

ETHICAL PERSPECTIVE OF THE FUTURE DEVELOPMENT OF LAW

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Abstract Law, by its very nature, is human and humane. The humanity of law means that law is a product of man and is intended for man. The humaneness of law, however, means that human dignity and well-being must be the fundamental basis of law. Law, therefore, does not exist without a sufficient ethical foundation. The establishment of a state governed by the rule of law, and a legal culture based on it requires a particularly strong anchoring of law in ethical values. The greatest threats to ethics and law are (1) ethical deficits in areas of society on which law (co-)depends, (2) extreme authoritarian and totalitarian regimes, and (3) autonomous artificial intelligence capable of turning away from humans or even turning against and overcoming humans. In the first two cases, the humaneness of law is critically reduced or even extinguished; in the last case, both the humaneness and the humanity of law are extinguished, which is the worst possible scenario. All these dangers must be recognized in time and adequately averted, and regular efforts must be made to preserve the ethical values and the values of the rule of law.

Keywords

morality,
ethics,
rule of law,
humaneness,
totalitarianism

1 Law as a Human Phenomenon

Law is, by its very nature, a *human phenomenon*. Although it is becoming increasingly complex in the modern world and artificial entities are appearing in it more frequently as legal persons (or juridical persons), *man* is its creator and direct or indirect addressee.

Legal history teaches us that, even in the past, people often granted the status of legal entities to non-human beings. In religious, customary, and state legal systems, legal subjectivity was attributed to God, certain "supernatural beings," animals, and things (for more details, see, e.g., Holmes, 1963, pp. 1–33). Even today we are familiar with such definitions of legal subjects, some of which are fully worked out in legal terms,¹ while others are less legally thought out and primarily reflect the interests of the political public.² Especially in modern times, the subjects of law, in addition to people, the so-called natural persons, are also legal persons, as artificially conceived entities. The latter include, above all, various organizations and associations or property units, such as funds. In addition, the view is increasingly being expressed that animals should also be granted legal rights and at least limited legal subjectivity. Recent developments in technology have even led to the view that certain rights should also be recognized for robots.³

Despite the inclusion of non-human entities in the sphere of legal subjects, the law remains *essentially co-defined with humans*. Even in cases where animals, parts of the environment, objects, machines (robots), property units, and various organizations and associations are granted certain legal statuses or rights, man is the creator and direct or at least indirect addressee of the legal norms.

Man is indisputably the creator of positive law (e.g., constitutions, laws, judgments), even though technology aids him in this creation. Likewise, man bears *directly* or *indirectly* the consequences of legal and illegal acts. He is the direct bearer of legal acts

¹ For example, in 2017 in New Zealand, the Whanganui River was granted the status of a legal entity, with two (human) legal representatives assigned to it to appear in court.

² This is, for example, the well-known case from 2017 when Saudi Arabia recognized the citizenship (i.e., legal status) of the android Sophia.

³ See Evans, 2015, pp. 373–383. The author claims that machines have no rights in any domain as long as they are just machines, but he also points out that the Actor-Network Theory disputes this because wheels, hammers, artificial intelligences, and humans exist on a spectrum or within a network of what is cultural; social actors are everywhere because "the social" is distributed in all things and beings with which humans interact (*ibid.* p. 379). Thus, robot rights are the moral obligations of society towards its machines, similar to human rights or the rights of animals.

and legal consequences when the law directly determines his rights and duties as a natural person. On the one hand, man is an indirect bearer of legal acts and legal consequences because he represents legal persons or is a member of them; on the other hand, there are rights or benefits legally assigned to other entities (e.g., legal persons, animals, natural resources, or objects) on the basis of man's wishes, needs or interests.

The evolution of artificial intelligence confronts us with the increasingly less theoretical question of whether law can be a normative phenomenon whose *creators* are no longer human. In extreme consequence, it is even a question of whether humans can also be excluded from law as *addressees*. The former would mean that law would be determined mainly or entirely by autonomous, artificially intelligent machines as legislators and judges. The second would mean that artificial intelligence would dominate humanity to such an extent that it would no longer regard humans as subjects of law, but only as objects of law (e.g., similar to a slave), if it would regard humans as relevant to law at all.⁴

All this is no longer just a matter of fantasy or science fiction, for developments in artificial intelligence and technology, and the irresistibility of man to drive these developments, already confront us with realities that some fifty years ago fell into the realm of pure science fiction or were completely unimaginable. But even then, and before that, the idea of a conflict between machine and man was not unknown. The 1968 film *2001: A Space Odyssey*, in which a thinking computer comes into conflict with a human space crew, illustrates this vividly. In the resulting situation, the machine assesses that the human element in the spacecraft poses a threat to the defined (programmed) mission and is therefore prepared to remove it.

The humanity of law is not only a fundamental defining characteristic of law. It is also a fundamental element of morality and ethics, which we will discuss below. If law were no longer a human creation, intended for human beings, it would lose its essential characteristic and become something completely different. At the same time, of course, it would also lose its connection to human ethics, which would have additional negative consequences for humanity.

