

What Has Logic Got to Do with It? On the Use of Logic in Christian Wolff's Theory of Natural Law

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1	Introduction	310
2	The Ontological Basis of Natural Law Theory and its Relationship to Logic	310
3	Logic and Epistemology: the Dualism of the Theory of Knowledge Demonstrated with the Help of Logic	313
4	The Criticism of the Use of Logic in Natural Law Theory	315
5	Kant's Solution to the Problem: Logic has only a Regulative Function	318

1 Introduction

A characteristic feature of the theory of legal methodology prior to Immanuel Kant's critical philosophy was the extraordinary significance attributed to logic. This central role was not only with respect to the theoretical basis of the argumentation, but also with respect to its structural construction. This meant that the task of logic not only consisted of guaranteeing that the legal argumentation was free from contradictions and therewith consistent, but also that logic was the true core of methodology theory. Such an emphasis on the logical character of legal argumentation at first glance however appears to not only have a limited validity with respect to pre-Kantian legal theory. Even modern legal theory assumes that logic has a double function. It is highlighted not only as a fundamental element in legal reasoning, but is also considered an independent type of methodology – one among many. Stig Strömholm consequently refers to logic partly as a "negative control instrument" with the task of detecting and eliminating contradictory legal arguments,¹ and also as a specific type of scientific legal methodology:

When one speaks of the "logician's" ... manner of posing and discussing issues as to the "valid law", it is a special form of structural analysis being envisioned: Can one construct a contradictory-free and consistent system for *determining the validity of norms as from other norms*, and in such a case, what is the structure of such a system?²

That encompassed here obviously is not logic as an analytical dissection of legal argumentation. Instead, logic is perceived as a path to a synthetic knowledge of the legal system. With the assistance of logic, a logically consistent system of norms can be constructed and new norms can be deduced in a logical manner.

The understanding that logic constitutes a path to knowledge as to the substantive law has had a very long historical tradition. One can thus argue that the close connection between logic and ontology constitutes a scientific philosophical theme with roots in the thought of the ancient world.³ For my contribution, I have chosen Christian Wolff as an example of this use of logic. This topic has been limited further to encompass only the role of logic in the construction of Wolff's theory of Natural Law.

2 The Ontological Basis of Natural Law Theory and its Relationship to Logic

For Christian Wolff and the so called Schulphilosophie, logic served as a guarantee that a priori objective knowledge was possible, in other words, with the help of logic, absolute and incontestable statements as to how the object

¹ Strömholm, Stig, *Rätt, rättskällor och rättstillämpning*, 5 ed., Lund 1996, p. 401.

² Strömholm, p. 62.

³ Kaulbach, Friedrich, *Philosophie der Beschreibung*, Köln 1968, p. 90 ff. See also Coplestone, F., *A History of Philosophy*, vol. I, London 1946, p. 142 ff.

realm is constituted can be reached, for example, the postulates of Natural Law that fulfill these criteria.

The methodology of Natural Law Theory cannot be understood without insight into its ontological basis, namely a dualistic object structure. On one side, there is the object's essence, the transcendental object systemization. On the other side, there is its existence, in other words, the temporally and spatially determined realm of experience. It can be seen from these definitions that the essence and the existence constitute two contradictory principles. The essence refers to something absolute, in other words, to an autonomous and consequently necessary basis for knowledge, while the existence constitutes a temporally and spatially relative manifestation. These contradictory definitions, the essence and the existence, or the being and the manifestation, are distinguished with the assistance of the principle of contradiction: A is not not-A.

That existing in time and space (existentia) has its basis in something else, which at the same time constitutes the reason as to its existence (essentia), as *ex nihilo nihil fit*. The manifestation must be able to be tied together with a reason, which is possible and therewith necessary, as that which is possible cannot at the same time be impossible (compare the principle of contradiction). Consequently, a stone that did not previously exist cannot suddenly begin to exist, if it is not created by something possessing a being to the same or higher degree. This was summarized by Gottfried Wilhelm Leibniz as the principle of sufficient reason (*ratio sufficiens*). The reason is that which makes it so that I understand why something is. An existing thing consequently has a sufficient reason, when something exists, from which one can derive why the thing is. Wolff formulated this relationship in the following manner:

