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Science, axiology and legal values in the 21st Century*

Introduction

1. *Values in the XXI century* is a subject which is becoming an endless source of philosophical and scientific considerations of the future. Its actualisation is a result of the discontent from the implications of development of science and the technological development on the humane future of modern society. It is not a common assessment that researches in natural sciences are not always related to and motivated by humane values and that apart from the indisputable use of their results in many areas – from technical sciences to medicine, not only that they are not reduced, but the danger of their misuse for aims opposite to human interest is increased. In addition, there is the opinion about social sciences that with their empiric and positivistic orientation, the limit in advance their own important creative role in resolving basic social contradictions and giving an idea about the future of the social development.

Deepening the gap between scientific and technological and humane development of society, in the last decades of the XX century, results in appearance of an expressed criticism of the separate development of philosophy, ethics, natural and social sciences. The main direction of critics is the approach of science towards the leading ideologies of the XX century, that is, the dominant collectivistic idea and absolute dominance of politics and political practise.

2. Today, nobody brings into question the contribution of the two centuries development of science for the great civilisation steps of the modern society, in all areas of human life. However, exactly that civilisation and reasonable

* The paper is printed as submitted.

development, sharpens to the greatest extent the meaning of the initial „*Op-penheimer-paradox*” (the Atom bomb is a scientific invention, but it is alien to science)¹: to what extent that development makes human happy and gives his life a content inspired with the absolute values of truth, goodness, beauty and justice.

That question opens the problem of value basis and orientation of science. The basic value of science is, as the most serious and the most consistent epistemological accomplishment, is the truth. However, the more the science develops, the bigger is the realization about the insularity, often the unattainableness of the objective truth. Thus, many philosophers think that the truth, at least as an objective truth, cannot be the only objective of science. That pessimistic standpoint opens the issue of the relation between scientific values, the truth above all, and the ethic and other social values, and the recognition of their existence and the potential conflict imposes the request for establishing objective criteria and procedures for its resolving.²

New orientation of philosophy of science

3. The debate about science and values cannot bypass the great „*Copernican turnover*” from the beginning of the XIX century, which marked the appearance of the modern scientific and technological era. The new cognitive and rational paradigm of the new world is based on the separation of science from philosophy, which results in destroying the unity of observing the universe, and, of course, the human and society as part of that single entirety. Opposite to the holisms emerges the atomism, opposite to the idealism and the concept of the absolute, a priori values (truth, goodness, beauty, justice), emerge the materialism and relativism, and opposite to the monism emerges the dualism. The essence of that turnover is the methodological orientation of science towards the facts, unlike the philosophy that comes down to their rational consideration through the value judgements. The consequence of their separate development is the greater distancing of science from the values and the greater reducing of philosophy to phenomenology and epistemology, and again by neglecting the axiological questions.

¹ V. Thorpe, 187.

² Haller, Science and Ethics Again, s. Keith, 5.

That turnover has further consequences especially on the social sciences which are influenced by the philosophical studies, especially the legal, economic and political science. Since the beginning of the XIX century they have begun to develop under the strong influence of the empiricism and the naturalism, trying to apply the explanations to the regularities to which natural sciences come, and to the social phenomenon. A wider social context of neglecting the traditional values in the last two centuries have the market economy and the mercantilism, the concept of national state and the totalitarian ideologies. Precisely during the greatest ideologisation of science and its placing as an instrumental function of the militaristic objectives of the world divided into blocks, the idea of an *open society* was proclaimed as a counterpoint to the communist world, in which science has been placed in the function of defence from the western threat.³

4. The XX century is a century of the highest scientific achievements, but also of the cruellest bloodsheds in the latest history of humankind. Apart from the great progress of science, technology and knowledge, there is a general consent that humankind is far away from rational and humanistic organisation of the society.⁴ The modern global economic crisis according to the majority of the scholars is nothing new than *a top on the ice rock* in the sea of global contradictions. The danger of ecologic catastrophe and the unscrupulous exhaustion of energy sources are by-products of the development of the society, which directly are attributed to the character of the modern society and its logic for profit at any cost, and the economic crisis which is generated by the basic contradictions of that system is transferred to the higher social spheres of the basic humane values.⁵

The possibilities for misuse of the scientific knowledge are expanding in a greater number of areas: destruction of the environment, wars, manipulations with people etc. On that basis, completely unforced imposes the question (*Paul Feyerabend*) on the need for protection of society from the misuses of science and for the responsibility of the scientists and those who use the results of their work. That is the first, lower level of the issue of the attitude towards the misuse of science, but without doubt the higher level is the one about the spirituality and humanity of the scientific development in general. If science precepts, but also creates and changes the objective reality, than

³ Thorpe, 188.

⁴ V. Račkov/Platonov, 21.

⁵ Leskov, 40

without doubt it should take the responsibility for preserving and developing its humane dimension, for guaranteeing the central position of the human in the changed world.

The thesis about responsibility of science for the humane future of society harshly opposes the positivistic orientation of philosophy of science and the acceptance of the paradigm of natural sciences as a general scientific pattern. There is a more present situation of making an issue out of the standpoint that for the interest of the objectivity and truth, science should be free from the values and should be fully distant from the social, historic and cultural context of its time. Just like in philosophy, under the influence of the social changes in the XX century, the post modernism suppressed the modernism and the classical philosophical standpoints, the same way in the science the culmination of the modern contradictions has opened a path for transition from positivism and empiricism to post positivism, expressed as recognition of the influence on it by the traditional values, culture and the need for humane orientation of the social development.

