

Law in the World of Values

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Introduction

How can legal norm and values influence the change of behavior? This is the question that can be expected, because human existence without values, in its very core, cannot be considered. Human existence, without values, would be like animal survival and not like free Christian life. For these reasons we can say that there cannot be legal issues without values considered.

Man and his life remain a pure organic process if we exclude values. Thus, Max Weber and Leo Strauss point to our relation towards values as indispensable. It is actually about Weber's insisting on the role which values play in the social science.¹ Looking at it from the ontological point of view, the existence of man without values is impossible. If law was cleared of values it would be crippled in its human core.

In case man really didn't take part in realization of values he would not be in position to realize his humanity. Man's deeds would have all the marks of unquenchable longing for the establishing the relation between our reality and values only in case of the realization of values. This would refer to law as well, which is also the value product of the human spirit. Therefore it is necessary to divert attention to the axiological surface of law and then to the legal system as a whole. If values were excluded from the legal system, as the creation of the human spirit, as a reason for its existence, law would turn into a pure formal and legal way of existence with the legal norm. Since the realization of law lies in the very construction of law, it is necessary to establish the place of law in the world of values.

The best way to recognize a man is to know what kind of future he is creating. His creation of future is based on values. The formulation of legal norm is also a way of forming future, the future of nations, not of a person. Thus, the extent to which legal norm has influence on future can be unforeseeable. That's why it is so important to incorporate values into legal norm. Values are moved into the center of life. They cause lasting belief.

Values stand for standards which rule our behaviors. They help us measure and judge situations we face in life. At the same time values have function of motivation, which is expressed as our striving towards achieving values.²

¹ L. Strauss, *Prirodno pravo i istorija*, the original title *Natural Right and History*, Beograd, 1997, 36.

² For example, we strive to be honest.

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Thus, if we look at the etymology, the word Value comes from the Greek word *TIME* which means value, and the Latin word *VALEO* which means strong, healthy, good. In English for the concept of value the word *VALUE* is used, in German the word *WERT* is used. As the word we use in everyday speech it conveys the meaning of something that is good, true, beautiful, just.

The world of values is not apart from our reality for it is the purpose of all that exists. Perhaps it is more appropriate to say that it is about the demand to embrace values into our reality. In this case value is not related to fiction, to something made up, but it is related to something real. Besides, the very purpose is directed towards something which shows values. According to Nicolai Hartmann, one can strive towards almost all moral values. Almost all values can be realized, but one should be careful.

Hermann Lotze developed the same idea as for the purpose of values. He believes that the power of the origin is in faith. Thereby Lotze accepted theological idealism. According to the theological idealism the value which is the base of all is in God. Thus, the reality of our world and the reality of law are subordinate to values personified by God. Their relevance is absolute for the opposite would be impossible. Values have absolute not partial meaning. It is impossible to think of values which would have partial meaning and importance.³

The Phenomenological Axiology, within which we single out Max Scheler, insisted on values which are given within our reality, and are therefore empirically available. These values are not only empirically available but are also set inside the value ontologism. Therefore Scheler highlighted the eternity of values and is named absolutist when talking about value. Actually, the eternity of values points to the absolute order of values which has the origin in God. All existing values are established on the value of timeless spirit and the world of values which lies ahead.⁴

Still Scheler believes that moral values possess the tone of the imperative. The necessity of the values as the imperative appears in the beings that are godless enough and are not in accordance with values but are often quite the opposite, also this refers to the world which as a necessity and with no difference produces truth and lie, good and evil, beautiful and ugly, simply what is valuable and what is not valuable.⁵ The norm finds its grounds in values and not in obedience. If we don't want norm to become arbitrary command then it has to rely on values.⁶ Therefore the values are always the simplest qualities which set the meaning of norms and law.⁷

³ H. Lotze, *Mikrokosmos*, I, II, III, Leipzig, 1923.

⁴ M. Scheler, *Fromalismus in der Ethik und die materiale Wertethik*, 3 aufl., Haale 1927, 94.

⁵ *Ibid.*, 74.

⁶ M. Scheler, *Fromalismus in der Ethik und die materiale Wertethik.*, 188-189.

⁷ *Ibid.*, 272.