⁴ In a hypothetical (imaginary) case, both situations could also occur, if (non-human) beings came from outer space to our planet and completely dominated mankind by force.

2 Law as a Humane Phenomenon

Legal theory and philosophy teach us that law is not only a part of the social sciences, but also a humanistic science and practice. This follows on the one hand, from the fact that - as already explained - law is a human phenomenon, and, on the other hand, from the fact that law is also humane in its foundation. This does not mean that humaneness as a value is directly present in all legal norms and legal relations. It does mean, however, that law as a whole is and must be committed to this value as well. Thus, law as a whole must sufficiently serve the well-being of human beings as multidimensional (psycho-physical, spiritual, etc.) beings. In the spirit of Kant's ethical imperative (see Kant, 1999, pp. 48–53, 105–106, 130–132), the principle that man must always be an end and never a mere means must also be applied to law.

In the 19th century Georg Jellinek wrote that law is the ethical minimum (Jellinek, 1878, p. 42). Even if thinkers differ on a theoretical or philosophical level as to whether law should be strictly separated from morality or whether the two phenomena should be perceived as existentially interdependent, in the deepest ontological sense the two phenomena are indeed one. Such a monistic ontological perspective is bipolarized in human rational reflection, which is conditioned by sense perception, and then further pluralizes into a great variety of phenomena. In the rational reflection or idea that gives rise to the concept of plurality of social phenomena, morality, custom, politics, religion, and other normative phenomena are distinct from each other and from law. Law, then, is a relatively autonomous realm of human action in the collective rational dimension of man, but in reality, this realm is inseparable from all other phenomena of this world, and thus also from morality and ethics.

3 Ethics as the Basis of Law

Ethics, then, is not only the foundation of law, but also of politics, culture, medicine, and other areas of human activity. Without a sufficient ethical foundation, no man-made phenomenon or activity has any real human and social meaning. However, since ethics is distinct from all these fields in a rational perspective, it is characteristic of all other fields that they normatively regulate or intervene to some degree in society and the individual in ways that are either not ethically relevant or even contradict ethics. In addition, in the rational perspective, people also perceive ethics

differently and therefore conceive different (particular) ethics. All this shows that the relationship between ethics, law and other normative domains is complex.

Nevertheless, neither law, nor politics, nor economics, nor religion, nor customs, nor any other sphere of regulating human relations is socially sustainable in the long run unless it is sufficiently grounded in ethics. Despite its seemingly plural and, from a rational point of view, even contradictory appearance,⁵ ethics is the fundamental value-bearer of constructive social coexistence and development. And since law is the common normative denominator to which all other normative systems within a sovereign state must be subordinated, the ethical foundation of law is of crucial importance for the quality of law and legal culture.

The ethical foundation is strongest in law when law functions according to the *rule of law*. The modern concept of the *rule of law in the broader (integral) sense*, which conceptually and practically combines and connects various modern legal traditions (German *Rechtsstaat*, French *l'Etat de droit*, English *rule of law*, American *due process of law*, etc.), and is conditioned by modern democracy, protects human dignity and human freedoms and rights more intensively than law in non-democratic systems. Non-discriminatory protection of human rights is one of the most important expressions of the ethics in law, since these rights largely protect the dignity of individuals at the personal and social levels, i.e., in the political, economic, labor relations, social security, cultural, etc. spheres.

At a given level (more precisely: levels) of humanity's social consciousness, ethics cannot completely replace law and other normative phenomena. Ethics and law, therefore, are mutually dependent. This also means that the *right measure* of law is conditioned by *the right measure* of general or universal ethics, and in particular also by the right measure of legal ethics, which, within the framework of legal activity, is divided into special areas, such as the ethics of judges, lawyers and notaries, as well as the ethics of those other professional groups to which lawyers also belong (e.g., the ethics of civil servants or the ethics of a certain economic sector). "More ethics, less law"⁶ thus means that the hypertrophy of legal acts and the excessive belief in

⁵ Different particularistic ethics may be contradictory or mutually exclusive. For example, a proponent of imperative ethics holds that (only) capital punishment is appropriate for a murderer, while a proponent of the ethic of compassion rejects capital punishment already in principle.

⁶ This idea was already articulated in different ways by many ancient thinkers, for example, Confucius, who believed that social relations should be regulated as much as possible by ethical rules (Confucian concept *li*) that differentially take into account the different meaning and function of social roles. Confucius and the Confucians rejected the

legal regulation and dispute resolution⁷ must be "cured" primarily by the right degree of general and legal ethics - the latter as the primary domain of the legal professions.