That is the general context of the new orientation of philosophy of science, expressed as transit from logic empiricism to rationalism, responsibility, constructivism in acquiring new scientific knowledge and humane orientation to human values. The affirmation of the axiological postulates and norms of scientific researches is supported by the rational relativism and criticism, which starts from the conviction that human perception is never fully rational and absolutely objective, because science will never determine the truth about the existence, the infinity of the universe and the universe without space. Apart from that, one cannot dispute the statement that scientific perception is to a certain, greater or lesser extent, subjective and a subject to influence by irrational and unconscious elements (*Huten, Kuhn*). Apart from the solely positivistic basis of knowledge and the strict *objectivity* of the scientist, the recognition of the fact of a relativity and limitation of the scientific truth, implies a request for completeness and integrity of the scientist's personality.

5. Scientific activity as a combination of objectivity, rationality, intuition, ethics and responsibility is an imperative which comes from the belief that science not only that reveals the objective reality, but also creates and changes it. If science precepts, but also changes the world, a key importance acquires the question about its methods and objectives, its value basis and direction and the possibility of misuse of its results for objectives opposite to human values.

However, it is simpler to formulate a thesis that value basis and orientation is necessary to science, and it is much more complex to determine how the science to derive them and from what, and which values of the pluralistic world to take for its basis. It is not disputable that value imperatives of (each) science cannot be deducted from the science itself, because they are related to the search for *need* opposite to what *is* and which is a result of the cognitive scientific process. The ethic, i. e. in general the value basis of science apparently can be deducted from the philosophy, i. e. axiology as a practical philosophy, which needs to determine the value determinates of: the scientific knowledge, the methods and the process of their acquiring; the transfer of scientific knowledge through the educational system; and the application of the acquired scientific knowledge, by which reality is changed. On that basis, value criteria and norms of responsibility must be established by each science as an integral part of the scientific approach, which is characterised by: the universality of scientific knowledge, objectivity and truth, impartiality and non-susceptibility to acquisitiveness or similar motives, communication of the scientific results and their availability to society, respecting the standards and norms of the scientific community and the scientific scepticism and criticism for the own results.

The axiological basis of the science is a complex postulate which includes intrinsic and extrinsic values. The first ones, that primarily have an epistemological character, are values and essence of the science itself: the truth and the search for new knowledge, which are in service of the general knowledge of human and his development; freedom of scientific work; responsibility of the scientist about the selection of objectives and methods, but also the scientific results and their availability and application; and the integrity, professionalism and non-corruption of the scientist. In the line of these values are also the values created by science itself and which are distributed as general cultural and civilisation values.⁶ Extrinsic and complementary with the scientific values are the values which the science must obtain from the rich fund of general human values, founded on human freedom and his natural rights. They have been sublimated through the following axiological postulate: no science or scientific discovery cannot be directed towards negation of the image of the human as free, conscious and responsible being, towards negation of his freedom and natural rights. That postulate is the connection that brings science

⁶ V. and Allchin, 1083.

into a wider area of axiology and which unavoidable imposes the demand for the *binary* character of its essence, meaning, methods and objectives.

Axiology

6. Science gives the human a great power, but the question is how to use it for the interest of the individual and the society. Is there a danger someone to grab and misuse it for objectives opposite to that interest? The science cannot answer that question (*Michael Crichton: Jurassic Park*). The task of the science is to determine the facts of the objective reality, but it cannot determine values. Whether a research, according to its own methods and results, is good or evil, is a value question, and determining the basic human values is a task of the philosophy, not of the science.

Moving of the modern science towards the axiological aspects is a result of a long evolutionary development of the rational basis of the human perception. In the old age and the middle century, when science was developing within the philosophy, the lack of empiric basis and non-existence of methodological instruments was compensated with conceptual criteria and rationalistic deduction of quasi empiric cognitions from the *first principles*. Science of the new age, opposite to that, marginalizes the conceptual parameters, transferring the point of the argumentation of the a posteriori evaluation to the basis of the deducted empirically based predictions. Today *post empiricism* science is characterised by theoretical pluralism, placing in second place the relation between theory and evidence (reality) and directing the attention towards the interrelation of co-existential theories and their interactions. Thus, the conceptual, non-empiric parameters are acquiring greater significance in the evaluation of the theoretical approaches, and, as primary functions of the theory are not stated the descriptive and explanatory functions, but the heuristic (heuristics is a science about the possibilities of the scientific research, which corresponds to the question – what can, and what cannot be researched?) and conceptual ones.

That turnover in the philosophy of science has contributed to abandoning the correspondence theory of truth about scientific statements, as well as the atomistic theory of meaning, in favour of the holistic approach.⁷ Instead of the standpoints about the absolute autonomy of science, in the post positivistic

⁷ Gordić, 3.

philosophic approach prevails the belief about the inevitability of the scientific interaction and connecting the science with the wider social and cultural environment, and the great theories, such as the Freud theory, for example, are considered to be meta scientific heuristics, which demand additional empiric confirmation.

7. It should be emphasized that such reorientation of philosophy of science does not find previously prepared philosophical soil. The modern world is in a deep value crisis, which integral part is the crisis of the philosophical explanation of its reasons, the prospects and possibilities for its overcoming. One should have in mind that the role of philosophy, especially the axiology, has been for a long time suppressed and in the shadow of the scientific findings. But more important that that is that philosophy of the XX century ends with the philosophical tradition, founded since the time of the classical philosophy about observing the world, and the human in the world, as a whole. It means leaving free space for the modern scientism to be based on the unity of science and rationalism, which becomes a source of *imperialistic chauvinism of science* (Feyerabend). In addition, instead of search for essence and values, the philosophical opinion of any kind is more inclined to *virtualisation* of theoretical opinion, and the term *virtual reality* acquires a wider meaning and use, thanks to the pervasive use of computers.