The Absolute Character of Values and their Hierarchy

The absolute character of values is shown in the man himself. Since we notice in him the arithmetical laws which don't depend on him, we find the values as well.⁸ Being self-sacrificing is always value, although from the point of view of human logic it is not always wise to be self-sacrificing. Not to act in accordance with this value is always shameful, even when one's mind signals that it is better to be selfish. The same goes for honesty. The value in its basis is not certain to be carried out but what is certain is that if it is not carried out it is not in accordance with the value. Thus, values are not only valid but also exist. Their existence is independent of the real beings. Therefore they can be neither created nor destroyed by man. Should man create them he would be in position to destroy them.⁹ They are also independent of what must be, because they are given and not ordered. Value are not some kind of force, that is why the responsibility of man towards values is even more prominent, particularly when we are talking about the logic of the heart offered by Christianity in the establishing of values.

The logic of the heart offers freedom in relation to accepting and refusing values and love in relation to wrong choices. This is to be expected, for all the values that are established in the independent being, in God.

In the world of values there is a hierarchy of higher and lower values. This hierarchy is such that every value on the scale can be understood by certain spiritual acts. According to Max Scheler there are hedonistic values, seen as what is comfortable and what is uncomfortable. There are also vital values as a pair of noble and rude. There are also spiritual values where we can find esthetic values as beautiful and ugly. There are also values such as just and unjust and finally there is a value of pure truth. Scheler claims that these values are worthy of sacrificing the vital values. On the very top of the value scale there are values of the holy and sacred and what is not holy.¹⁰

Nicolai Hartmann also formed his scale of values which exists in the empire of values. But in the case of Hartmann's scale, values sway between subordination and dominance. In this unique line of values there are values of goods. Then there are values of comfort – what is comfortable. There are also vital values – what is useful for life; there are also moral values – good, and esthetic values – beautiful. There are also cognitive values – truth.¹¹ He embraces moral, esthetic and cognitive values in one notion of spiritual values. In the empire of values, values of goods have basis in vital values. There is no such a thing that is called good by itself. It becomes good for somebody. This is not limited to man only.

Hartman points to man's attitude towards values, for man knows what many of his vital goods are only when they are taken away from him. This particularly refers to his

⁸ Ibid., 279.

⁹ Ibid., 268.

¹⁰ Ibid., 125-129.

¹¹ N. Hartmann, *Estetika*, the original title *Ästhetik*, Beograd, 1979, 390-392.

everyday needs. It is completely logical that this attitude leads to another saying that man's tragic is the tragic of the hungry man sitting in front of the full table and not holding his hand because he doesn't see what lies in front of him. The real world is full in its wealth and the real life is imbued with values and where we reach for it miracles and beauties appear.¹² He also claims that vital values exist independent of our knowledge. The treasure of hard coal exists even before man gets to know about that and starts using it.¹³ If man was creating values they would be prone to failure and wouldn't be absolute.

At the same time he accepts the notion of the value of the state of things which is formed by the phenomenologists. Actually that notion is involved in the wider concept of the value of goods. Otherwise, according to Hartmann, it wouldn't be possible to find both the value of happiness and the value of power in the value of goods.¹⁴

Hartmann points to the relation between values of goods and moral values. It is relevant for considering the place of law in the world of values. In his opinion all moral values have base in the value of goods and in such a way that each moral value has as an assumption certain goods. He explains this by giving the example through which he inquires differences between working of the honest man and working of the thief in relation to someone else's goods not supervised by anyone. He finds the difference in respect towards someone else's valuable goods. If the goods have no value, nobody will wish for it. If the property has no value, then there is no difference between action of the honest man and the thief. The trouble is that the importance of the moral value doesn't depend on the value of property because the highest moral value can be lifted over the slightest value of goods.¹⁵

There are moral values that can be developed through upbringing. They can also be commanded because they have to be carried out. Among these values we can find: diligence, stability, love for order, self-restraint, self-discipline, and to a certain degree reliability, loyalty and sense for equity.¹⁶

In all work and actions, including the legal works, values of goods and moral value are involved. But they don't overlap. The purpose of any action is not the moral value, it is the value of goods or to be precise the value of the state of things. Further on, moral value appears on the backs of the act.¹⁷

Hartmann's way of seeing the moral values is very close to Christian understanding of values. According to that understanding man is the carrier of the moral values because only man is left with freedom to be good or evil.¹⁸ That kind of man's behavior

¹² N. Hartmann, *Ethik*, Berlin-Leipzig 1935, 5.

¹³ N. Hartmann, *Estetika*, the original title *Ästhetik*, Beograd, 1979, 392.

