

# Wilhelm Schapp's Qualitative Social Ontology

## The Role of Values for the Law

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### 1. What Is Qualitative Social Ontology?

What am I talking about when I talk of qualitative social ontology? I am talking about a social ontology that has an existential gaze, so to speak, and accounts for our being, living, and acting as personal subjects in the world. Indeed, it is a social ontology that is intrinsically connected with an ontology of the person and focuses on the relation between the personal and the social. It describes the social world as a lifeworld, as the world that we experience daily as persons who in that world live and act together with other persons, and it dwells on the being of the persons in the social world as a personal world. The qualitative social ontology I am accounting for is a phenomenologically inspired and oriented social ontology, which is grounded in classic phenomenology, which develops in the first three decades of the last century. I mean the phenomenology that focuses on topics such as personal identity, the common surrounding world, and lifeworld as the world seen by a personalistic attitude, phenomenology of intersubjectivity, collectives and social acts, phenomenology of the law and values. These are topics that we find in the works of Edmund Husserl (1984, 1950, 1994, 1973, 1976), Edith Stein (1922, 1925, 2008), Max Scheler (1954, 1973), Adolf Reinach (2012), and Wilhelm Schapp (1930). Indeed, these phenomenologists, among others, are all fundamental references for the personally embedded qualitative social ontology I am presenting here. They deal with social ontology extensively, and it is not by chance that the first occurrence of the expression “social ontology” is in Husserl’s work (1973). I am convinced that classic phenomenology offers a precious perspective in social ontology, precisely because it is about the essential connection between the ontology of the person

and the ontology of society. Therefore, with the expression “qualitative social ontology,” I propose a new line of research in social ontology that, in addressing the connection between the personal and the social, opens a different research track with respect to the mainstream social ontology in the tradition of analytic philosophy, that of John Searle (1995, 2010) and Margaret Gilbert (1989, 2014), for instance, which is instead characterized by a “*lacuna* on the qualitative,” so to speak. I already focused on Husserl’s, Stein’s, and Reinach’s contributions to social ontology as a qualitative one in previous works of mine. In this chapter, I concentrate on Schapp’s phenomenology of law and aim to show how and why it justly belongs to the tradition of phenomenologically embedded qualitative social ontology.<sup>1</sup>

### **1.1 The Novelty of Qualitative Social Ontology: The Individualizing Role of Values**

The novelty of qualitative social ontology reveals itself plainly: as persons, we do not experience the things of the world as bare things but as things that are qualitatively characterized. This means that we experience things not merely as physical objects, as only spatio-temporally situated and mathematically measurable—the famous primary and objective qualities of the Galilean tradition—nor merely as sensory-perceived objects—colors, flavors, smells, etc., the famous secondary and subjective qualities—rather, we experience things also, and most importantly, as identified by value-qualities, which may be positive or negative.<sup>2</sup>

Here are some examples: this chair I am sitting on is uncomfortable, my grandmother’s kitchen knife is blunt, my place is cozy, the town I am living in is chaotic, the dress you are wearing is elegant, my promise to you is sincere, the air this morning is stale and stifling, that seawater is inviting me to swim in it, the person who is speaking with me is gentle, etc.

The qualitative social ontology I am presenting here, deals with *the good life of things*-that which is their own, simply in virtue of the value-qualities that identify everything for the thing/what it is: the delicacy of the caress, the sharpness of the knife, the justice of the judge, the lightness of the gymnast, the economical utility of the enterprise, the courage of the warrior, the sweetness of a musical adagio, etc. This does not mean that every knife we deal with is sharp, that every judge is just, that every enterprise is economically productive, and so on. Nevertheless, it does mean that each one of these things, be they natural or artifactual, cultural, institutional, in order to be the thing, it is, has to realize,

more or less adequately, the value-qualities that are essential to it. Only if things satisfy this condition can they then be good exemplars of their type, and realize their *ontological paradigm*. Of course, the world is full of knives that do not cut, of enterprises that are not economically productive, of judges who are not just, etc. Nevertheless, this does not imply that to be a good judge, the judge ought not to be just; that to be a good knife, the knife ought not to be sharp; that to be a good enterprise, the enterprise ought not to be economically productive; etc. This perspective, of course, introduces an *ontological gradualism* with respect to the being of things: each thing may be a good or bad exemplar of the type of thing it is; that is, it may have a good or bad life, so to speak, according to its ontological paradigm that everything realizes in its own way and degree.

