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MORAL VALUES AS THE BINDING FORCE OF THE HUMAN RIGHTS

Moral values represent the binding force of human rights. They are primarily the binding force of norms of national legal systems, and then the binding force of legal norms of international law and international conventions and declarations on human rights. The very essence of moral values represents the primary issue for the creation of conventions and declarations which protect human rights. However, moral values are not merely that, they are also the source of human rights. If we start from the fact that the values were given and are, thus, indestructible by man, then they are the best possible foundations of human rights. Actually, all human rights are based upon the values given to people to exercise and protect them. As with any issue of binding force of legal norms of national legal systems, the issue of respecting declarations and conventions on human rights, the sanction is not and cannot be the source of the binding force of these norms and declarations. It must be something more durable, and these are just the values that are given to people. Therefore, we can assume that human rights are given and are independent of people, even when they are being oppressed and violated, human rights do not lose their value and its importance. Only an order of values does not allow human rights to be rejected and to enter into a vicious circle in which the man disappears. Distorted application of moral values, directly lead to the rejection of human rights. There is no establishment of human rights without accepting moral values, and they will then be a valid foundation of durable establishment of human rights. Only then and only in this way human rights will not remain a record on a piece of international paper.

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1. INTRODUCTON

The value approach in establishing human rights arises because of the nature of human rights which are not only a legal phenomenon. Such an approach of human rights will enable us to determine the roots of human rights, their structure and content, as well as their binding force. Such an approach is required in order to eliminate the possibility that human rights are just what stands in declarations and conventions. Their power is not derived from declarations, but from their value content.

The philosophical prism of the observation of human rights is present as a simple fact that the law, as a science, was derived exactly from philosophy, which was a basis for its development, so the understanding of any legal institute is only possible from the ontological-axiological point of view. Values represent the foundation for the construction of every legal system and the binding force of any legal norms, and it is impossible not to introduce an axiological perspective in observing human rights, which, as well as the legal norm, has the same root – value. How can values influence the human rights? 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 human rights issues without values considered. In this manner, searching for the value roots of human rights, we avoid all the traps of legal positivism which explains everything through a self-creating self-sufficiency. This law requires simple obedience without the involvement of the ontological and axiological social setting from which the law is derived. Actually, such law and legal system do not ask for the motives for respecting human rights, but only require submission. If we include practical wisdom, there is a simple question: how far will human obedience go? It is quite expected that it will exist as long as there is a fear of sanctions for violations of legal norms, which immediately implies that they might not be respected to that extent if there is no fear. Is it possible to set the construction on human rights on such fragile pillars such as sanctions? So, our reality requires a value approach in resolving all issues, and that includes human rights as one of the pillars of culture, society and the state.

What should also be avoided as the trap of the modern age is a trend in dealing with human rights. It is not and never will be a topic that is now “modern.” Human rights are not a matter of fashion, but an integral part of man and society and only through the value approach to the study of all aspects of human rights is possible to see the bottom of their entirety. Therefore, a thorough value approach and a value construction of human rights are essential. This value construction of human rights is not only a metaphysical observation of ready-made things, but it includes the

active involvement of values in the process of construction and drafting of legal regulations that come as a finish of studying a phenomenon for which the state is interested. Thus, the value construction of human rights is not a post festum thing, but the primary issue of every study and construction of human rights. It is not a “meeting after” but rather before each of the final formulation of human rights; it is an absolute respect of human rights, because man and his life remain 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 human rights as well, which is also the value product of the human spirit. Therefore it is necessary to divert attention to the axiological surface of human rights. If values were excluded from the human rights, as the creation of the human spirit, as a reason for its existence, human rights would turn into a pure formal and legal way of existence of the declarations. Since the realization of human rights lies in the very construction of law, it is necessary to establish the place of human rights 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 human rights is also a way of forming future, the future of nations, not of a person, because: “recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world... this Universal Declaration ... (is) a common standard of achievement of all peoples and all nations.”² Thus, the emphasis is on the active participation of values in the development of human rights. Such a construction will contribute to their better understanding and their better implementation, which is the main goal, the application to the life of man and his well-being.

2. THE ABSOLUTE CHARACTER OF HUMAN RIGHTS

In the necessity to recognize the absolute, timeless validity, validity of a value per se, basic value forms, we insisted on finding a stable foun-

¹ L. Strauss, *Natural Right and History*, Chicago & London, 1992, 38 39.