¹⁴ *Ibid.*, 394.

¹⁵ *Ibid.*, 398-399.

¹⁶ *Ibid.*, 401-402.

¹⁷ *Ibid.*, 400.

¹⁸ *Ibid.*

can be marked as valuable and moral but can't be forced out of man.¹⁹ He accepts the main messages of Christianity saying that the man who acts out of wishing for his own values doesn't attain them. His actions are directed towards the value of the state of things and not towards moral values. If the action is directed towards the development of his own value, that is the direct way to self-satisfaction and Pharisee. According to him it is dangerous to strive towards moral values directly because in that case their essence can turn into its very opposite. In his opinion we shouldn't strive towards them, generally speaking. As an example, Hartmann gives the case of happiness which very often cannot be realized despite our longing. One can realize all values except for purity. Purity, as well as youth, beauty, innocence can only be lost.²⁰ Arthur Schopenhauer agrees with this opinion. Schopenhauer believes that showing the selfish motives in some action reduces the moral value of the action. Actually the criterion for morally valuable action is in the absence of the egotistical motives.²¹ At the same time, the indifference towards values leads towards the crime out of indifference.²²

Values do not Differ Nearly as Much as it Appears

According to Max Scheler, man doesn't create values, by finding himself in various practical relations with the world of objective facts. Rather he finds himself in relation towards values. According to him, we have rights to claim that what is relative and limited is only human knowledge of values, and not values themselves. As for the diversity of value-moral convictions, he claims that there is one common thing, and diversity only refers to the form which depends on the development of human consciousness and human experience.

For example, we can loath the fact that once there was human sacrifice to God, to celebrate victory over the enemy, or to win the love of Gods in front of some danger. Still, today we consider normal for a man to physically sacrifice himself for the common goal or value, such as state or social idea.

Universalists, Max Scheler and Nicolai Hartmann warns us that it should be critically inquired whether the cases mentioned by relativists (in their favor) really are about the same activities in the ethical sense and the same objects? We are aware of the fact that for the ethical character of the activity it is important to know the motives for the activity. One physical activity can have different moral characteristics depending on the motives and then different moral value. However, if we approach the actions of the primitive people we are shocked by (using the aforementioned conviction), and on the grounds of which we often conclude about the opposition between their way of thinking and modern way of thinking, we'll see that their motives are not contrary to ours.

¹⁹ Ibid., 397.

²⁰ N. Hartmann, *Estetika*, the original title *Ästhetik*, Beograd, 1979, 400-402.

²¹ A. Schopenhauer, *Dva osnovna problema etike*, the original title *Die beiden Grundprobleme der Ethik*, Novi Sad, 2003, 276.

²² H. Broch, *Pisma o Nemačkoj, 1945-1949*, the original title *Briefe über Deutschland 1945-1949*, Novi Sad, 1994, 52.

So, for example, when we look at the killing of the old in some primitive nomadic tribes, it is certain that they didn't kill out of hate or cruelty. The motive for killing in these primitive tribes belongs to the same group of feelings because of which we today feel as our obligation to take care of the old and to try to cure them. We can also be questioned: Isn't it cruel to let man or a woman suffer for a long, long time because of their age or sickness? Can you watch your parents or relatives shiver in the cold, useless, old and not come to a thought to end their unhappiness out of pity?²³

When we critically inquire the object of action, we can claim that it is actually different, though the relativists consider it unique. So they don't have any right to claim that the same objects suffer totally opposite actions.

For example, if some primitive tribes consider proper to leave their sick people to their faith, and we today think that it is an obligation to try to cure them, then we should know that the primitive people think of the sick person as someone who is possessed by an evil spirit, and thereby dangerous for the environment. So the reason for their action towards sick people lies not in the moral consciousness which is totally opposite to ours, but in incorrect intellectual notions.

Eventually, the given examples show that relativists should take into account the circumstances, the level of development, conditions, before they give the thesis of the opposition of the moral consciousness of the people from old times and different social structures. In the totally different existential conditions, physically the same actions are no longer morally the same. Thus, they don't deserve the same moral characteristics.

The critical analysis of the given examples, not only opposes the thesis about the opposition in moral consciousness, but it also gives grounds for considering the possibility of the common, universal elements of moral consciousness. What could be these elements? First, it is a formally-structural element. That is to say, it is the universal existence of the normative layer in human consciousness. To be more concrete, this is universal differentiation between permitted and not permitted actions, between good and bad, between those we should do and those we must not do. What we are obliged to do, what makes something good or bad is usually relative, depending on the level of development, and particularly on the social-economic conditions. What is universal is the existence of duty and the very difference between good and bad.

