations endure; and 3) rights and obligations which are given to the person through social acts and cannot be transferred because the person lacks the legal ability to do so.<sup>1</sup>

"Representation", a social act "in the name of another", is next studied in order to discover the essential legal foundation which makes such acts possible. To act in the name of another is not strictly the same as acting in the manner I assume the other would act. If I make a promise in the name of another no obligation results for me, only for the person named. It is a priori possible that B promises C, in the name

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between acts and legal relations, (Die neue Wissenschaft vom Recht, 2 vols. Berlin-Grunewald: Rothschild, 1930-1932, I, p. 182.). The close tie between the a priori legal and social essences was also the subject of part of the article by C. A. Emge, "Über die Zusammenhänge zwischen Soziologie und Rechtswissenschaft einerseits, zwischen Religionsphilosophie, Geschichtsphilosophie und Rechtsphilosophie andererseits," II, Archiv für Rechts- und Wirtschaftsphilosophie, XVIII (1924-1925), 30-57.

<sup>1</sup>aGbr,GS, pp. 274-75.

of A, that he, B, will do "x". The result is that C has a claim against A that B fulfill the obligation. There are, of course, conditions on acts in the name of another. I cannot make promises in someone's name if those promises are against his will. The person whom I am to represent may promise, however, to fulfill all obligations which I make in his name. In doing so he takes on an obligation whose content is identical to the content of any obligation I may subsequently take on in his name.<sup>1</sup>

The case where I promise a third person that I will do whatever B promises him in my name, involves an obligation on my part to the third person and is thus not a true case of "representation" in the sense discussed above. The legal ability to represent someone comes about instead by an "act of ceding of power" by the person to be represented. The power ceded may include all types of legal social acts or it may be limited to specific ones. The "mandate" extended in this ceding of power may either be complete or it may include certain stipulations about how particular cases are to be handled. "Passive-representative power", as opposed to the "active" form discussed above, is found in cases where the sole function of the representative is to receive social acts in the "name of someone" though he has no power to perform social acts in that person's name. An example of this distinction is seen in the comparison of an errand-boy with one who actively represents. The errand-boy must deliver what is received to the person addressed, whereas the one who represents fulfills his function by simply receiving it.<sup>2</sup>

In the remainder of the treatise Reinach plans to limit himself to two paths of research: 1) the exhibition and teleological foundation of

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<sup>1</sup>Ibid., pp. 275-80.

<sup>2</sup>Ibid., pp. 280-91.

general positive legal propositions, and 2) the study of the eternal laws of Being which are grounded in the pure legal concepts.<sup>1</sup> Reinach begins this new stage in his analysis with the observation that positive Law seems to contradict what he has said at almost all points. The fundamental observation that only persons can be the bearers of rights and obligations is, for example, apparently disproven through the fact that positive Law recognizes foundations as the bearers of rights and obligations and does not recognize a twenty-year old person as being one who may assume legal obligations. It is on points such as these that Reinach expects there to be objections to his attempt to formulate an a priori legal doctrine. He therefore takes great pains to explain clearly that positive and a priori legal propositions stand on two quite distinct levels, with the result that there can be no actual contradictions.

The propositions of a priori legal doctrine, insofar as they set forth a being as subsisting, i. e., presuppose an a priori legal structure independent of positive Law, are propositions of judgment. But propositions of positive Law are not judgments; "true" and "false" in the logical sense may never be applied to them. Rather they are "determinations" or "enactments" (Bestimmungen) which may then serve as the basis for legal assertions, such as, "it is the case that 'the legal ability of men begins with the completion of birth'". Thus one cannot speak of a true contradiction between essential a priori laws and the propositions of positive Law. If positive Law asserted its propositions originally then contradictions with essential a priori laws would indeed

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<sup>1</sup>Ibid., p.297. See above, p. 157, nt. 1, and below, pp. 201-204, on the use of the term "concept".

result. However, positive Law "determines" ("it is to be regarded as being the case that ....") its propositions rather than asserting them ("it is the case...").<sup>1</sup>

Reinach clarifies this distinction by a discussion of determinations as such. A "determination" is a social act founded on the will that something should be the case. The experience, act, statement, content, and effect of a determination are all to be distinguished. In executing an act of determination a law-giver may say, "A should be b". This same statement as used in ethics--where it is a means of expressing the subsistence of an objective should-be (Seinsollen), grounded in the rightness of the "being-b of A",--stands in sharp contrast to its use by the law-giver. Any judgment, as such, including false judgments, can refer only to states-of-affairs. In judgments states-of-affairs are set forth as subsisting or non-subsisting. In determinations they are set forth as that which should or should not be. Conduct can be the object of a determination, even one's own conduct, as is reflected in the self-binding Laws made by the state. This explains the tendency to confuse orders and determinations.<sup>2</sup>

A determination, Reinach insists, does not correspond to any in-itself in the objective sphere (i.e., to any objective state-of-affairs). It exists only as a correlate of the determining act of the law-giver. In this respect it is arbitrary. All determinations aim at the realization of that which they set forth as what "should be". The content of a

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<sup>1</sup>aGbr,GS, pp. 296-300.

<sup>2</sup>Ibid., pp. 300-304. Edith Stein, in her treatise on the State ("Eine Untersuchung über den Staat," Jahrbuch für Philosophie und phänomenologische Forschung, VII (1925), 1-123), states that her conclusions regarding the State and Law are for the most part only consequences of Reinach's legal philosophy. One question she deals with is the significance of the distinction between orders and determinations in relation to various acts of the State.

determination cannot be that which is a priori necessary or impossible if the determination is to be meaningful. In the former case it would be redundant and in the latter ineffective. Like many other social acts, a determination may be made by, or directed to, many persons.<sup>1</sup>

Determinations have power to produce legal effects only if this power has already been bestowed on the law-giver by the persons effected. Bestowal of power is a unique social act. The validity of a priori connections is presupposed by determinations, not altered by them. The function of the determination is to negate the legal structures which grow from the a priori laws or to produce by its own power the legal structures excluded by these laws. A law-giver, one with power to make determinations, may, for example, know that certain legal structures do not result from the present social acts though from some relevant point of view they "should be". He may then make a determination that they "should be" with the result that they are realized, insofar as he in fact has the power to make effective determinations.<sup>2</sup>

Reinach considers the case of an a priori connection whereby a legal structure cannot arise from a given social act, for example, possession from a promise. The determination cannot change this a priori connection as such, but it can say that in all cases it should be the case that promises may produce possession. If the determination is effective then this relationship is in fact established, but never through the promise alone, only after the promise and through the determination. Cases involving a necessary connection are different from the above which involved an a priori impossibility. If social act "b" by necessary

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<sup>1</sup>aGbr,GS, pp. 304-307.

<sup>2</sup>Ibid., pp. 307-12.

connection gives rise to legal structure "a", an effective determination can make it a matter of fact that social act "b" gives rise to legal structure "c", without structure "a" ever coming into being. Thus, Reinach asserts, a determination can prevent what necessarily comes from an act from doing so, but it cannot make arise from an act that which cannot so arise. The essential connection is presupposed by the determination in the former case and then neutralized. The essential connection, in such cases, still subsists, as was seen in the relationship of possession and the ceding of rights to the "thing".<sup>1</sup>

There are two types of essential connections; those which hold under all circumstances, the necessary essential connections, and those which hold only under certain circumstances, i. e., those which are neither necessary nor impossible. Reinach gives as an example of the first the connection whereby color exists only as somehow united with extension, while an example of the second is said to be that the fulfillment of striving is accompanied by pleasure. Another example of the second is said to be that only if there has been no ceding or transferring of rights to "things" do all rights to "things" spring from actual possession of the "thing". All necessary legal connections hold for positive Law only under the presupposition that there has been no opposing determination. In and for themselves, (rather than for positive Law), however, necessary connections are valid in all cases.<sup>2</sup>

Once it has been effectively determined that a certain legal structure is to result from certain social acts, then the assertion is correct that within a given circle of persons a given structure actually

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<sup>1</sup>Ibid., pp. 312-13.

<sup>2</sup>Ibid., pp. 313-14.

exists on the ground of the performance of the particular social act. It is in this respect that judgmental propositions have a place in positive Law and may be correctly referred to as "true" or "false".<sup>1</sup>

Reinach reasserts that there is no contradiction between a priori and positive legal doctrine, but rather only a divergence of the determinations of positive Law from the a priori laws of essential connections. This divergence implies no invalidity of the a priori laws; rather it is the case that the a priori laws are what first makes positive Law possible and comprehensible.<sup>2</sup>

Positive Law is said to have the task of interpretation. Thus, for example, positive Law associates various forms of selling and buying with a variety of legal effects by interpreting these forms of selling and buying as types of promises and transfers of possessions. Reinach illustrates his point by drawing from the different interpretations found in Roman law, the French civil code, and more recent German law. The interpretative function of positive Law is seen as well in its various determinations throughout history of what is to be regarded as a legal person. Slaves have often not been regarded as legal persons, while the development of corporate enterprise has met with the response from positive Law whereby corporations are treated "as if" they were legal persons.<sup>3</sup>

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<sup>1</sup>Ibid., pp. 314-15.

<sup>2</sup>Ibid., pp. 315-16.

<sup>3</sup>Ibid., pp. 320-337. Edith Stein (op. cit.) discusses how and on what basis the State functions as a legal person. Alfred Schutz stated that Edith Stein's and Gerda Walther's ("Zur Ontologie der sozialen Gemeinschaften," Jahrbuch für Philosophie und phänomenologische Forschung, VI (1923), 1-158.) "naive use of the eidetic method in analyzing the problems of social relations, of community, and of the state led them to formulations of certain apodictic and purportedly aprioristic statements

The propositions of a priori legal doctrine are, Reinach states, synthetic a priori judgments in Kant's sense.<sup>1</sup> Their validity, however, is not to be seen in positive Law; the latter is first made possible only by a priori legal connections of essence. It is possible, Reinach suggests, that there are many immediately intuitable a priori legal propositions which have found no objectivation in positive Law. In any case nothing is clearer to Reinach than the untenability of attempts to establish immediately intuitable connections by reference to cultural institutions which themselves can first be made clear and understandable through such connections. Synthetic a priori propositions should not be accepted at once on good faith; it is rather, Reinach insists, the intuition of essences on which one must rely. Pure phenomenological analysis alone can produce insight into essential connections which is evident, free from doubt.<sup>2</sup>

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which have contributed very much to discredit phenomenology among the social sciences," ("Husserl's importance for the social sciences" in Edmund Husserl: 1959-1959: Recueil commémoratif publié à l'occasion du centenaire de la naissance du philosophe, Phaenomenologica, Vol. IV, ed. by H. L. Van Breda, The Hague: Martinus Nijhoff, 1959, p. 89). It is rather, Schutz continued, in the constitutive phenomenology of the natural attitude that the empirical sciences will find their true foundation, (Ibid., p. 97).

<sup>1</sup>This statement has often been misinterpreted due to lack of attention to Reinach's discussion of Kant's use of the terms a priori, synthetic, and analytic; see KAH,GS; NU,GS; RVK,GS; Spiegelberg, PM, pp. 195-205; and above pp. 40-53. Kant's sense of synthetic a priori is adequate in this context because the subject is propositions and not the essential connections in which, according to Reinach's position, these propositions find their objective reference.

<sup>2</sup>aGbr,GS, pp. 337-41. Theodor Elsenhans found that despite all protests to the contrary the phenomenological method did not exclude inductive empirical elements. This is a common criticism of phenomenology. One example put forward by Elsenhans is the legal philosophy of Reinach. He asserts that although Reinach emphasized the a priori character of phenomenology, the propositions which are to hold for legal structures exclude Husserl's distinction of the phenomenological and the empirical

Reinach's primary aim in the last section<sup>1</sup> of the treatise was to lay to rest any tendency to confuse a priori legal doctrine with "general legal doctrine" or with "natural law".<sup>2</sup> In addition to a priori legal doctrine which, Reinach argues, founds those concepts and conceptual connections found in all legal systems, Reinach recognizes that there is a "general legal doctrine" for each particular positive legal system. In this general doctrine are founded the concepts and connections shared by the various disciplines of the legal system. The viewpoint taken towards the same social act by different legal disciplines can be different. General legal doctrine, however, unlike a priori legal doctrine, is dependent on positive Law. Although general and a priori legal doctrine are completely distinct, the former having an empirical basis, Reinach suggests that the latter may in

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insofar as they are oriented at "simple matters of fact". The fact that the reader must visualize the various cases in which he has made or received promises in order to verify the results of Reinach's analysis of promises is regarded as casting strong doubt over the claim that for the phenomenological method a single case of "exemplification" may be adequate to serve as a basis for grasping the essence. ("Phänomenologie, Psychologie, Erkenntnistheorie," Kantstudien, XX (1915), pp. 247-249). Elsenhans' remarks do not take into account the distinction between simply remembering past experienced cases and methodological variation of examples.

<sup>1</sup>aGBR,GS, pp. 341-50.

<sup>2</sup>See ARP, pp. 23-32 for Alexander von Baeyer's remarks on the distinctions, often overlooked, between a priori legal doctrine and "natural law". Von Baeyer observes (Ibid., p. 27) that a priori laws are grounded in the essence of the legal structures. A priori Law therefore contains only descriptive propositions, whereas "natural law" contains only prescriptive or normative propositions. Von Baeyer finds many misinterpretations of Reinach's legal philosophy to have arisen precisely from ignoring Reinach's distinction of the normative from the specifically legal. Regarding the latter, see also below, pp. 176-84.

certain ways first make understandable the possibility of the former.<sup>1</sup>

Reinach finds the idea of an unconditionally valid, rational law to be essential to any natural law theory. One error of natural law, Reinach asserts, is to believe in the possibility of an ideal law for all time with unchanging content. The variability of the life relations on which the validity of such a proposition would depend is, for Reinach, adequate evidence of the impossibility of such an eternal ideal law. Natural law, however, searches for a sphere uninfluenced by positive Law and possessing eternal truth. A priori legal doctrine provides such a sphere, although not in the sense sought by natural law which regards ideal laws as having their ground in "a higher moral world and life order".<sup>2</sup> Natural law appears to aim at the ultimate obliteration of all distinctions between ideal and positive Law. Nor does natural law appear to regard ideal and positive Law as fundamentally distinct in nature, whereas for Reinach a priori Law is that which "is" while positive Law is enacted as that which "should be".

A priori laws, as essential laws, subsist independent from the way in which any subjects conduct themselves. Although it is not the case that all men regard a priori laws as in fact obtaining, this is as irrelevant for them as it is for mathematical propositions.<sup>3</sup> It is

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<sup>1</sup>aGbr,GS, pp. 341-44.

<sup>2</sup>Ibid., p. 345.

<sup>3</sup>J.-L. Gardies, in his first article on Reinach's Legal philosophy, ("Le droit, l' 'a priori', l'imaginaire et l'expérience," Archives de Philosophie du Droit, VII (1962), 171-197), takes with utmost seriousness the similarity between 'a priori' mathematical and legal propositions. His two tasks are: 1) an attempt to axiomatize positive Law, as Hilbert axiomatized euclidian geometry, and thus an attempt to penetrate to the roots of the legal a priori; and 2) to obtain alternative sets of postulates, analogous to those of non-euclidian geometries, by simple replacement with other possible postulates. Gardies remarks that he finds himself in a position like that of the uncomfortable position of

irrelevant, Reinach asserts, whether it is men who are the bearers of claims and obligations, the performers of acts, etc., or not. Any other adequate agent could be bearer of such acts. Legal structures are grounded in the essence of certain social acts, and consequently a priori legal propositions hold for any thinkable subject and world. Legal objects and laws are in no way natural; they are neither physical nor psychic. A priori legal laws subsist independent of Nature, of human knowledge, of human organization, and above all, Reinach concludes, of the factual development of the world.<sup>1</sup>

b) Analysis of Reinach's method for concrete analysis of problems in legal philosophy.

The distinction between the moral and the legal spheres. --Reinach's analysis of the distinction between the moral and legal spheres presupposes the work done by Husserl in the development of a phenomenological theory of value. According to this theory there were objective values for which a priori laws held. Both the values and the laws were accessible to men by means of value-feeling (Wertfühlen) and intuition and were regarded

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Euclid, axiomatizing euclidian geometry without knowing of the existence or even possibility of non-euclidian geometries. The article is of general interest relative to the feasibility of axiomatization in the social sciences. In his later article ("La philosophie du droit d'Adolf Reinach," Archives de Philosophie du Droit, X (1965), 17-32.) Gardies expresses certain limited reservations about Reinach's legal philosophy. Reinach's protests against reduction in philosophy Gardies finds both sane and dangerous; his claim that legal structures are irreducible highly questionable (referring back to the arguments of the previous paper); and his use of the Sein/Sollen distinction, in his discussion of the relations of a priori legal doctrine and positive Law, abusive.

<sup>1</sup>aGbr,GS, pp. 345-50. The footnotes in this section have attempted to provide an indication of the range of critical response to Reinach's legal philosophy. These notes supplement the extensive notes on this topic provided in Alexander von Baeyer's dissertation, "Adolf Reinachs Phänomenologie: Untersuchungen zum Verhältnis von phänomenologischer Forschung und Geschichtlichkeit," Faculty of Philosophy, University of Bern; Munich: Mikrokopie, 1969.

as the basis on which acts of evaluation were to be grounded.<sup>1</sup> Moral rights and duties, which it was Reinach's aim to distinguish from non-moral rights and obligations, were likewise ultimately founded on objective values. Thus, as Reinach reminds his reader,<sup>2</sup> it is morally right that an object of moral value exist and acts to bring this morally valuable object into existence are also morally valuable. Immediately intuitable essential connections (Wesenszusammenhänge) such as had been described in Husserl's axiology thus subsist between the values of persons, acts, objects, etc., and the "rightness" of states-of-affairs involving elements of value.