² D. Little, *Natural Rights and Human Rights: The International Imperative*, in, *Natural Rights and Natural Law: The Legacy of George Mason*, edited by R. P. Davidow, The George Mason University Press, Boston, 1986, 68.

dition for absolute values. The belief that there are norms which rise above the empirical motif for the expression of human knowledge is based upon the assumption that the Government represents a higher intellectual system. If we want to conceive this system as a part of a higher real awareness in analogy with our impression of the relation between perception and its subjects or values, we must represent it as a set of ample provisions of an absolute mind, i.e. Creator, this because “For in six days the Lord made heaven and earth, the sea.”³ Thus, the absolute values, values per se and absolute criteria and norms have found the absolute legislative instance – God, and from there also “fundamental human rights logically precede governments and all positive law.”⁴ Therefore Max Scheler emphasized the eternity of values and was named absolutist when referring to value. This leads to the fact that essential values are timeless, as well as the principles of logic.⁵ This implies that human rights founded on absolute values also constitute an absolute category. 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.⁶ For, the value has its own being as a unique quality that exists by itself in the independent realm of values which exists objectively, absolutely and eternally, independent of any real object or subject, independent of man. In such manner, the values cannot be destroyed.⁷ Thus, human rights originating from absolute values cannot be destroyed.

Such absolute values enable human rights to be absolute in terms of their foundation. It is, actually, ontological and axiological foundation of human rights which is unambiguously clear and absolute. What causes doubts about their absolute character is the issue of implementation of human rights, which often results in views such is the one of Alasdair MacIntyre: “(T)he truth is plain: there are no such rights (as human rights), and the belief in witches and in unicorns. The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches and the best reason which we possess for asserting that there are no unicorns: every attempt to give good reason for believing that there are such rights has failed... Natural or human rights then are fictions.”⁸

³ R. P. Davidow, *Introduction*, in *Natural Rights and Natural Law: The Legacy of George Mason*, 16

⁴ D. Little, 73.

⁵ L. Strauss, 39.

⁶ M. Scheler, *From Idealism to the Materialism of Value*, 3rd ed., Haale 1927, 94.

⁷ *Ibid.*, 268.

⁸ D. Little, 74.

This entirely skeptical attitude towards the existence of human rights originates from the issue of their implementation. That issue makes them a relative category, which is still arising, so that human rights sometimes cannot help us in deciding “whether a national law is good or bad, just or unjust.”⁹ The reality of monopoly of physical violence which the state possesses, very often makes us believe that human rights are relative categories and that “when the secret police come, when the torturers violate the innocent, there is nothing to be said to them of the form “There is something within you which you are betraying. Though you embody the practices of a totalitarian society which will endure forever, there is something beyond those practices which condemns you...”¹⁰ This dismisses a possibility of not the literal existence of human rights, but the possibility that they are based on something more solid, on something like the absolute values. Quite the opposite of this attitude Look believes that “According to the law of nature all men alike are friends of one another and are bound together by common interests”.¹¹ So, on the question: “Is every man’s own interest the basic of the law of nature?” Locke simply answers: “No.”¹²

This confirms that there is something higher than selfish interests or “rights of self-interest” of “egoistic person” who is in the words of Karl Marx “separated from community” and who is “wholly preoccupied with his private interest, and acting in accordance with his private caprice.”¹³ Therefore, something greater and more valuable is the basis of human rights than selfish interest of the individual and the government. Since for Loocke “Law of Nature” something “which obliges every one” thus, the values, as well as human rights, are something which absolutely obliges every one. Only if the values are binding force of human rights, then will they be guaranteed to all who were born as members of “human family.” Thus, it becomes understandable that: “The State of Nature has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions.”¹⁴

These absolute values represent the binding force of human rights existing at the very root of human nature, which implies that we are com-

⁹ *Ibid.*, 73.

¹⁰ R. Rorty, *Consequences of Pragmatism*, University of Minnesota Press, Minneapolis, 1982, xlii xliii, in: D. Little, 73 74.

¹¹ J. Locke, *Essays on the Law of Nature*, Clarendon Press, Oxford, 1954, 163, in: D. Little, 81.

¹² J.D. Little, 82.

¹³ *Ibid.*, 75.