The ethical foundations of law are formed not only by the specific ethics of the legal profession, but also by other types of ethics. The basic assumption of law is, first of all, *universal ethics*, which is considered to have validity and relevance for all people.⁸ In addition, various *particular ethics* from *non-legal fields* are part of the basic assumptions of legal regulation and legal practice, including the ethics of various non-legal professions (e.g., medical and business ethics), which significantly shape various areas of society. Finally, the *ethics of various legal professions* also belong to the realm of assumptions just mentioned, which directly influence the actions of lawyers in legal proceedings and the dissemination of legal knowledge, values, and consciousness.

In addition to ethics, legal regulation and functioning are also directly influenced by the prevailing social morality or the various community moralities, and in this context, by the various types or forms of moral life.⁹ *Morality* is etymologically very close to *ethics*,¹⁰ but over time the difference between the two concepts was

concept of *fa*, i.e., the legal regulation of social relations, which was thought to be incapable of adequately accounting for the diversity of social roles because of its generality and external coercion, and therefore to spoil social relations (on the concept of *li* and *fa*, fundamentally David & Grasmann, 1998-1999, pp. 431-433. The Chinese philosopher Lao Tzu said in this context: "The more laws and regulations, the more thieves and robbers" (Ibid, p. 431.)

⁷ On the harmfulness of such excessive belief and ideologization of law, see Cerar, 2009, pp. 94-96.

⁸ Universal ethics can be justified simply by its conditionality in universal human needs, from which universal moral requirements or values arise. For example, food, space, the possibility of movement, and security are essential basic human needs from which arises the primary moral demand to secure these values, which then leads to the universal ethical demand to respect human life, dignity, and freedom (cf. Žalec, 2005, pp. 22-23). Hans Küng, as one of the more significant modern advocates of *universal ethics*, who in his project of a world ethos, in addition to the fundamental principle of humanity ("We must treat every human being humanly and not inhumanly") and the golden rule of reciprocity ("Do unto others as you would have them do unto you.") highlight the following four general ethical requirements or values: (a) non-violence and respect for life (prohibition of killing, torture and ill-treatment, and the imperative to respect life); (b) solidarity and just economic regulation (prohibition of theft, exploitation and bribery, and the imperative of sincerity and honesty); (c) sincerity and tolerance (prohibition of lying, deception, and manipulation and the commandment to speak and act truthfully); and (d) equality and partnership (prohibition of sexual abuse, prohibition of abusing, humiliating, or despising one's partner, and the commandment of respect and mutual love) (Küng, 2012, pp. 26 and 35). These and similar approaches to defining universal ethical principles (orientation to universal ethical principles is also advocated, for example, by the Dalai Lama, 2000) provide an important framework for legal ethics as well.

⁹ Since it is not possible here to discuss the concept and types of morality in more detail, I will only refer to the division of morality into eight types of moral life, which Sruk briefly summarizes, citing Gurvitch. According to this division, there are the following forms of moral or ethical life: 1. traditional morality; 2. finalist or utilitarian morality; 3. morality of virtue; 4. morality of subsequent judgments or evaluations; 5. the imperative or normative morality; 6. The morality of ideal symbolic representations; 7. The morality of aspiration; 8. The demiuric or creative morality (Sruk, 1999, pp. 102-103, 154-155, 191-192, 306-310, 504-505, 531-532).

¹⁰ See, for example, Hutchings, 2010, p. 7; Stres, 1999, pp. 10-11. The latter refers to Ricoeur's observation that both terms are associated with two elements of the view of life. These elements are: 1. awareness of what is good for a person; 2. awareness of the duties a person must fulfill (Stres, 1999, p. 11).

established. Since there is not space here for a more detailed explanation of the relationship between morality, ethics, and law, I will briefly define morality as man's individual inner sense and awareness of the need and obligation to do good and help others. The basic value-determining characteristics of morality are *goodness*, as opposed to badness or evil, and *humaneness*, as acting for the good of man or people. In contrast to normative ethics, which seeks its content in a particular prevailing morality but then binds the individual *from without* (e.g., through the principles laid down in an ethical code or elaborate ethical theory), morality is a set of norms that form predominantly spontaneously within the individual through socialization and binds him or her only intimately, i.e., *from within*. The morality of an individual is often, but not always, in harmony with the morality of the members of his immediate or wider community or society, so that in this sense we speak of various collective morals (e.g., tribal morality, peasant morality, journalist morality, lawyer morality, Christian morality, morality of Western society).

Morality means the responsibility of the individual to his own conscience. For this very reason, only that moral behavior is authentic which is autonomously imposed on the individual by his conscience, and consequently the only authentic moral sanction is the sense of bad conscience (the so-called self-sanction). External moral sanctions, i.e., those imposed by a community on an immoral individual, e.g., in the form of criticism, temporary boycott, corporal punishment, or exclusion of an individual from the community, are not authentic moral sanctions from the point of view of the individual concerned. Indeed, they "touch" or "convince" him only insofar as they are consistent with his conscience, that is, with his *authentic, autonomous morality*. For the rest, such more or less communally harmonized moral norms of behavior or action and moral sanctions are only *externally determined* (i.e., *heteronomously*) for the individual. They mean for him only an external constraint, which does not convince him personally of the immorality of his behavior.¹¹ Of course, in the long run, community morality may lead the individual to change some of his moral views, while in exceptional cases the reverse is also possible.