Really, where can we find people, or some tribe which doesn't value and doesn't look for bravery, sticking to your words, respect for the ancestors, which doesn't blame the killing of tribesman out of greed?

Where can we find the people or a tribe which have no grace, no sense of justice?

It is quite another issue whether the mentioned tribe or a group of people has reached the level of development where they feel obliged to apply their basic moral norms to the relation towards the other groups? We already know that man didn't feel morally obliged (in the times of primitive society) towards the members of other groups. The process of widening the moral obligations is slow. Still we can say that universal values are given to man when he is born. In future, reasons for having basic

²³ E. Wedtermarck, *Ursprung und Entwicklung der Moralbegriffe*, Leipzig, 1907, 326.

moral norms (such as do not kill, do not steal, do not tell lies when witness) as imperative, as something to be achieved by power or pressure, may disappear. But if the reasons disappear it will mean that people and the conditions have improved, developed, that norms have become reality. It will mean that we are approaching the Heavenly Kingdom.

The Legal Norm

What we mean by legal norm is the logical, binding formulation of values. The norm is not precious on its own. Rather when it expresses values. It has to be the logical formulation of values. The norm expresses and realizes the demand of values. The issue is what principles animate a person when he respects legal norms? Are these value principles, lucrative motives, or is it the fear of punishment?

Thus, according to the conception of legal positivism, legal norm includes only two basic elements, disposition and sanction. The positivists highlight that the norm expresses certain demand. It does so through its element-through disposition. Disposition by itself stands for the element of the norm directed towards man. That is expressed through the command of behavior. What is the basis of the command? This is a very relevant issue because the command directed towards certain behavior expresses the behavior and changes it. This begs the question: in what direction goes human behavior? It is considered that legal norm should not exist without disposition. Can the legal norm exist without values?

I believe that when disposition and sanction are considered as elements by itself, they represent relevant ingredients of the legal norm. But when they are considered in relation towards values, they represent technical elements which should express values, or in case of sanction, protect them.

The legal norm highlights some ideal aim or value. Even the state itself should be interested in the primary realization of this legal norm, that is to say, value. The primary realization should come willingly. And that should happen after the disposition, that should reflect values, motivates our consciousness and conscience and thereby redirects our will towards realization of values.

This primary realization of the disposition is based on:

1. The direct autonomy of will, if the norm is made by our free will, so we consider it ours and act in accordance with its disposition – *I make the norm, and I accept it and realize it.*

2. The indirect autonomy of will, if the norm is made by someone else's will and we attach our moral and value acceptance, so though it springs from other person's will we accept it as ours – *I don't make the norm, but I accept it and I realize it.*

3. Fulfilled heteronomy, if the norm is made by someone else's will, we don't attach our moral-value acceptance but we carry it out anyway for different reasons – *I don't make it, I don't approve of it, but I carry it out.* This aspect of the primary fulfillment of the legal norm is already value problematic. Simply, in comparison to the other two ways of fulfillment, this third introduces possible nonvalue motives for the

fulfillment of the disposition. These can be lucrative motives, fear of sanctions, and so on and so forth.

As long as it lasts, in these given possibilities, primary fulfillment of the disposition, man in no way causes the sanction of the legal norm. The sanction is caused by:

1. If the norm is created by man's will and he didn't confirm it or he didn't carry it out by the act of creating or later in moral and value way so he caused sanction;
2. If the norm is created by someone else's will, a man doesn't give his moral and value acceptance and by breaking it he causes sanction.

If the sanction is applied and there is a forced carrying out, we have the secondary following the legal rule.

This begs the questions:

1. Can one entire legal system be based on the primary realization of the disposition? What would be the grounds for the realization?
2. Can the legal system be based on the fear of the secondary realization of the disposition, on the sanction?

To the first question positivism gives the answer that the existence of the legal system, which is based on the primary fulfillment of the disposition, is not possible. Why? The reason is simple, positivism doesn't accept and doesn't care for basic values of the Christianity. It actually doesn't believe in value nature of man. It is fulfilled in the idea of submissiveness, and doesn't question the motives. The only motive in submissiveness is fear. An answer that would be even simpler is that power doesn't believe in the legal norms without values. But the state power wants the unconditional respect anyway. The state power doesn't believe that citizens will respect it willingly.