¹⁴ J. Locke, *Two Treaties*, bk. 2, sec. 6, in: D. Little, 90 91.

pletely aware when we act to someone's detriment, violating his/her human rights and his human dignity. Thus, via human rights, the values become a guaranty of the fight against pure voluntarism and arbitrariness, since "each and every human being always and everywhere is entitled not to be subjected to coercion, to severe pain, impairment, disfigurement, loss of life, or neglect, purely for the sake of anyone's pleasure or self-interest."¹⁵ Values become a still actuator of human rights since they "claims that are justified by moral principles and rules that apply to all human beings qua human beings, regardless of their particular institutional arrangements. This rights are general rather than specific (specific rights originate out of transactions, such as contracts), and they are universal."¹⁶ Quite expectedly, it is stated in the Virginia Declaration of Rights: "That all man are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."¹⁷

3. VALUES AS A BINDING FORCE OF LAW AND HUMAN RIGHTS

Since human rights at the national level are mostly mentioned in the Constitution, by observing the Constitution, we realize that it is a "pure" and not a "sanctioned" norm. Why is it binding then? What binds us? And, how is it possible for an entire legal system and system of human rights to be founded on a "pure" norm, a norm which is not sanctioned? Radbruch finds that: "Aber auf der Suche nach dem Grunde dieser Geltung stößt die juristische Geltungslehre mit Notwendigkeit irgendeinmal auf die Tatsächlichkeit eines Rechtssatzes aus andern Rechtssätzen ableiten, die Geltung einer Verordnung aus dem Gesetze, die Geltung eines Gesetzes aus der Verfassung. Die Verfassung selbst aber kann und muß eine solche rein juristische Geltungslehre als eine *causa sui* auffassen. Sie kann wohl die Geltung eines Rechtssatzes im Verhältnis zu andern Rechtssätzen, aber niemals die Geltung der höchsten rechtsordnung, als Ganzen dartun."¹⁸

¹⁵ D. Little, 104.

¹⁶ J. F. Childress, *The Meaning of "The Right to Life"*, in *Natural Rights and Natural Law: The Legacy of George Mason*, edited by R. P. Davidow, The George Mason University Press, Boston, 1986, 129.

¹⁷ *Ibid.*, 130.

¹⁸ G. Radbruch, *Rechtsphilosophie*, Verlag Von Quelle & Mezer in Leipzig, Leipzig 1932, 77.

In such a manner, we come to the issue of the binding force of a legal norm, and human rights which are contained within legal norms, and, then, to values. Positive law by itself does not possess value-based binding force, therefore, sanctions are applied. Positive law must be adjusted to values. The conflicts of social groups are not a mere struggle for law, but a struggle for the better law than the existing one, and for the human rights. Human rights are constantly being improved and their development is never finished. The value represents an absolute ideal, an eternal noble aspiration of mankind towards the perfection, the perfection of law and of human rights. The conflict between the value and positive law is reduced to the conflict between variable and permanent, real and ideal, stagnation and progress. It is a conflict that encourages the progress. Positive law retreats in front of values in this conflict. The view according to which the entire law consists of positive law, which equates the state with law and law with power, is absolutely unacceptable. The ambition to incorporate values into human rights would be of essential significance. Human rights should serve to realize values in reality. Only thus can the values have an actual impact on positive law. We study the binding force of human rights in order to demonstrate that values, which can be in conflict with positive law, and which are to take victory over positive law, are able to enforce us to achieve them. If we would think that only a sanction provides the binding force of a legal norm, then values would be useless for law.

It is more acceptable that the basis of human rights lies in values, than that it lies in a sanction. For, a norm is not able to draw its binding force from a sanction or from some other norm, a higher norm. If a norm would draw its binding force from other norm, then, the binding force of a legal norm would be reduced to a mere form, which is impossible, since the binding force cannot be contained within the form, but within the content in case it pledges for longevity: "Aus den Rechtssätzen als Imperativen, Willensäußerungen kann, wie gezeigt wurde, vielleicht ein Müssen, niemals aber ein Sollen abgeleitet werden."¹⁹ Such an assumption on the form as the fundament of the binding force excludes the world of values and makes the human rights completely powerless, ineffective and useless.

However, a human rights by itself are actually able to bind a subject, that is, to bind him to execute it only as a value. In this way, a value is contained within the goal, the purpose of the human rights. Human rights are binding by means of the objectively postulated values, which are actually capable to motivate our will. Thus, we adopt objectively postulated values and execute human rights in practice. The binding force of human rights is created in the union with values.

¹⁹ G. Radbruch, 43.