## 1.2 An Ontology of the Person and Society

Let us now look more closely at the connection between the personally embedded social ontology and the good life of things—between an ontology of the person applied to social ontology and a qualitative ontology of things. This is a very close connection. Personally embedded qualitative social ontology accounts for the qualitative richness of the things of the world since they are the things we experience personally, in our living and acting as personal subjects, as subjects of personhood.

A personally embedded qualitative social ontology suggests a new form of correlation between subject and object: between a subject who is a person, the persons living together in various forms of collectives (persons embodied in a living body and centers of personal acts: of decisions, value-qualities perception, emotions as affective responses, etc.), and objects that are things perceived as valuable (or valueless) things, as goods (or ills) of various kinds. Indeed, our personal lives develop in position-takings toward things as goods (or ills) of different kinds, and in doing that we become the subject of a motivational life and unfold our personhood. Briefly put, we experience things as valuable things only from a “personal attitude” toward them and the world that contains them.<sup>3</sup> So, my point is that things in the world, be they natural or artificial, cultural, institutional, are all rich in value-qualities that constitute and identify their being, without value-qualities, things are not the things they are for us. In the natural, spontaneous attitude that we have as personal subjects, we grasp the being of things as an essentially qualitative being.

Each thing we experience in the world is a good (or ill) of some sorts, and our world is full of all kinds of goods (and ills). Each of them is identified by specific

value fields; that is, useful value-qualities make useful goods such as artifacts (knives, chairs, cars, computers), vital value-qualities make vital goods (covid vaccines, medical units, the air we breathe and the water we drink), cultural value-qualities make cultural goods (philosophical theories, universities, schools), artistic and aesthetical value-qualities make artistic and aesthetical goods (Matisse's paintings, Jane Austin's novels, the Arese Borromeo Palace and park), moral and juridical values make moral and juridical goods (the Universal Declaration of Human Rights, the Constitution of the Italian State, the law against homotransphobia crimes which in Italy has not yet been promulgated), holy values make holy goods (Mount Olympus, the holy bread, the Torah), etc.<sup>4</sup>

### 1.3 A New Ontological Paradigm: The Unitary Foundation versus the “Powdered-Sugar Cake” Ontological Paradigm

If value-qualities are constitutive parts of things and are even what makes a thing the thing it is, that is, a valuable thing, a good of a certain kind, then the classical ontological paradigm, let us call it the “powdered-sugar cake ontological paradigm,” reveals itself as inadequate to account for the qualitative being of the things. Indeed, the classical ontological paradigm is composed of an existentially independent basic layer, or substratum, which is physical and natural, and by a supervenient layer that is qualitative: it is conceived as an accidental, decorative frill (like the powdered-sugar on the cake) and is existentially dependent on the physical-natural layer, as classically Aristotle (2002) argues for (*Categories*). Under this ontological paradigm, the physical-natural layer is the only one that has the ontological status of reality.

Another new ontological paradigm is needed: the powdered-sugar cake ontological paradigm is unable to explain the compenetrating way in which value-qualities belong to things and individualize them. Things are “unitary foundations” (Husserl 1984, *Third Logic Investigation*, §21), wholes constituted by parts, among which there are also valuable parts, and are characterized by several directions of dependency relations: bottom up, among the parts and from the parts to the whole, and top down, from the whole to the parts—and the parts are not only physical and material but also qualitative parts.<sup>5</sup>

Together with the ontological powdered-sugar cake paradigm, the classical separation between brute or physical and natural facts, on the one hand, and social and cultural facts, on the other hand, also reveals itself to be unjustified: it no longer has **itsraison** d'être. The same occurs with the separation between the natural world and the social world. Indeed, these separations are founded on the

powdered-sugar cake paradigm: the social facts are nothing else but a qualitative layer, a “status function” (Searle, 1995, 2010) attributed, conventionally, to things as natural facts: the natural and physical layer of things are the real being of things.