The axiological idealism (Kant), which commences from deduction of god from the basic, a priori ethical norms, which manifest human nature, the human being as a reasonable being (*work the way your will's maxima, at any time, may simultaneously apply as a principle of the general legislation*)⁸ as well as from the standpoint (Hegel) that the mind itself looks for conjunction of the individual with the community, in which the exterior of the relations with other individuals becomes his moral interior, since the XIX century have been coming in a sharp collision with the more rougher reality of expressed social oppositions, with the development of natural sciences and the positivistic, naturalistic and empiric orientation of the social thought. On an axiological plan, the positivism (Ihering) is on the standpoint that there are not universal and absolute values, that nothing can be determined in advanced as good or bad, right or wrong, but that everything depends on the relation of things towards the human objectives. According to Auguste Conte, positivism and empiricism, or the scientific stadium, is the highest stadium of the mature age of human mind, and the intellect is the only criteria for differencing the

⁸ Kant, 215.

altruism, as the highest value of society based on empiric sciences, from the egoism.

The utilitarians (Bentham, J. S. Mill) have special merit for destroying the concept about absolute and eternal values, but the real era of nihilism and value pluralism, in fact a collapse of the traditional value system is announced by Nietzsche. His core is the idea for the eternal returning of things, as a principle that denies the progress, and by that the meaning of human sense, in which light all concepts and ideas that the human creates do not have any basis and do not exist as absolute values, and the moral values are nothing more than a different interpretation of life values. The traditional values system, developed by the Christianity, is nothing more than a *slave morality*, i. e. a moral that enslaves and makes pressure on people in the violent effort to make them equal. Instead on the traditional Christian values, the new theory of value in the cruel and harsh world should be based on the *will for power*, which is an essence and being of the modern world.

8. The philosophical theories of the XX century have been developed mainly on a created grounds of value scepticism and pessimism, which is anticipated with the paradox lowering down of the absolute idealism of Hegel, according to whom *the truth* from perfect, eternal and unchangeable has been transformed into mobile and dynamic, and from abstract and metaphysic – into real and concrete, historically subjectless through the dialectic process of improvement. The latter improvements on the Hegel theory – from the Young Hegelians, Marxists, the followers of Dilthey and the other protagonists of the *anti-metaphysical revolution* lead toward further *lowering of the status* of the ideal principle: all great ideas, such as the idea of the law, are related to the human perception and sense.⁹

The main characteristic of the post classic rationality is recognizing the impossibility for absolute and objective knowledge, due to what the philosophical thought places in the centre of its consideration the phenomenology, the phenomenon of things and interpretation and the communication possibilities of the individual. One, Neo-Kantian possibility, represented by *Windelband, Brentano, Bergson, Rikert, Max Scheller, Hartman, Cohen, Natorp, Husserl* and others, remains further on the a priori and intuitionist standpoint about the values as a central object of philosophy, treating the truth, goodness and beauty in a single way. In the philosophy of law, justice is added to this triad as

⁹ Чичнева, 99.

the highest value of the law (Radbruch et al.) However, Neo-Kantians limit the area of philosophy to the value judgments, which should differ from the facts, i. e. the factual judgements. With this separation it has been recognized the definite division between philosophy, as axiological discipline, and science, which formulates its standpoints on the value neutral judgments, based on the empiric determination of facts.¹⁰

Relativisation of values and their perception continues in the modern analytic philosophy, which is focussed on the *logic analysis of language* as the most suitable method of philosophy.¹¹ Regarding the axiology, the analytic philosophy (Wittgenstein and others) is relieved from the request that some abstract and non-existent entities to be determined always according to their formal expression as ready conceptions and develops the sceptic approach, according to which: nobody can percept the values, except by intuition; the values judgment is just an expression of the feeling of the one that gives it for a moral approval or disapproval; axiology is also important only for the value analysis of language, so it cannot represent a major subject of analytic philosophy. In the area of philosophy of law, as one of the most significant areas of axiology as practical philosophy, that turnover implies a breakthrough of the question about language and hermeneutics as its central topics.

Value relativism and scepticism leaves a free space in which (according to Ortega y Gasset) basic preoccupation of the social thought of the XX century becomes politics and collectivism. Making an issue out of the idea on universal values, the English philosopher Raz, one of the most eminent representatives of the legal positivism, points out that only hope is universal, and belief in values, whereas the values are variable in time and space, and also different due to their subjective perception; thus, one can say only about the value pluralism and the mutual incomparability and non-measurability of values.¹² The study about the value pluralism (*Isaiah Berlin, Max Weber – polytheism*) appears as an alternative to the value absolutism (monism) and to the value relativism: values are different and, sometimes, in opposition to each other, and according to that, in comparison to the absolutistic standpoint they are variable and there is not a hierarchy among them, but on the other hand, unlike the relativism, there is a border between the difference and the opposition.

¹⁰ V. Vujačić, 63.

¹¹ V. Lloyd, 28.

¹² Raz, 3.