Wo etwas ist, woraus man begreifen kann, warum es ist, das hat einen zureichenden Grund. Derowegen wo keiner vorhanden ist, da ist nichts, woraus man begreifen kann, warum etwas ist, nämlich warum es wirklich werden kann, und also muss es aus nichts entstehen. Was demnach nicht aus nichts entstehen kann, muss einen zureichenden Grund haben, warum es ist, als es muss an sich möglich sein und eine Ursache haben, die es zur Wirklichkeit bringen kann, wenn wir von Dingen reden, die nicht notwendig sind. Da nun unmöglich ist, dass aus nichts etwas werden kann; so muss alles, was ist, seinen zureichenden Grund haben, warum es ist, das ist, es muss allezeit etwas sein, daraus man verstehen kann, warum es wirklich werden kann.⁴

With the assistance of the principle of contradiction, Wolff maintains that that which is the reason cannot at the same time be based in something else. The reason consequently is necessary:

Wenn man demnach mancherlei in einem Dinge von einander unterscheiden kann; so muss einiges unter ihnen den Grund in sich enthalten, warum das übrige ihm zukommt, und weil dieses nicht wiederum seinen Grund, warum es demselben Dinge zukommt, in einem von dem übrigen haben kann, wie es durch den Grund des Widerspruches sich garleicht begreifen lässt, so muss es ihm

⁴ Wolff, Christian, *Vernünfftige Gedancken von Gott, der Welt und der Seele des Menschen*, Halle 1725 (hereinafter referred to as "Deutsche Metaphysik"), § 30.

notwendig zukommen. Denn was notwendig ist, braucht keinen weiteren Grund, warum es so ist. Nämlich in jedem Dinge ist etwas notwendiges, wodurch es in seiner Art determiniert wird, und das übrige hat seinen Grund darinnen.⁵

That which in itself is the reason and consequently the reason for everything else is the being. When a thing's being is known, the reason for everything attributed to the thing consequently becomes obvious. However, the being first becomes perceivable to reason through its manifestation. The manifestation, which becomes perceivable through the temporal and spatial determinations – the thing's systemic principles – is identical with the consummation of its movement from possibility to reality. The spatial and temporal determinations entail that the being is individualized. In addition to the necessary attributes of the being, a series of determinations is given that belong to the changeable world's accidents or coincidences. The being is thereby transformed to a temporary historical manifestation. The object in its existence can therefore demonstrate an unpredictable number of variations. On the other hand, in its essence it is always the same, it is necessary and identical with itself. With respect to the being's necessary character, Wolff maintains that:

[D]a die Welt anders hätte sein können, als sie ist; so gehört sie unter die zufälligen Dinge und ist daher in Ansehung ihrer Wirklichkeit nicht notwendig. Ich sage mit Fleiss, in Ansehung in ihrer Wirklichkeit: denn in Ansehung ihres Wesens ist und bleibt sie wie alle übrige Dinge notwendig. Wie denn zugleich hieraus erhellt, dass nichts in Ansehung des Wesens, sondern nur in Ansehung der Wirklichkeit zufällig ist. Nämlich da das Wesen in der Möglichkeit besteht; so geht es nicht an, dass etwas zugleich möglich und auch unmöglich sein kann.⁶

The systematization in the object realm is defined with the help of logic and the purpose is to guarantee a path to scientific knowledge: Behind that which appears, is something that is. Logic, in other words, is no pure principle of thought, but rather represents a fundament principle for a priori knowledge of the object. Logic accordingly has received a knowledge building or synthetic function.

The connection between the principle of contradiction and the principle of causality conceals however a fundamental problem: these two contradictory attributes cannot be in a cause-effect relationship to each other. This would namely mean that they contain each other in different proportions. If this were the case, the first determination must be stated and the relationship must then be defined as something relative. In such a case, this means that it would be impossible to maintain the idea of an absolute knowledge, as everything becomes more or less a priori and a posteriori, respectively. The fundamental choice for this methodology theory, whose task specifically consists of maintaining the rigorous division between a priori and a posteriori, thus collapses.

To use logic with the help of the principles of causality and of contradiction for the purpose of demonstrating the existence of the object realm and in

⁵ Wolff, *Deutsche Metaphysik*, § 32.

⁶ Wolff, *Deutsche Metaphysik*, § 576.

addition, its dualistic structure, crosses over to the epistemological question, in other words, to what extent is it possible to obtain knowledge of the realm of the essence.