In brief, we believe that human rights must rely on values given by the Creator in order to be binding. Indeed, man has to discover and understand a value in order for it to become actually binding for him. In that respect, it is subjective. However, if the cognition of a value is indispensably subjective, the essence of a value is not subjective, it is a subjective feeling by no means, but it is an indispensably subjective cognition of an objective system of values given by the Creator. And, our cognition of a value must, more or less, correspond to the very objective value. It is important to emphasize that a value consists of the judgment that something should exist, and the judgment is an act of consciousness, therefore, it cannot exist outside the minds of one who produces it. Thus, it is possible that something represents a value for you, for me, but it is not possible to have a value *per se*, a value without a subject. In order for such a value to exist, an impartial mind should exist as well, independent from man, the consciousness which will make judgments about a value. That is the mind of the Creator. A value is not subjective solely in its essence. For, the first man who created a value and used his actions for its realization, was truly the first man, since, by then, there was no creature on this earth to consciously act in compliance with values that the first man – Jesus Christ. Law as a norm and human rights cannot be binding otherwise but by our acceptance of values they realize. Any single legal norm realizes a particular value, and any single human right realizes a particular value, respectively, which we can either accept or reject.

4. MORAL VALUES AS THE IMPERATIVE OF THE HUMAN RIGHTS

Everything that takes place in law, from the creation of human rights to their application, has been accompanied, motivated and justified with certain values. Thus, values are inherent for human rights and: “The word inherent, which Mason also uses, is virtually a synonym for natural. Inherent means “existing in something as a permanent attribute or quality... especially a characteristic or essential element of something; belonging to the intrinsic nature of that which is spoken of.”²⁰

The term inherent “is repeatedly used, as, most recently, in the Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief (adopted by the UN General Assembly 25 November 1981): “the dignity and equality inherent in all human beings.” Something quite similar appears in the African Chapter on Human and People’s Rights: “fundamental human rights stem from the attributes of human beings.”²¹ Thus, already with Lask, it is demonstrated

²⁰ J. F. Childress, 69.

²¹ *Ibid.*

that philosophy of law studies typical value relations of law. Therefore, the operations of lawyers must be determined by value judgments manifested in positive-legal state regulations of human rights, because values are the absolute guarantee. “According to the law of nature all man alike are friends of one another and are bound together by common interests.”²² That is why: “the Sword is not given to the Magistrate for his own good alone.”²³ In addition, the orientation of law towards values and deformalization of law are accomplished in this way as well. Value path of human rights should be the object of jurisprudence and the main ingredient of law. Values and human rights are often violated in such a refined manner that such injuries cannot be sanctioned by law, which itself often violates values. Actually, the subordination of values in relation to positive law is indispensably derived from the objective nature of values, for it is a duty of man to set his rules in compliance with values. Because we cannot accept the following: “Whatsoever pleased the sovereign, has a force of law.”²⁴ This is the reason why law is often defined as ethical minimum, “etische Minimum (Georg Jelinek),”²⁵ and also because “we really do act within a moral world.”²⁶

Minimal value program of human rights contains the provision that we must account for the axiological content of the human rights entity, that is to say, its value features. Whereas, the utmost requirement is that jurisprudence should not be only descriptive, but should evaluate entire legal systems, human rights and all their elements from the standpoint of value, because non values *are hostis humani generis*.²⁷ Values are indispensable support for the responsible in a secularized society and in a state, where a valid life for all people is possible only through respect of values, because “The rights of the citizens rest upon the “rights of man.”²⁸ At the same time, they are a manifestation of truth about the progress of implementation of the human rights.

We realize from the tragedy of human rights that values have inscribed laws in our hearts, for the answer to the question “Who show the

²² D. Little, 81.

²³ *Ibid.*, 92.

²⁴ St. T. Aquinas, *Treatise on Law*, in: C. Johnsn, *Philosophy of Law*, New York 1993, 14.

²⁵ G. Radbruch, 42 43.

²⁶ D. C. Hendrickson, *A Commentary on Just and Unjust War*, in, *Ethics & International Affairs*, J. H. Rosenthal and C. Barry editors, Georgetown University Press, Washington D.C., 2009, 3.

²⁷ S. Benhabib, *On the Alleged Conflict between Democracy and International Law*, in, *Ethics & International Affairs*, J. H. Rosenthal and C. Barry editors, Georgetown University Press, Washington D.C., 2009, 185.