As for the second question, positivism shows respect towards the idea of the preserving of the legal system which is based exclusively on the secondary fulfillment of the disposition. But again, the motive for this is not value or the protection of value, but fear of political unrest and disturbing the political security, therefore the fear of overthrowing a government.

Undoubtedly, positivists know about Ihering's thought that the law which has power through the whip would be helpless without the whip. Still they are aware of the fact and it doesn't concern them that the secondary fulfillment of the disposition, that is to say, forced fulfillment is above willing fulfillment. They conclude mistakenly that if law wants to be law, it has to have certain amount of efficiency. Actually it is otherwise. If law wants to be law it has to achieve certain amount of values.

The Place of Law in the World of Values

The world of values is the origin of law. The place of law is determined by its purpose which is achieved only by the moral upbringing and the development of the moral values. In the world of values law stands for the instrument for protection of the values of goods, because law itself is based on the autonomous moral values which are above the law.

The place of law in the world of values can be established particularly by determining the concept of legal norm. That can be accomplished by having in mind the concept of the legality of law as the value moment of the legal phenomenon.²⁴ Thereby it can be shown how establishing the place of law in the world of values belongs to the pre legal issues.

The world of values stands for the assumption of the existence and the development of law. That world gives the meaning and the purpose to the entire law, that is to say, all its elements. Values as the origin of law are not pure total, or the simple collection of elements, but the whole.²⁵ Actually, everything that exists has value content, so that is the case with law as well. This means that the categories of value orientation can be applied to everything that exists.

The positivists are striving to define law as the notion independent of values. But even then in the holistic mesh of circumstances law gets the value content. If the legal norm is logical and binding formulation of values then we can conclude that law is based on value determinations. Only when the values are established they can be expressed in the legal norm which then becomes the formulation of values. In accordance with this, Emil Lask believes that the existence of legal norms can be deduced from the system of abstract formulas of values.²⁶ Thus, by defining the system of values we can define the place of law in it. Actually, it would be good if the over empirical values could be turned into the independent life forces.²⁷ This can be achieved by introducing values into the process of creation and application of law. Thereby, value can become truly beneficial through law. Law can get the transcendental position.²⁸

Legal norm always serves values. Legal norm is particularly precious when it expresses original values. We emphasize this for the very importance of the acceptance of some legal norm for its contents in the conscience of those who are legally obliged. In that case legal norm can be explained only morally, only through its binding effect on human conscience (however, it shouldn't be claimed that law and moral are the same). Even then nobody could deny its necessity in reality where it gets the binding legal power, if we really care about the binding character of the legal norm.²⁹

But the legal norm is not self-sufficient. Man, as a human being is also necessary. It is too often that man looks for mediators in trying to find and realize values. Since he, in his reality, can't reach values directly, the legal norm can become the mediator and the sign for man's achieving values. Thereby law becomes the bridge connecting values and concrete behavior. It actually shows the content of values and suggests the

²⁴ N. Hartmann, *Estetika*, the originale title *Ästhetik*, 433.

²⁵ Ibid.

²⁶ E. Lask, *Filozofija prava i kraći spisi*, the original title *Gesammelte Schriften*, Band I, Beograd, 2005, 26.

²⁷ Ibid., 22.

²⁸ Ibid., 26.

²⁹ A. Kaufmann, *Pravo i razumevanje prava*, the original title *Recht und Rechtsverstehen*, Beograd-Valjevo, 1998, 200.

form of the ideal behavior, but not as something absolute but in the role of the mediator for expressing true values.

Finally, valuing refers to the world of law. The laws of valuing are absolutely obvious, like geometrical laws. Therefore law can be seen as a place where values can be discovered and accepted. Also we can talk about the value aspect of law. It represents the degree of sensitivity of law towards values, as well as the degree of realization of values in law or by means of law.

The Place of Law in the World of the Christian Values

There is the question: Can law squeeze out Christian values?