The social world is nothing else but a world that is not natural, so it is not objectively real. All the qualitative is not objectively real: it is just a subjective projection, a mere attribution of the subject on the real things, just some powdered-sugar on a cake that already exists as such. As is well-known, Searle’s attempt to give social reality a foundation is as follows: social facts are ontologically subjective but are epistemically objective, that is, intersubjectively recognized and shared. Therefore, the social fact that Joe Biden is the US president is not a private and individual fact, but a social one (Searle 2010).

On the contrary, the personally embedded qualitative social ontology I am outlining, and that I retrace in the phenomenological tradition, goes beyond the separation between natural facts and social facts, and suggests that “social” is everything that has a personal salience for us, and it therefore concerns our unfolding as subjects of personal acts: “social” are even natural entities such as the strawberry plants, when I plant them together with my kids in the garden, and they become a good for our family life—and “social” is not only the kids’ enrollment in the swimming course.

#### **1.4 The Personalist and Correlative Claim**

Moreover, personally embedded qualitative social ontology shows that what we gain at the level of qualitative ontology, that is, concerning the being of things, also has deep repercussions for the ontology of the person. Indeed, things, as valuable things, are the things we deal with daily in our life as personal subjects. An ontology that accounts for the qualitative being of things also implies a gain on the level of the ontology of the persons who together deal with those valuable things in the world.

Indeed, if things were no longer goods, if their value-qualities were not some of their constitutive parts, if things were just bare things, then we also would cease to exist as personal subjects who experience things as valuable things and would exist simply as psychophysical individuals. I have to clarify this point in addressing the relationship between us as personal subjects and things as valuable things.

Things are valuable things, goods for us who are personal subjects who experience them. As persons, we are subjects of value-perception acts; we live

in a world that is not only physical-natural, we live personally in the world we share with others (Husserl 1994).<sup>6</sup> The philosophical challenge of the personally qualitative social ontology is accounting for the qualitative being of things as correlates of the qualitative being of ourselves as personal subjects. *A parte subjecti*, things are valuable things for us who experience them. However, our experience is not a sufficient condition but just a necessary one for them to be qualitative things. *A parte objecti*, there is another necessary condition for the qualitative being of things: their ontological structure as unitary foundation. This means that the qualitative being of things is neither a subjective attribution to things nor a being of the thing that is absolutely independent from the relationship with the personal subjects who experience it. Rather, there is a mutual correlation and existentially mutual dependency between the qualitative being of things and the personal being of the subjects.

## 2. Schapp's Qualitative Social Ontology

Schapp's phenomenology of law belongs to the phenomenological tradition in which qualitative social ontology is embedded—this is one of the main claims of my chapter. Indeed, Schapp's phenomenology of law focuses on the relation between law and values, and more precisely on the foundation of the law in the evaluation of values. It contains an analysis of the ontological status of values, of the sociality of values, and of the sharing of values that undoubtedly involves a new ontological paradigm: values are constitutive qualities of the being of things and persons. In other terms, there is no trace in Schapp of the powdered-sugar cake ontological paradigm; on the contrary, there is a qualitative ontological paradigm in which values are constitutive of the being of things and persons and have an essential role for their existence and individuation. Moreover, Schapp develops an account of the “existential relation,” so to speak, between law and values that represents one of the most original ways in which Schapp contributes to qualitative social ontology. Indeed, Schapp's account of the law opens a quite fruitful perspective on the *existential foundation* of the law: the law is grounded on the essential tendency of persons to “enjoy values” (*genießen Werte*), and to “savor values to the full” (*Auskosten des Wertes bis zum Letzten*) (Schapp 1930: 12). Persons need to enjoy values in order to have a meaningful existence, and also values need to be enjoyed by persons in order to reach their fullest vitality. This is Schapp's interesting development of the theme of the correlation between persons

and valuable things that is, as I have shown, one of the fundamental topics of qualitative social ontology.