9. The modern value crisis, which general basis is utilitarianism, pragmatism and the value pluralism and relativism, finds a weak resistance and philosophical attempts for constituting a new consistent value order. Insufficiently convincing and acceptable is the idea against the *first philosophy*, based on the epistemology and ontology (Aristotle), the philosophical opinion to be constituted upon the axiology as *the first philosophy*, on the idea that against all changes in the philosophical standpoints, entailed with the historic changes and the spirit of the time (*zeitgeist*), there are absolute and constant values, which are to be taken as basis for evaluation of the philosophical standpoints, as well as of the science and any other structure of knowledge.¹³

The abandoning of that sceptical vision on values in the last decades is a results of the rapid focussing of philosophy on the axiological thematic. It is mainly provoked by the dissatisfaction from the development of science in a direction, which is from ethical point of view *empty* and focussed on objectives which are confusing for the human: what does scientific development aims at, what will come out of the scientific and informatics revolution, what are the dangers for the individual from the cold scientism not understandable to his mind? New discoveries in physics, cosmology and especially biology change the representations about the world, but more importantly is that they penetrate in the essential characteristics of the human.¹⁴ Even the ethical function of death has been brought into question, which can have far-reaching consequences regarding the perception of human, his freedom and rights. One should think about how development of biological sciences and bio experiments, human beings cloning etc., can lead to immortality of chosen ones, and how in that case human egoism and inhuman tendencies would triumph.

Fears from misuse of science, confirmed with experience, bring into the centre of the axiological issue of the modernity and human future the question about the rationality and legitimacy of science as human activity. Their base is the standpoint that there is not a rational human activity without the existence of a normative system. Scientific activity, as a rational undertaking, has to have in mind certain internal (methodological) norms and values and external (social) norms and values. The first focus the scientific activities which can be assumed only by qualified scientist. The second, manage and justify the scientific activities which are not an exclusive responsibility of scientists

¹³ McDonald, 57.

¹⁴ V. Яковлев, 3.

and are in touch with the general human values. The first cover the area of the researches, whereas the second – the use of their results.¹⁵

The next benefit of respecting the axiological postulates of science is the rejection of the indisputable assumption that scientific knowledge and results are good on itself, regardless of the consequences; it is rejected as basis of scientism that loses its rational and legitimate basis or becomes a disputable assumption.¹⁶ If during the time of emancipation of the general philosophical, deistical and other views and the autonomous development of sciences (especially the natural ones) exactly the freedom of scientific research represented an imperative without which it was unimaginable the releasing of the enslaved thought from the dogma chains, today the same freedom is understood as human freedom in general, as a rational self-limitation which must take into consideration the social consequences of the scientific discoveries. Is that a limitation of the scientific freedom, without which there is not a scientific and social development? The answer to that question gives the evaluation about the rationality of the value system: was it created according to the human, or according to some metaphysical, deistical or ideological images.

10. But, what are values and what values can today represent landmarks of the scientific perception? The term *value* has an attributive and substantial meaning – something *has* value or something *is* valuable. In the first case it is about external (attributive), and in the second it is about internal (substantial) value. In the substantial sense, value is something that belongs to the material or spiritual world and satisfies certain needs of the individual. In the attributive sense, value is a quantitative concept and refers to measuring the value of the mutual communication between people. There is difference between subjective and objective values. The first are not measurable, they have their meaning about the psychological, subjective and unrepeatable profile of the individual, and they can be influenced with the mechanisms of their socialisation. The second are the values that create communication with the others and they are accepted as common.

Observing the values as purely objective, beyond the experience cultural layer, or as objective and subjective layer of idealism and reality, has important axiological consequences. According to Kant, values that are considered to be categorical moral imperative are eternal, unchangeable and absolute (*fiat*

¹⁵ V. Tran-Ÿy, Science and Ethics: Some of the Main Principles and Problems, s. Keith, 11.

¹⁶ V. Bergström, On the Value of Scientific Knowledge, s. Keith, 53.

justitia, pereat mundus!). However, when the subject, which is the carrier of the value, is interpolated in the understanding of the value, it is necessarily becoming relative and becomes influenced by all historic and cultural transformations of the subject. Thus, *Scheler*, for instance, makes a difference between non-changeability of values (objectivism) and the changeability of the objects to which values are related (emotional intuitivism, material apriorism): values are given as a priori sensory experience of their carrier, who can be changed, unlike the values, which have super temporal and super individual lasting and validity. The belonging of values to other kingdom – the kingdom of ideas, of the *eidetic essence* of human being, his a priori spiritual structure (Hartman), allows only their spiritual cognition, but not an empiric, experiencing determination. They are, in other words, absolute, the last ideas to which reaches the thoughtful search for the reason of the human *need*, as the highest cognition. According to that, the subject does not create the values, but only the value goods and the value matter, whereas the value character, the value, represents an ideal being on itself that cannot be brought into question.¹⁷ The a priori nature of values does not mean their independence from the value cognition, but an independence of the value cognition from their realization.¹⁸ In other words, values exist also when in a specific situation they are not considered, representing a basis for the evaluation of the acts that mean their harming.

Human is predetermined, with his sense and free will to seek for values and to value, and his a priori values and appraising capacity is his anthropological essence. He creates values, sublimating in them the own civilisation heritage, the collective experience and the individual expectations and moral standpoints.¹⁹ The objects to which values are related are changeable and relative, because the carrier of the values is changeable, so that the relation between the a priori spiritual structure of the human to strive towards the absolute values and their sublimation as concrete values is a relation between a given value capacity and the potentiality and achieved result. Thus, the values are simultaneously a projection of the intrinsic, subjective element, as much as they are part of the objective, external element, understanding under that the world of objectivized, more general ideas.²⁰ The axiological cognition is a product of the interaction between the object and the subject, and between the subject

¹⁷ Pavičević, 145.