In his analysis of the legal sphere Reinach also discovers essences and essential connections. Like those of the moral sphere, these are regarded as immutable, a priori, and independent of consciousness. The a priori laws regarding the relationships of promises, claims, and obligations, for example, thus have a certain affinity with the a priori laws of the moral sphere. A significant difference in the analysis of the two spheres is found in their explanations of cultural and historic diversity. The explanation for diversity of moral codes--developed most completely by Scheler--is that of a progressive discovery of objective values, in themselves a priori and immutable. A hierarchy for evaluating the moral codes is ready-made in the value-hierarchy and the a priori laws of value as such. In the legal sphere, however, there appears to be no objective standard internal to the legal sphere for a comparative evaluation of two legal codes. In the very term "evaluation" we are thrown back to a reference to the sphere of objective

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<sup>1</sup>See above, pp. 131-34.

<sup>2</sup>aGBR,GS, p. 183, n. 1.

value. Reinach is intent in his attempt to differentiate the two spheres and does not knowingly allow questions of evaluation to mingle unrecognized amid questions of a specifically legal nature. Yet it is to be suspected that the labels "moral" and "legal" may be applied by Reinach in accordance with arbitrary distinctions rooted in his cultural experience rather than in immediately intuitable essential ones. The "good", the "true", the "beautiful", and the "right" are subject in practice to a certain degree of "cultural shift". This shift is facilitated by linguistic similarities. The "right" may refer to that which is morally and/or legally right. "Right"/"wrong" in the moral sense, for Reinach, implies being essentially connected with an objective value whose realization is desirable/non-desirable, while in the legal sense "right"/"wrong" implies only being/not being in accordance with the fulfillment of existing claims and obligations whether these claims and obligations have a moral, amoral, or immoral content.

Reinach finds both legal and moral claims and obligations or duties and rights to have a bearer and a content. Both may be absolute or relative. Moral duties and rights, however, never have their origin in will-directed acts, as such, nor can they be transferred to another bearer or be renounced. A legal claim or obligation can be transferred or renounced by means of a will-directed act because its origin is always some will-directed act. Moral duties and rights always presuppose the moral value of some state-of-affairs.<sup>1</sup> Reinach attempts to clarify the difference between moral duty and legal obligation by pointing out that once one has made a promise and thus assumed a legal obligation, one has a moral duty to realize the content of that obligation.<sup>2</sup> The moral duty comes

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<sup>1</sup>Ibid., pp. 181-83.

<sup>2</sup>Ibid., pp. 183-84.

to rest on the agent on the back of the legal obligation, as a by-product of assuming the obligation. Thus the obligation ultimately entails both a legal and a moral duty, the first immediately, the second because of the first. We argue, however, that it is not clear that one can be said to have an immediate moral duty to fulfill legal obligations, although Reinach calls this an essential law (Wesensgesetz). The fulfillment of obligations cannot be argued to be morally valuable in itself but only by reference to the value of the state-of-affairs which would thereby be realized. A better candidate for an essential law in this context would be that once one has assumed a legal obligation, and thus a legal duty to realize the content of the obligation, one has in addition a moral duty to decide whether the resultant state-of-affairs would be a morally valuable one and to act in accordance with this decision. The reflective process leading to the decision could take into account the question of the ultimate value or disvalue which might result for social order, insofar as it is based on adherence to law, specifically from the act of neglecting or fulfilling the legal obligation. The point which Reinach was attempting to illustrate--that the moral duty and the legal obligation are not to be confused--is thus illustrated, though with the substitution of another "essential law" for the one disputed.

The essential law--that one has a moral duty to fulfill legal obligations, which has been disputed above--is reiterated by Reinach in his critique of Schuppe,<sup>1</sup> indicating that Reinach's statement of this proposition as an essential law was not an oversight in passing. Not only does Reinach restate the law but he also insists that the duty is a

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<sup>1</sup>Ibid., pp. 225-28.

specifically moral one by raising the problem of a conflict between two "moral" duties in the case where the original legal obligation has an immoral content and thus entails a moral duty not to realize the content. In stating this essential law Reinach apparently simply assumes it to be immediately evident, as we cannot, that acts which are legally "right", i. e., in accordance with a legal obligation, are morally valuable in this respect quite apart from the value or disvalue of their content. We, by contrast, find fulfillment of legal obligations, as such, to be of no specifically moral value in itself, but only by virtue of the value or disvalue of the consequences. This law, and the arguments made against it above, may illustrate the influence of cultural factors on "essential intuition" and on attempts to dispute its results.

In setting forth the analysis of possession Reinach clearly separates questions about the "origin" and nature of possession from questions about its moral value. In the latter category Reinach places questions about the "moral rightness" of a given individual case of ownership under particular social and economic conditions or of the form (individual/collective) of possession of land and the means of production. Reinach attempts to treat only a priori laws of possession, not questions of its moral value. The moral/legal distinction thus here serves to limit his subject.

Legal ability (that ability of the person which first makes possible the constitution of legal-social relations) and certain absolute moral rights (such as the right to free development of the personality) are said to be grounded in the essence of the person as such and thus to be inseparable from that person, non-annullable. There are

two other classes of moral and legal rights and duties which are recognized to be non-transferable and non-annullable: moral ones which arise from situations and relationships in which the person is involved and which continue as long as these situations and relationships last; and legal ones which may not be transferred or annulled because of an inability to transfer or annul them arising from the conditions of the social act in which they originated. Reinach observes that many moral rights and duties may "play a role" in positive Law.<sup>1</sup> Thus while Reinach is here clearly separating the a priori moral and legal spheres, he indicates a direction whereby positive Law, which may diverge from the a priori legal essential connections, may give recognition to certain moral rights and duties. This recognition may even take the form of legislation that such and such a moral right or duty shall also be a legal claim or obligation.

Reinach's analysis of the relationship between positive Law and a priori legal propositions<sup>2</sup> includes an explication of the process referred to above whereby moral rights and duties may influence positive Law. The recognized moral value of the subsistence of some state-of-affairs--"the being-b of A"--may serve as a motive for executing a determination or enactment (Bestimmung) of the form "A should be b". The statement "A should be b" will then express the determination and, in the case where the intuition of value was actually objectively grounded, the valid judgment that an objective moral Seinsollen subsists. The moral Seinsollen subsists, if at all, completely independent of all consciousness

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<sup>1</sup>Ibid., pp. 274-75.

<sup>2</sup>This relationship is analyzed below, see pp. 185-87.

and all acts of judgment. The legal Seinsollen set forth in a determination, however, is dependent on that act of determination. Only in the case where the determination is effective does the state-of-affairs set forth gain an objective status and then only for the given circle of persons effected by the determination.<sup>1</sup>

In this analysis of the relationships of the moral and legal Seinsollen Reinach succeeded well in separating the moral and legal spheres. At the same time he has provided a basis for explaining the processes whereby the legal and moral codes of a given culture may become strongly intertwined and mutually supporting, although he himself does not give such an explanation explicitly or even claim to have provided the means for doing so.

A concrete example of the product of the intermingling of moral elements in a system of positive Law is treated by Reinach in the treatise on reflection.<sup>2</sup> The intricacy of the relationships which Reinach discovers to lie beneath the practice (in German criminal law of the time) of using the presence or absence of reflection as a criterion for determining the severity of punishment, attest both to the validity of the claim that moral elements may in fact become so strongly intertwined in a legal system that they may come to defy identification

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<sup>1</sup>aGbr,GS, pp. 301-307. Reinach illustrates the distinction between the objective "should-be" and the determined "should-be" by reference to a controversy in medieval philosophy which he formulates as follows: whether moral value subsists in itself (as objective states-of-affairs) and is merely the basis for God's determinations or whether it is first constituted through God's free acts and is only binding for all essences as a result of these acts, i.e., these effective acts of determination that such-and-such should-be, Ibid., p. 307, n. 1.

<sup>2</sup>See above, pp. 135-39.

as moral elements and to the fundamental significance of a theoretical framework--whether or not it is that used by Reinach--which will facilitate the differentiation of specifically moral and legal elements within a system of positive Law. The latter is significant, but not because moral elements have no valid role in positive Law; they clearly do have a role. However, the identification of specifically moral elements will contribute to more accurate analysis of legal problems and thus to a system of positive Law which is more self-conscious and therefore can become more self-consistent.

The distinctions Reinach discovered between the moral and legal spheres served to: 1) limit his subject, 2) provide part of the basis for his analysis of the divergence of positive Law from a priori legal essential connections, and 3) provide a theoretical structure for analyzing contemporary legal problems which involve an intermingling of moral and legal elements. The ultimate test of the value of this particular theoretical structure for that purpose would lie in its usefulness in clarifying such problems.<sup>1</sup>

A fundamental weakness of Reinach's general approach has been seen above in the dispute over whether the proposition that, "one has a moral duty to fulfill legal obligations", is an essential law. The problem of the validity of "essential intuition", "eidetic intuition", is of course, one shared by all phenomenologists. Many disputes similar to the one above arise in the following pages and must be considered in any

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<sup>1</sup>To be recommended to the reader who is doubtful of the significance of the problem of the relationship of law and morals is Basil Mitchell's Law, Morality and Religion in a Secular Society (London: Oxford University Press, 1967) which concerns itself with contemporary British debate of the problem.

over-all evaluation of Reinach's approach to legal philosophy. In this context, however, the fact that this dispute has arisen is taken to indicate the validity of Reinach's claim that an approach to analysis is needed which will make it possible to distinguish moral and legal elements.<sup>1</sup>

Social acts. --In order to clarify the unique nature of promises Reinach pursues an analysis of "social acts". "Spontaneity" is the first characteristic identified for social acts. Intentionality and activity are both distinguished from spontaneity, as such, through the examination of examples characterized by one or the other or both but not by the "inner doing" of the "I" to which Reinach wishes to refer by the term "spontaneity". Grasping an intention to do something, forming a conclusion, making an assertion, asking a question, and giving an order, are all given as examples of "spontaneous acts".<sup>2</sup> Some of these spontaneous acts may be purely internal to the "I". Others, as in the case of the last three examples, require an outward form of expression. Some, as in the case of an order or a request, necessarily are directed to another person.<sup>3</sup> An order, moreover, by essence requires recognition. Reinach calls acts which are spontaneous and require recognition "social acts". Grasping an intention to do something is thus a spontaneous act but not a social act. An order is an experience of a unique type, a "doing" of the subject, to which recognition, intentionality, and

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<sup>1</sup>See Norberto Bobbio, L'indirizzo fenomenologico nella filosofia sociale e giuridica (Torino: Istituto giuridico della R. Università, 1934) p. 147, for observation that in non-phenomenological level philosophy the confounding of the normative with the specifically legal was common practice. See also above, p. 174, nt. 2.

<sup>2</sup>aGbR, GS, p. 189.

<sup>3</sup>Ibid., p. 190.

direction towards another subject are all essential. Requests, questions, commands, communications, answers, etc., are all "social acts".<sup>1</sup>

The "notification function" of a social act can be fulfilled only if the social act has an outward aspect.<sup>2</sup> An assertion, as such, is not a communication. It is essential for the latter that the assertion be directed to another person to inform him of something. Orders and requests are closely related. Their outward expressions may use the same words and be differentiated only by the tone and emphasis with which they are spoken. The aim of a communication is fulfilled when the content has become inner for the person addressed.<sup>3</sup> The request and the order, however, aim at the execution of subsequent action by the person addressed, and therefore the becoming inner for the person addressed of the content of the order/request is only the first of a series of events leading to the realization of the original aim. Questions exemplify social acts which require a response in the form of another social act, that is, an answer. Reinach therefore distinguishes simple social acts (communications), social acts which presuppose other social acts (as does an answer), and those which point to following social acts or other activity (questions, requests). There are always essential connections between the intentional content of the inner and outer aspects of all authentic social acts.<sup>4</sup>

"Determinations" or "enactments" (Bestimmungen) are the last principal type of social act discussed by Reinach in the treatise. A clear understanding of what he says about determinations is an absolute prerequisite for a proper understanding of his view of the relationship

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<sup>1</sup>Ibid., p. 191.

<sup>2</sup>Ibid., p. 192.

<sup>3</sup>Ibid., p. 193.

<sup>4</sup>Ibid., p. 194.

of a priori legal doctrine and positive Law.

Reinach points to a series of apparent contradictions of a priori legal doctrine by positive Law. The fundamental observation that only persons can be the bearers of rights and obligations is, for example, apparently disproven through the fact that positive Law recognizes foundations as the bearers of rights and obligations yet does not recognize a twenty year old person as being one who may assume legal obligations. Reinach anticipates that such apparent contradictions will be used as grounds for objections to his claim of absolute validity for a priori laws. The propositions (Sätze) of a priori legal doctrine insofar as they set forth a Being as subsisting, i. e., are grounded on an a priori legal structure independent of positive Law, are propositions of judgment. Positive legal propositions, however, are determinations or enactments, not judgments, and are not subject to classification as true or false. The distinction holds even in the case in which the words used for the expression of two propositions are identical. After the determination has been effectively made, assertions and judgments can be made, on the basis of this determination, that the states-of-affairs established by the determination subsist. Assertions which purport to be based on determinations can be true or false, unlike the original determinations.<sup>1</sup>

Determinations and orders are both social acts. The order, however, aims at the realization of some action by another person or persons while the determination sets forth the will that something should be the case. In some cases the determination may found or motivate certain orders. Reinach regards it as clear that the two acts, orders and

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<sup>1</sup>Ibid., pp. 296-300.

determinations, are fundamentally distinct. The experience, act, proposition, content, and effect of a determination are distinct. Various persons may execute the same determination "A should be b". The same act may be formulated in different propositions, in different languages. "A should be b" is a determination when used to express an act of determination but a judgment when used to express the subsistence of an objective should-be (Seinsollen).<sup>1</sup>

The analytic procedure used by Reinach--involving the examination of examples for essential similarities and differences--is simple and for his purposes efficient. A list of the essential characteristics of social acts in general is produced within the first three pages and a list of some of the characteristics by which social acts may be differentiated as to type in the following three pages. Whether the procedure has in this case provided adequate results, and whether its efficiency is a reflection of certain "pre-judgments" or of an "acute insight into essential connections", are distinct questions. The adequacy of the results can only be tested by their ability to stand up against further examination of these and other examples. The decision as to their adequacy will in turn probably determine whether Reinach is accused of "prejudging" the nature of social acts or attributed with "acute insight into essential connections".

An alternative procedure would be the attempt at an exhaustive list of all "acts" which could be regarded as "social", followed by lists

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<sup>1</sup>Ibid., pp. 301-303. See also above, pp. 168-72. Karl Olivecrona notes in Law as Fact (2nd. ed., London: Stevens and Sons, 1971), pp. 161-62, that K. Larenz ("Der Rechtssatz als Bestimmungssatz", Festschrift für Karl Engisch zum 70. Geburtstag, Frankfurt am Main, 1969) has adopted Reinach's interpretation of determinations as an explanation for the validity of legal facts.

of their similarities and differences. This process would, however, not only lack efficiency, but would also presuppose criteria on the basis of which to construct the lists. These criteria would also be subject to the labels "pre-judgments" and perhaps "sound general hypotheses" or "principles" in accordance with the success of the resultant lists in standing up to examination. It is not clear, however, what the origin of these criteria would be. Reinach, at least, makes it clear that he regards the characteristics of the social acts he has set forth to be grounded on the essential objective connections of the acts under examination. Given the two alternatives, that presented by Reinach and that which consists of forming lists and classifying members of the lists by means of principles whose origin is unclear, Reinach's gains immediate preference. Its adequacy can be challenged only through concrete examples--many of which appear to be open to subsumption under one characteristic or another through analysis as Reinach himself argues for a variety of examples in the course of the subsequent analysis of various social acts.<sup>1</sup>

J. L. Austin's suggestion in "A Plea for Excuses"<sup>2</sup> that his approach be called "linguistic phenomenology" rather than "analytic" or "linguistic" philosophy has given rise to various comparisons of his work with that of the phenomenologists.<sup>3</sup> Basis for a concrete comparison, rather than a

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<sup>1</sup>See for example, the analysis of "representation", aGbR,GS, pp. 275ff. and above, pp. 166-67.

<sup>2</sup>Philosophical Papers, London: Oxford University Press, 1961, p. 130.

<sup>3</sup>See for example, Walter Cerf, "Critical Review of How to Do Things with Words," Symposium on J.L. Austin, ed. K.T. Fann, London: Routledge and Kegan Paul, 1969, pp. 351-379.

discussion of the possible "merging" of the two traditions, is found in Austin's treatment of "performatives" and Reinach's treatment of "social acts".

It is, in the first instance, clear that Austin did not know of Reinach's analysis of "social acts".<sup>1</sup> The first characteristics given for performatives, (that they do not "describe" or "report" anything, are not "true" or "false", and are, or are a part of, the doing of an action)<sup>2</sup>, parallel certain characteristics of Reinach's social acts. Nor is Austin's distinction between the performative utterance and a description of the performative utterance<sup>3</sup> a new one.

Austin foresees trouble ahead (from perjurers, bigamists, and the like) should the performative be taken as a true or false description of an inward act and therefore attempts to exclude such cases from further attention by claiming that he will limit the analysis of acts to the analysis of outward verbal utterances.<sup>4</sup> The distinction between the act and the utterance is said to be simply "not in point".<sup>5</sup> The ultimate failure of this approach, however, evidently was recognized by Austin. Its limited point of view certainly appears to be at odds with the "moral" Austin suggests later, i.e., that "the total speech act in the total speech situation is the only actual phenomenon which, in the last resort, we are engaged in elucidating."<sup>6</sup>

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<sup>1</sup>How to Do Things with Words, ed. J. O. Urmson, New York: Oxford University Press, 1965, p. 2., p. 4, p. 19.