¹¹ Some examples to illustrate: The surrogate mother is morally condemned by the immediate community to which she belongs, but is herself convinced that she has done a morally good and undeniable act by helping the couple to whom she has given her child; a person who morally tolerates homosexuality is morally condemned by the community in which he or she lives; a person is morally condemned by the community for telling a lie in public, but that person believes that the lie was morally justified because of good intentions or positive effects.

For example, if we consider the commitment of a Slovenian judge to moral norms, we see that this commitment is even raised to the level of a legal principle. Indeed, when judges take office, they commit themselves, in accordance with the Constitution and the law, to judge according to their conscience.¹² With regard to conscience, the legal norm is completely open ("blanket legal norm"), because the conscience of each judge is specific, individual. In terms of content, moral conscience is not and cannot be a general regulatory concept, so of course it is understandable that the judge's oath also includes the judge's commitment to the law, which ensures that the judge enforces the principles of legal equality, non-discrimination, proportionality, legal certainty, respect for legal formalism, and all other principles and rules of the applicable legal order. From a legal point of view, a judge's commitment to the Constitution and the laws is the primary obligation of his conscience in the exercise of his profession, even if his conscience would disregard some of the legal norms binding on him. When a judge performs a judicial function, he may exercise his moral conscience only within the framework of the Constitution and the law.¹³

Within the legal (constitutional and statutory) framework, of course, the judge is left with relatively wide latitude to act according to his or her own conscience, which introduces a relatively "influential" subjective factor into his or her judicial decision-making (cf. Merc, 2005, pp. 10–12) that should be rationalized and objectified as much as possible to ensure uniform case law. Specific moral views of an individual judge, including those that develop into (discriminatory) prejudices, can significantly influence the outcome of the case in question during the trial, either through the judge's decisions on more important procedural actions or when he or she makes the final decision.

¹² In accordance with Article 23 of the Judicial Service Act (Official Gazette of the Republic of Slovenia, No. 94/07 - official consolidated version, 120/08 - odl. US, 91/09, 33/11, 46/13, 63/13, 69/13 - odl., 95/14 - ZUPPJ15, 17/15, 23/17 - ZSSve, 36/19 - ZDT-1C, 34/23 - hereinafter ZSS), each judge, before taking up his judicial office, takes the following oath before the President of the National Assembly: *"I swear that I will perform my judicial function in accordance with the Constitution and the law, and that I will judge according to my conscience and impartially."*

¹³ In the same vein, Hribar (Hribar, 2012, p. 154) discusses the importance of conscience in the context of the constitutionally established oath of the President of the Republic of Slovenia, as well as the Prime Minister and Ministers (Articles 104 and 112 of the Constitution), as he says that a political functionary must obey the law unconditionally, even if his or her conscience and ethics contradict such a law. In this case, the official (obeying one's conscience is even a legal duty of the one who takes the aforementioned constitutional oath - *ibid.*, p. 152) can and must advocate the amendment of a morally or ethically unacceptable law, but this amendment can only be proposed and realized through legally permissible procedures.

Any moral views of the judge that might have an undue influence on judicial decision making cannot be adequately controlled or limited by legal norms. The law cannot and should not aim to regulate the judge's inner moral feelings and beliefs.¹⁴ It is at this point that judicial ethics come into play. At this point, it should be noted that a judge is influenced not only by judicial ethics, but also by any other ethics to which he or she adheres, in addition to morality, custom, law, and other factors. However, the principles of *judicial ethics* have the most direct influence on the judge's decision making.

In the broadest sense, ethics is defined as a philosophy of morality or a systematic reflection on what is moral (cf. Van de Poel & Royakkers, 2011, pp. 70–71). In this sense, ethics is a theoretical or philosophical reflection on phenomena and processes that are morally relevant (Sruk, 1999, p. 138). According to the two main types of its functions, ethics is divided into two basic areas. *Theoretical ethics (meta-ethics, descriptive ethics)* establishes the existence, essence, and meaning of morality, moral principles, and moral judgments; examines the role of human personality, intentions, goals, and motives in moral judgment; and theoretically and philosophically addresses all moral-ethical categories and issues or problems (personality, conscience, freedom of will, good, evil, happiness, bliss, meaning of human existence, etc.). *Practical normative ethics*, on the other hand, makes moral judgments, defines and explains moral principles, and, not least, determines which character, initiative, motive, intention, goal, and action are morally positive and which are negative (ibid; see also, e.g., Poel & Royakkers, 2011, p. 71). Practical normative ethics also includes the ethics of the legal professions, insofar as they are regulated in ethical codes (e.g., judicial ethics, lawyer ethics).