¹⁸ Also regarding the legal values *Zippelius*, 101.

¹⁹ *Kubinjec*, 700: the practical mind creates the values, and the theoretical mind percepts them.

²⁰ V. i *Tanović*, 8.

and other subject, in which the subject acts towards the object or the other subject as to a value.

11. Value is created and maintained through an interactive process between the subject and the object, in their complex social environment. Universal and eternal are only the values related to human existence and needs (life, body integrity, existence etc.) and are relatively independent from the cultural, religious, ethical and other particularities and differences. Absolute meaning have also the values that derive from the belonging of the human and the society of the universe and the universality and unity of the human being. They are basis of the culture as *conditio humana*, which essence, composed of the fundamental values remains unchanged regardless of the existence of different value steps with the change of the epochs. The good, true, beautiful, fair are the pillars of each cultural system, regardless of the historic metamorphosis. At the same time, for each cultural system a specific response is characteristic to the question about the relation between the values on themselves and the instrumental values, which appear as means for realization of the first. A value on itself are human, his freedom and natural rights, truth, good and justice. Law and legal values (equality, legal safety, legality etc.) are means for their realization. The value on itself as an objective reflects on the nature and the contents of the means for its realization: the means should be adjusted and subordinated to the objective, so that it represents *contradictio in adjecto* respect of the human, his freedom, or human natural rights and justice, as the highest values and final objectives, to affirm to with inhuman, totalitarian or unfair means.

On such axiological approach, the value reintegration of the modern society can be prepared by the philosophical thought only if it abandons the understanding about the necessary relation between dualism and materialism (the dualism implies materialism and vice versa), as well as epistemological basis of the materialism on atomism, and not on holism. The materialism (the matter determines the consciousness), which implies monism (reality is unique), as well as ontological idealism (consciousness determines matter), which implies dualism (reality is binary – matter and spirit), they come down to epistemological atomism (in order to understand it, reality should be decomposed to its real elements) or epistemological holism (reality should be investigated as a whole). Such separation emphasizes the division of axiology into scepticism or relativism (values as idea works do not have material existence) and cognitivism (values that are recognized by sense are real entities). The chance

for an integral axiological approach can open a path for the materialism in an epistemological sense not to be based on the atomism, which is a dominant paradigm in the western sense, but to be based on the holism, as well at the axiology not to be based on the relativism, but on the moral cognitivism based on the materialism.

The defence on an axiological plan, based on a priori, universal and absolute values, achieved with the human sense, can and should be based on the thesis that regardless whether modernism affirmed invalid values or that some fundamental modern ideas about values (freedom, equal rights etc.) have been misused, it does not mean that there are not absolute ideas about the values and that they should not exist.²¹ Even the representatives of the value relativism and pluralism feel the need of finding a basis for resolving the conflict between the different values. Today, it is formulated through the doctrine of coexistence and respect of different values, which allows partiality and difference to the extent of hurting or denying the values of the other.²² Finally, the modern man, faced with the serious threat of paying high price for his devastating behaviour towards the nature (emerging environmental disaster), as well as with resolving the basic problems of the modern society, sunken in the hopelessness, is called to recognize his moral responsibility for the future of the world and to return to the values that are inevitable rational basis of his existence (Jaspers: *What is happening on a wider scale is just a symptom of what is secretly happening among many of us. He who cannot live in peace with his neighbour, he who, with bad soul, makes life difficult to the other, he who secretly thinks badly about the other prevents the world peace with his behaviour, which is never a private behaviour, although he thinks the opposite. He thinks that he is doing a little, but on a wider scale he causes destruction of humanity*).²³

Any attempt for a fully observing and cognition of the world, can, thus, be based only on the anthropocentric basis. Only that way it can be overcome the duality and the ambivalent relation between the truth and the ethical and other values and to constitute a responsibility of the science and the scientist about the directions and the results of the scientific researches. The basic values, such as the respect for the human life, freedom and natural rights, justice and respect

²¹ Engle, 18.

²² Raz, 8.

²³ Jaspers, 50.

*for the others, is not incompatible with the truth as value that has the greatest significance for the science.*²⁴

Legal values

12. The law has a special role in the value reconstruction of the modern society based on knowledge. It is an autopoietic system, directly related to the existential, universal, values of the human, the recognition of which cannot be conditioned with the concrete historic and social circumstances.

The law is a normative phenomenon, a conjunction of ideality and reality, from the ideas of the law, the legal norms and the legal relations. The very idea about law, as well as the ideas about its basic norms, rules and principles, are based on certain values: justice, legal safety, freedom etc. The very concept of the law implies value, valuation (law – from right, legality, justice etc.). The values are pillars around which gravitate legal norms, rules and principles, so that without a clear value basis and a values system, which represent its meta-juridistic basis, law would represent a simple non-functional aggregate of contradictory norms.

The basic question that unforced derives from its axiological nature is the question – can it fulfil its functions during a social crisis, which is above all a value crisis, in the era of violence and continuous armed conflicts, in a society which has deeply entered into a corruption and criminal, in a world and time of lost and unrecognizable general human values. The emanation of the modern process of globalization is also the general diffusion of the factors that generate general crisis of the state (state-nation), of the economy and law, of the macro and the individual plan, criss-crossed with moral confusion and destruction of the human dignity.