<sup>2</sup>Ibid., p. 5.

<sup>3</sup>Ibid., p. 6.

<sup>4</sup>Ibid., pp. 9-11.

<sup>5</sup>Ibid., p. 11.

<sup>6</sup>Ibid., p. 147.

Reinach, by contrast, also recognizing the cases such as the perjurer and the "false" promise, regards the outward verbal utterance as only one aspect of the whole act, although an aspect essential for the fulfillment of what he calls the "notification function" of a social act. The agent, the person performing the verbal utterance, is never lost from sight in Reinach's analysis which deals with conditions corresponding to Austin's "infelicities" in the same terms as Reinach deals with the conditions of effective social acts.

Austin does not, of course, actually succeed in excluding from his analysis aspects of speech acts which are not limited to the outward verbal utterance. Within a few pages of making this claim, Austin sets forth, as one of the conditions for performatives, that appropriate thoughts, intentions, or feelings must be held by the persons performing them.<sup>1</sup> This view corresponds to Reinach's insistence that there is in the case of an actual social act (as opposed to an "apparent" or "conventional" social act) an essential connection between the content of the outward act and the inner subjective experience. There are numerous such points where Austin's work in the end confirms Reinach's conclusions, but by contrast the former shows itself to be fragmentary, to lack a sufficiently global approach to the speech act. The stages of analysis represented by How to Do Things with Words appear to fall from a phenomenological point of view within the stage of concept and word analysis preliminary to analysis of the essences themselves. This is by no means to say that concept and word analysis is insignificant.

Reinach's conclusions, based on essential intuition, are open to dispute, as has been seen in preceding sections. Austin's conclusions

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<sup>1</sup>Ibid., p. 15.

are no more final, nor did he claim that they were. One which he evidently did not question, however, was that to say, "I promise 'x', but I ought not", was to defeat the promise.<sup>1</sup> This is not clear in the least. Surely there are few persons who have not at some time made such a statement and considered themselves committed by it. Reinach's distinction between the legal and moral spheres makes some of the many possible senses of such a statement clear. Once again Austin appears to be viewing the speech act in too limited a framework.

Austin regards the commitment of the speaker by his promise as a merely conventional consequence.<sup>2</sup> Of illocutionary acts in general Austin asserts that, strictly speaking, there can be no such acts unless the means (verbal or non-verbal) employed are conventional.<sup>3</sup> Austin likewise observes that the locutionary act may involve conventions, as in the case of doing obeisance. Austin does not, however, give this central theme of conventionality any thorough-going treatment. He does not attempt to differentiate conventions rooted in language from those of the social or cultural sphere. Thus he does not distinguish true and false statements which can be made about a "happy" performative utterance in accordance with the linguistic meaning of the performative as opposed to its social and cultural meaning. Reinach's distinction between what he chose to call the essential a priori connection of an act with certain effects (as the groundedness of claims and obligations in the essence of promises as acts) and the effectively determined connections (resulting from effective "determinations" or "enactments") which may replace these a priori connections as the basis for social

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<sup>1</sup>Ibid., p. 51.

<sup>2</sup>Ibid., p. 102.

<sup>3</sup>Ibid., p. 118.

interchange are both concerned with some of the aspects of what Austin appeared to regard as "convention".

Each of the performatives tentatively grouped by Austin into five classes could either take or not take the form of a "social act" in Reinach's sense dependent on whether the act in which it was performed fulfilled the necessary criteria: spontaneity, intentionality, direction to another person, requirement of recognition. The fourth and fifth groups are most "troublesome", as Austin observes, because of the ease with which they might be used as mere descriptions of our feelings, action, etc. Reinach eliminates this problem with such cases by excluding from the category of social acts all statements which are merely outer references to subjective experiences which could have been there without the outer reference--"I want to do that", or "I am afraid"--as well as all statements referring to the social act as a whole--"I have given an order.". In the end the analysis of performatives and illocutionary forces of utterances as it is found in How to Do Things with Words appears to be a preliminary study demonstrating the need for a more global attack on the problem of how language works and what an "act" is.

In Manfred Moritz', "Reflexionen zur Theorie der performativen Sätze", the basis of the "conventional effects" of performatives, an aspect not adequately analyzed by Austin, and the distinction between the active and descriptive functions of identical expressions are examined.<sup>1</sup> Moritz argues that "performative expressions" are a special type of "active-expressions". Let us assume with Moritz that in a

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<sup>1</sup>Manfred Moritz, "Reflexionen zur Theorie der performativen Sätze", author's mimeographed manuscript.

country L there is a "rule" whereby if person P makes the sound "Ba" in the presence of person R, then P must either 1) pay R 100 crowns, or 2) be charged with paying R 100 crowns and the state-treasury 200 crowns. It is regarded as irrelevant whether P knows of this rule or not. "Ba" is said to lack all "meaning", it communicates nothing, describes nothing. The occurrence of "Ba" in the situation described above does, however, given such a rule as above, ground the following series of judgments: 1) P "ba-ed", 2) P has produced in R the expectation of being payed 100 crowns by P, and 3) P has "ba-ed"; not in the first sense (making sound "Ba"), but in the sense of having produced a situation and a series of consequences.

If P knows the rule he may use the production of the sound "Ba" to evoke in R the expectation of receiving 100 crowns. In fulfilling the conditions of the rule the action conditionally required by the rule becomes actually required and P may be said to have "obligated himself". Moritz calls expressions like "Ba" "active expressions", that is, expressions whose use according to given rules brings forth certain consequences. Sound sequences thus are or are not "active expressions" dependent on the existence or non-existence of certain rules.

In the case where P says "I promise..." the sound sequence functions both as 1) an active expression and as 2) a descriptive statement. It is those active expressions which are identical in sound with their descriptive expression (as in the case "I promise") which, Moritz asserts, have been called performatives although they are but a subclass of active-expressions. Signatures and handshakes are examples of non-verbal acts which produce consequences in accordance with rules and are to be classified as "active-expressions". Moritz finds it to

be an empirical contingency whether the active and descriptive expressions are identical in sound or not.

Austin's suggestion that performatives can "miscarry" may, in Moritz' view, easily lead to misinterpretation. It is rather only because there are certain rules whose conditions include these linguistic expressions that performatives have certain results. All conditions, not only the linguistic ones, must be fulfilled if the performative is to have those results. Moritz states clearly that these relationships apply to both legal and moral rules. Legal and moral rules are required if "active expressions", verbal or non-verbal, are to be legally and morally relevant.

The framework Moritz has provided for examining the basis for the effects of performatives is a major advance over Austin's vague talk of "conventions". It follows directly from Moritz' discussion that the precision with which the effects of a performative can be determined in any given situation of social interchange will depend directly on the lack of ambiguity of 1) the relevant rules themselves and 2) the degree to which the conditions of these rules have been fulfilled. Consideration of the cases not governed by unambiguous rules, however, encourages renewed sympathy for Austin's grasping after "convention". The moral and legal spheres, the base-ball game, the circulation policy of a library, etc., leave large spheres of social interchange ungoverned by unambiguous rules save insofar as the "conventions" of language and culture provide these.

Karl Olivecrona,<sup>1</sup> writing from a point of view close to that set forth by Moritz, is critical of J. L. Austin's work on performatives

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<sup>1</sup>Law as Fact (London: Stevens and Sons, 1971), pp. 233-39.

insofar as the latter neglected to examine the meaning of performative sentences and the nature of their non-psychological effects. Olivecrona argues that neglect of these aspects led Austin to extend (and thus dilute) the category of performatives "to include a number of utterances that are not 'supposed to give rise to any non-psychological effects", (for, example, "I congratulate you", "I advise you").

Alf Ross likewise suggests circumscribing the category of performative acts. Olivecrona quotes the following passage from Ross:

Because a statement creates expectations, or claims and corresponding responsibilities, it belongs to the group of linguistic acts which has been called performative. If this concept is to be of philosophical and not only linguistic interest, it should in my opinion be limited to the designation of locutionary acts which by virtue of a social norm create social relations of claims, obligations, and responsibilities, determined in accordance with the meaning content of the act.<sup>1</sup>

Ross clearly recognizes that the category of performatives is a function of the social norms current in any given medium of social interchange. An adequate treatment of the performative as a social act in the broad sense--not treatment merely as an act with legal or moral effects in accordance with unambiguous rules--must be able to deal with all performatives which arise in any given social context. Reinach's analysis of the "social act" shows its strength precisely in its lack of limitation to either the Austin-type emphasis on the outward verbal utterance itself or to acts with "merely" legal or ritualistic effects in accordance with unambiguous rules or with social norms. Olivecrona discusses both Austin's work with performatives and Reinach's distinction between imperatives and determinations (Bestimmungen), but does not

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<sup>1</sup>Quoted in Ibid., p. 239 from Alf Ross, Directives and Norms (London, 1968).

mention the latter's analysis of "social acts" or connect this with the topic of performatives. It thus appears that the relevance of Reinach's analysis of "social acts" to "performatives" has gone unnoticed.

- c) Significance of the theories of states-of-affairs, intentionality, and judgments for ethics and legal philosophy.

This section evaluates the relevance of the threefold theoretic structure, which was the subject of Chapters II-V, to problems in ethics and legal philosophy. The controversy over synthetic and analytic judgments--central to much of the criticism in the past of Reinach's legal philosophy--is discussed. An attempt is made to clarify the claims and counterclaims of which much of the criticism has consisted, as well as to clarify Reinach's own position and suggest ways in which his own claims and interpretations of their significance may be qualified. The nature of the states-of-affairs with which ethics and legal philosophy are concerned is also considered.

The a priori/a posteriori and analytic/synthetic distinctions.-- Reinach regarded the latter distinction as originally ontological, not epistemological, referring only secondarily to judgments about states-of-affairs to which the distinctions pertain. "Analytic" refers to the connection of an essence with itself, or an essential part with the whole, thus retaining Kant's notion of the predicate being "contained" in the subject. "Synthetic" refers to the connection of a predicate or relation with the essences in which the predicate or relation is grounded (but not "contained"). In his later work Reinach shows little interest in "analytic" states-of-affairs. This is in accord with his view that essences were irreducible objective elements which could be

known only in connection with one another and thus only in "synthetic" states-of-affairs. Study of "analytic" states-of-affairs would coincide with, or come dangerously close to, the attempt, which Reinach denounced, to define essences.

The "analytic" and "synthetic" connections, mentioned above, were essential connections (Wesenszusammenhänge), a groundedness of the predicate in the essence(s) (Wesen) of the subject(s). Generality and necessity were not regarded as criteria constitutive of the a priori, but rather, like a priori, as themselves due to essential connections. The alternative to necessity and its counterpart, impossibility, was of course, essential possibility or contingency. An essential possibility may ground both an a priori judgment of possibility and the empirical states-of-affairs to which a posteriori judgments that "A is b" and "A is not b" refer.

There has been a long standing controversy over the analytic/synthetic distinction, complicated still further by the controversy over the distinction between the material a priori and formal a priori. The main task here is to evaluate Reinach's distinctions on the subject without confounding them with distinctions made by others which are referred to by the same popular, but not often carefully defined terms.

A study on the subject which should be taken into account is that by Harald Delius.<sup>1</sup> Using the example of the proposition, "All color has extension", Delius, after extensive examination of the positions of

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<sup>1</sup>Untersuchungen zur Problematik der sogenannten synthetischen Sätze a priori (Göttingen: Vandenhoeck und Ruprecht, 1963), see pp. 310-21 for sources for the following two pages.

linguistic analysts, logical empiricists, and to a lesser extent phenomenologists, and of the various ways they have used the terms "analytic", "synthetic", "a priori", and "a posteriori", produced the following classification:

"Analytic"--any proposition which is true on the basis of the meaning of the word-signs it contains and thus can be grasped as true on the basis of knowledge of these meanings alone.

- a) "formal analytic"--cases where meaning referred to above is formal.
  - 1) those of a logically valid form (All bachelors are bachelors).
  - 2) those which can be transformed into 1 by means of a (linguistic) substitution rule (All bachelors are unmarried men).
- b) "material analytic"--cases where meaning referred to above is material.
  - 1) those whose predicate belongs to connotation of subject, ("real-analytic").
  - 2) those whose predicate belongs only to intension of subject, ("nominal-analytic").
  - 3) those which are material-analytic, but not in sense of 1 or 2.

The logical empiricists, exemplified for Delius by Carnap<sup>1</sup>, take "synthetic" to include that which does not fall under a,1 or a,2 and call it "F-true" (truth value depends on facts) rather than "L-true". Delius finds the dilemma surrounding the proposition "All color is extended", which does not fit into either the class of synthetic a posteriori or a priori (formal) analytic--the two classes recognized by logical empiricists--to arise because this disjunction of propositions into two classes is not complete. More broadly speaking the subject has been and remains problematic because of the general and unqualified use made of the terminology. Delius observes that while the term "a posteriori" in general indicates that a proposition is true only because it describes certain determinate empirical

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<sup>1</sup>Introduction to Semantics, p. 141, Def. D21-2.

relations which in fact (tätsachlich) subsist, correspondingly it can be said of a proposition, referred to as a priori, that the proposition is indeed true, but not because the empirical fact or facts, which it describes, subsist. The latter case neither excludes nor implies that a priori propositions are ones stating something about the formal or material construction (Beschaffenheit) of subsisting relations. They can thus be regarded as statements about the "conditions of the possibility" of the objects of empirical perception as such and thus as about their (formal) construction, or, secondly, as propositions which do not describe ideal empirical or essential relations which are exemplified by all empirical perceptible relations, and thus as propositions which state something about the (formal or material) construction of these empirical relations. Thirdly, however, they could be propositions which stand in no connection to empirical relations, as is the case for all those true on the basis of the formal meaning of the signs from which they are formed. In any case it would not be the case for propositions in any of these three senses that they were true because certain empirical relations in fact subsisted. Likewise, knowledge of these a priori propositions would not require recourse to "experience".

Delius shows, moreover, that the proposition, "All color is extended", is not only true a posteriori (it does describe certain empirical relations factually subsisting and to be known in this sense requires knowledge of these empirical relations), but also true a priori, because 1) it holds in general and by necessity (referring to the Kantian point) and 2) the conviction that it is true does not rest on empirical experience, but is rather a conviction of the senselessness of reference for proof or contradiction to empirical facts. Inductive generalization

is in principle senseless in this case; insofar as we understand the proposition, and thus the meaning of the word-signs (i.e., know the type of non-linguistic content to which "color" refers), we also already know that "color" means something of which it can be said that it is "extended".

Analogously Delius argues that attempts to view the color proposition as analytic or synthetic are mistaken. It is rather analytic insofar as it is an explication of the knowledge that we already possess of what the word-signs in it mean, and synthetic insofar as it expresses knowledge about the construction of non-linguistic empirical relations that we can only have learned through experience. Delius concludes that the problems of the so-called "synthetic and a priori" can begin to be resolved only through fundamental revision of the terminology as he has attempted to do in the case of the color proposition.

The question of the synthetic a priori is clearly still a lively and undecided issue in philosophy. Delius, with his observation that knowledge of the non-linguistic content of a proposition can make inductive generalization appear not only senseless but superfluous, and Russell, with his admission that knowledge of some general propositions not obtained by inference must be possible for otherwise there would be no general propositions,<sup>1</sup> imply a central role for either "synthetic a priori principles" or something else which fulfills the same role. Spiegelberg remarks that "Reinach's approach suggests at least an alternative to the stalemate between an empiricism unable to justify its principle of induction and a rationalism based on dogmatic a priori

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<sup>1</sup>"Logical Atomism", in LK, p. 235.

principles: to go beyond the level of concepts and propositions to the phenomena they mean, to explore the states-of-affairs pointed at in their intuitively given structures."<sup>1</sup>

Reinach asserts that the propositions of a priori legal doctrine, like those of pure mathematics and pure science, are synthetic a priori judgments "in Kant's sense". Kant attempted to prove the "possibility" of these judgments by arguing that only through them could experience and the science of experience constitute themselves. Quite apart from the difficulties of transcendental deduction, however, Reinach finds Kant's position to be indefensible. Reinach claims to have intuited (erschaut) the propositions of a priori legal doctrine with absolute evidence. Observation of positive Law could not produce the synthetic a priori propositions of legal doctrine nor lead to any "deduction" of them. Attempts to establish immediately intuitable connections by reference to cultural institutions, which can first be clarified and understood only through such connections, are regarded as untenable by Reinach. It is not, however, Reinach's intention that synthetic a priori propositions should be accepted at once on "good faith", but that they should be subject to thorough scrutiny.<sup>2</sup>

Reinach claims to provide no "theory", as such, of promises or other social acts. He instead sets forth the simple proposition, not a definition, that promises as such produce claims and obligations. One can attempt, as Reinach has done, to make this proposition intuitable through analysis, but to attempt to explain it has, he asserts, the same sense as the attempt to explain the proposition  $1 \times 1 = 1$ . Reinach suggests that an unphenomenologically directed philosophy faced with such

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<sup>1</sup>Spiegelberg, PM, p. 201.