According to Benedetto Croce, Christianity was the biggest revolution in the history of people. All the other revolutions are nothing compared to it.³⁰ It must also be mentioned that positive law's looking for values has to count on the prepolitical and ethical convictions of the religious community.³¹ According to Pope Benedetto XVI, constitution by itself doesn't form morality.³²

According to Christianity the kingdom of values above us reaches to us according to God's will. Values are real quality of God's thought. So, turning the above empirical values into the real live force stands for the embodiment of values into realities. Thereby bridging the gap between values and realities happens. So, out of value we can deduce legal values and then the justification of the existence of the legal norms. The reason for this is the fact that the main purpose of law is its position and realization in the kingdom of values.

Christian values stand for certain guarantee that law doesn't become only the command of power. In case law is only the command of power, what is not explained is how power is obligated through law. Law is above the state and state law has its meaning in values, and not in state obligation towards its own law. We attach meaning to law only if it springs from values. Pope John Paul II also believes that democracy without values simply turns into the open or fake totalitarianism.³³

Thus values have duty to subordinate the power of law to itself. The power of Christian values should rule and not the power of the positive law. Otherwise, there is a suspicion towards the law and then the rebellion against the law. So, law can't annul the values. Law is only the minimum of the Christian values given by God. Does man live according to the norms only out of fear of sanctions? The words of St. Thomas Aquinas prove to be true, that law is made for the evil and the wicked and there are punishments defined by law.

³⁰ M. Pera, *Zašto se moramo zvati hrišćani*, the originale title *Perché dobbiamo dirci Cristiani*, Beograd, 2010, 52.

³¹ J. Habermas, J. Ratzinger, *Dijalektika sekularizacije*, the originale title *Dialektik der Säkularisierung*, Beograd, 2006, 19.

³² *Ibid.*, 90.

³³ *Ibid.*, 50.

We'll define the place of law in the world of Christian values by asking the question what is the basis for the binding power of the legal norm? Is it possible for the legal norm to be the foundation of law by itself? So, for the foundation of the binding power of the legal norm we have to have something steadier. That would be Christian values. They reflect the relation towards the realization of humanity. And they are doing it in a more convincing way than law. It is the sincere care for every person.

Law as Means for Realization of Values and Non Values

Value, as an axiological face of law refers to the aim of law. As soon as we name values as norms, the statement leads us to its realization.³⁴ In this case this is about realization of values by means of law.

Since law represents the objective carrier of values, they can be realized in our reality. This value aspect of law directs the decision towards values as the quality. This can be achieved through legal-ethical judgment which chooses the path in the emptiness of the positivism and nihilism.

Every legal system which tends to be persuasive and obliging has to find its place in the world of values. Every turning away from that search is harmful for law. The suspicion towards the legal system and even the rejection of the legal system appears when law is no longer the picture of values but the expression of someone's self-will.³⁵

In Gustav Radbruch's opinion law is man's project, but as such can be comprehended only through his ideas which can only be a value. Law can be understood only in terms of behavior related to values, therefore the true existence of law blind to values is impossible.³⁶ Value is according to Radbruch material for the idea and to be precise for the legal idea. Thus, the notion of law is the notion of a reality related to values, of a reality with the purpose to serve the value.³⁷ Values have creative power and serve as the eternal standards of behavior and are in position to give the binding power to the legal norms.³⁸

As opposed to that where law would be nothing but the leader's command, the obligations of leader himself through law would remain inexplicable.³⁹ In the war of people's interests in which one's interests, eternal search for material comfort and fame are overwhelming, the aim of law will not be reached, for what is missing is the wish for values that would end the discord.

Thus, so as to reach its aim law has to become impersonal, related to objective values rather than to the interests of the person or a group which governs. To build the value mentality should be done through law containing objective values. However, it happens too often that instead of building value mentality the interplay between values

³⁴ E. Lask, *Filozofija prava i kraći spisi*, the original title *Gesammelte Schriften*, 74.

³⁵ J. Ratzinger-Benedetto XVI, *Europa, I suoi fondamenti oggi e domani*, Città dell Vaticano 2004.

³⁶ G. Radbruch, *Filozofija prava*, the original title *Rechtsphilosophie*, Beograd, 1980, 14-15.

³⁷ *Ibid.*, 44.

³⁸ B. Reich, C. Adcock, *Values, Attitudes and Behaviour Change*, Methuen, London, 1976.

³⁹ G. Radbruch, *Pravni i drugi aforizmi*, the original title *Aphorismen zur Rechtsweisheit*, 7.

and law happens, which has non values and totalitarianism on its side. In this case value is seen as legislative servant and law becomes the parasite and it won't be long-lasting.