Since it is not possible within the framework of this article to discuss the concept of ethics in more detail, it should only be pointed out that the complexity of this concept is reflected in the basic ethical directions or theories, which differ according to the definition of the value basis of ethical thought and action. In addition to the dichotomous classification of ethics already mentioned, the following groups of theories are at the forefront of philosophical and theoretical discussion of ethics: eudaemonism, hedonism, utilitarianism, rigorism, natural law theories, ethical

¹⁴ There is always a corresponding tension between law and morality, which is part of the legal and moral game, this tension being productive when it strengthens the morality of law, and unproductive when it stifles morality where law must respect it and build on it (Pavčnik, 2007, p. 3). The same can reasonably be said about the relationship between ethics and law.

relativism, theories of ethics as virtue (virtue ethics), and theories of ethics as concern for others (care ethics) (see, for example, Kos, 1970, pp. 253–272; Dell'Olio, Simon, 2010, pp. 64–462; Poel, Royakkers, 2011, pp. 75–107). All of these theories are either mutually exclusive or partially overlapping or intertwined.

Thus, according to the title of this article, when we discuss the ethical perspective of the development of law, we must be aware, on the one hand, of the complexity of the concept of ethics and, on the other hand, of the complexity of the concept of law, which includes in its existential framework legal norms, legal values and pre- and post-normative legal relations, as well as various psychological, historical and other reflections of the legal phenomenon. Thus, the concept of law is defined in terms of natural law or positive law and is conceived from normativist, historical, economic, sociological, realist, psychological, integral, and other perspectives, which sometimes overlap or are intertwined.¹⁵ Despite this complexity of ethics and law, both phenomena can be treated convincingly enough for the purposes of this paper using the abbreviated labels "ethics" and "law," of course, with additional attributes and explanations emphasized in both places.

Concerning ethics as a criterion for the perspective of legal development, it is necessary to explain, at least briefly, the nature and meaning of the professional ethics already mentioned, which are presently regulated by specific and generally written codes of ethics. These codes (deontological codes) are a rationalized (written, abstracted, formalized) *objectification* of the moral norms prevailing in a particular professional or other field, which means that as such they always deviate to some extent from authentic morality¹⁶ and thus establish themselves as relatively autonomous phenomena. In addition to typical ethical norms (substantive principles, guidelines, criteria) with which they guide the thinking and behavior of their addressees, such codes also contain norms that, by their nature, deviate from ethical and moral norms and approach the customary or legal norms (e.g., norms regulating procedures for determining ethical responsibility, ethical commissions or other bodies, sanctions for identified violations, and procedures for amending codes of ethics).

¹⁵ On different legal philosophical and theoretical approaches, see e.g., Kaufmann, 1994; on different legal cultures and legal families, see e.g., Zweigert & Kötz, 1998.

¹⁶ Ethical or deontological codes attempt to capture a substance in linguistic formulas that defies formulation; the moral guide loses part of its nature with its transformation into written words, as it gives up some of its inner flexibility (Novak, 2001, p. 1084).

The addressee of the code of ethics is bound to the content of the code to the extent that they belong to the social group that has adopted the code of ethics. For example, a judge is ethically bound by the judicial code adopted by the judicial organization to which he belongs, which means, among other things, that this code has a higher binding force than his personal moral conscience in relation to the judge's professional conduct. Therefore, as long as a person performs the function of a judge, in his work as a judge and in all social activities that have an ethically relevant meaning for his work as a judge, he must act according to the ethical norms established by the judicial code that is binding for him, even if his (personal, inner) morality contradicts some of these ethical norms. Similarly, the judge (like anyone else) must obey state law even if his morals or professional ethics discourage him from respecting certain legal norms. In such cases, the judge may find himself in difficult internal - value and functional - dilemmas and divisions, but as long as he performs the function of a judge, he must first and foremost, consistently and by example, respect the law. Of course, from his moral, ethical, intellectual, or other position, the judge may appropriately express criticism of the legal regulation that is controversial to him (e.g., in the form of a critical professional article or an initiative to change the legal regulation).

There is also the possibility of difficult situations when a judge, being caught in an extreme and unbearable tension between his conscience and the legal system that is unacceptable to him, where a mere possibility of morally criticizing the existing system is not sufficient for him,¹⁷ and where it can not be realistically expected that this system will soon be changed accordingly. The situation is intolerable for a judge if, as a moral person, he firmly rejects the undemocratic and inhumane legal system, because in such a situation his conscience commands him to renounce his judicial activity or even the legal profession. A less extreme situation occurs when a judge, on the basis of his conscience, firmly rejects only some parts of the legal system that he generally accepts. In the latter case, the judge may recuse himself from the hearing that would take place on the basis of a legal rule that is unacceptable to him, thus resolving the painful dilemma in a concrete way. However, if such an exclusion is