<sup>2</sup>aGBR,GS, pp. 339-41.

fundamental problems has been led by its fear of the given, by an inability to grasp final intuitables and recognize them as such, to untenable and simply fantastic constructions.<sup>1</sup>

The comment that a priori legal propositions are synthetic "in Kant's sense" may easily mislead the critic not cognizant of Reinach's criticism of Kant.<sup>2</sup> Kant's sense of "synthetic a priori" is adequate in this context because the immediate subject is propositions and not the essential connections in which, according to Reinach's position, these propositions find their objective reference. Reinach also asserted, in passing, that the synthetic a priori propositions actually arise from the "Nature" or "essence" of the concepts in question.<sup>3</sup> Whether he can say this and remain consistent is open to question. This comment may also have contributed to the confusion surrounding many interpretations of Reinach's claim that the fundamental propositions of his legal philosophy were synthetic a priori propositions. A remark that these propositions arise from the essence of the structures in question would appear to have been more in accordance with Reinach's over-all philosophic position and would render it overt in this context, as it is elsewhere, that his use of the term "concept" is not Kant's usage.<sup>4</sup>

Julius Kraft found Reinach to have been mistaken in his belief that "correct analytic propositions" such as those concerning the lapsing of claims were synthetic a priori propositions. Kraft remarks that although Reinach believed he had "intuited" these propositions they in truth were results of the presupposed concept "of a claim on a determinate result".

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<sup>1</sup>Ibid., p. 229.

<sup>2</sup>See RVK,GS, KAH,GS, and above, pp. 40-53, 117-21

<sup>3</sup>aGbR,GS, p. 179.

<sup>4</sup>See RVK,GS, and above, pp.50-53, 117-21.

The assertion that "claims and obligations are grounded in promises as such", is said by Kraft to be trivial, if by "promise" is meant "a binding declaration of will", but false, if only the fact of "a declaration of will" is meant.<sup>1</sup> Reinach himself had made the latter point with considerable force.

Erwin Riezler argued that the a priori axioms applicable to the legal sphere were not themselves legal propositions, but rather logical axioms, and had no specifically legal content. He found legal propositions to be either: 1) analytic and a priori, or 2) empirical, and therefore rejected Reinach's claim that there are synthetic a priori legal propositions. Riezler argues, in connection with Reinach's comment that he is using Kant's sense of the synthetic a priori, that the subject, "claim", in the proposition concerning the fulfillment of the service signalling the end of the claim, is in no way augmented by the predicate. Riezler finds the proposition whereby promises ground claims and obligations to be either a priori and analytic, "an empty tautology", or indefensible, unfounded.<sup>2</sup>

Hans P. Neisser likewise remarks that the proposition that a claim expires when it is fulfilled is analytic rather than synthetic a priori. Neisser asserts that there is no eidetic necessity involved in this case.<sup>3</sup> Poulantzas regards all supposed a priori eidetic characteristics of phenomenological a priori legal propositions as reducible to

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<sup>1</sup>Julius Kraft, "Die wissenschaftliche Bedeutung der phänomenologischen Rechtsphilosophie," Kantstudien, XXXI (1926), 286-96.

<sup>2</sup>Erwin Riezler, "Apriorisches im Recht," Archiv für Rechts- und Wirtschaftsphilosophie, XVII (1924), 264-84.

<sup>3</sup>Hans P. Neisser, "The Phenomenological Approach in Social Science," Philosophy and Phenomenological Research, XX (1959-60), 198-212.

simple tautologies.<sup>1</sup> All of these critics appear to have failed to recognize that Reinach, going beyond Kant's position, had argued that both "analytic" and "synthetic" are originally ontological terms and refer in the primary instance to two types of a priori essential connections. Their criticism therefore misses its mark.

Reinach clearly regarded the a priori essential connections which were the subject of his legal propositions as synthetic connections, not purely formal ones.<sup>2</sup> There is good reason for not regarding legal propositions of the type set forth by Reinach as a priori as sheerly formal and analytic, although this has often been denied. Their negation would not produce a logical contradiction for the original statement could not be deduced from any set of the concepts and propositions of pure meanings. This, however, leaves at least two directions open for a different interpretation of the significance of these "a priori essential connections" as they are constituted for us in propositions than was given by Reinach. The set of propositions believed to be based on the adequate intuition of essential connections can be regarded as a set of "axioms". An alteration in this set of "axioms" necessarily alters the synthetic propositions which can be subsequently intuited without falling into contradiction with any analytic propositions deducible from the original set of synthetic propositions.

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<sup>1</sup>Nicos Ar. Poulantzas, "Notes sur la phénoménologie et l'existentialisme juridiques," Archives de Philosophie du Droit, VIII (1963), 213-35.

<sup>2</sup>The significance of this view of the nature of the connections can be placed in a different light by comparing a priori legal propositions with mathematical propositions. It has been argued both that the latter are intuited and that they are deduced (and analytic). Both intuition and deduction appear to play a significant role for the working mathematician. One can say " $2 + 3 = 0$ " and still proceed to do arithmetic, however unfamiliar, just as positive Law has at times said "A slave is not a person".

The second alternative is to assume that the sphere of pure meanings is fixed (though they may not have all been "discovered" by any one consciousness or culture) and thus all analytic propositions are timeless and at least potentially deducible even though they may not all have been constituted for a consciousness. In conjunction with this sphere of pure meanings more than one set of synthetic propositions may be possible where no set contradicts analytic propositions deducible from the sub-set of the sphere of pure meanings related to that given set of synthetic propositions though one sub-set may, from a more global point of view, "contradict" another. This view is supported by Frege's comments<sup>1</sup> on the interplay of the synthetic and analytic, of intuition and deduction in the establishment of new definitions (i.e., the discovery of previously unconstituted meanings). This latter direction may be in accordance with the suggestion by Professor Spiegelberg that Reinach's essential connections be regarded as "essential tendencies".<sup>2</sup>

The nature of the set of synthetic propositions operant in both ethics and legal philosophy is influenced by the experience of the person or persons formulating them. Experience will: 1) produce greater awareness of some aspects of the sphere of pure meanings, and 2) provide the motivation to formulate synthetic propositions relative to the same sphere of ideal meanings. There can be no question that the nature of Reinach's legal propositions was influenced by his experience in both these senses.

The second alternative suggested can, as a more global view is

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<sup>1</sup>Gottlob Frege, The Foundations of Arithmetic, translated by J. L. Austin (2nd rev. ed., Harper Torchbooks, New York: Harper and Brothers, 1960), pp. 3-4, pp. 102-103.

<sup>2</sup>Spiegelberg, PM, p. 205.

taken, have as a sub-set the first alternative if, instead of arbitrarily altering one of the given list of axioms, intuition of a synthetic proposition and the attempt to then deduce it leads to the "discovery"/"positing" of a "new" axiom. In a similar vein Russell remarked about pure mathematics that:

some of the premises are much less obvious than some of their consequences, and are believed chiefly because of their consequences. This will be found to be always the case when a science is arranged as a deductive system. It is not the logically simplest propositions of the system that are the most obvious or that provide the chief part of our reasons for believing in the system.<sup>1</sup>

Legal and ethical states-of-affairs. --Ethics is regarded by Reinach as being divided into two spheres, that of moral rightness pertaining to states-of-affairs and of moral values pertaining to persons, acts, etc. The morality of the existence of the conduct of a person (i.e., the morality of a state-of-affairs) may be right in itself or by virtue of other connected states-of-affairs. The connections between these two spheres are said to be essential and immediately intuitable ones. The existence of an object, i.e., a state-of-affairs, is morally right when the object is morally valuable. The contrary state-of-affairs, under the same circumstances, is not morally right. The realization of a morally right state-of-affairs is morally valuable, its neglect not valuable, etc. These statements will sound familiar to those who have read Husserl and Scheler.<sup>2</sup> What suggests itself, however, within this

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<sup>1</sup>"Logical-Atomism", 1924, in LK, p. 325.

<sup>2</sup>Alois Roth, Edmund Husserls ethische Untersuchungen, dargestellt anhand seiner Vorlesungsmanuskripte, Phaenomenologica, VII (The Hague: Martinus Nijhoff, 1960). See also Ideen I, p. 197 on Sachverhalt and Wertverhalt.

Max Scheler, Der Formalismus in der Ethik und die materiale Wertethik: Neuer Versuch der Grundlegung eines ethischen Personalismus, ed. Maria Scheler, 4th ed., in Gesammelte Werke (Bern: Francke), II (1954).

context, is that the systemization of formal axiology and the logic of ethical statements can be facilitated by taking their immediate subjects to be states-of-affairs of various degrees.

If the notion of ethical states-of-affairs is to be made useful, however, it must be given a more thorough theoretical development. Lacking that development reference to ethical states-of-affairs by Reinach functions primarily as a shorthand for the claim that there are objective ethical essential a priori connections. If the nature of ethical states-of-affairs and their logic<sup>1</sup> were clarified the theory could serve a useful function for rendering general ethical discussion more precise. This would also be the case for the truncated form where the objects were contingent ethical states-of-affairs, i.e., empirical states-of-affairs concerning ends and means to ends.

Reinach's legal philosophy is written primarily about necessary essential connections with the result that the terminology of "states-of-affairs" almost completely falls away. The determinations of positive Law, however, have reference to contingent states-of-affairs. The content of determinations can include only what can and cannot be, what can have a beginning and an end in time.<sup>2</sup> The strict distinction between the ideal and the empirical, the a priori and the contingent, found in the theory of states-of-affairs is exploited by Reinach in the context of his legal philosophy. In his concern with the objective subsistence of a priori essential connections Reinach does not give enough attention

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<sup>1</sup>See above p. 55, and article by R. M. Chisholm, "The Defeat of Good and Evil," Proceedings and Addresses of the American Philosophical Association, XLII (1969), 21-38, for remarks on the problems of the logic of states-of-affairs.

<sup>2</sup>aGbR, GS, p. 306.

to the influence on his conclusions and his estimate of their significance of: 1) the range of his experience of possible legal structures, and 2) the extent of his acquaintance with the sphere of ideal meanings. In the latter connection it is useful to consider the distinction between the meaning itself and the possibility of its exemplification.

It is clear for the areas of ethics and legal philosophy that ultimately phenomenology must regard a priori propositions, believed to be grounded on the "self-givenness" of objective states-of-affairs, as "axioms" of a sort. The problems of evidence, illusion, and error could thereby be given the recognition they warrant without following the more drastic tack of abandoning the phenomenological method of philosophizing and what it has uniquely to offer. The hypothetical nature of essential a priori connections from a theory of knowledge point of view--not to be detached from any philosophy created by human beings for human beings--does not appear to be deniable.

The threefold theory of states-of-affairs, intentionality, and judgments, the subject of Chapters II-IV above, has a central role in Reinach's ethics and legal philosophy. As was the case in Reinach's theoretical discussion of that threefold theory itself the aspect of intentionality is given the least thorough development. In all general respects problems surround the same fundamental issues for both the threefold theory and ethics and legal philosophy. The nature of objective a priori essential connections and the evidence with which they may be grasped must be regarded as controversial in all cases. This issue is fundamental and the response to it will effect the whole of the resultant theoretical position.

d) Evaluation of Reinach's legal philosophy.

The principal qualification of Reinach's legal philosophy in this chapter was the suggestion that propositions, whose objective referents are believed to be essential a priori legal connections, be regarded as "axioms" of some sort. This response to the inability of phenomenology to verify the results of essential intuition does not point to an abandonment of what phenomenology uniquely has to offer, but rather is an attempt to strengthen the whole by admitting a qualification of one of its principal claims. Even if for "agnostic" reasons the propositions referring to the a priori essential connections which Reinach discovered for legal structures are regarded as "axioms", study of them will, as Reinach claimed: 1) help to clarify the history of positive Law, and 2) render the structure of positive Law more understandable insofar as it is regarded as presupposing the structure of the a priori legal sphere. It will also provide a basis for analyzing the relation of specific positive legal relationships to the whole fabric of social interchange and institutions.<sup>1</sup>

Reinach's analysis of "determinations" and of the distinction between the moral and legal spheres are, like his analysis of social acts, of intrinsic interest apart from their relation to his legal philosophy as a whole. The "social act" is shown to be fundamental to social interchange, legal and non-legal, the latter being a label which may vary in its applicability in accordance with changes in positive Law. The analysis of the social act is of key importance in providing a basis for

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<sup>1</sup> See aGbr,GS, p. 174 and pp. 156-57 above.

the analysis, mentioned above, of the relation of specific positive legal structures to the whole fabric of social interchange.

The comparison above of the remarks of Austin, Moritz, Olivecrona, Ross, and Reinach on "performatives" and "social acts" indicates that Reinach's treatment of the social act has not been taken into account in the literature dealing with performatives. The comparison may be useful in overcoming limitations in the points of view of all of these approaches and in affirming the existence of a concrete range of common problems for the practitioners of the analytic and phenomenological approaches. Further analysis of performatives should consider more fully their basis in "conventions", particularly problematic being those "conventions" which clearly have their roots in a specific culture and social structure, but do not qualify as "unambiguous rules". Austin's work suggests the need for a fuller study of the "total speech act". This might be assisted by consideration of Reinach's treatment of social acts, of meinen, and of the constitution of assertable judgments. Certain of the limitations in Reinach's results are likewise the result of the limitation of his experience of various legal and social forms and assumptions.

Reinach's analysis of "determinations" or "enactments" (Bestimmungen) as social acts which, when effectively enacted, constitute valid positive Law for a given circle of persons, is a significant attempt to clarify the social basis for the validity of positive Law. The analysis of the social act of determination is also useful for attempts to clarify:

- 1) the divergence of positive Law from a priori essential legal connections,
- 2) the processes by which positive Law may be modified (legal history), and

3) the social foundations of distinct co-existing legal systems (comparative law). If propositions referring to a priori essential legal connections are regarded as sets of "axioms", then determinations may be regarded as indicating which sub-set of possible "axioms"/"meanings" is to be used for social interchange. Reinach regarded the role of determinations to consist of negating a priori legal structures and creating legal structures excluded by a priori connections.<sup>1</sup> The difference is important on ontological and epistemological grounds, but in relation to the practical analysis of positive Law has no noticeable impact.

Reinach's analysis of the distinction between the moral and legal spheres and the two corresponding types of states-of-affairs which "should be"--those grounded on "objective a priori moral essential connections" and those dependent on the enactment of effective determinations--is of fundamental significance.<sup>2</sup> Although issue was taken<sup>3</sup> with certain of the specific results of Reinach's essential intuition of essential objective a priori moral laws, his use of the moral/legal distinction cannot be said to be abusive as Gardies<sup>4</sup> has found, but only subject to further examination and qualification. Treatment of a priori moral and legal essential connections as they are constituted in propositions as "axioms" may be expected to introduce a degree of confusion and uncertainty perhaps unappealing in comparison with Reinach's own work. Apart from these questions, however, it is argued here as above,

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<sup>1</sup>aGbR,GS, pp. 307-12.

<sup>2</sup>See above, pp. 176-84.

<sup>3</sup>See above, pp. 178-80.

<sup>4</sup>J.-L. Gardies, "La philosophie du droit d'Adolf Reinach," Archives de Philosophie du Droit, X (1965), 17-32.

that some theoretic structure is needed for the analysis of contemporary legal problems which involve an intermingling of moral and legal elements. Reinach recognized this need and attempted to meet it to some degree both in his legal philosophy and in his analysis of the basis for the use of "reflection" as a criterion in criminal law.

The analysis of the influence of moral laws and values on positive Law and on the process by which the latter comes to diverge from a priori Law supports the view of both positive Law and moral norms and codes as only two among many related aspects of social interchange. By implication positive Law cannot be adequately studied in isolation from these other aspects. This realization is important both for the history of Law and for comparative Law.

The criticism in the literature of Reinach's synthetic a priori propositions as either analytic or unfounded misses its mark because of the different senses in which the term "concept" has been used by the critics and by Reinach. Reinach's claim that analytic and synthetic a priori propositions are both grounded on objective a priori essential connections is overlooked. The results of Reinach's use of essential intuition are open to dispute but the ground (objective essential connections) claimed for these results is at least clear. In the next chapter Reinach's methods of philosophizing and his results as a whole will be found to share many of the strengths and weaknesses of his legal philosophy.

## Chapter VI

### General Evaluation of Reinach's Work

At the time of Reinach's death his philosophic work was by no means completed and the form it ultimately would have taken is a matter of conjecture. The preceding chapters have not been concerned with pursuing such speculative questions, and this final chapter represents instead an attempt to identify what is of present interest and lasting value in Reinach's work in the form in which he left it. An overview is given of the strengths and weaknesses of his philosophical position as they have been revealed in Chapters I to V. Some of the extensions and qualifications of his position, which have been suggested in response to specific weaknesses in that position, are reviewed. The attempt has been made in all such cases to formulate extensions and qualifications which are in accordance with the spirit of Reinach's intention.

Reinach regarded phenomenology not as a system of statements and truths but primarily as a method of philosophizing. The aim in the face of any philosophic problem was to learn to see, to discover, the essential characteristics of the subject, rather than to circumscribe it in definitions. Reduction and construction were rejected in favor of analysis of the essential nature of objectivity as self-given. Analysis of the meaning of words and concepts was only a first step towards this analysis of the essential characteristics of objectivity. This emphasis

on seeing, discovery, openness to the self-givenness of objectivity, is a key aspect of Reinach's approach to philosophic problems. Its value is self-evident insofar as his use of it gave rise to new and fundamental distinctions through analysis. Its use, however, presupposes certain ontological and epistemological assumptions. Qualification of the latter entails regarding the results of intuition of self-given objectivity in a different light. This question is considered below.