In law, the illusion of values which accompanies the lack of sense of values often appears, and has the character of not recognizing values and is always purely negative. According to Hartmann, man's organ for values has similarities with sense for colors, music, mathematics, which is not common to all people. Therefore there are people who have small capacity for understanding and differentiating in these fields and those who are very good at it having the heightened sense for it.⁴⁰ This is the attitude which Hartmann has reminds us of: the legend about the devil who wished to be good with no talent for goodness. So the devil with no talent but sticking to the rules tried to be good. Surely, the attempt failed for there are no rules for goodness and beauty and talent proves to be not only necessary but indispensable.⁴¹ Arthur Schopenhauer holds the similar opinion because you can't learn to be virtuous as you can't learn to be genius. The notion is for it the futile thing as for the art, and it can be used only as means. It would be weird if we expected that our moral systems and ethics create brave, noble people and saints, and our esthetics create poets and musicians.⁴²

However, it is a slightly different case with the ability to recognize values in comparison to understanding esthetic values and mathematics. In its basic form the talent for values is present in all people and thereby to introduce values into the world. There are individuals with bad keenness of sight for values but still able to recognize them. The history showed that it would be dangerous to highlight the concept of talent for values, for this could bring about huge evils which are excused by the lack of talent.

In this spirit, ignorance as the source of evil brought about awful crimes, and that is the secret of the devil, the absence of wish to recognize and realize goodness. It shows that evil is not the lack of something, but something alive, spiritual, perverted and corrupt. It is the frightening reality. It is the mysterious and horrible reality.⁴³ Thus, the devil does recognize the values, but as an enemy he resists them. Very often man does the exactly same thing, which makes him the inveterate liar, very skillful craftsman who doesn't choose means so as to darken the values.

In scholastic terms we can call this *ignorantia affecta*, ignorance as pretence or not wanting to know. This means that truly honest people are so few.⁴⁴ Schopenhauer has this attitude while looking into three major motives of man's actions. First, that is egoism-wanting the entire good for himself and it is endless. Then it is malice-wishing

⁴⁰ N. Hartmann, *Osnovne crte jedne metafizike spoznaje*, the originale title *Grundzüge einer Metaphysik der Erkenntnis*, Zagreb 1976, 570.

⁴¹ Р.М. Бородаё, *Теологические истоки категорического императива И. Канта*, in: *Этика Канта и современность*, Рига, Авотс, 1989, 178-195.

⁴² A. Schopenhauer, *Svet kao volja i predstava*, the original title *Die Welt als Wille und Vorstellung*, Novi Sad, 1981, 245.

⁴³ J. Ratzinger, V. Messori, *Razgovor o vjeri*, the original title *Raporto sulla fede*, Split 2001, 128.

⁴⁴ A. Schopenhauer, *Dva osnovna problema etike*, the original title *Die beiden Grundprobleme der Ethik*, 276.

others evil and it reaches utter cruelty. And finally: Pity-wishing good for others and it reaches kindness and generosity.⁴⁵

It is very important in law to realize that goodness is always the direction towards higher value, and evil the direction towards lower value.⁴⁶ So the law can become one of the ways for the values as ideal powers⁴⁷ to push into our reality. That other energy that values need can be found in law which can deal with the resistance of the real towards values. Legal norm, as a command, must be directed only towards values, so as to emerge out of the ocean or a large swamp of facts.⁴⁸

To reject using the value judgment in law leads to the strictly factual description of the obvious actions as seen in the concentration camps. Everyone who avoids using value judgments intentionally covers his higher knowledge and thereby realizes intellectual dishonesty. The exclusiveness of the legal positivism represents the scientific and moral violation of the obligation open expression and the bitter satire.⁴⁹ Then we can justify actions in this way: I've done this, says my memory, it's not possible that I've done this, says my pride and in the end memory deteriorates.⁵⁰ Thereby we certainly reach agreeing to non values because of its conviction that law is law and positivism destroyed legal class because of its laws with self-will and criminal contents. At the same time positivism is not able to explain by its own power the meaning of laws.⁵¹

So Legal Positivism, which insists on the rejection of values, brings itself into danger of historical objectivity. That stops us from calling a spade a spade and it brings into danger the kind of objectivity which calls for previous assessment, that is to say, the objectivity of interpretation.⁵² This attitude of legal positivism, free from values, leads directly to legislation and the legal actions of the totalitarian regimes. This could be completely possible if we accept the existence of law without values. If law doesn't contain values it will be devoid of judging the social phenomenon and it won't be able to differentiate between authentic and fake, higher and lower, true religion and false religion, between real leader and a charlatan, between knowledge and something scholarly or sophism, between virtue and vice, between moral sensitivity and moral dullness, between art and trash, between vitality and degeneration, etc.⁵³

⁴⁵ Ibid., 283.