3 Logic and Epistemology: the Dualism of the Theory of Knowledge Demonstrated with the Help of Logic

The division of the object realm into necessary unity and occasional diversity, in other words, the essence and the manifestation, demonstrated and confirmed with the help of the principle of contradiction, resulted in a comparable division of knowledge. As knowledge according to the “Schulphilosophie” is reduced to constitute only an image of the object realm, it also follows that knowledge is characterized by a bifurcation of philosophical and historical knowledge. When the thing is realized in the temporally and spatially bound world, it is transformed into a temporary manifestation. Knowledge as to this manifestation has its support in *observatio*, in other words, in the observation of individual phenomena, which through an inductive process can lead to general representations. The observation and manifestation merge. Historical knowledge consequently relates to *existentia*, in other words, to that which is contingent. A higher knowledge is placed against this knowledge, the philosophical, necessary knowledge. Wolff describes this dualism of knowledge in the following way:

Cognitio eorum, quae sunt atque fiunt, sive in mundo materiali, sive in substantiis immaterialibus accidant, historia a nobis appellatur; exempli gratia *historica* ejus est cognitio, qui expertus novit, solem mane oriri, vespere autem occidere; initio veris gemmas effrondescere arborum; animalia propagari per generationem; nos nihil appetere nisi sub rationi boni.⁷

In a different work, Wolff states “[c]ognitio rationis eorum, quae sunt, vel fiunt, philosophica dicitur.”⁸ Philosophy is the knowledge that something can exist or the knowledge as to the reasons for that which occurs in the realm of experience. Philosophical knowledge represents the thing’s *essentia*, while historical knowledge is related to *existentia*.⁹

Knowledge of the being constitutes scientific knowledge, as it meets an absolute knowledge, the thing in itself. In other words, it is the object’s identity which guarantees the scientific character and not the method: “[C]ertitudo ... non e methodo, sed e principiis pendet”.¹⁰ The ontological truth thus constitutes a prerequisite for the logical truth.¹¹

⁷ Wolff, Christian, *Philosophica rationalis sive Logica*, Frankfurt & Leipzig 1740, § 3.

⁸ Wolff, *Logica*, c. 1, § 6.

⁹ Compare Baumeister, F.C., *Philosophia definitiva*, 1746, § 1-2: cognitio causarum respectively cognitio factorum.

¹⁰ Ickstatt, J.A., *Meditationes praeliminares de studio juris*, Würzburg 1731, § 38.

¹¹ Wolff, Christian, *Philosophia prima sive Ontologia*, Frankfurt & Leipzig 1736, § 499: “Si nulla datur in rebus veritas transcendentalis, nec datur veritas logica propositionum universalium, nec singularium datur nisi in instanti”.

We consequently have to deal with two separate types of knowledge and we recognize the structure of the argumentation from ontology: they can be distinguished from each other with the help of the principle of contradiction and be reunited with the help of the principle of sufficient reason. The tenability of the argumentation stands beyond all doubt and is confirmed, according to Wolff, by experience: “Wir haben demnach zweierlei Wege, dadurch wir zur Erkenntnis der Wahrheit gelangen, die Erfahrung und die Vernunft. Jene gründet sich in den Sinnen; diese aber in dem Verstande.”¹²

The two separate types of knowledge and the use of the demonstrative methodology among the Wolffian jurists gave rise to two different types of demonstration: an historical and a philosophical.¹³ In the Natural Law area, the demonstrations were philosophical, as Natural Law propositions stemmed from necessary reasons. The Positive Law demonstration in contrast was historical, as it traced the valid law back to historical legal sources, and then primarily legislation.

In this context, the truth thereby constitutes an ambiguous concept. The historical truth is inferior to the philosophical, in other words, the scientific truth. The philosophical demonstration or deduction is a logical automaton, guaranteeing that the conclusion has the same quality with respect to knowledge as the basis.