Reinach found the essential nature of objectivity to be revealed in essential laws. Essential laws, unlike any facts or factual connections about which sensible perception gives us information, were, according to Reinach, a priori, objective, and thus one of the most important subjects in philosophy. Knowledge of final a priori connections was to be grounded on the intuition of these a priori connections themselves. Knowing--only one of many possible intentional relations to objectivity--has a precise meaning for Reinach. Knowledge is not knowledge in Reinach's sense unless it has a discursive form--that such-and-such is so-and-so. This form reflects not the framing of a definition but rather the adequate intuition of objective connections. Thus we perceive objects, feel them, take pleasure in them, but, strictly speaking, never know them. Knowledge can be only of states-of-affairs. We can know "that an object is so-and-so." States-of-affairs are thus regarded as being of fundamental importance for philosophy simply by virtue of their being that of which knowledge, in the precise sense, is possible.

The distinction between the empirical and the a priori is, for Reinach, an ontological one, grounded in the distinction between necessary and contingent states-of-affairs, and applied to knowledge and judgments which have intentional reference to states-of-affairs only secondarily.

The a priority, generality, and necessity, pertaining to a necessary state-of-affairs are all regarded as deriving from the essential connection, the groundedness of the "predicate"<sup>1</sup> in the essence(s) of the subject-object(s). Just as, strictly speaking, we cannot know an object, so we cannot know an essence. The objective correlates of knowledge of the essential nature of objectivity are connections between essences (synthetic) or of an essence with itself or an essential part with a whole (analytic). The latter receive little attention from Reinach. This is probably due in large measure to his view that essences are irreducible objective elements which can be known only in connection with one another and thus only in "synthetic" states-of-affairs. Study of analytic states-of-affairs would coincide with, or come dangerously close to the attempt, denounced by Reinach, to "define" essences.

The role attributed by Reinach to states-of-affairs, particularly those which are synthetic, is thus clearly a fundamental one. His analysis of states-of-affairs therefore warrants the most careful consideration in any evaluation of his work as a whole, as well as being of intrinsic interest. The view that objective and constituted states-of-affairs are that of which we have knowledge and that which we believe and assert to be the case, respectively, is paralleled by Russell's claim that belief is not of objects, but rather "that so and so, etc.,"<sup>2</sup> and by his analysis of molecular propositions as truth functions of atomic facts.<sup>3</sup> This

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<sup>1</sup>This unfortunate usage, found also in LI, (see p. 581), contributes to misunderstanding of Reinach's position by blurring the distinction between the nature of propositions and the nature of objectivities. Confusion on this point is related to misunderstanding of Reinach's use of the terms "concept", "analytic", and "synthetic", and tends to occur in the literature whenever Reinach's criticism of Kant in RVK,GS and KAH,GS is not taken into account. See above, pp. 201-204.

<sup>2</sup>LK, p. 220.

<sup>3</sup>LK, p. 287. See above p. 52, nt. 3, 57, nt. 2, 58, nt. 1, pp. 63-5, p. 68, nt. 2 and p. 73, nt. 2, for comparison of aspects of the work of Reinach and Russell.

parallel and others indicate that there existed a basis for dialogue between logical atomism and early phenomenology on common problems. Contemporary philosophy which directs itself to an analysis of "states-of-affairs" or "facts" and propositional entities would profit from a consideration of Reinach's work on states-of-affairs and the theory of judgments.

It was established in Chapter II that the term "state-of-affairs" was not originated by Reinach and that he made no claims in this regard, but rather made careful note of its previous uses. Reinach did, however, vastly enrich the concept through careful analysis. The theory of states-of-affairs is the most fully developed aspect of the threefold theoretic structure with which Reinach approached the problem of the relationship of consciousness and being. This fact, given the incomplete form of his work, only confirms that his own philosophic practice actually reflected the relationships of "founding" and "foundedness" which he argued for in theory. Reinach's work on states-of-affairs (and the theory of judgments) has been, relatively speaking, neglected in the literature. The preceding chapters have attempted to avoid this tendency, not merely in reaction to the literature, however, but as the result of the view that Reinach's philosophic position can be adequately understood and evaluated only as a whole. His legal philosophy, ethical discussions, and the later analysis of premonitions and religious experience must be seen as the result of approaching the analysis of problematic forms of practical judgments and experiences with the threefold theoretic structure discussed in Chapters II to IV. The value ultimately attributed to this theoretic structure is likely greatly enhanced by its successful application not merely to the ideal sphere but rather to these problematic forms

of practical judgments and experiences as well. The analysis of the latter is, in any case, not to be adequately understood without an understanding of Reinach's theoretic position established in his analysis of states-of-affairs, intentionality, and judgments. This is clear from confusions in the literature dealing with his legal philosophy.

Like Stumpf and Husserl, Reinach regarded the sphere of the objective to include, but be greater than, that of the real. Both real and ideal existents were regarded as objective. Reinach thus avoided both an unmitigated realism, for which all objectivities are real, and an idealism in which consciousness creates and sustains its objects in existence. The question concerning the ontological status of ideal objects and objectivities is resolved in part by Reinach by claiming a mode of being for ideal entities which is not existence in the sense of real being, but "ideal existence". Here, as is almost always the case, Reinach is concerned with objects (Gegenstände, not Objekte) and objectivities under the aspect of being the transcendent correlates of a grasping act, an intentional act. He argues for the ideal existence of ideal objectivities by maintaining that though they are not real particular objects they are not "nothing" because we can make "valid" positive and negative statements about them. The latter statement together with Reinach's claim that knowing, by essence, involves discovery rather than construction or creation of its object, implies at the very least some strong form of independence from consciousness for ideal objects and objectivities. The argument, problematic insofar as it appears to presuppose a correspondence between the structures of thought, language, and objectivity, echoes in Reinach's rejection of the denial of the objective

subsistence of states-of-affairs in general. Reinach finds such a denial to be in accordance with the "contrary-to-sense position of absolute scepticism in the theory of knowledge." The subsistence of negative states-of-affairs, independent from consciousness, is simply asserted by Reinach.<sup>1</sup> Had he provided an argument in this latter case it would presumably have been either or both of those referred to above.

The assumption that the structures of thought and language correspond to the structure of objectivity is fundamental for Reinach's work. This assumption has no ultimate defense. It is rather a common-sense point of view closely akin to an "act of faith." In the absence of counter-examples or other evidence that the assumption is defective it remains a sound philosophic point of view so long as its status as an assumption is not forgotten. Closely related to this assumption is Reinach's non-traditional use of "a priori" as an ontological term. Acts of knowing and judgments are regarded as "a priori" only by virtue of their reference to an objective a priori connection. In the ideal case the correspondence theory is regarded as holding in its strict form.

It is clear that Reinach claims an objective ground for judgments about objectivities other than real individuals. How one has knowledge of non-real objectivities must be regarded as a closely related but distinct issue. Central to Reinach's view of both ontological relationships and the processes by which we come to know them is the notion of levels of "founding" and "foundedness." To each unbounded set of individual real and ideal entities there is said to correspond a general ideal objectivity. We have argued that to each of the general qualities as well there corresponds an unbounded set of real particular qualities. The

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<sup>1</sup>NU,GS, p. 104.

general ideal entities and qualities are not to be regarded as consisting of the unbounded set to which they correspond; presumably there are general ideal entities such as "unicorn" and "round square" even though each of these correspond to an empty set of individuals, in fact and by necessity, respectively. The separation of general and individual retains the order of "founded" and "founding."

Each entity and quality, real or ideal, has an essence. Connections between the relevant essences correspond to each and every real or ideal connection of real and ideal entities and qualities. Like essences, essential connections are not said to "exist," "to be," or "to exist ideally." Reinach assigns no specific label to the "mode of being" of essences or of essential connections. The whole essential connection, including the essences connected, is said, however, to found a state-of-affairs that in turn subsists or does not subsist. Relationships of "founding" and "foundedness" are here, as elsewhere in Reinach's treatment of ontological and epistemological questions, more crucial and clearer than the labels assigned to various modes of being. Drawing upon Husserl's discussion of the ideality of categorial forms<sup>1</sup> we have argued that the connection is the objective correlate of the ideal "relational being," expressed in predication.

To know is not to know an object, but that the object is so-and-so. Knowledge about essences, general entities and qualities, real and ideal individuals and particular qualities is thus obtained only through knowledge of the objective connections, states-of-affairs, and facts, into which these objective elements enter. Yet more precisely it is

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<sup>1</sup>See LI, pp. 780-84.

states-of-affairs which are known and thus only mediately can facts,<sup>1</sup> to which there may correspond many states-of-affairs, and essential connections, which ground states-of-affairs, be known.

Concepts and constituted states-of-affairs are the means by which we think and talk about objects and the objective states-of-affairs into which these objects enter as elements. General objectivities (including, we argue, qualities) and objective states-of-affairs lie at one level removed from the individual objects and facts. It is no coincidence that general concepts and constituted states-of-affairs likewise lie at one level removed from self-given individual objectivities and facts. There are many such parallels in the structures of intentionality, objectivity, and judgments. Not an idealist, not a sceptic, Reinach regarded evident knowledge as grounded in the self-givenness of objectivity. Parallels in structure such as those found above both result from Reinach's view of the nature of evident knowledge and, once established, serve to sustain and explicate that same view.

If the implications of Reinach's comments to the effect that objects and essences are, strictly speaking, known only as elements of states-of-affairs and essential connections, are to be fully drawn, then it must be argued that concepts of "unitary entities" such as "lion," "rose," etc., are logical abbreviations whose full objective referent is not simply an unbounded set of particular objects falling under that concept as Reinach suggests, but rather an unbounded set of particular objects falling under that concept insofar as they are "subject" elements of objective states-of-affairs. Likewise in response to Reinach's

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<sup>1</sup>See above, p. 62, on Reinach's use of the term "fact" (in the sense of Tatbestand, not Tatsache).

unanswered question about general qualities<sup>1</sup> we have suggested that concepts of general qualities (redness, squareness, evenness, etc.) are logical abbreviations whose full referents are the unbounded sets of particular qualities falling under those concepts respectively insofar as they are the "predicate" elements of objective states-of-affairs. Like ideal objects and objectivities, general qualities may be said to "exist ideally".<sup>2</sup>

A key characteristic of states-of-affairs in relation to the theory of judgments is that states-of-affairs, unlike objects or qualities, can take on negation, thus providing a referent for negative judgments of the form, "It is the case that A is not b." Going beyond Reinach's position we have argued that phrases referring to negative states-of-affairs have a role similar to that which Reinach attributed to concepts. Concepts were said to set forth the universality of objectivity under which a particular object was to be grasped. In the case of reference to objective negative states-of-affairs we find the universality of objectivity involved to be set forth by means of the negation of some constituted positive state-of-affairs. The objective negative state-of-affairs, such as the "not-being-b of A," may be then referred to in a judgment, not by a concept, but by a phrase of the form "that A is not b." A self-sufficient assertion can be made about this objective negative state-of-affairs, such as--"It is the case that A is not b," or, as is seen above, a phrase referring to the objective negative state-of-affairs may perform the function, within a more complex

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<sup>1</sup>RVK,GS, p. 55.

<sup>2</sup>See above, p. 77.

statement, of a "negative concept". There can be no negative concepts, as such, for concepts refer to unbounded sets of particular objects and we accept Reinach's view that there are no negative objects. Analogously, we argue that there are no negative qualities. Only misunderstanding results when Reinach's view of concepts as derivative and secondary, serving only to set forth the universality of objectivity under which a particular is to be grasped, is forgotten.

Reinach's theory of judgments presupposes his theory of states-of-affairs, states-of-affairs being the intentional correlates of acts of knowing and that which is evident and a priori in the primary sense. Historically the negative judgment had been one of the more problematic forms of judgment and serves as the main focus for much of Reinach's work on the theory of judgments. In the process of his analysis Reinach clearly rejects the claims that negativity is not objective, that judgments are affirmations or denials, and that judgments refer to objects, as well as Brentano's divergence from the correspondence theory. The differences between their two positions are all ultimately grounded in their distinct ontological assumptions.

Almost all of the distinctions Reinach made with regard to various types of judgments and propositions, the nature of the evidence for them, the logic required by them, and the processes by which they are formulated and constituted as judgments and potential assertions, respectively, are said to be grounded in the nature of the objective states-of-affairs to which they refer. Strictly speaking, this entails regarding all epistemological and logical terms as primarily ontological. In the ideal case this would indeed hold true. It was seen, however, from the articles on

reflection, motion, premonitions, and religious experience, all of which lead to an enrichment of Reinach's theory of judgments, that in actual practice outside a restricted ideal sphere this view represents only an ideal limit to be approached to some degree.

Reinach's claim that the laws of traditional logic are actually founded in the laws of states-of-affairs can be supported only if an overt claim is also made, as Reinach does not, that the full objective referent of a judgment, whether an assertion or a conviction, is not simply the state-of-affairs but the state-of-affairs together with its subsistence or non-subsistence. Only in this way is it possible to maintain that a distinct objective referent corresponds to each of the four types of judgments identified by Reinach for the case of convictions. It is also necessary to supplement Reinach's view that the laws of states-of-affairs are the foundation of most of the traditional logical laws governing propositions and judgments by asserting that many states-of-affairs--especially those which take on modalities in the range between the necessary and the impossible, and states-of-affairs of values--actually require a many-valued logic. This view is in fundamental agreement with Reinach's central point: that the laws of logic must be grounded in the nature of the subject matter, the objective states-of-affairs to which propositions refer.

Although Reinach made much of the characteristic of states-of-affairs whereby they, unlike objects, take on negation and modalities, he did not state in any explicit way the basis for this difference between objects and states-of-affairs or clarify adequately how states-of-affairs take on negation. Drawing upon Husserl's discussion of the ideality of

categorial forms<sup>1</sup> we have interpreted this difference between states-of-affairs and objects as being grounded in the fact that, while the subsistence of states-of-affairs--like the existence of an object--is in no way included in the concept, State-of-Affairs, or in the concepts of individual states-of-affairs, the relational being expressed in predication--often in the copula--is not independent of the state-of-affairs but is founded in the objective connection of the elements of an objective state-of-affairs. Negation of an objective state-of-affairs is thus a negation of this objective connection, the "relational being". Relational being is the ideal objective correlate of the categorial form "being" in the copulative sense. In a judgment it is precisely this categorial "being" and thus the whole constituted state-of-affairs which can be negated.

The negation of causal judgments--judgments referring to an empirical non-essential relation of two states-of-affairs--left unclarified by Reinach, may be regarded as a case where the necessity qualifying the predicate (the causal necessity) is "pushed away". This argument is analogous to Reinach's analysis of the use of the term "not" in "the car was not driven fast" as the "pushing away" of a non-essential element. Either this or some similar explanation must be applied to the "negation" of causal relations for these are relations of two states-of-affairs, whereas the negation function effects only an individual state-of-affairs. An alternative explanation of the negation of causal judgments and the empirical relations of the states-of-affairs to which they refer is given by regarding the negation of the constituted causal relation as a negation of the

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<sup>1</sup>See LI, pp. 780-84.

necessity of the subsistence of the state-of-affairs, not a negation of the state-of-affairs.<sup>1</sup> It is clear that relations of objective states-of-affairs and constituted states-of-affairs of higher-order require much further analysis than is actually provided in Reinach's work.

The theory of intentionality presents a serious area of problems for the threefold theory. This theory must carry the burden of clarifying the relationship of consciousness to being, of acts of knowing to states-of-affairs, and therefore requires a fuller development than it is overtly given in Reinach's work. Reinach accepted much of Husserl's work on this topic, introducing distinctions only as these were motivated by analysis. The division of judgments into "assertions" and "convictions" and the accompanying analysis of the former as speech-acts involving functions and acts of meaning (Meinen), the latter as grounded on representation and acts of knowing, are instances of significant and far-ranging distinctions being motivated by such analysis.

Comparison of the "and"-function and the negation function points to an important difference between many objective and constituted states-of-affairs. Negative states-of-affairs are said to subsist with the same objectivity as positive states-of-affairs. A negative objective state-of-affairs belongs to the same ontological level as a positive objective state-of-affairs. An objective negative state-of-affairs is not a negated positive objective state-of-affairs. Correspondence between a constituted negative state-of-affairs and an objective negative state-of-affairs requires that the negation function be performed only in constituting a state-of-affairs whose objective correlate is a negative state-of-affairs.

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<sup>1</sup>See above, pp. 65-67.

In the case of the "and"-function the objective correlate is not a single state-of-affairs, but two or more distinct states-of-affairs. The constituted state-of-affairs involving an "and"-function, unlike that involving the negation function, is thus synthetic although Reinach has not made this distinction overt. Correspondence requires that the "and"-function be performed only when its use, resulting in the constitution of a higher-order state-of-affairs, is grounded in the states-of-affairs forming the objective correlate.

It has been argued above<sup>1</sup> that though Reinach's claim that states-of-affairs, as they are constituted for meaning (Meinen) in assertions, must be in accordance with determinate laws of constitution may appear to be an argument that the structure of language used to refer to states-of-affairs corresponds in a simple one-to-one relation to the structure of the objective states-of-affairs referred to, this is not the case. Reinach's analysis of the distinctions between meaning (Meinen) and knowing, assertions and convictions, and the roles of functions and representation, respectively, must be seen not as arguments for a "grammatical" objective structure but rather as a response to the problem of analyzing the leap from the sphere of the objective, to thought, and finally to language. Reinach argues that the structure of each is "founded" on that of the previous, but avoids a simplistic image or picture analogy. The radical distinction between the natures of objectivity and consciousness is instead recognized in his analysis of the constitutive activities of consciousness while at the same time, without contradiction, a correspondence of structure in the sense of "foundedness" and "founding" is claimed for the ideal case.

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<sup>1</sup>See p. 58, above.