¹⁷ Such a possibility exists, of course, only in a democratic state, governed by the rule of law or in a political system that at least enforces the values of democracy and the rule of law to such an extent that it permits this kind of criticism of the legal system by judges in the first place. In an authoritarian or totalitarian political system, a judge, by publicly criticizing the legal order as morally unacceptable, *de facto* relinquishes his judicial function; *de iure*, removal from judicial office as a self-evident consequence of such a judge's "failure" is then only a matter of time. In such a case, taking into account the well-known practice of authoritarian and totalitarian systems, the judge's criticism usually seriously threatens his general social existence and that of his family and all those who are "ideologically too close to him".

not possible or permissible, the judge may, under the pressure of his morality, make a conscientious objection in a particular case, aware, of course, of the possible legal consequences of such behavior.¹⁸

4 The Fundamental Ethical Assumptions of Law and the Ethical Perspective of the Development of Law

The two basic ethical assumptions of law are its *humanity* and *humaneness*. Law loses its function if these two basic assumptions are not sufficiently expressed in law. The *humanity of law* means that it is man who determines the content of law through state and other state institutions and who is also the direct or indirect addressee of law. *Humaneness of law*, on the other hand, means that man is perceived in law as a fundamental initial and final value. The rule of law, as the most humane form of law to date, thus primarily and without discrimination protects human dignity, human rights and fundamental freedoms and ensures the highest level of peace, justice, solidarity, legal certainty and similar values.

Of course, the law also protects animals, natural and artificial objects, tangible and intangible products, legal persons and other legal entities. However, their protection is always at least indirectly aimed at the satisfaction of individual and collective desires, needs and interests of people.

The ethical perspective of the development of law shows us to what extent and in what way law takes ethical norms into account in its development. Accordingly, we must assume that law develops mainly:

- a) *in connection* with humanistic development, social sciences, natural sciences, technical and other discoveries, findings, inventions, etc.;
- b) by *depending on* the development of the various spheres of social life, such as the economy, the security system, labor relations, health care, social services, education, science, environmental protection, culture, sports, etc.; and
- c) as a *relatively autonomous* scientific and professional field of legal thought and action.

¹⁸ On the nature, conditions, and consequences of conscientious objection, see: Cerar, 1993.

In addition to universal ethics (respect for life, human dignity, personal safety, intimacy, freedom, etc.), law is also influenced by particular professional ethics from the areas mentioned in (a) and (b), while at the same time law, as an autonomous phenomenon (c), also produces its own particular professional ethics and more or less uniform ethical norms for the entire field of law, usually grouped under the concept of legal culture. Thus, the ethical perspective of the development of law is conditioned by the peculiarities of all these and other non-legal ethics and special legal ethics, but also by general ethical concepts that fall within the scope of individual and collective world views, ideologies, philosophies, etc. - e.g., utilitarian ethics, ethics of duty, ethics of values or ethics of virtue.

5 Functions of (Contemporary) Modern Law and Some Basic Tendencies in the Development of Law

By contemporary modern law, we mean a law that comprehensively enforces the principle of the rule of law. To sum up the *functions of law* (Cf. Rütters, 1999, pp. 48–58) law in this sense mainly guarantees:

- a) efficient and predictable functioning of the state and society (legal order, peace, general security, framework conditions for economic and other development, education, smooth functioning of state subsystems);
- b) the prevention of (legal) conflicts and the resolution of (legal) conflicts before administrative and other state authorities, especially before the independent courts;
- c) justice and freedom (human rights and freedoms) and security of the subjects of law;
- d) freedom of private/property sphere of legal subjects, and other forms of property (e.g., state property, collective property);
- e) social cooperation (contract, association, etc.);
- f) the social security of the individual (welfare state institutions);
- g) general social integration.

If law remains flexible enough to universal ethics and other particular ethical foundations mentioned above, these basic functions of law will remain fundamentally intact for the foreseeable future. Admittedly, under the influence of postmodern and other factors, the forms and ways of their practical implementation will change to a considerable extent.

Under the given social and other assumptions, law will most probably develop in the following directions in the next decades, at least as far as it can be provisionally predicted today:

- increasing complexity of the legal system and legal relationships;
- increase in the number of norms regulating the scope of potential and actual conflict relations (many new forms of legal relations will emerge);
- further digital transformations (informatization, automation, etc.);
- use of artificial intelligence in legislative, administrative, judicial and other types of legal regulation and decision-making;
- creation of new areas of law and legal values (e.g., animal rights, plant rights, cryptocurrencies, genetics, Arctic law, space law, robot rights, artificial intelligence rights and obligations, etc.).

All of this, despite many positive effects, may lead to further depersonalization and dehumanization of law. This would mean a weakening of the ethics of law, i.e., the weakening of its humanity and humaneness. Thus, the actors of law and humanity as a whole face major ethical challenges associated with law and, of course, with society as a whole. The fundamental question is whether we will succeed in strengthening or at least preserving sufficient humanity and humaneness in law in the future, or whether law will move away from its ethical premises to a critical extent and become an instrument of unethical actors.