⁴⁶ N. Hartmann, *Ethik*, 2 Aufl, Berlin 1935, Kap. 30, b.

⁴⁷ N. Hartmann, *Kleinere Schriften*, Berlin 1955, 293.

⁴⁸ L. Strauss, *Prirodno pravo i istorija*, the original title *Natural Right and History*, 37.

⁴⁹ L. Strauss, *Prirodno pravo i istorija*, the original title *Natural Right and History*, 45.

⁵⁰ F. Nietzsche, *Jenseits von Gut und Böse*, in H. Broch, *Pisma o Nemačkoj 1945-1949*, the original title *Briefe über Deutschland 1945-1949*, 132.

⁵¹ G. Radbruch, *Pravni i drugi aforizmi*, the original title *Aphorismen zur Rechtweisheit*, 18.

⁵² L. Strauss, *Prirodno pravo i istorija*, the original title *Natural Right and History*, 51.

⁵³ Ibid., 53.

Conclusion

The philosophy of values stands for the philosophy without a flaw and it is an answer to the ideology of evil⁵⁴ which awaits a man in the same way as a devil lurking to attack man's moral balance.⁵⁵ This leads to a conclusion that the philosophy of values had to be a barrier from the ideology of evil. That is what Radbruch realized during his experience before Damask.⁵⁶

The world of values stands above us and in front of us and as such it is the base for development of kindness in law and man. At the same time we are left with freedom to accept or reject values and also the consequences of our choice. Thus, the realization of values can't be left to God alone.

The value character of an event, act or a person can be objectively true. In general, objectively true claims are possible in all objective values – in morality, ethics, law.

For example, a lie, murder, genocide, are all objectively and value wrong. This isn't only because we think that they are wrong. Unfortunately, often judgments of value vagueness are right. Actually, this is about the claim that there is no right answer to some difficult case. These claims are not desirable as far as the practical directness of law is concerned, which should guarantee the existence of value differences.

The existence of the objectively given values is obvious even in the existence of the value cultural diversity which is present because of the responsibility and the care God has in his generosity. We can prove this by the fact that no matter how we claim that we are skeptics we will never say that values have something to do with terrorism, racial discrimination, genocide. Despite the cultural differences, which are the reason for our often not wanting to inquire into the values, we totally agree about these issues, without doubt.

The issue of finding the place of law in the world of values is pre-legal issue. Thereby the world of values is becoming the assumption of the existence and development of law. Legal norm then becomes the formulation of values. Legal norm is not precious in itself, but only if it expresses fundamental values. Legal norm has to be the logical formulation, that is to say, it has to deliver the contents of value correctly and appropriately. As an expression of the value dimension legal norm obtains the binding power. Keeping in mind the legal norm defined in such a way, nobody can deny its necessity in reality. Law then expresses the contents of value and proposes the model of the ideal behavior. The fact that values have creating power is thus proved to be true.

Where is the place of law in the world of values? Law has to be filled with values and at the same time has to protect values from attacks. Legal norm has to express values, although values are so richer than the norm can express by words. Value is what determinates legal norm which is based on values. Every attempt to explain law on its own, to leave values to some philosophical field of exploration proved to be futile. The

⁵⁴ J. Pawel II, *Pamięć i tożsamość*, Città dell Vaticano-Milano 2005.

⁵⁵ J. Ratzinger, V. Messori, *Razgovor o vjeri*, the original title *Rapporto sulla fede*, 128.

⁵⁶ A. Kaufmann, *Uvod v filozofijo prava*, the original title *Einführung in Rechtsphilosophie und Rechtstheorie der Gegenwart*, Ljubljana 1998, 122.

theory of law, which leaves out values, has a flaw which is expressed in human suffering and pain. There is no existence of law and man without values, which demand of us *bene vivere et bene operari*.⁵⁷ We can sacrifice everything for values but not the value itself. What is left? Values and life remembered for striving towards values. Everything else is not worth remembering.

⁵⁷ B. Häring, *Das Gesetz Christi I*, München-Freiburg 1967.