Reinach's division of the sphere of judgments into convictions and assertions was an original approach to the problem of the nature of judgments. His distinction between acts, like representation and meaning, in which we grasp an object in "having" or "aiming" and those experiences like convictions, striving, expectations, etc., in which we "take a position to something", is a highly useful one. Convictions, as analyzed by Reinach, can take on a rich variety of forms in reference to an identical state-of-affairs in virtue of being "position-takings". Ideally the sphere of assertions should include a similar variety. Reinach's theory of assertions is too restricted, however, to provide a solution to this general problem without making certain extensions.

One extension to Reinach's theory of assertions proposed above<sup>1</sup> is that instead of limiting the sphere of assertions to those based on "positive convictions" as Reinach does, disbelief that, "A is b", be regarded as equivalent to the immediately assertable belief that "it is not the case that A is b". We have argued that without this extension the sphere of assertions is unrealistically impoverished<sup>2</sup> and may in certain cases produce erroneous assertions.<sup>3</sup>

It appears feasible as well to extend Reinach's discussion of the constitution of states-of-affairs in and for meaning, which he limited to the objects of positive convictions, for statements of all forms. It may be presumed that he did not choose to do this because it lay outside the sphere of his set problem.

The distinctions Reinach made regarding meaning (Meinen), in his sense, appear to have been the product of his attempt to provide an analysis of the relationship between language and intentionality. In respect to

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<sup>1</sup>See pp. 103-104, above.

<sup>2</sup>Ibid.

<sup>3</sup>See above, p. 121, nt. 2.

the analysis of meaning (Meinen), in Reinach's precise sense, claims for the originality of his analysis are scarcely disputable. The work of Brentano, Marty, and Husserl from this period, however, also contains many passages relevant to the problem of the relationship of language and intentionality. The problem in its general form was a contemporary one, not first discovered by Reinach.

In the sketchy form in which Reinach allowed the distinctions between meaning and representation to remain it has been difficult to evaluate them fully. A far more detailed discussion than is provided by Reinach of the complex of intentional processes required from the stage of sense perception to the stage of making an assertion would be desirable. The distinctions he did develop with respect to intentionality are consistent, however, with the view he presented in more general terms of the over-all process of forming a judgment, achieving an insight and taking a position. It must be recognized that the functions are of the greatest importance for his theoretical position: they are the means by which negation, conjunction, disjunction, causal relations, and deductive relations, can be grounded in objectivity and yet be constituted for consciousness in forms which theoretically correspond strictly to the elements and connections of objectivity.

Reinach asserted<sup>1</sup> that no intentional act passes to any objectivity unless on both sides necessary "ordering connections" (Zuordnungsverhältnisse) are present as a result of the subsistence of essential connections between the consciousness that formulates judgments and the objectivity to which these judgments refer. This claim requires

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<sup>1</sup>NU,GS, p. 77.

qualification, for the relationship would hold, presumably, only for the case of the correct judgment and rests on the assumption that consciousness is somehow capable of formulating "ordering connections" which do indeed correspond to those of objectivity. The validity of this assumption reduces to the question of whether the "ordering connections" of constituted states-of-affairs, which form the content of our judgments, actually correspond to those of objectivity. The occurrence of erroneous judgments, which also involve "intentional acts" passing to "objectivity", gives the lie to the above flat statement and suggests instead that all authentic judgments, correct or not, are the result of the belief that the "ordering connections" of the constituted state-of-affairs correspond to those of the objectivity referred to by the judgment.

The examination in Chapters III and IV, above, of the nature and basis of our knowledge of positive and negative states-of-affairs of different modalities and types of evidence supports the view that there are significant differences between the range of ontic connections in themselves and what the knowing subject may be said to know of these ontic connections. Reinach tends to neglect to make these latter distinctions although the aspects of the article on reflection dealing with intellectual reflection do significantly enrich the theory of judgments beyond the overly simplified form in which it is found in the article on negative judgments.

Reinach's position has been supplemented above<sup>1</sup> by observing that impossibility, possibility, probability, and necessity belong to the same

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<sup>1</sup>See pp. 68-69.

category--it may still be called modality--just as negation in general belongs to one category although the implications of the laws stating its relationships are weaker for states-of-affairs containing non-essential connections than for those containing essential connections. From the point of view of the knowing subject it is important to be able to distinguish empirical states-of-affairs from a priori states-of-affairs, non-essential connections from essential ones, for the epistemological implications of the laws stating the relationships regarding both modality and negation are not the same for all states-of-affairs.<sup>1</sup> Greater emphasis must be given than Reinach does to the distinctions between objective states-of-affairs and our possible knowledge, immediate or mediate, of those objective states-of-affairs.

Religious experience<sup>2</sup> and premonitions are analyzed by Reinach in terms of the threefold theoretic structure developed in his earlier work. It is clear that religious "position-takings", although "subjective" and not verifiable by any demonstrations, may still be the basis of convictions as discussed by Reinach in the article on negative judgments. Likewise premonitions, in which a state-of-affairs is grasped, correctly or incorrectly, as subsisting, are a source of knowledge in what Reinach calls the "wide" sense and thus are not ungrounded convictions but rather that which may, validly or not, ground convictions. Reinach emphasizes that the strength and inner certainty of a conviction grounded on a

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<sup>1</sup>See above, pp. 69-72.

<sup>2</sup>The treatise on the philosophy of religion was left in an incomplete form. For this reason we have chosen to treat only those issues which bear a clear relation to Reinach's other work, such as epistemological questions and his method of analysis, but not, for example, the qualities of the Absolute.

premonition--an act in which we grasp, or believe we grasp, a state-of-affairs as subsisting--is in no way inferior to one grounded on acts of knowing in the traditional sense. In his attempt to analyze the subjects of the later writings, Reinach's theories of knowledge and judgments appear to have become enriched in response to the very demands of their subjects. It becomes clear that there are many more significant types of judgments not conforming to the ideal cases dealt with in his earlier work than was earlier apparent. In the works in which the threefold theory is applied to the analysis of concrete problems a direction may indeed be seen towards the introduction of qualifications of his epistemological position. It would be purely speculative to ask whether these would have corresponded to those qualifications suggested in the preceding chapters. Nor is it to be forgotten that Reinach had always maintained a strict distinction between the natures of the a priori and empirical spheres. Given this distinction it is only to be expected that the epistemological claims he might make for the ideal and real spheres would be different.

Evidence and self-givenness require further analysis than they were given by Reinach. Reinach did remark on the severe limitations on evidence, as well as observing that only states-of-affairs containing essential connections can be grasped as necessary with indisputable evidence, that there is no final evidence for claims of real existence, that judgments involving immediate evidence are rare, and that the process of practical reflection is theoretically infinite. In addition Reinach makes a variety of distinctions concerning mediate and immediate evidence, positive and negative evidence, evidence for claims of real

existence, evidence of existential possibility, and evidence for empirical knowledge.<sup>1</sup> He asserts that the attempt at a clear and articulate grasping of objects is open to all the possibilities of illusion that any knowledge involves.<sup>2</sup> It has been argued above<sup>3</sup> that Reinach also implied that there is no necessity for essential (ontic) connections to be given to us in our intuition of an objectivity.

The lack of any criteria for determining when an objectivity has been grasped with adequate self-givenness--a process which may be influenced by interest, experience, and unexamined pre-judgments, as Reinach was by no means unaware, also indicates a need for further examination of the questions of evidence and self-givenness. It is likewise argued above<sup>4</sup> that insofar as the intuition of essences and essential connections in any way presupposes other less adequate forms of givenness, such as the perception of real objects, the insight gained through intuition becomes hypothetical. More precisely, the degree of evidence of the least adequate form of givenness presupposed by the process would become the greatest degree of evidence which could be claimed for the result of intuition.

It has been shown above that Reinach was concerned with epistemological issues in all of his writings. The role which he recognized to be in fact often performed by "subjective" experiences--grounding beliefs, convictions, assertions, feeling-states, position-takings of the will, strivings, and by extension influencing the whole range of practical and intellectual position-takings,--was a significant one. He was not so

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<sup>1</sup>See above, pp.89-91, pp.121-134.

<sup>2</sup>UP,GS, p. 405. See also NU,GS, p. 90, nt. 1 and p. 91 above.

<sup>3</sup>See above, p. 91.

<sup>4</sup>See above, pp.91-92, and pp. 93-94.

naive as to assert that these "subjective" sources of knowledge in the wide sense could be demonstrated or proven to have real objective correlates or to have these in adequate self-givenness--resort to attempts at "demonstration" or "proof" in the case of ultimates was indeed a course whose validity he strongly denied. He was at the same time, however, not afraid of attempting to grasp the essence of these experiences, as he occasionally accused non-phenomenologists of being, or of admitting the significance of the role they may play in the personal, practical, emotional, social, intellectual, and religious spheres of human experience. Reinach's response to the problem of grounding synthetic propositions--the intuition of objective connections--does appear to provide a viable alternative to strict rationalism and ungrounded empirical induction.<sup>1</sup> It is difficult to read Reinach's work with care and in the end find his epistemological point of view naive in the simple pejorative sense. The point of view is far more the common-sense one of proceeding painstakingly with analysis of the given and its modes of being given (having already rejected scepticism and psychologism) in constant awareness of the high possibility of illusion and error.

The article on reflection as well as the short pieces on premonitions and religious experience revealed Reinach's ability to bring distinctions on the theoretical level to bear on problems of the practical sphere without descending into dogmatism. The gulf between the ideal and real realms is not lessened thereby, but it is seen that the results of his analysis of the ideal realm can be utilized to provide a theoretic framework for critical examination of some of the most problematic issues

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<sup>1</sup>See, Spiegelberg, PM, p. 201.

and types of judgment found in the practical sphere.

The analysis of intellectual and practical reflection is also of interest, however, quite independent from its demonstration of the successful application of Reinach's threefold theoretic structure to problems of the concrete sphere. Many of the issues involved have been the subject of contemporary debate in connection with the question of capital punishment. The article likewise provides analysis of a particular instance where normative elements are intertwined with a system of positive Law almost to the point of defying recognition.<sup>1</sup> The intricacy of the relationships Reinach discovered beneath the practice (in German criminal law of the time) of using the presence or absence of reflection as a criterion for determining the severity of punishment, attest both to the validity of the claim that moral elements may in fact become so strongly intertwined in a legal system that they may come to defy identification as moral elements and to the fundamental significance of a theoretical framework--whether or not it is that used by Reinach--which will facilitate the differentiation of specifically moral and legal elements within a system of positive Law.<sup>2</sup> The latter is significant, but not because moral elements have no valid role in positive Law; they clearly do have a role. However, the identification of specifically moral elements will contribute to a more accurate analysis of legal problems and thus to a system of positive Law which is more self-conscious and therefore can become more self-consistent.

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<sup>1</sup>See above, pp. 135-38.

<sup>2</sup>Reinach's analysis of the two corresponding types of states-of-affairs which "should-be"--those grounded on "objective a priori moral essential connections" and those dependent on the enactment of effective determinations--is central to his approach to this problem; see above, pp. 176-83, p. 174, nt. 2.

Reinach's analysis in his legal philosophy of the influence of moral laws and values on positive Law and on the process by which the latter comes to diverge from a priori Law supports the view that both positive Law and moral norms and codes are only two among many closely related aspects of social interchange. By implication positive Law cannot be adequately studied in isolation from the context of social interchange as a whole. This realization is important both for the history of Law and for comparative Law. Its implications for the social sciences in general are likewise worthy of consideration.

Reinach found the ultimate foundation for the constitution of legal-social relations to be the legal ability of the person. This legal ability is not further reducible but rather has its final origin in the legal person as such. Nor is this legal ability, which documents itself in "social acts" and their legal effects, transferable. Insofar as it is grounded in the essence of the legal person as such, it is inseparable from that essence.<sup>1</sup> The "social act" is shown in turn by Reinach to be fundamental to social interchange, legal and non-legal, the latter being a label which may vary in its applicability in accordance with the positive laws in effect. The analysis of the social act is of key importance insofar as it provides a basis for the analysis of the relation of specific positive legal structures to the fabric of social interchange.

Reinach's analysis of the "social act" has been found to show its strength precisely in its lack of limitation to either the Austin-type emphasis on the outward verbal utterance itself or to acts with "merely"

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<sup>1</sup>See, aGbR,GS, p. 274.

legal or ritualistic effects in accordance with unambiguous rules or with social norms. An adequate treatment of the performative as a social act in the broad sense--not treatment merely as an act with legal or moral effects in accordance with unambiguous rules--must be able to deal with all performatives which arise in any given social context. Further analysis of performatives should therefore consider more fully their basis in "conventions", particularly problematic being those "conventions" which clearly have their roots in a specific culture and social structure, but do not qualify as "unambiguous rules". Olivecrona discusses both Austin's work with performatives and Reinach's distinctions between imperatives and determinations (Bestimmungen), but does not mention the latter's analysis of "social acts" or connect this with the topic of performatives. It appears that the relevance of Reinach's analysis of "social acts" to performatives has gone unnoticed.

Reinach's analysis of "determinations" or "enactments" (Bestimmungen) as social acts which, when effectively enacted, constitute valid positive Law for a given circle of persons, is a significant attempt to clarify the social basis for the validity of positive Law.<sup>1</sup> The analysis of "determinations", like those of the distinction between the moral and legal spheres and of social acts, is thus of intrinsic interest apart from its relation to Reinach's legal philosophy as a whole. The analysis of the social act of determination is also useful for attempts to clarify: 1) the divergence of positive Law from a priori essential legal connections, 2) the processes by which positive Law may be modified (legal

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<sup>1</sup>See above, p. 187, nt. 1. K. Larenz has, for example, adopted Reinach's interpretation of determinations as an explanation for the validity of legal facts.

history), and 3) the social foundations of distinct co-existing legal systems (comparative Law).

Ignorance of Reinach's criticism of Kant and Reinach's particular use of the terms "concept" and "synthetic a priori" has led to mis-interpretation<sup>1</sup> of Reinach's legal philosophy with the result that much of the criticism of the latter has missed its mark. Strong reservations were expressed above<sup>2</sup> about the implications of reference within a legal system to the notion of "the essence of a person's personality" as revealed in "ability to feel value".

The disputes above<sup>3</sup> regarding certain of the results of essential intuition found in Reinach's legal and religious philosophy all presumably illustrate the influence of cultural factors on both essential intuition and attempts to evaluate its results. The results of essential intuition in general have, of course, always been open to question. In those spheres of experience, however, such as religion, law, ethics, and inter-personal relationships, where cultural differences have their broadest significance, essential intuition must be used with particular care. Cultural differences may well also effect an individual's perception of the physical aspects of his environment as is illustrated by the now well-known examples of color perception and development of many linguistic distinctions for aspects of phenomena of importance for given cultural groups.<sup>4</sup> It is clear that pre-judgment of what is truly essential easily

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<sup>1</sup>See above, pp. 201-204.

<sup>2</sup>See, pp. 137-39.

<sup>3</sup>See, pp. 178-80, p. 141.

<sup>4</sup>See, Benjamin Lee Whorf, Language, Thought, and Reality, edited by John B. Carroll (Cambridge, Massachusetts: The M. I. T. Press, 1967).

arises when experience of diverse cultural forms and practices is limited.

The specific internal criticisms in the preceding chapters of the results of Reinach's analysis have led to the formulation of numerous qualifications and extensions of his position. Although these qualifications and extensions are not complete or final, they do indicate that it is apparently possible to resolve the problems at which criticism was directed while remaining within the theoretical framework set forth by Reinach. Problems have been found, however, to surround certain more fundamental issues for both the threefold theory and Reinach's application of it to ethics and legal philosophy. It has therefore been asserted that the nature of objective a priori connections and the evidence with which they may be grasped must be regarded as controversial in all cases.

It has been argued above that phenomenology must regard the final validity of its a priori propositions, believed to be grounded on the "self-givenness" of objective states-of-affairs, as open to question. The "hypothetical nature" of our knowledge of essential a priori connections does not appear to be deniable. It is one matter to maintain that there are objective a priori essential connections but quite another to claim that we have final knowledge of what they are. Admitting a qualification of one of its principal claims will strengthen phenomenology as a whole. The problems of evidence, illusion, error, and pre-judgment, as well as those problems which reflect the gulf between the ideal and empirical spheres, could thereby be given the recognition they warrant

without following the more drastic tack of abandoning the phenomenological method of philosophizing and what it has uniquely to offer.

The introduction of this fundamental qualification, whereby the final validity of a priori propositions, believed to be grounded on the "self-givenness" of objective states-of-affairs, is regarded as open to question, need not be regarded as utterly alien to Reinach's approach to ultimate philosophic questions. It is but one step, although a crucial one, beyond his insistence on the thorough scrutiny of essential connections and is in part a response to Reinach's own remarks on the many problems surrounding the issue of evidence. This qualification, moreover, in no way detracts from that which is of particular and lasting value in Reinach's work: the emphasis on "seeing", on being open to, the objective connections of the "given"; the analysis of knowledge as being ultimately grounded on necessary and possible a priori essential connections (Wesenszusammenhänge) and essential laws (Wesengesetze); the analysis of ontological and intentional relations in terms of levels of "founding" and "foundedness"; and the insightful application of the theoretic framework, developed through analysis of the ideal sphere, to problematic practical issues and types of judgment, as, for example, in his analysis of "social acts", "determinations", and the distinctions between specifically moral and legal elements within a system of positive Law. Each of these aspects of Reinach's work number among those which are of intrinsic philosophic value and therefore remain objects of contemporary interest.

## Appendix I

### An Evaluation of the Two English Translations of Reinach's 1914 Lecture, "Über Phänomenologie"

The translation entitled "What is Phenomenology?"<sup>1</sup>, by Derek Kelly, should not have been published. The style of presentation is far less straight-forward than that of the original. This might seem to be a misguided criticism in the light of the translator's assertion that his basic aim was "to present an English text that is as readable as possible". It is, of course, fortunate that preferences in literary style differ; however, given the fact that part of Reinach's appeal as a lecturer was the directness of his delivery and the brilliant clarity of the examples he gave, it is most unfortunate that the translation obscured this aspect of the lecture.