More in detail, according to Schapp, the law, and precisely its “pre-givennesses” (*Vorgegebenheit*) or a priori structures such as the “rational and mutual contract” (*vernünftiger, gegenseitiger Vertrag*) are founded on the existential relation between values and persons, the law arises and develops as the normative tool that allows persons to share values and intensify their enjoyment of values. Therefore, Schapp claims, the “world of values” (*Welt der Werte*) constitutes the “infrastructure” (*Unterbau*) of the “rational and mutual contract,” that is, of the law.<sup>7</sup> The character of “rational,” attributed by Schapp to the contract as “pre-givenness of the law,” is based on the fact that the conclusion of the contract by the counterparts is preceded by an evaluation process of values: the contracting parties take the decisions to exchange and share values, in order to enrich their own world of values, after an attentive evaluation of the values in play. Indeed, Schapp points out that there is an essential connection between persons’ social and legal acts of mutual promising that perform contracts, and persons’ evaluations of the value of things, which make things goods of various types.

In my chapter, I focus on one of the main claims of Schapp’s phenomenology of law, which can be summarized in the following way: there are values (both individual and collective values) and they are salient in the everyday life of persons, in which they enjoy values that essentially characterize the being of things and make them a certain type of good (or ill); values are the foundation of the “rational contract,” which is a “pre-givenness,” that is, an a priori structure, of civil law; so, *values are the “infrastructure” of an a priori structure of the law*; more in general, *values are necessary for law to exist: there is no law if there are no values*.

Moreover, I inquire into the nature of the ground of the relation between values and law in Schapp: I show why this ground is an *existential* one, as it is deeply embedded in the quality of the existence of both persons and things of the world as essentially constituted by values. This existential perspective of Schapp’s work on values represents a great contribution for qualitative social ontology and its filling the “qualitative *lacuna*” that characterizes mainstream social ontology.

I concentrate on the first part of Schapp’s book, which is devoted to the “The rational contract as pre-givenness” (*Der vernünftige Vertrag als Vorgegebenheit*) (Schapp 1930: 1-67). It is in this part of his work that Schapp develops his original account on the relation between values and the a priori of the law. Within this account, he takes up Reinach’s analysis of the essence of social acts (Reinach 1912),

in particular, the act of promising in its variation of the “mutual promising contract”, and he places his phenomenology of law on the trail of Reinach’s.

## **2.1. The Main Thesis on the Essential Relation between Values and Law**

The structure of Schapp’s main thesis and arguments on the relation between values and law is as follows:

- (i) From the viewpoint of the values: there are values; persons enjoy values, evaluate values in their everyday life, and constitute their “world of values” (*Weltwert*); values are the quintessence of the life persons live everyday; persons exchange and share their world of values with other persons, and the “rational-mutual contract” comes into play in this sharing: “the mutual contract consists in the fact that, from the world of values of one, something is transplanted into the world of values of the other and *vice versa*.”<sup>8</sup>
- (ii) From the viewpoint of the law: there are “pre-givennesses,” a *priori* structures of the law, among which, the rational contract; in the rational contract, and, more precisely, in its paradigmatic case of the mutual contract, values are the objects of “evaluations” and “reflections” by the persons who are the part and the counterpart of the contract; then, the contracting parties decide to share their world of values, to take on in their world of values some values of the world of values of the other, in order to enrich them; values and processes of reflection on values are the “infrastructure” of the rational-mutual contract as “pre-givenness” of the law.

Thus, the fundamental elements of Schapp’s thesis and arguments are: the crucial role of the existence of values in persons’ everyday life, in their enjoyment and evaluation of values, and persons’ decision to exchange or share values. These elements together constitute the ground on which the rational-mutual contract takes place as a pre-givenness of the law; more concisely, the rational-mutual contract as a *priori* structure of the law is grounded in the values and in the reflection processes of persons on values.

As already mentioned above, it is necessary to highlight that, accordingly with such thesis and arguments, Schapp’s foundation of the law in values, which are considered the quintessence of persons’ everyday life, has the character of an *existential foundation*.<sup>9</sup> The law is rooted in something that deeply characterizes

the existence of human persons and makes of it a meaningful existence, that is, values. This is a perspective of correlation in a double direction. Indeed, one correlation is that between persons and their personal attitude to enjoy values, on the one hand, and values as ontologically constitutive of the things of the world, on the other; the other correlation is that between persons and their need to exchange and share values in order to savor them to the full, on the one hand, and the law that in its constitutive form of rational contract is founded on values and valuable things that persons share and exchange. This is an extremely original perspective on the foundations of the law that manifestly provides a great contribution to the phenomenologically embedded qualitative social ontology.