The philosophical demonstration however is not sufficient, as the a priori reasons lack content. They must be filled in with the help of an opposite path of knowledge. Induction therefore becomes a requirement and the beginning to the strived for scientific argumentation, in other words, deduction. The inductive process is based, in its turn, upon the principle of sufficient reason and its suitability for its purpose can be demonstrated with the help of logic: “Da nichts wirklich werden kann, als was möglich ist; so ist alles wirkliche auch möglich, und kann man von der Wirklichkeit auf die Möglichkeit jederzeit ohne Anstoß schließen. Nämlich wenn ich sehe, das etwas ist, so kann ich annehmen, dass es sein kann.”¹⁴

The result is that an identity exists between the principles of nature and of logic. As knowledge in accordance with this scenario cannot be something other than an image of the systemization of things, this thought structure corresponds to the structure in the object realm. Each thought consequently must have its *ratio sufficiens*. With respect to this theme, Wolff states that:

Es dienen nämlich die Schlüsse dazu, daß wir begreifen, wie immer ein Gedanke in einer unverrückten Reihe aus dem anderen erfolgt, und dass man solchergestalt den Grund anzeigen kann vor allen den Gedanken, die aus einem anderen entstanden, und etwas vorstellen, so unseren Sinnen nicht zugegen ist.¹⁵

¹² Wolff, *Deutsche Metaphysik*, § 372.

¹³ Nettelblatt, D., *Unvorgreifliche Gedanken von dem heutigen Zustand der bürgerlichen und natürlichen Rechtsgelahrtheit in Deutschland*, Halle 1749, p. 48.

¹⁴ Wolff, *Deutsche Metaphysik*, § 15.

¹⁵ Wolff, *Deutsche Metaphysik*, § 341.

This causal connection is described as a chain, which binds the dependents to one system. In the beginning of the chain, there is the absolute, that which in itself is independent, in other words, the a priori reason or being. A dependent link, the individual link in the chain, is conditionally determined, it exists as a relation to that which immediately precedes and that which immediately follows. A relative link is through the connecting links connected to the first absolute. The systematization in the being or object realm is described with the help of the depiction of the chain and its absolute beginning (compare the enumerator idea by Descartes). If the chain from the different dependent relationships reaches its end by a movement of thought reaching an in itself highest independent point, the time is at hand for reason, with this highest ground as an origin through the levels already touched upon in the analysis in the induction, to return to the originally observed empirical phenomena.¹⁶ To have knowledge of a thing according to this methodology theory is to have acquired this concept.¹⁷ The concept is the form of knowledge in which reason perceives the being.

In a correct definition of a thing, the logical attributes or knowledge related attributes must therefore concur with the ontological. The definition of a being consequently carries this being.¹⁸ The logical truth is an image of the transcendental truth, in other words, a truth grounded in its own being and which exceeds the boundaries for the perceived and recognizable realm of experience: “Veritas adeo, quae transcendentalis appellatur et rebus ipsis inesse intelligitur, est ordo in varietate eorum, quae simul sunt ac se invicem consequuntur, aut, si mavis, *ordo eorum, quae enti conveniunt*”.¹⁹

The consequence is that the logical level of truth in the concept or definition does not have any independence, but rather assumes a transcendental truth. In its capacity as an image, in other words, knowledge is entirely dependent upon the being.

In summary, it can be argued that the use of logic by the “Schulphilosophie” was equivocal. On one side, logic has an ontological function, for with its help the existence of object realm as well as its dualistic structure can be proven. On the other side, logic has an epistemological function, namely to ascertain the certainty of the deductibility of knowledge.

4 The Criticism of the Use of Logic in Natural Law Theory

The principle of sufficient reason, however, cannot lead to knowledge on an irrefutable basis, as this would assume a complete view as to the realm of experience. The result of induction can only be something approximate, in other words, something more or less occasional or historical. For this reason, one can with certainty only make those statements as to that which allows itself to be formulated on the lower levels in the chain of argument. When it comes to the

¹⁶ Kaulbach, *Philosophie der Beschreibung*, p. 147 ff.

¹⁷ Wolff, *Deutsche Metaphysik*, § 273.

¹⁸ Wolff, Christian, *Vernünfftige Gedancken von den Kräften des menschlichen Verstandes und ihrem richtigen Gebrauch in der Wahrheit*, Halle 1719 (Deutsche Logik), chap. 1, § 48.

¹⁹ Wolff, Christian, *Ontologia*, 1736, § 495.

highest "sufficient" reason, one cannot with any certainty make any statement, as one can find that the reason as discovered can be substituted by a qualitatively better reason. This insufficiency must therefore be overcome by a particular method, namely the historical demonstration, based on the conviction that it is possible to cross the boundary between the two dimensions of existence. The attempt, for example, to trace contract types in different positivistic legal systems to a mutual source is based on empirical observation and inductive work.