Value pluralism and nihilism deeply penetrate the understanding about the law and its functions. Law is in crisis, which is just one of the appearances of the general crisis of the rationality. There are opposite opinions: that law is not in crisis, but the society in which it should implement its functions and objectives, or that with the transfer from formal-legal towards social-legal paradigm of the law in the western sense of the XX century, the optics of observing its values has been changed (Habermas: at the end of the last century

²⁴ Preston, 9.

the social-legal paradigm of law is in crisis). Namely, law enters in harsher conflicts with the process of irrationalisation of the modern culture and the human behaviour, caused by number of factors, in conditions of violated social stability transforming itself into an instrument articulated according to the proportion of forces, which brings itself into a position to have different standards for different social groups.²⁵

13. However, in one of the key areas of the social order, and that is the order of knowledge and the world of ideas, the global crisis carries within itself the inception of its own liberation. The main characteristic of the global connectivity is, namely, the creation of a common consciousness based on the rationalism and meaning.²⁶ Apart from the announcement of death for the rationalism, the greater part of the knowledge and rationalism, now developed in planetary dimensions, remains on the soil of anthropocentrism, secularism and universal human values.

Enhancing the rational component of considering the dangers that the modern transformation of society brings for the interests, freedoms and rights of the individual, list a number of authors to name the so called self-aware and self-critic orientation of the rationalistic thought of the *reflexive rationalism*. A confirmation for those positive tendentious is, among other, the affirmation of the universal concept of human freedoms and rights through the basic international documents for human rights, adopted in the second half of the XX century. That way, the mutual communication and facing of different cultures, traditions and value systems, simultaneously can be used as a strong mechanism for approximation of the views on common interests and values. A visible result of its acting is the global process of harmonisation of the modern legislations, which in the last decade receives a greater acceleration.²⁷

Following that, although weak ray of optimism in the modern informatics, post industrial society, the legal science is in search for a new integral value system, which can overcome the created value differences emphasizing the significance of the universal idealistic and ethical approach (*Del Vekio: leges inumere, una iustitia*).²⁸ In the area of legal axiology, the standpoint of existing a priori values *on itself* is presented by the modern theory of natural law

²⁵ Taboroči, 363.

²⁶ Šolte, 313.

²⁷ V. i Champeil-Desplats, 59.

²⁸ *Del Vekio*, 111.

(Finnis and others).²⁹ It uses the Plato method of *via negativa*, according to which human cognitive capacities of perceiving the absolute values are limited, but not to the extent of excluding a perception to what is their negation: it cannot be determined what is justice as an ideal, but anyone knows what an injustice is. The knowledge about the basic human goods, such as life, liberty, sociability etc., is *self-evident*.³⁰

It should be emphasized that the modern concepts about legal values are far away from the answer to the question – whether the law can represent a law if it does not start from some determined common or universal values. Value pluralism and respect of different values is a fact which is result of the fragmentarisation of the multicultural societies. The whole world in value and cultural sense resembles a Babylon Tower in which life is difficult to organize and to live according to previously set up a priori rules. One of the most eminent representatives of pluralism, Habermas³¹ develops the perspective of not-surpassing that confusion, but of finding new *modus vivendi* in the modern informatics society, through his theory of communitarian interpretation: each individual must become an independent moral subject, with own value principles, and in the communication with the other members of the community to exchange own experiences and standpoints, creating a new information basis about the common value standpoints. This concept, which he calls a post metaphysic theory of human sense, opposite to the universal reason (which is dead), emphasizes the communication sense: in an ideal form of democracy, the communications and the discourse between the free and equal citizens can ensure human rights to be guaranteed in the laws adopted by the citizens as autonomous legislators.³²

In the critic of this concept we should emphasize the obvious idealistic basis of the expectations that the communication discourse can surpass the value differences and conflicts. It is possible only under the assumption that there is a rational choice of what can be considered as useful for everyone through that discourse. The values and norms that are acceptable to everyone, which have a universal meaning, so that, finally, the standpoint of Habermas on the

²⁹ V. Whitte/Patterson, 184.

³⁰ V. Minda, 52.

³¹ *Faktizitt und Geltung*, 93.

³² *Habermas*, 122.

general consent about the values, starts from the assumption that a basis for that is the principle of their universality.³³

14. It is understandable why, in the light of the new expectations about value reconstruction of the modern society, directed towards the law, the changes in the observation of the general human values move the gravitation centre of the philosophical-legal thought from the legal epistemology and gnoseology towards the legal axiology.

Understanding the values as universal and absolute ideas is the only methodological approach that opens perspectives for the law in the modern conditions of value and moral crisis. On such, neo-Kantian axiological position, the law can answer the challenges of the future, which are difficult to predict, but will surely open on the line of: accelerating the social innovations, accelerating the diversification and, what is especially important in the area of law – acceleration of the universalisation and unification of the legal systems.³⁴ That new metaphysics of law and its values has a real basis in the social anthropology and the knowledge about the necessity of existing common values imposed by the needs and interests of the life in a community. The social community can be maintained and developed only provided that the will and freedom of the individual are in accordance with the will and freedom of the others, by accepting the rational common interests and rules of behaviour, derived from the idea of a rational justice and other common values. In the light of such, metaphysical concept, the law is a compulsion legitimated with the philosophic-legal norms: the metaphysics of law is a limitation of power and strength.³⁵

This principle has a far reaching consequences regarding the possibility of a repeated constituting a consistent philosophic-legal concept, which will move the epicentre of philosophy of law on the essential, axiological questions. Developing a legal axiology should not deny the epistemological benefits of the analytical legal thought, but it must direct itself primarily to surpassing the dichotomy between the factual and value judgments through a deepen scientific discourse on epistemological axiology.