6 Three Fundamental Threats to the Ethics of Law

Legal ethics may face significant threats to its future development in several ways. Apart from the possibility of a natural disaster or nuclear war, which I do not consider here, the three greatest social threats that would lead to a significant weakening or even destruction of legal ethics are the following:

The first of these dangers is *the substantial decline of ethics in scientific and professional fields on which law is substantially (co-)dependent*. If, for example, in politics, public administration, business, public media, various scientific and technical fields, etc., ethical standards decline substantially, this will threaten the ethical dimension of law in a dangerous way. All this, of course, would directly or indirectly cause the decline of ethics in society in general. In these cases, lawyers as judges, constitutional judges, prosecutors, and in other professional roles can prevent unethical influences on the law to some extent by interpreting and enforcing constitutionally and legally established human rights and rule of law principles. However, if unethical influences also prevail in politics, i.e., in the bodies that govern social (sub-)systems and enact the constitution, laws, and other key formal sources of law, the ethical consciousness of lawyers cannot prevail. This brings us to the next fundamental danger, namely the dominance of authoritarian and totalitarian political and legal systems.

The second greatest danger are therefore *authoritarian and especially totalitarian political regimes and systems*. There is a difference between the two systems. While authoritarian systems deny the ethics of law to a significant degree, totalitarian systems go to the extreme and become an all-encompassing and totally inhumane form of autocratic rule that poses the greatest danger to ethical and legal values. In a totalitarian system, where everything is completely subordinated to the interests of the leader and his political party, all available technical means and human resources are used to control and subjugate the population. With the use of modern technology, this leads to a society with the highest degree of control in human history. In a totalitarian system, people's freedoms and rights, as well as the principles and institutions of the rule of law, are completely negated. In such a system, law is completely subordinated to totalitarian politics, so it cannot be expected that judges and other jurists or lawyers would be able to successfully circumvent such a repressive regime.

The third danger is *the possibility of artificial intelligence gaining the upper hand over humans in law* (and in society more generally). This can happen if artificial intelligence develops to the point where it becomes predominantly capable of self-generation – e.g., so-called artificial general intelligence, AGI (see: Modin & Andren, 2021, pp. 58–59). This would mean that humans would lose their (algorithmic) ethical influence on artificial intelligence built into various machines.¹⁹ In this way, the artificial intelligence would become "mentally" and "decisionally" autonomous²⁰ and could exclude humans as legislators (lawmakers, judges, etc.) and main addressees of the law. In such a situation, humans would become objects of law over which intelligent machines would have authority. If today, when humans try to teach machines ethical responses to critical life situations,²¹ we can at least still point to the human origin of these algorithmically set assessments and evaluations, then in the case of an autonomous artificial general intelligence (AGI), this intelligence would prevail in the evaluation of all ethically and legally relevant situations. If, for example, humans at least argue about different ethical starting points when evaluating human life, health, professional success, or anything else, then in the case of the predominance of artificial intelligence, humans would completely submit to its decisions, for which any humanly recognized ethics could be irrelevant and meaningless.

While ethics is a fundamental and necessary prerequisite for meaningful human (self-)development and the process of self-realization, it is also a significant burden for each individual. Ethics constantly confronts us with value issues and dilemmas and requires us to make responsible decisions. But this decision-making is still up to us, to human beings. Even if we humans make a wrong decision, it is still our own decision, which as such gives us the opportunity to improve ("We learn from mistakes."). Only in this way can we truly move forward and give meaning to our lives. If artificial intelligence were to make decisions in our place and for us, this

¹⁹ On machine learning of ethical responses to life events, see e.g., Anderson & Anderson Leigh, 2007, pp. 15–25.

²⁰ I put the terms "mental" and "decision-making" in quotation marks only as a warning that we must ask ourselves whether human thought and the human decision-making process are really *identical* to what we attribute to artificial intelligence as "thoughts" manifested through symbolic ("linguistic") machine articulation or "decision-making." We must not forget that human intelligence is a multidimensional phenomenon (see, e.g., Gardner, 1995) in which *human (rational) thoughts* and decisions in law, medicine, politics, etc. are interwoven with *emotional, social, linguistic, and other layers* of integral human intelligence.

²¹ For example, if we program the response of a self-driving vehicle to an unavoidable collision, where the "intelligence" of that vehicle must decide whether it is more likely to collide with a man or a woman, or a light-skinned person or a dark-skinned person, etc., in the inevitable collision with one of two people of roughly the same age.

would mean the end of human society and, in this context, of politics, law, medicine and other human phenomena.

Of all three threats to ethics and law described, this third is the most serious. Ethical deficits in social spheres and totalitarian political systems can significantly impair or even destroy the *humaneness of law*. But the dominance of artificial intelligence described above cancels out *both humaneness and the humanity of law*, which, as I said, is the worst possible scenario. All these dangers must therefore be *continuously recognized and adequately averted*, and at the same time efforts must be made to *preserve and strengthen ethical and legal values*.