Deduction on the other hand entails that all conclusions made from an irrefutable basis have the same theoretical knowledge quality as the basis itself. All individual aspects are peeled away – nothing new may be introduced - which also means that no connection to the historical facts can be achieved. Induction and deduction cannot coincide, and therefore how a priori facts can be transformed into a priori reasons cannot be explained. The irrefutable reason has no connection to the actual reality.

The conviction that it was possible, with the help of logic, to cross over the realm of experience and reach an a priori reason has shown itself to be wishful thinking. The possibilities of logic in this aspect have been demonstrated to be most limited. That which Kant refers to as the dogmatic mistake was a result consistent with the impossibility of crossing the boundary between the a posteriori and the a priori. The principle of sufficient reason actually expresses nothing other than that which Kant refers to as the dogmatic mistake. The conclusion begins with a vague assumption, *sufficient*, which later with the help of the principle of contradiction is transformed into something necessary. Knowledge of the being is consequently nothing other than empirical knowledge, which in an arbitrary manner is declared to be a priori knowledge. The attempt to present the origins of the theory of knowledge and the scientific methodology theory in two logical proofs inevitably leads to a priori. In actuality, it is a logical impossibility in a causal relationship to connect two types of knowledge, which from the beginning are defined as a contradictory, opposite pair: the principle of contradiction and the principle of sufficient reason are two, in relationship to each other, opposite principles, which cannot be combined. If causality is to function, in other words, that the being and its expression in the realm of experience are to be understood as a cause-effect relationship, the principle of contradiction must be abandoned. This is a problem that does not allow itself to be eliminated, indicating a fundamental theoretical mistake. If one of a theory's fundamental pillars must be abandoned for the other to be viable, the theory in its entirety must fall.

Related to this, in addition, is the fact that the principle of sufficient reason is treated as a logical principle, but in actuality it is a mechanical or natural principle. This means that the principle of contradiction and the principle of sufficient reason are not compatible with each other, and therefore, cannot work together towards a conclusion in the manner posited by the Scholastics. By combining two "analytical proofs" with one another – the principle of contradiction and the principle of sufficient reason – Wolff argued that he could prove that outside of consciousness or reason, an object realm existed which expressed itself in representations. The reason for the representations must be something separate from the consciousness, as the force of the principle of

contradiction cannot have its basis in the consciousness as well as at the same time in the object realm outside of the consciousness. The conclusion therefore was that the representations have their sufficient reason in the object realm. Each representation is caused by the thing in itself. This line of thought, however, leads to an insolvable contradiction. The human being is based in the consciousness: by thinking, I know that I exist and that I, in relationship to other things, am something independent. These thoughts belong to the consciousness and they therewith are something separate from the thing. Encompassed in the thoughts is knowledge in understandable units, forms of knowledge, which consequently have their basis in the consciousness.

Induction does not lead to the desired result, in other words, the law's a priori reason, the Natural Law principles. The effort, by transcending the positive law to reach the Natural Law, was consequently impossible to perform. With respect to the fact that the theory of Natural Law and the theory of positive law represent two separate types of knowledge, which are formulated in a contradictory opposite relationship, the represented deduction according to the chain model is a logical necessity. First, it is inevitable that the a priori and a posteriori are combined. If one depicts legal premises as links in a chain, this means that the a priori and a posteriori are combined, at least at those places where the links connect. Second, it is logically impossible that one can see something as more or less a priori.

With these given prerequisites, one consequently cannot reach continually higher a priori units. The result of the Natural Law Theory confirms this philosophical problem. That which is portrayed in Natural Law Theory consists in reality of nothing other than a sum of historical Roman legal institutions. With respect to this dilemma of Natural Law Theory, Friedrich Carl von Savigny maintained entirely consequentially that "die juristischen Naturrechte stellen römische Rechtswahrheiten nur abstrakter auf und glauben sie dann durch Philosophie gefunden zu haben".²⁰

The result therefore can be described as "apriorisch schon aufgefundene Sätze".²¹ In actuality, Natural Law Theory is also viewed with a great degree of skepticism by its Positive Law colleagues: Natural Law theory is as an anatomist at a sickbed, the latter is no physician and therefore cannot make any diagnosis, the former is no lawyer and therefore cannot provide any solution to actual legal problems.²² The theory of Natural Law does not teach the law as it is applied, but rather as it ought to be.²³ As a consequence of the actual limitations which exist in the argumentation of Natural Law Theory, J.F. Reitemeier gave his contemporary legal colleagues the following advice:

Es scheint auch wirklich ratsamer zu sein, lieber auf die alte Weise das positive Recht mit Vernachlässigung seiner Gründe bloss als eine Wissenschaft für das

²⁰ Savigny, Friedrich Carl von, *Juristische Methodenlehre*, Ed. G. Wesenberg, Stuttgart 1951, p. 49.