³³ Höffe, 267.

³⁴ Sacco, 743.

³⁵ Naucke/Harzer, 153.

15. Determining the concept of legal value is *value-value* question, which implies a certain social norm, as desired or obligatory model, type or a manner of acting. The norms are a natural and necessary addition to the values and they are a product of the rationality of the human being, a shape of a shape-demiurgic creative force of man, which expresses him as a free being.³⁶

There are two kinds of legal values, according to a rough and relative classification: values that are created by the law itself, or purely legal values, and general values that are affirmed by the law, creating conditions for their maintaining or development, or which protects them.³⁷ The first are also values for the whole normative order, whereas the second are primarily legal values, which, as such, have support by the other parts of the normative system. Among the first are: human, freedom and natural human rights, peace, order and stability, justice, truth and the general good, whereas among the second are – efficiency, legal safety and suitability. The general values are legal to the extent to which there is a need for the law to support, promote or protect them. Human is the highest value, who represents his social personality through the image of a *legal human* (*homo juridicus*): his own existence and a number of his interests and needs he expresses, exercises or protects with the help from the law (life, integrity and dignity etc.) On the anthropocentric structure, the created general values (peace, security, stability, safety, stability etc.) are also implemented, developed and protected by law, to the extent to which the law and the legal compulsion are necessary means for achieving those objectives, especially when they cannot be achieved with the help of the moral or other normative systems due to their insufficient efficiency.

There is hierarchy among legal values according to the principle of monism, based on the idea about the highest value as *summum bonum*. The hierarchy of the values is not their important, ontological characteristics. The law holds on to, precisely, in order to be correct, should hold on to the strict hierarchy of values determined on the degree of closeness to their anthropocentric core. Their inexhaustible source, as well as and a criterion for their valuing and hierarchy, is the rational natural right.³⁸

The highest social, and according to that legal value is the human. Any consideration of the values should start from the human being. The legal anthro-

³⁶ Pavičević, 97.

³⁷ V. i Vračar, 125.

³⁸ Perović, 2, 543.

pology, as a separate area of the legal axiology, has a task to study and explain human being and human's role as a determinant of the essence of law by defining the *legal human* as a coupling of personality and law.³⁹ The world of law values cannot be created without, beyond or independently from the human as a value, to whom, i. e. to his freedom as important, essential characteristics of his nature, is related the very idea about the law, justice and the other elements of the essence of the being of the law.

Freedom as the highest social and legal value is a manifold idea. According to the philosophy of law, especially relevant is the positive definition of freedom as a possibility to do anything, except what is not harmful for the others, or for the general interests (*neminem laedere*), and, therefore, is explicitly forbidden by law. The concept of freedom, according to this definition, contains own inner contradiction – the possibility to limit it by law. The legal form gives a unique extent of freedom for the individual, so that it is not unlimited, but within the frames of the law and spreads its boundaries to the freedom of the other individual. It is a rational approach contained in the basic principle pointed out in the classical law: not to harm anyone (*neminem laedere*), to which other *praecepta juris* is added (*Digesta: neminem laedere, honeste vivere, suum quique tribuere*).⁴⁰ The idea of human freedom as a priori value is today the basis for the universal corpus of human rights, proclaimed for immanent, natural, unimposed and invulnerable.

16. The two century development of the philosophical-legal perception of freedom and of natural rights of the human as the highest legal values resulted in the second half of the XX century with their defining as a categorical imperative of the modern state in the international documents on human rights. The UN Universal Declaration of Human Rights from 1948 sublimates this philosophical-legal standpoint through the following provision (Article 1): *All human beings are born free and equal in dignity and rights*. On this concept, a series of conventions on human rights are added: The European Convention for the Protection of Human Rights and Fundamental Freedoms by the European Council from 1950, the International Pact on Civil and Political Rights from 1966 and the International Pact on Economic, Social and Cultural Rights from 1966, as well as the EU Charter of Fundamental Rights from 2000.

³⁹ Данъилян, 231.

⁴⁰ V. i Perović, XCVI.

According to the EU Treaty (Article 6.2), the European integration has for its legal basis the respect of the fundamental rights that are result of the constitutional traditions of the member-states, as general principles of the Community law.⁴¹ In the most sublimated and the most complex form, the categorisation of the basic freedoms and rights on the European level today is represented in the EU Charter of Fundamental Rights from 2000, a document that has a great philosophical-legal, historic and civilisation significance (the Charter is not a positively-legal act and a part of the positive EU law, but a codification of the basic freedoms and rights contained in the constitutions of the member-states and it is considered to be a source of the EU law in terms of the general legal principles of the EU and the member-states). Starting from the alignment of the action and the achievement of all *generations* of rights, the Charter makes a systematisation of the human rights in the following categories: dignity, freedom, equality, solidarity, right to citizenship, justice. The first chapter, titled *Dignity* (Article 1-5) contains the basic human rights (human dignity, the right to life, the right to the integrity of the person), provides an explicit prohibition (Article 3) of human beings cloning. In the second chapter *Freedoms* especially are guaranteed: freedom of arts and scientific research, academic freedom and the right to education.