The translator's footnotes are for the most part either vague or incorrect. But the final and key fault of the translation is found in its complete alteration of the meaning of the text at point after point. Occasionally this results from stylistic changes and the use of vocabulary with a slightly different tone from that used in the original, (examples of this can be seen in the first paragraph of the translation). Often, however, the cause seems to have been total misreading of the German text. For example: on page 243 Kelly translates "die vielen anderen Versuche", "the many other attempts", as "the four other attempts"; on page 241 he renders "ist eine Philosophie more geometrico beim Worte genommen ein absoluter Widersinn", or "a philosophy in the geometrical style (more geometrico) is, when taken literally, an absolute self-contradiction", as "philosophy has taken the more geometrico in a completely different sense"; and on page 245 he translates "Nun...sehen Sie die Verwirrung, die das Verbleiben in den Zeichen angerichtet hat", or "now consider the error occasioned by remaining at the level of signs", as "now look at the confusion produced by the remaining symbols". In short, the translation by Derek Kelly is unreliable and not to be recommended.

The translation entitled "Concerning Phenomenology"<sup>2</sup>, by Dallas Willard, is quite good in all respects and should be useful to the general reader and student. A few comments about the translation can be added in the form of footnotes. On page 195, line 17, it would be clearer to say, "but rather by essence belongs to the I".<sup>3</sup> Throughout the lecture it is perhaps best to

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<sup>1</sup>Philosophical Forum, I (Winter, 1968), 231-256.

<sup>2</sup>Personalist, L (1969), 194-221.

<sup>3</sup>This and subsequent references are to the Willard translation, (Ibid.).

render "ich" as "I" rather than as "ego". The distinction between "mean" (meinen) and "intend" (top of page 196) should be retained in accordance with Reinach's discussion of meinen in the work on negative judgments. In line 16, page 196, Gesinnungen would be better translated as "dispositions" rather than as "convictions". The last sentence of the second paragraph on page 203 should be rendered more literally as "But here the distance from any material content is especially clear."

The discussion of ordinal and cardinal numbers involves problems of terminology, (see pages 205-209). First of all, where the word "group" or "groups" is used in this context one should read "set" or "sets". The other problem arises from Reinach's purposeful use of Anzahl and Zahl. The translator has chosen to render both as "number" although Anzahl carries with it the sense of number as quantity. Until the end of the first paragraph on page 207 it is the Anzahl which Reinach is examining. Unlike the translator, Reinach does not explicitly identify the Anzahl with the cardinal until the beginning of the third paragraph on page 208. It is characteristic of Reinach's style of presentation not to introduce a new notion or distinction until it has been motivated by analysis. The key sentence, pages 208-209, should be translated: "Is anyone indeed so far gone as to wish to derive the cardinal numbers from the ordinal numbers, i.e. to derive the Anzahlen from a mode of designation which already presupposes the Anzahlen as a presupposition?" The reader should also be aware that the translator makes no distinction between Wesen and Wesenheit, Gegenstand and Objekt, or Fakta and Sachen.

## Appendix II

On the Phenomenology of Premonitions<sup>1</sup>

In my half sleep rings the talk of men who rest during a fire pause in the batteries. A young officer had fallen the day before; shortly before the ride from which he never returned, he had, as he otherwise never did, given his orderly the trunk key, put his papers in order, and written a farewell letter. He had therefore had a premonition of his death. Other stories are added to this one. One was remarkably disgruntled and sad before the shell hit him; another had made his testament; indeed it is reported of many that they had said directly before their deaths that they would not be alive the next day. None of the common soldiers doubted that there are premonitions which let us foresee the future with certainty.

A young sergeant breaks into the conversation. I hear him as he-- a bit condescendingly--explains, how little there is to premonitions as such. Certainly everyone conjectures before a dangerous undertaking that he perhaps or probably will be killed. Should this conjecture be fulfilled, then it will pass as a mysterious premonition; should it not be fulfilled, then no one will remember it. No, there are no premonitions; only rational calculations, which prove true with more or less probability, are possible. Ever more scientific is the small sergeant and ever more silent it becomes around him. Premonitions are matters of mood. When I am sad and ill-humored the world appears gloomy to me and misfortune seems to lie ahead. Perhaps such a misfortune actually occurs. Then the number of mysterious premonitions is increased by one. Or it doesn't occur, and then no one talks of the affair. Should anyone wonder that the actualizations of dismal dispositions are especially frequent in war? For this reason there are many "premonitions" in this time, therefore also the greater number of these premonitions before Verdun or at the Somme, than at any quiet point on the front. It is sad enough that one yet believes in such things in our time. Who could oppose these words flung out with the power of higher education and rational enlightenment? Taken back, the soldiers are silent. And it may indeed be a minute before their spokesman begins a new story about a cousin who not only spoke but also wrote of his death. However, that is a reply not sufficient as a scientific claim to the preceding instruction. Shrugging his shoulders the young sergeant turns away.

In me, however, a world rises up, which for a long, long time was submerged in the all else stifling activity of soldiers at war. What are

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<sup>1</sup>English translation of "Zur Phänomenologie der Ahnungen," from "Aufzeichnungen, 26 Juli 1916 - 3 Oktober 1917." Typewritten manuscript presumably compiled by Anna Reinach from Reinach's papers. Nachlass Adolf Reinach. An edition of this unpublished German text is presented below, see pp. 245-47.

"premonitions" actually? That they are justified in themselves has just now been denied. And the argument had advanced to the assertion that there were no premonitions at all. Now that to be sure was a quite unscientific blunder by the scientific sergeant: to dispute the particular essence of a structure whose essence he had nevertheless just recognized in that he denies its inner truth and attempts to genetically explain its frequent occurrence. But we won't discredit him for that which is found often enough in yet more scientific people than he.

Whether premonitions in themselves have authority and truth, I am not able to say; cannot possibly say before I know what that actually is by its essence: a premonition. I do not know yet. But already there awakes in me the desire of the phenomenologist to bring forth a structure from the wealth of the appearances, to seize it, to submerge oneself in it and thus now to obtain the intuitive essence (anschaulichen Wesen)--acknowledged previously only in accordance with the meaning of the word--by itself.

## I.

However necessarily any premonition as such requires a related content--a "premonition" as such--just so far is the boundary of the here possible content drawn. Premonitions can refer not only to the temporal or even only to the future. Within a scientific study a premonition of the result can occur to me; here, obviously extra-temporal, is formed--a more or less determinate proposition (Satz) or state-of-affairs--the related content of the premonition. But not this premonition-content, which, as identical, also could be the content of a judgment or of a fear, rather the premonition as such--not the noematic, but the "noetic" side, to speak with Husserl,--presents the actual problem. If we avail ourselves of the division, in itself quite limited but sufficient for our ends, of the mental world (seelischen Welt) into the "spheres of feeling, will, and thought", then, since the premonition is certainly no willing, one will only be able to be undecided as to whether it could not be claimed perhaps to be a feeling. Indeed, it appears to have a good sense to speak of felt (gefühlsmässigen) premonitions, indeed of the aspect of being felt (Gefühlsmässigkeit) of any premonition. Yet it is immediately clear, that the premonition--for instance of a future event--is no feeling-state (Gefühl), like joy or sadness, no state-of-being-of the I, no finding itself so or so of the I. Far more the premonition adds something new to the whole wealth of knowledge--in the widest sense of knowledge; here the subject appears to grasp by means of the premonition, no matter whether correctly or incorrectly, something out of the flow of future occurrences which was not accessible to him before. What is meant by the words, 'aspect of being felt of the premonition', only a deeper going dissection can explain. But already here we are permitted to include the premonition--like everything which allows certain states-of-affairs to appear to the subject as subsisting now or in the future or in general--in the area of knowledge and therefore of thought, in the sense of that three-way division. In clear contrast with the premonition of future destiny is the dismay which as a feeling-state springs from this foreseeing grasping, as does all

striving and resistance, willing and not-willing, which is rooted in this feeling (Fühlen) and knowing.

Certainly "knowing" is taken here in the widest sense; in a narrower and proper sense one can indeed oppose premonition and knowing to one another. Thus after this first superficial orientation closer determinations are indispensable. In this sphere we make the fundamental and far-reaching distinction between grounding and grounded structures. I have already pursued knowing in the narrower sense in an earlier essay (Munch. Philos. Abhandl., "Zum negativen Urteil"). If we take knowing in the strict meaning as the act in which a state-of-affairs comes to givenness for us, in which it shines forth for us and the corresponding proposition (Satz) is understood by us, then the conviction which develops for us on the ground of this understanding distinguishes itself in all clearness from the state-of-affairs. We refer to the first as knowing, the second as judgment (in one of the many possible meanings of this expression). Without closer dissection both contrast with one another clearly enough, if one considers that the case of knowing concerns a punctual temporal act which cannot endure more or less, whereas we can live in a conviction as long as we like, and that furthermore a set of convictions often come to life in us without grounding themselves in an act of knowing or at any time having been grounded. Observed from this point there is no doubt that we have to class premonitions with the grounding structures, not with the grounded ones--i.e., those which by their essence are open to a grounding. Through premonitions we grasp--or we believe to grasp--the previously hidden. And in premonition a conviction also can be grounded, which in strength and inner certainty need be in no way inferior to the conviction based upon knowing. From the premonition of near death arises the certain conviction of having to die soon.

As knowing and foreseeing stand on the same level in this relation, then just thereby will the task of setting forth the fundamental difference of the two be all the more urgent.

Zur Phänomenologie der Ahnungen<sup>1</sup>

In meinen Halbschlaf hinein tönt das Gespräch der Leute, die während einer Feuerpause an den Geschützen lagern. Ein junger Offizier ist den Tag zuvor gefallen; kurz vor dem Ritt, von dem er nicht mehr zurückkam, hatte er, was er sonst nie tat, den Kofferschlüssel seinem Burschen gegeben, hatte seine Papiere geordnet und einen Abschiedsbrief geschrieben. Er hatte also seinen Tod geahnt. An diese Geschichte knüpfen sich andere. Da ist einer merkwürdig verstimmt und traurig gewesen, bevor ihn die Granate traf; ein anderer hat sein Testament gemacht; von vielen gar wird erzählt, sie hätten es direkt vorher gesagt, dass sie den kommenden Tag nicht mehr erleben würden. Keiner der Landser zweifelte daran, dass es Ahnungen giebt, die uns Künftiges mit Sicherheit voraussehen lassen.

Da mischt sich ein junger Vicewachtmeister ins Gespräch. Ich höre ihn, wie er - ein bisschen von oben herab - auseinandersetzt, wie wenig es mit solchen Ahnungen auf sich habe. Gewiss vermutet jeder vor einem gefährlichen Unternehmen, dass er vielleicht oder wahrscheinlich umkommen werde. Erfüllt sich diese Vermutung, so wird sie als geheimnisvolle Ahnung ausgegeben; erfüllt sie sich nicht, so erinnert sich niemand daran. Nein, es gibt keine Ahnungen, nur vernünftige Berechnungen sind möglich, die sich mit mehr oder minderer Wahrscheinlichkeit bestätigen. Immer wissenschaftlicher wird der kleine Wachtmeister und immer stiller wird es um ihn herum: Ahnungen sind Stimmungssache. Wenn ich traurig und missgelaunt bin, erscheint mir die Welt düster und Unglück scheint mir bevorzustehen. Vielleicht geschieht ein solches Unglück wirklich. Dann wird die Anzahl geheimnisvoller Ahnungen um eine vermehrt. Oder es geschieht nicht, dann redet kein Mensch von der Sache. Dass die Verwirklichungen trüber Stimmungen im Kriege besonders häufig sind, wen sollte das wundern? Darum die vielen "Ahnungen" in dieser Zeit, darum auch die grössere Anzahl dieser Ahnungen vor Verdun oder an der Somme, als an irgend einem stillen Punkte der Front. Traurig genug, dass man in unserer Zeit noch an solche Dinge glaubt. Wer könnte diesen mit der Kraft der höheren Bildung und vernünftigen Aufklärung herausgeschleuderten Worten widerstehen? Betroffen schweigen die Landser still. Und wohl eine Minute dauert es, bis ihr Wortführer eine neue Geschichte beginnt von einem Vetter, der seinen Tod nicht nur vorausgesagt, sondern auch vorausgeschrieben habe. Aber das ist keine wissenschaftlichen Ansprüchen genügende Erwiderung auf die vorangehende Belehrung. Achselzuckend wendet sich der junge Vorgesetzte ab.

In mir aber steigt eine Welt auf, die seit langem, langem versunken ist in der alles andere erstickenden Tätigkeit des Soldaten im Kriege. Was sind das eigentlich "Ahnungen"? Dass sie in sich berechtigt sind, ist soeben bestritten worden. Und die Bestreitung hat sich bis zu der Behauptung gesteigert, es gäbe überhaupt keine Ahnungen. Das ist nun

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<sup>1</sup>Dated Embagneux, 26 Juli 1916; from "Aufzeichnungen, 26 Juli 1916 - 3 Oktober 1917." Unpublished typewritten manuscript presumably compiled by Anna Reinach from Reinach's papers. Nachlass Adolf Reinach. Obvious errors in punctuation and spelling occurring in the transcription have been corrected.

freilich ein recht unwissenschaftlicher Missgriff des wissenschaftlichen Vicewachtmeisters gewesen: Das Eigenwesen eines Gebildes zu bestreiten, dessen Wesen er doch eben dadurch, dass er seine innere Wahrheit leugnet und sein häufiges Auftreten genetisch zu erklären sucht, anerkannt hat. Aber rechnen wir ihm nicht an, was sich bei noch wissenschaftlicheren Leuten wie ihm häufig genug findet.

Ob Ahnungen Recht und Wahrheit in sich tragen, das vermag ich nicht zu sagen; kann es unmöglich sagen, bevor ich weiss, was das eigentlich seinem Wesen nach ist: eine Ahnung. Noch weiss ich es nicht. Aber schon erwacht in mir die Begierde des Phänomenologen, aus der Fülle der Erscheinungen ein Gebilde herauszuheben, es festzuhalten, sich in es zu versenken und damit das, was bisher nur der Wortbedeutung nach bekannt war, nunmehr dem anschaulichen Wesen nach sich zu erringen.

## I.

So notwendig jede Ahnung als solche eines Beziehungsgehaltes bedarf - eines "Geahnten" als solchen - so weit ist die Grenze des hier inhaltlich Möglichen gezogen. Nicht etwa nur auf Zeitliches oder gar nur auf Zukünftiges können sich Ahnungen beziehen. Es kann mir innerhalb einer wissenschaftlichen Untersuchung die Ahnung des Resultates aufsteigen, hier bildet offenbar Ausserzeitliches - ein mehr oder minder bestimmter Satz oder Sachverhalt - den Beziehungsgehalt der Ahnungen. Aber nicht dieser Ahnungsgehalt, der als identischer auch Gehalt eines Urteils oder einer Befürchtung sein könnte, sondern die Ahnung als solche - nicht die noematische, sondern die "noetische" Seite, um mit Husserl zu reden, - stellt das eigentliche Problem dar. Bedienen wir uns der an sich recht unzureichenden für unsere Zwecke aber genügenden Einteilung der seelischen Welt in die "Fühlens- Wollens- und Denksphäre", so wird man, da die Ahnung gewiss keine Wollung ist, nur darin schwanken können, ob sie nicht etwa als ein Fühlen in Anspruch genommen werden könnte. Es scheint ja einen guten Sinn zu haben, von gefühlsmässigen Ahnungen, ja überhaupt von der Gefühlsmässigkeit jeder Ahnung zu reden. Immerhin ist ohne weiteres klar, dass die Ahnung - etwa von einem künftigen Ereignis - kein Gefühl ist, wie Freude oder Trauer, keine Ichzuständlichkeit, kein sich so oder anders Befinden des Ich. Vielmehr fügt die Ahnung dem Gesamtwissensschatze - im weitesten Sinne des Wissens gesprochen - etwas Neues hinzu; das Subjekt scheint hier, mit Recht oder Unrecht sei dahingestellt, vermittelt der Ahnung etwas aus dem Flusse künftiger Begebenheiten zu erfassen, was ihm vorher nicht zugänglich war. Was mit dem Worte Gefühlsmässigkeit der Ahnung gemeint ist, kann erst eine tiefergehende Zergliederung aufklären. Schon hier aber dürfen wir die Ahnung, wie alles, was gewisse Sachverhalte dem Subjekte als jetzt oder künftig oder überhaupt bestehend erscheinen lässt, dem Gebiete des Wissens und damit des Denkens im Sinne jener Dreiteilung zurechnen. Deutlich hebt sich von der Ahnung künftigen Geschickes das Entsetzen ab, welches aus diesem ahnenden Erfassen als Gefühl entspringt, und alles Streben und Widerstreben, Wollen und Nicht-wollen, welches in diesem Fühlen und Wissen wurzelt.

Freilich "Wissen" ist hier im weitesten Sinne genommen, in einem engeren und eigentlichen kann man ja Ahnung und Wissen einander entgegensetzen. So sind nach dieser ersten oberflächlichen Orientierung nähere Bestimmungen unerlässlich. Wir machen in dieser Sphäre den grundsätzlichen und weittragenden Unterschied zwischen gründenden und gegründeten Gebilden.