²¹ Savigny, *ibidem*.

²² Meister, J.C.F., *Über das juristische Studium besonders auf Akademien*, Berlin 1780, p. 60.

²³ Nettelbladt, D., *Von dem rechten Gebrauch*, p. 124.

Gedächtnis zu bearbeiten, als nach Art jenes Naturalisten in der Jurisprudenz zu spielen.²⁴

The closest a priori situation in which academic legal thinking immersed itself is confirmed by the tenuous position of Natural Law Theory as a legal source. Not unexpectedly, that which could not be tied together in theory namely was not adequate in practice. The crown jewel, in other words, Natural Law Theory, was reduced to something secondary, even to something that could be relegated. In the absence of other legal sources, a person in need could receive help from Natural Law.

5 Kant's Solution to the Problem: Logic has only a Regulative Function

Wolff's use of logic knew no boundaries: For Wolff, logic was not only a perfect science, but it was also a guarantee for the possibility of a priori object knowledge, in other words, with its assistance it was possible to reach absolute and incontrovertible findings as to the object realm's qualities. This metaphysical being tradition within philosophy during the 1700's was the object of sharp criticism by Empiricism. David Hume, the most active voice, reconciled the Scholastic philosophy's being and the concept of causality. In accordance therewith, he rejected the idea of a transcendental truth.²⁵ For Hume, there consequently was no reason to investigate whether logic offered a path foreign to the science of knowledge. By removing the transcendental knowledge of the object as well as the transcendental quality of knowledge, it automatically followed that the use of logic as a methodology to obtain material knowledge of the object was overplayed. Kant's situation was different. His ambition to defend scientific knowledge led him to the Copernican revolution. Therewith, the question as to the actual breadth of knowledge was the focus:

Was die besondere, Leibnizen und Wolffens eigene dogmatische Methode des Philosophierens betrifft: so war dieselbe sehr fehlerhaft. Auch liegt darin so viel Täuschendes, dass es wohl nötig ist, das ganze Verfahren zu suspendieren und statt dessen ein anderes – die Methode des kritischen Philosophierens, in Gang zu bringen, die darin besteht, das Verfahren der Vernunft selbst zu untersuchen, das gesamte menschliche Erkenntnisvermögen zu zergliedern und zu prüfen: *wie weit die Grenzen desselben wohl gehen mögen.*²⁶

²⁴ Reitemeier, J.F., *Encyklopädie und Geschichte der Rechte in Deutschland*, 1785, p. XVIII.

²⁵ Immanuel Kant, *Vorrede zu Prolegomena zu einer künftigen Metaphysik*, in Immanuel Kant, *Werke in sechs Bänden*, Ed. Wilhelm Weischedel, Darmstadt 1983, Bd. III, p. 115: "Seit Lockes und Leibnizens Versuchen, oder vielmehr seit dem Entstehen der Metaphysik, so weit die Geschichte derselben reicht, hat sich keine Begebenheit zugetragen, die in Ansehung des Schicksals dieser Wissenschaft hätte entscheidender werden können, als der Angriff, den David Hume auf dieselbe mache."

²⁶ Kant, *Werke III*, p. 456.

It was natural for Kant therefore to place Wolff's use of logic under the microscope. Wolff and the "Schulphilosophie" under the protection of logic had not seen any boundaries as to how far knowledge could go. This criticism by Kant was based on the distinction between analytical and synthetic proofs:

Der erste Schritt, der in dieser Vernunftforschung geschehen ist, ist die Unterscheidung der analytischen von den synthetischen Urteilen überhaupt. – Wäre diese zu Leibnizens oder Wolffs Zeiten deutlich erkannt worden, wir würden diesen Unterschied irgend in einer seit dem erschienen Logik oder Metaphysik, nicht allein berührt, sondern auch als wichtig eingeschärft finden. Denn die erste Art Urteile ist jederzeit Urteil a priori und mit dem Bewusstsein seiner Notwendigkeit verbunden. Das zweite kann empirisch sein und die Logik vermag nicht die Bedingung anzuführen, unter der ein synthetisches Urteil a priori statt finden würde.²⁷