7 Ethics of Law and Artificial Intelligence

In the face of many decadent social phenomena (e.g., excessive materialism, increasing flattening of interpersonal relationships and knowledge, flattening of values, control society, pollution of the mind, emotions, and nature), and in the face of present and future climate change, the use of ever more advanced technology in conjunction with artificial intelligence is one of the greatest challenges facing human society. So let me add a few thoughts on this societal challenge.

At the time I am writing this article, the intellectual and wider world is excited by innovations in artificial intelligence chatbots (e.g., Chat GPT), artificial humanoid robots with which some people already have an emotional attachment, and, not least, the use of algorithmic computer assessments in science, medicine, business processes, jurisprudence (e.g., in determining criminal penalties), employment-related personnel decisions, and many other areas. These and other aspects of artificial intelligence are only in the early stages of application and, together with emerging manifestations of this intelligence, will be able to develop previously unimagined capabilities in a few decades. This confronts humanity with major ethical and legal challenges.

An often-heard viewpoint is that technology in itself is neither bad nor good - it just depends on the goals and how people use it. In principle, of course, this idea is correct. But its understanding is generally problematic because people incorporate it into their incomplete (and often misunderstood) understanding of life. In reality, technology can be used for good purposes only by spiritually highly developed human beings who are no longer seduced by selfish and possessive human passions

and desires. The vast majority of people are unable to restrain their possessive desires, passions, needs and interests, which is why humanity keeps using and abusing technology for selfish and socially destructive (degenerative) purposes. If we add another fact, namely that humanity always reaches the point where it practically tests and uses its inventions and products, even the most destructive ones (e.g., torture devices, deadly viruses and gases, poisons, weapons, the atomic bomb), we can conclude that the uncritical acceptance of any technology can pose a great danger to individuals and humanity as a whole.

Of course, the accelerated development of modern technology and artificial intelligence, which often exceeds the human capacity to respond to this development in a preventive and timely ethical and legal manner, is a fact that we live with and will have to live with and survive in the future. This development has already brought us much good and will continue to bring us much good. In this respect, we must accept and encourage it. But at the same time, we must constantly prevent all extremes and actions that deny humanity and humaneness as ethical prerequisites of man and society. That is, society must be constantly aware of ethical principles and guidelines and implement them in the production of technology and its application in law and in all other areas.

8 Final Thought

In conclusion, I would like to emphasize that we lawyers must do everything possible to ensure that in the face-off between *Homus dignitatis* and *Homus digitalis*, the former takes precedence (cf. Kirchlaeger, 2021, pp. 415–418). We must raise awareness among ourselves and in society at large of the importance of humanity and the humaneness of law. Only in this way can we give law an appropriate ethical background and a perspective for development, which should manifest itself in the further development of the rule of law and the legal culture based on it. From the perspective of civilizational development, the highest ethical level of law has been reached with the establishment of the concept of the rule of law, which is inseparable from the protection of human rights and democracy.

Of course, despite this historical progress, humanity is still at a low level of civilizational development. This is reflected not only in wars and other conflicts, various other forms of violence, torture, discrimination, oppression of weak groups, hunger, poverty, etc., but also in the existence of law as such (just think of the

civilizational message resulting from the description of all possible illegal behaviors in the criminal codes). Thus, more ethics and less law remain the correct civilizational orientation. However, at the present stage of human development, it is necessary to protect and develop the principles and culture of the rule of law as the main legal guarantor of humanity and humaneness.

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Povzetek v slovenskem jeziku

Pravo je po svoji naravi človeško in humano. Človeškost prava pomeni, da je pravo izdelek človeka in je namenjeno človeku. Humanost prava pa pomeni, da morajo biti človekovo dostojanstvo in blagostanje temeljna osnova prava. Pravo tako ne obstaja brez zadostne etične podlage. Ustanovitev države, ki temelji na vladavini prava, in pravne kulture, ki temelji na njej, zahteva posebej močno ukoreninjenost prava v etičnih vrednotah. Največje grožnje etiki in pravu so (1) etični primanjkljaji na področjih družbe, od katerih je pravo (so)odvisno, (2) ekstremni avtoritarni in totalitarni režimi ter (3) avtonomna umetna inteligenca, ki je sposobna obrniti hrbet človeku ali se celo upreti in prevladati nad človekom. V prvih dveh primerih se humanost prava kritično zmanjša ali celo ugasne; v zadnjem primeru se ugasne tako humanost kot človeškost prava, kar je najslabši možen scenarij. Vse te nevarnosti je treba pravočasno prepoznati in ustrezno preprečiti ter si redno prizadevati za ohranjanje etičnih vrednot in vrednot vladavine prava.

Ključne besede: morala, etika, vladavina prava, humanost, totalitarizem