

Will and the Normativity of Law

In the last few decades, the investigation of metaphysical issues has returned to the field of legal positivism. Employing the method of conceptual analysis, legal positivism considers the nature and essence of law (Raz, Schapiro, Leiter, Marmor and others).

In this text, I would like to reinforce this tendency and address the issue the normativity of law, which, in other words, is to ask the question: What is 'duty'? I treat this question as one of the essential questions, understood phenomenologically, and the method on the basis of which I will conduct these deliberations is that of phenomenological analysis (Ingarden, *Essential Questions*, 343).

The function of the question 'What is X?' is to provide knowledge of the essence of the object, and phenomenological analysis consists in an *a priori* examination of the content of the idea of a given object, omitting its phenomenality (*epoche*). This allows us to detect essential relations (necessary and purely possible) that arise at the level of ideas. In turn, the relations between ideal qualities within the framework of a given idea are defined as the essence of a given object. However, these relations are not easy to grasp intellectually, because they cover domains of existence (to be precise, the mode of existence), matter (the endowment of properties) and form (the subject of properties).

"Every object (any something whatsoever) – writes Ingarden – can be regarded from three different points of view: first, with respect to its existence and mode of existence; second, with respect to its form; third, with respect to its material endowment" (Ingarden, *Controversy over the Existence of the World*, 87).

Thus, in the process of obtaining knowledge of the object, we have three types of ontological problem: 1) existential-ontological questions, 2) formal-ontological questions, and 3) material-ontological questions. The first requires us to answer the question about the proper mode of existence and the reason for existence, the second – which form the object takes, and the third – which variables and constants figure in the idea of the given subject, in other words the relations between the qualities in the content of the idea of this object.

Thus, the essence of the object is not a bundle of properties that appear with the greatest statistical frequency in the characteristics of a given object, but is rather part of a very complex picture that we often seek to reduce to a formula, by means of a (real) definition; yet this is simply impossible with many objects.

However, the issue of the normativity of law can be analyzed not only in terms of ontological justification, but also through consideration of causal justification (in the methodological sense, which involves indicating the source of normativity in the meaning of the justifying reason, understood transcendently).

Although causal justification is always derived from ontological justification – or, to be precise, from eidetic reduction in phenomenological terms – this what I shall to concentrate on in this paper. I seek a relationship between the normativity of law and the phenomenon of will. The inspiration behind this was Hannah Arendt's analysis of the phenomenon of will in *Willing*. As Arendt writes, the will is not only the ability (power) of the mind to decide, make a choice, but also "the mental endowment we have for beginning something new, of which we know that it could just as well not be" (Arendt, *Willing*, 195). The will is a permanent potential to exercise it, and thus to change previous decisions – that is, the opportunity to say "I do not want to". "The will with its projects for the future challenges the belief in necessity, the acquiescence in the arrangement of the world which it calls complacency. Yet isn't it clear to everyone that the world is not and has never been, what it *ought* to be? And who knows, or

has ever known, what this 'ought' should be? The 'ought' is utopian; it has no proper *topos* or place in the world" (Arendt, *Willing*, 196).