Consequently, according to Kant, the use of logic was very limited, as with its help, we can only determine if something is either possible or impossible. On the other hand, logic cannot give us any answer as to how something actually is. Herein, Kant maintains, lies the Achilles heel of the "Schulphilosophie". The principle of contradiction for Kant is an analytical statement that does not create knowledge, but only has a regulative function: It guarantees that the thinking is free of formal mistake. In addition, the utility of the principle of contradiction assumes that that which is being compared has the same quality of theoretical knowledge. The being and the conscious being however have entirely different qualities. They are the opposite of each other, and cannot exclude each other. The specific character of reason, the conscious being, excludes the possibility of confirming reason as a thing, *res cogitans*. Obviously, the use of the principle of contradiction by the "Schulphilosophie" also led to the circumstance that reason was attributed an independent quality with respect to theoretical knowledge in relation to the thing itself. By representing the consciousness as the specific expression of the self, Descartes and later Wolff in actuality recognized a characteristic that does not exist in any other object. Therein *res cogitans* is distinguished from all other objects and consequently cannot be viewed as a thing. The "Schulphilosophie" ended up at a turning point: on one side, the first certain basis for the knowledge of the thinking self – consciousness constitutes the being - and on the other side, the thing itself as the exclusive basis for knowledge, which exists independent of the conscious self. Two competing basis for knowledge therewith exist, and it is unclear how and why reason should transgress the realm of experience and acquire an a priori reason, which lies outside of reason.

Kant's criticism of the ability of reason to define an absolute boundary for possible knowledge was:

Alle analytische Urteile sind Urteile a priori und gelten also mit strenger Allgemeinheit und absoluter Notwendigkeit, weil sie sich gänzlich auf dem Satze des Widerspruchs gründen. Synthetische Urteile können aber auch Erfahrungsurteile sein, welche uns zwar lehren, wie gewisse Dinge beschaffen

²⁷ Kant, Werke III, p. 596.

sind, niemals aber, dass sie notwendig sein müssen und nicht anders beschaffen sein können: z.B. alle Körper sind schwer, da alsdenn ihre Allgemeinheit nur komparativ ist: Alle Körper, so viel wir deren kennen, sind schwer, welche Allgemeinheit wir die empirische, zum Unterschied der rationalen, welche, als a priori erkannt, eine strikte Allgemeinheit ist, nennen können.²⁸

The development of logic from a Natural Law to a law of reason constitutes in actuality the separation of the study of law from science. Jurisprudence or the positivist legal theory cannot fulfill those criteria that the Kantian knowledge ideal poses, as the object *law* has characteristics that exclude legal studies from Kant's definition of science. Kant's criticism means that logic and ontology take separate paths. Logic thereafter consists exclusively of the structure of knowledge in the formal sense.

The limitation of logic to exclusively encompassing formal knowledge relationships is confirmed by the inability of jurists to maintain a dialogue between the methodology type and the substantive law. The critical discussion within law regarding logic as a possible methodology is based on the representation that logic constitutes a possible alternative as to reworking substantive legal issues. In accordance with such an understanding, logic would be able to provide us with new knowledge as to legal conditions. In contrast to Kant's critical review of logic, the question as to the extent logical analysis can be seen to have is not in itself addressed. Instead, the criticism of this methodology type first arises when the results are tested and evaluated. First, when a result has been reached empirically taking into consideration the fact that the substantive law is meager and equivocal, logic can then become the object of criticism in the sense that reality is so complex that it does not allow itself to be contained in abstract logical models. Consequently, Stig Strömholm's summary is characteristic of the approach by jurists as to the role of logic in legal methodology theory:

Strictly formalized logic in general has been assessed to be of minor practical importance for a person applying the law, if only also because this science has become so "technical" and inaccessible that specialist competence is required in order for its methods and results to be understandable in general. At the same time, it is argued that those relationships, which even a very highly developed and methodically well-equipped logic can study, must necessarily be systematized and simplified; the complicated interplay between precise norms, unwritten and vaguely formulated rules of operation, evaluative assessments of a more general character and finally, detailed evaluations of the individual facts which characterize the application of the law in not entirely simple lawsuits, is scarcely ever available for an analysis with such methods.²⁹

²⁸ Kant, Werke III, p. 664.

²⁹ Strömholm, p. 141.