17. The legal protection of the fundamental freedoms and rights is exercised through a number of legal branches, and especially the criminal law, which basic function is protection of the freedoms and the rights. One of the main courses of the modern criminal-legal reform is precisely the expansion of their criminal-legal protection from the misuse of the scientific and technological development. In a number of criminal legislations there are criminal-legal prohibitions on biological experiments and human beings cloning (the Spanish Criminal Code from 1995 and others), acts of illegal trafficking and prohibited transplantation of human body parts, environmental incriminations, act related to nuclear and radioactive materials etc.

The new axiological orientation of the legal philosophy results in expanding the science area, the scientific researches and the application of the scientific results, which are becoming a subject of a legal regulation and legal prohibitions. The highest level of such philosophic-scientific-legal symbiosis has been achieved in the area of bioethics. As a study about the ethical controversies about the progress of biology and medicine, bioethics sublimates the philosophical, political, legal, theological and other aspects of the development of

⁴¹ Belvisi, 21.

science in the area that is of important significance for the human existence.⁴² Today, it has reached its mature phase of scientific constituting and is focussed on the ethical, philosophical and legal aspects of the boundary issue of life (abortion, euthanasia) and the possibilities related to them about medical interventions (donating organs), medical experiments, the new treatment methods, in vitro fertilization, genetic modifications and cloning, as well as the right to refuse medical protection due to religious or cultural reasons. Gradually have been formulated the basic principles of bioethics (since the famous Belmon Report from 1979): autonomy of will, a benefit of the research and the application of the scientific researches to the human life and health, justice, human dignity and the inviolability of human life.

The development of bioethics and medicine is followed by the development of the medical law as a separate legal discipline, that includes all legal aspects of the medical profession.⁴³ In the broad spectra of the medical, criminal and other legal branches, a number interdisciplinary areas have been included, such as: unscrupulous treatment, not providing medical help, quackery, innovations and technical improvements in health, discovering genes, human genome, giving and taking bribery, legal protection of the genetic identity and the privacy, transplantation of human body parts etc. The basic principles and rules of the law on international level are incorporated in the basic documents on human rights and in the separate conventions in the area of medicine and bioethics: The Convention for Protection of Human Rights and Dignity of the Human Being of the European Council regarding the application of biology and medicine from 1999, the Convention on Human Rights and Biomedicine (Oviedo 1997) and the two protocols: the Prohibition of Cloning Human Beings (Paris 1998) and for the protection of human rights regarding Transplantation of Organs and Tissues of Human Origin (Strasbourg 2002), the Declaration of Helsinki on Ethical Principles in Human Biomedical Research from 2000, the Madrid Declaration on Ethical Standards for Psychiatric Practise from 1996 and others.

For the future development of the law and the bioethics are especially relevant the basic rules and prohibitions contained in the UNESCO Universal Declaration on Bioethics and Human Rights from 2005. In its Preamble it is emphasized that it is time for the international community to state universal principles that will provide a foundation for humanity's response to the ever-

⁴² V. Klobučar, Filipče, Kambovski, 73.

⁴³ V. Žizmić, 171.

increasing dilemmas and controversies that science and technology bring for the humankind and for the environment. As a fundamental principle it has been emphasized that the interests and the welfare of the individual should have priority over the sole interest of science or society. The Declaration establishes an obligation (Article 22) for the States to take all appropriate legal and other measures to give effect to the ethical principles, which application can be limited by law, adopted in the interest of the public safety, for the needs of the investigation, detection and proceeding a criminal procedure for a criminal act, due to protection of the public health or protection of the rights and freedoms of others and in accordance with the international conventions on human rights.

Conclusion

18. The new axiological orientation of philosophy, science and law is a guarantee for their harmonic development in the direction opposite to the extreme scientism, and by that for avoiding the misuses of science and the scientific researches for causes that are in collision with the interests of human, human freedom and natural rights. The orientation of science towards the human values, as the highest priority causes reconsideration of a number of settled standpoints on: its value neutrality, the truth as its only value and the irresponsibility for its results and their use.

But if the axiological approach of science represents an imperative, which necessarily has to result in *binarity* of the scientific method, the demand of integrity, objectivity, ethics and non-corruption of the scientist as a complex individual, a question has been raised about the selection of values that need to fulfil their axiological basis. It should develop its exceptionally important functions in the modern world, based on knowledge and researches, in a situation of a general crisis of values, pluralism, scepticism and value relativism.

The value reintegration of the modern society can be prepared by the philosophical thought developed not on the atomism, but on the holism, as well as on a priori, universal and absolute values, achieved with the human mind. The respect for human life, freedom and natural rights, justice and the respect for the others are not incompatible with the truth as a value that has the greatest significance for the science.

As an autopoietic system, directly related to the existential, universal human values, the law has a special role in that value reconstruction of the modern society, which may be achieved if it holds on to the highest legal value – human and human's freedom. The idea of human freedom as a priori value is today the basis for the universal corpus of human rights, proclaimed for immanent, natural, unimposed and invulnerable in the international documents on human rights.

The axiological approach of the legal philosophy towards the universal freedoms and rights results in expanding of the areas of the scientific researches and the application of the scientific results, which are becoming a subject of a legal regulation and legal prohibitions. The highest level of a philosophic-scientific-legal symbiosis has been achieved in the area of bioethics, so that the legal model developed around the fundamental ethic and legal issues in this area can be recommended as a good basis for a legal regulation in other areas, in which scientific researches are in touch with the universal concept of the human freedoms and rights.

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