Für das Wissen im engeren Sinn habe ich ihn schon in einer früheren Arbeit ausgeführt (Münch. Philos. Abhandl., "Zum negativen Urteil"). Nehmen wir das Erkennen in strenger Bedeutung als den Akt, in dem uns ein Sachverhalt zur Gegebenheit kommt, in dem er uns aufleuchtet und der entsprechende Satz von uns eingesehen wird, so scheidet sich davon in aller Klarheit die Ueberzeugung vom Sachverhalt, die uns auf Grund dieses Einsehens erwächst. Wir bezeichnen das erste als Erkennen, das zweite als Urteil (in einem der vielen möglichen Bedeutungen dieses Ausdruckes). Beide heben sich auch ohne nähere Zergliederung deutlich genug von einander ab, wenn man bedenkt, dass es sich bei dem Erkennen um einen zeitlich punktuellen Akt handelt, der nicht mehr oder minder lang dauern kann, während wir in einer Ueberzeugung beliebig lang leben können, und dass ferner eine Menge von Ueberzeugungen in uns lebendig zu werden pflegen, ohne dass sie sich in einem Akte des Erkennens gründen oder jemals gegründet haben. Von hier aus betrachtet ist kein Zweifel, dass wir Ahnungen zu den gründenden, nicht zu den gegründeten - d. h., zu den ihrem Wesen nach einer Gründung zugänglichen - Gebilden zu rechnen haben. Durch die Ahnungen erfassen wir - oder glauben wir zu erfassen - vorher Verborgenes. Und es kann auch im Ahnen eine Ueberzeugung gründen, die an Stärke und innerer Sicherheit der sich auf ein Erkennen stützenden Ueberzeugung nichts nachzugeben braucht. Aus der Ahnung des nahen Todes erwächst die sichere Ueberzeugung, bald sterben zu müssen.

Stehen in dieser Beziehung Erkennen und Ahnen auf gleicher Stufe, so wird eben dadurch die Aufgabe um so dringender, die grundsätzliche Verschiedenheit beider aufzuzeigen.

## Appendix III

"Fragment of a treatise on the philosophy of religion"<sup>1</sup>

## Section 2: Structure of Experience

One could ask, whether in our experience (Erlebnis), which indeed quite certainly includes knowledge (Erkenntnis), there is knowledge of a a priori or empirical character. Or whether a knowledge of a third and perhaps quite unique type is present here. If we take a a priori states-of-affairs<sup>2</sup> as such, for which the predication through the subject according to its essence (Wesen) is required, and which therefore thereby becomes known, so that we sink ourselves in the essence of the subject, then there is no a priori knowledge here. But, on the other hand, also no empirical knowledge, for it concerns no contingent and temporally changeable matter of fact. Here two different intersecting distinctions must be separated.

We separate explicit and experience-immanent knowledge. Thus the enjoyment of a work of art is not knowledge, but forms the foundation for and releases from out of itself the knowledge that a picture is beautiful. However, one could ask oneself here, whether the knowledge, "it is beautiful", does not have its own intuitive foundation (Anschauungsgrundlage). To be judged quite differently, on the other hand, is a perception in relation to a knowledge of actuality (Wirklichkeitserkenntnis) insofar as the latter must always refer back to the perception for its verification. There is, after all, even in the perception a taking-as-real, though not an actual knowledge. Quite otherwise is the taking-as-reality (Wirklichkeitsnehmung) in feeling-oneself-sheltered in God; logically speaking the former is the presupposition for the latter. However, no one would draw a logical conclusion from this. It is rather immanently contained in the sense of the experience (Erlebnissinne) itself. Here we must separate two aspects: on the one side the knowledge of the being-sheltered and on the other side the knowledge of the being-there (Dasein) of God, i. e., an immediate and a mediate immanent knowledge. The experiences of thankfulness and love contain only a mediate knowledge; as position-takings they are in a certain sense derivative experiences.

I experience my absolute dependence on God. Insofar as I myself am concerned with this experienced relation, the state-of-affairs does not stand before me, rather I myself experience myself in this relation, which then naturally cannot be objective for me. In this manner, also, if I perceive an object, the corresponding relation between perception and object is not objective to me. Then comes, however, immediately a difference: in perceiving there comes to me, through reflection on it, the knowledge that "I perceive". In the experience of dependence I find myself dependent, without reflection being necessary, which indeed also could lead only to the knowledge that I feel myself dependent...

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<sup>1</sup>English translation of the two unpublished sections of "Bruchstück einer religionsphilosophischen Ausführung," 28 Sept. -3 Okt. 1917. An edition of the unpublished German text is presented below, see pp. 250-51. For text of Section 1 see GS, pp. xxxi-xxxvi.

<sup>2</sup>See above, pp. 39-40, on states-of-affairs (Sachverhalte).

## Section 3: Sceptical Reflections

He, who has partaken of such an experience, may be raised above all necessities and doubts of life, he may experience a reversal and change in himself which is comparable with no other event of his life, he may have obtained a firm direction which now makes all steps of his life firm and certain--but what has occurred beyond this pure individual event in the being-there (Dasein) of an individual? Especially, to what extent is true knowledge furthered, how can such a subjective experience claim validity for the individual or even for all men in general? So many doubts will make themselves felt to the present positions of most men with regard to the theory of knowledge, there will be so much rejection from the very beginning, that one will hardly take upon oneself the trouble to formulate the deliberations exactly...

"Bruchstück einer religionsphilosophischen Ausführung"<sup>1</sup>

2. Struktur des Erlebnisses

Man könnte fragen, ob in unserem Erlebnis, das doch ganz gewiss eine Erkenntnis einschliesst, Erkenntnis apriori oder empirischen Charakters vorliegt. Oder ob hier eine Erkenntnis dritter und vielleicht ganz eigener Art vorhanden ist. Nehmen wir apriorische Sachverhalte als solche an, bei denen die Prädikation durch das Subjekt seinem Wesen nach gefordert ist, und die daher dadurch erkannt werden, dass wir uns in das Wesen des Subjekts vertiefen, so liegt hier keine apriorische Erkenntnis vor. Andererseits aber auch keine empirische, da es sich um keine zufällige und zeitlich veränderliche Tatsache handelt. Es müssen hier zwei verschiedene, sich kreuzende Unterschiede getrennt werden.

Wir scheiden explizite und erlebnis-immanente Erkenntnisse. So ist das Geniessen eines Kunstwerkes keine Erkenntnis, bildet aber die Grundlage für und entlässt aus sich heraus die Erkenntnis, dass ein Bild schön ist. Allerdings, hier könnte man sich fragen, hat die Erkenntnis "es ist schön" nicht ihre eigene Anschauungsgrundlage. Anders ist wohl eine Wahrnehmung im Verhältnis zu einer Wirklichkeits-erkenntnis zu beurteilen, insofern diese zu ihrer Bestätigung immer wieder auf die Wahrnehmung zurückgreifen muss. Immerhin liegt auch in der Wahrnehmung noch ein für-Wirklich-Nehmen, wenn auch nicht eigentlich Erkenntnis. Ganz anders liegt in dem sich Geborgenfühlen in Gott die Wirklichkeitsnehmung, logisch gesprochen wäre sie Voraussetzung dafür. Aber den logischen Schluss wird kein Mensch ziehen. Sie liegt vielmehr im Erlebnissinne selbst immanent enthalten. Zweierlei müssen wir hierbei trennen: einerseits die Erkenntnis des Geborgenseins und dann die Erkenntnis des Daseins Gottes, d.h. eine unmittelbar und eine mittelbar immanente Erkenntnis. Den Erlebnissen der Dankbarkeit und Liebe wohnt nur eine mittelbare Erkenntnis inne; sie sind in gewissem Sinne als Stellungnahmen derivate Erlebnisse.

Ich erlebe meine absolute Abhängigkeit von Gott. Insofern ich selbst an dieser erlebten Beziehung beteiligt bin, steht der Sachverhalt nicht vor mir, sondern ich selbst erlebe mich in dieser Beziehung, die dann mir natürlich nicht gegenständlich sein kann. In dieser Weise ist mir auch, wenn ich einen Gegenstand wahrnehme, das entsprechende Verhältnis zwischen Wahrnehmung und Gegenstand nicht gegenständlich. Dann kommt allerdings sofort ein Unterschied: Bei der Wahrnehmung erwächst mir durch Reflexion auf sie die Erkenntnis "ich nehme wahr". Im Abhängigkeitserlebnis finde ich mich abhängig, ohne dass eine Reflexion nötig wäre, die ja auch nur zur Erkenntnis führen könnte, dass ich mich abhängig fühle...

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<sup>1</sup> An edition of the unpublished sections from "Bruchstück einer religionsphilosophischen Ausführung," 28 Sept. - 3 Okt. 1917, in "Aufzeichnungen, 26 Juli - 3 Oktober 1917," Nachlass Adolf Reinach.

### 3. Skeptische Erwägungen

Wer eines solchen Erlebnisses teilhaftig geworden ist, der mag hinübergehoben werden über alle Nöte und Zweifel des Lebens, er mag eine Umkehrung und Wandlung in sich erfahren, die mit keinem anderen Ereignis seines Lebens vergleichbar ist, er mag eine feste Richtung erhalten haben, die nunmehr alle Schritte seines Lebens fest und sicher macht - aber was ist über dies rein individuelle Geschehen im Dasein eines Einzelnen hinaus geschehen? Inwiefern insbesondere ist wahre Erkenntnis gefährdet, wie kann ein solches subjektives Erlebnis Gültigkeit beanspruchen für den Einzelnen oder gar für alle Menschen überhaupt? Soviel Zweifel werden sich bei der heutigen erkenntnis-mässigen Einstellung der meisten Menschen regen, soviel Abweisung von vornherein, dass man sich kaum die Mühe nehmen wird, die Bedenken genau zu formulieren.....

## Appendix IV

"Adolf Reinach", by Edmund Husserl<sup>1</sup>

German philosophy has sustained a severe loss through Adolf Reinach's early death. He was, of course, yet in the process of development when the war broke out and he, full of enthusiasm, marched off as a volunteer to satisfy the duty to the fatherland. However, the first essays had already given evidence of the independence and power of his mind as well as of the seriousness of his scientific striving, which only the most fundamental research could satisfy. Whoever was close to him, whoever learned to treasure his philosophic manner in scientific conversation, whoever had observed the scope of his studies, the intensity and diversity of his interests, might have been amazed that he decided to publish so slowly. How easily he grasped lines of thought developed verbally or in writing, how quickly he recognized the principal difficulties and saw the most remote consequences. And what a wealth of brilliant ideas were at his disposal in any deliberation. But how he restrained this aptitude which seemed to press towards fast and excellent production. He wanted to draw only from the deepest sources, he wanted to perform only lasting valuable work. He succeeded in doing so precisely by means of this wise caution. The writings which he authored since his doctorate, (the last of which appeared in his thirtieth year), are not great in number and scope, but each one is rich in concentrated thought content and worthy of the most fundamental study. His first work<sup>2</sup> was specifically influenced by Th. Lipps to whom he owed his first philosophic training. Yet already as a student in Munich he was open to the influence of the new phenomenology and joined the group of this important researcher's highly talented students who opposed his<sup>3</sup> psychologism from the standpoint of my "Logical Investigations". Reinach did not follow the changes which Lipps made in his writings after 1901 as a result of this opposition, however much Reinach also knew to value their wealth of valuable ideas. He was one of the first who was able to fully comprehend the peculiar sense of the new phenomenological method and to see its philosophical import. The phenomenological manner of thought and research were soon second nature to him and never henceforth did the conviction, so very pleasing to him, fall into doubt, of having reached the true continent of philosophy and to now know himself, as researcher, to be surrounded by an infinite horizon of possible and, for a rigorous scientific philosophy, decisive discoveries. Thus his Göttingen writings breathe a completely new spirit and at the same time manifest his efforts to dedicate himself to clearly bounded problems and through taking the work in hand to make the ultimate foundation fruitful.

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<sup>1</sup>This is the first English translation of an article entitled "Adolf Reinach," by Edmund Husserl, which appeared in Kantstudien, XXIII (1919), 147-49.

<sup>2</sup>Über den Ursachenbegriff im geltenden Strafrecht (Münchener Doktordissertation, 1905).

<sup>3</sup>Lipps', (Trans. note).

Only one of Reinach's treatises is historical. Its subject is: "Kant's Interpretation of the Humeian Problem", (Zeitschrift f. Philos u. philos. Kritik, Bd. 141; 1908).<sup>1</sup> It deserves most serious attention. For me, at that time, the sinking into the sense (Sinn) of the knowledge (Erkenntnis) about "relations of ideas" and the insight that Kant's interpretation of them as analytic judgments was a misunderstanding, were decisive on the way to pure phenomenology. Reinach, on the other hand, as an accomplished phenomenologist proceeding to the study of Kant, noted the Kantian misunderstanding immediately and devoted an instructive investigation to it.

The first of Reinach's systematic-phenomenological works, "On the Theory of Negative Judgments,"--an honorary gift for his earlier philosophy teacher<sup>2</sup>--treats difficult problems of the general theory of judgments in extraordinarily sharp thinking ways. It makes the original attempt of carrying out a phenomenological distinction between "conviction" and "assertion" and, in connection with this, of enriching the doctrine of the negative judgment through a series of phenomenological distinctions. --Very important and, it seems, little known studies then appeared in 1912/13 in the Zeitschrift f. Philos. u. philos. Kr., Bd. 148 and 149 under the title: "Reflection; its ethical and legal meaning." The purely phenomenological analysis of the essences of theoretical ("intellectual") and practical ("voluntary") reflection leads Reinach in different directions to fine and meaningful distinctions in the areas of the intellectual and emotionally-practical acts and situations; the results are then made ethically and legally useable. Of the same maturity and solidity, is finally the by far most significant and at the same time most rich in scope of Reinach's works, "The A priori Foundations of Civil Law," which, as co-editor of my "Jahrbuch für Philosophie u. phänomenologische Forschung," he presented in the first volume (1913).<sup>3</sup> It offers, as opposed to all legal philosophical outlines of the present, as of the past, a completely new type of attempt to actualize on the basis of pure phenomenology the long despised idea of an a priori legal doctrine. With singular sharp thinking Reinach draws a great diversity of "a priori" truths which lie at the base of all real and imaginable law, into the light of day; and he shows they are a priori exactly in the sense that the primitive arithmetic or logical axioms are, and thus like them, are graspable by insight as truths valid in general without exception, prior to all experience (Erfahrung). These a priori legal propositions, as for example, that a claim expires through fulfillment, that a possession through transfer passes from one person to the other, express nothing less than "determinations" (arbitrary stipulations, that something should be) as do all propositions of positive law. All such positive legal determinations indeed already presuppose concepts, as, for example, claim, obligation, possession, transfer, etc., concepts which are therefore a priori in the face of positive law. Reinach's a priori legal

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<sup>1</sup>The date of publication was 1911, not 1908, (Trans. note).

<sup>2</sup>Vgl. "Münchener philosophische Abhandlungen. Th. Lipps zu seinem 60. Geburtstag gewidmet von früheren Schülern, Leipzig, 1911."

<sup>3</sup>In the following I repeat the analysis I gave in the "Nachruf" in the Frankfurter Zeitung, 6 Dec. 1917.

propositions are therefore nothing other than expressions of unconditioned valid a priori legal truths, which are grounded purely in the sense contained in these concepts (Sinnesgehalt dieser Begriffe) and accordingly, in contrast to positive-legal stipulations, are themselves a priori.-- That which is fully original in this piece of work, masterly from every point of view, consists in the knowledge that this a priori belonging to the unique essence of any law in general, is to be sharply distinguished from another a priori that refers to all laws by means of norms of evaluation: for all law can and must be placed under the idea of "correct law"--"correct" from the standpoint of morality or some objective expediency. The development of this idea led to a quite distinct a priori discipline, but one which aims at the realization of the fundamentally mistaken ideal of a "natural law" as little as Reinach's a priori legal doctrine. For it can set forth only formal legal norms from which a positive law is to be pressed out as little as objective scientific truth is to be from formal logic.--No one, who is interested in a rigorously scientific legal philosophy, in a final clarification of the fundamental concepts constitutive for the idea of positive law in general (a clarification, which obviously is to be accomplished only through phenomenological submersion in the pure essence of consciousness of law), will be able to overlook this pioneering work of Reinach. For me it is beyond doubt that it will give the name of its author a lasting place in the history of legal philosophy.

In the last years before the war Reinach was concerned with fundamental problems of general ontology and, concerning the essence of movement in particular, he believed he had established decisive phenomenological insights. There is the hope that valuable pieces from his incomplete literary drafts can be made accessible to the public. In the war itself he devoted his powers with never failing willingness to the fatherland. But his religious disposition was too deeply afflicted by the monstrous war experiences for him not to have had to venture an attempt at the time of a relatively quiet service at the front to develop his conception of the world (Weltanschauung) in the philosophy of religion. I understand that he in fact made his way to a clarity satisfying to him: the enemy bullet struck one who was composed, fully in agreement with himself and God.

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The bibliography lists all the editions of Reinach's published works. It is to be regarded as possible that some unpublished materials, in addition to those listed below, may still exist in the possession of Reinach's personal friends or their heirs and may eventually be given to appropriate libraries and archives. To the best of my knowledge no translations of works by Reinach other than the three listed have been published. The section entitled "Other Sources" lists all additional sources to which reference was made in the thesis. It does not contain a complete listing of all the articles and books which contain explicit reference to and criticism of Reinach's work but only those which I have personally examined. To the best of my knowledge, however, the bibliography is representative of the range of critical reaction to Reinach's work.

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The system of annotation used in this section is the following:

(S) = source referred to by Reinach or presumed to have been known to him.

(R) = contains explicit reference to or criticism of Reinach's work.

(B) = contains biographical or historical information or is of historical rather than philosophical interest.

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