²⁸ *Ibid.*,190.

work of the law written in their hearts?”²⁹ is values given by the Creator, because they are an axiological face of human rights. Any legal system, which tends to be persuasive and obliging, has to find its place in the world of human rights, and every turning away from that value search is harmful for law. In Gustav Radbruch’s opinion, law is man’s project, but as such, it can only be comprehended through his ideas solely which can be regarded as a value. Legal norm, as a command, must be directed only towards values and human rights, so as to “emerge out of the ocean of morass of facts”.³⁰ The rejection of value judgment of human rights leads to the strictly factual description of the obvious actions, as seen in the concentration camps.³¹ So, Legal Positivism, which insists on the rejection of values as a binding force of human rights, brings itself into danger of historical objectivity. That prevents us from calling “spade a spade”³² and it brings into danger the kind of objectivity which requires previous assessment, that is to say, “the objectivity of interpretation”.³³ This attitude of legal positivism, devoided of values as a binding force of human rights, 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 does not contain values, it will be divided of judging the social phenomenon.³⁴

5. THE LIMITS OF THE HUMAN RIGHTS

The limit of the human rights is a man’s attitude towards the values, and because we must bear in mind the “confession of the German priest, Father Niemoller: “When they arrested the gypsies, I said nothing. When they arrested the homosexuals, I said nothing. When they deported the Jews, I said nothing. But when they arrested me, the others said nothing.”³⁵ 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, because we very often believe that: “In this world, right and wrong, justice and injustice, have no place. If war belongs to the realm of necessity, it makes no more sense to pass moral judgment on it than it would to pass moral judgment on catastrophes occurring in nature.”³⁶

²⁹ St. T. Aquinas, 16.

³⁰ L. Strauss, 40.

³¹ *Ibid.*, 45.

³² *Ibid.*, 61.

³³ L. Strauss, 61.

³⁴ *Ibid.*, 63 64.

³⁵ P. Virilio, *Art and Fear*, Continuum, London New York, 2003, 87.

³⁶ D. C. Hendrickson, 3.

Thus, it seems as if the values were banished from the realm of human rights, like: “There is not enough cruelty.”³⁷ If the history of a conflict or “rule of the gun”³⁸ has shown something, it is the rejection of the moral minimum of international law which is necessary for human survival, and “is by nature founded on the principle that the various nations should do to one another in times of peace the most good possible, and in times of war the least ill possible, without harming their true interests.”³⁹ Interstate and international conflicts directly involve the issue of limiting international law and human rights, and states are to “pursue their interests within the limits imposed by justice and good faith.”⁴⁰ Quite apart from historical reasons, as well as of the rise of historical perspective of a conflict, there remains a question that no one gives an answer to, the question of the fate of the common man in a conflict and his future after the conflict.

The conflicts and “Verbrechen gegen die Menschlichkeit” (crimes against humans)⁴¹ in the world “that shock the moral conscience of mankind”⁴² show the inability to achieve a moral minimum of international law, which seems to remain paralyzed when it comes to protecting the only subject for which it exists, man and then it looks like we are living in a “universal tyranny.”⁴³ Thus, the fact of a very fragile peace that has been established is coming under attack, and, therefore, man comes under attack as well., because of that Harry Truman said that “aggression anywhere in the world is a threat to peace everywhere in the world”⁴⁴ and also “whenever the filthy work can be stopped, it should be stopped.”⁴⁵ As if in these conflicts it is forgotten what was the reason for the adoption of all international conventions, declarations on human rights. As if man as a value is forgotten, an individual with his hopes, fears, just as if a man is merely a word in the international legal and political dictionary.

International law, independent from its legal requirements and legal actions, has a moral value basis, because “Though banished from the realm of positive law, natural law did not simply disappear. It continued

³⁷ P. Virilio, 29.

³⁸ D. A. Crocker, *Reckoning with Past Wrongs*, in, *Ethics & International Affairs*, J. H. Rosenthal and C. Barry editors, Georgetown University Press, Washington D.C., 2009, 54.

³⁹ D. C. Hendrickson, 5.

⁴⁰ *Ibid.*

⁴¹ S. Benhabib, 186.

⁴² D. C. Hendrickson, 14.

⁴³ *Ibid.*, 9.

⁴⁴ *Ibid.*, 12.

⁴⁵ *Ibid.*, 13.

to march under the banner of morality.”⁴⁶ In fact, moral values are the basis for the construction of human rights and a primary issue for the development of international law, and “Its principles constitute a common moral world in which human beings have rights not as members of this or that community but as members of the human community.”⁴⁷ The moral minimum that is necessary for the proper functioning of the law is already compromised by the very fact of conflict. Then, it is being violated and eventually rejected, which undoubtedly happened in every country during the war.

The moral minimum does not ask for the rights of the state, it asks for the common man, and since the state is not a mystical creature, but a real legal and socio-political entity made up of people, the thing becomes paradoxical, but quite clear as well. The basic moral value that people who run a state must respect man, because “cosmopolitan norms of justice accrue to individuals as moral and legal persons in a worldwide civil society”⁴⁸, is being rejected by those people. How is it possible at all to talk about the application of international law to protect the human rights when states often ignore the previous issue of the protection of man? Do those who knowingly go into a conflict can confirm that they did not know that the very fact of causing conflicts would jeopardize human life? A man and his life are a moral minimum international law, because “all human beings are “neighbors”⁴⁹ but the inability to protect them in recent conflicts indicates the limit in the application of international law enforcement.

6. CONCLUSION

What is now most concerning is not the formal and legal presence of human rights in legal standards, declarations, resolution, but their absence in the actual practice of present-day states, both at national and international levels. This points out to the rule of pure legal positivism which complies with the fact that human rights are “mentioned” in legal standards. Such a purely formal and legal view of human rights represents the beginning of their disappearance.

Rejection of the real roots of human rights and the values leads to their cyto formal presence in the legal norms. Even when we talk about

⁴⁶ T. Nardin, *The Moral Basis of Humanitarian Intervention*, in, *Ethics & International Affairs*, J. H. Rosenthal and C. Barry editors, Georgetown University Press, Washington D.C., 2009, 92.

⁴⁷ *Ibid.*, 92.

⁴⁸ S. Benhabib, 187.

⁴⁹ T. Nardin, 95.

human rights, we refer to them as impersonal category. Is it possible that something which is fundamentally tied to the personality be impersonal? What kind of inconsistency it is? Intentional or accidental? This impersonality in the understanding of man, as well as the values, is reflected in the view of men as figures. Rejecting a mere legal positivism and adhering to the axiological understanding of the world, we are able to construct a human rights system that will be really ontologically linked to the man. In contrast, even in spite of the existence of sanctions for violation of human rights, human rights are “fatally” wounded with “Kill! Kill! Kill! One good thing: their skulls will make perfect ashtrays.”⁵⁰

We hereby do not reject the formal aspect of the existence of rights, but merely indicate to its inadequacy to explain the binding force of law and ensure the value fulfillment and duration of one legal system which ought to be the guarantor of human rights. For one thing will always stand, and that is the necessity for a formal side of rights expressed also in proceduralism of law, but it is quite another matter the binding force of law, to which legal positivism has no answer. The answer to the question of binding force of law actually lies in the values, which thus form the basis of a binding force for human rights because “The moral principles of the natural law have become positive law in modern constitutional states.”⁵¹

However, since a state is not a mystical creation, it actually made of people, what remains unaccounted for is such a neglect of man and his rights by man himself. In fact, if human rights were a product of man, then, because of the sheer neglect and violations, they would have logically disappeared so far. But since the foundations of human rights are values, which are given, human rights cannot disappear insofar their ontological – axiological structure. Their implementation, which depends entirely on people, may be the reason for their obscurity, but not for their total disappearance.

Only value-oriented legal theory may become an obstacle for the disappearance of human rights. Superiority of legal positivism lead to the disappearance of man together with his rights. This kind of axiological reversal is what should happen, because the history of human conflicts has confirmed the existence of an irrepressible desire to destroy man like “War is the world’s only hygiene”⁵² but: “If all men loved their enemies, there would be no more enemies.”⁵³ So, the quest for peace is a search for

⁵⁰ P. Virilio, 64.

⁵¹ J. Habermas, *Law and Morality*, The Tanner Lectures on Human Values, Delivered at Harvard University October 1 and 2, 1986, 230.

⁵² P. Virilio, 29.

⁵³ R. Girard, *The Girard Reader*, edited by James G. Williams, A Crossroad Herder Book, The Crossroad Publishing Company, New York, p. 184.

the realization of human rights values, whose absolute respect can lead to peace, because there is no peace without respect for human values and respect for human rights cannot exist without peace. And all this can only be absolutely guaranteed by values that fulfill by their contents first man and then the law he creates, because “positive law is internally linked to moral principles.”⁵⁴

⁵⁴ J. Habermas, 269.