## 2.2 The Ontological Status of Values

However, it should be noted that there is an intrinsic problem in Schapp's account of the foundation of law on values. This is Schapp's *confusion between values and goods*, that is, between values and valuable things, the things which are the bearers of values. Such confusion is a critical point in Schapp's theory of values and the a prioriof the law: ultimately, is it goods or, rather, values which constitute the foundation of the law? Is it the sharing of values or rather the sharing of goods (which are the bearers of values) that has to be normed by the rational-mutual contract?

Schapp does not develop a theory of values comparable to the very extended, fine-grained, and exhaustive theory of values presented by Max Scheler in his masterpiece, *Formalism in Ethics and Non-formal Ethics of Values* (1954, published in 1913).<sup>10</sup> Schapp just outlines an account of values as grounds of the rational-mutual contract and of the positive law in general. Thus, Schapp's theoretical contribution on values is partial, in the sense that his main focus is on the law and not on values: values play the role of counterpart of the law within the frame of Schapp's theory of the law (it is no coincidence that the title of Schapp's work is *The New Science of Law* and that "Values" does not occur in the title).

Thus, let us focus on the ontological status of values in Schapp's phenomenology of law.

The following quotation presents some of the main claims characterizing Schapp's idea of values:

Was unter Wert zu verstehen ist, ist leichter zu fühlen, als begrifflich zu umgrenzen.  
Der Wert ist irgendwie ein Akzent der wertvollen Gegenständlichkeit. Er ist selbst

aber nicht der Gegenstand theoretischer Betrachtung, sondern in eigenartiger Weise etwas Gegenständliches an dem Wertvollen, welches im Genuß erfahren wird. Dies „Genießen“ ist etwas ganz anderes, als sich theoretisch mit einem Gegenstand beschäftigen. (Schapp 1930: 7)

### **2.2.1. Values are Qualities of the Valuable Objectivity That Are Experienced in Enjoyment and Known in Savoring**

Values are “an accent of the valuable objectivity,” and, therefore, are not to be identified with valuable objectivity. In other words, *values must be distinguished from their bearers*, from goods that are valuable objectivities.

The distinction between values and goods is very important for preserving a transcendence of the type of the value with respect to its instantiations in goods: without such distinction, a value, for instance, friendship, would be identified with a certain instantiation of friendship in a certain bearer.<sup>11</sup> Unfortunately Schapp is not sufficiently rigorous with regard to this claim. As already said, he often seems to confuse values and goods and to speak of goods instead of values. For instance, he speaks of people dear to one’s heart as values or of a cathedral as a value: they are, of course, bearers of values, goods in which values such as love, friendship, and religiousness, are embedded but they are not values themselves (Schapp 1930: 13, 20).

A value “is experienced in enjoyment.” In effect, values are not the object of a theoretical consideration: enjoying values is very different from focusing on objects theoretically. Thus, the intentional mode of grasping values is an affective mode. Values are enjoyed through the “capacity of enjoying” (*Genußfähigkeit*) that belongs to the field of feeling and not to the field of cognizing and that, as a capacity, can be adequate or inadequate, and can be increased or decreased.<sup>12</sup> Values are grasped by *enjoying* and are objectified, “known” (in a very different sense of theoretical knowledge), by *savoring*. Schapp states two axioms about the enjoying and savoring of values: “Without enjoyment, values cannot be grasped by persons” and “without savoring (*Kosten*), any value can be objectified” (Schapp 1930: 9).

### **2.2.2. There Are Values but Also Disvalues**

Besides values, there are also *disvalues* (*Unwerte*). Disvalues are not enjoyed. Rather, they are borne. For instance, “we bear a pain. Pain as quality has the character of a disvalue” (Schapp 1930: 10)<sup>13</sup> that is, pain is a disvalue.

There is a broad parallel between values and disvalues and between “valuable objectivity” (*wertvollere Gegenständlichkeit*) and “disvaluable objectivity”

(*unwertvollere Gegenständlichkeit*) (Schapp 1930: 9-10).<sup>14</sup> “The world of values and disvalues is the actual world we live in,” it is the quintessence of our life. “Without values, the world would be just a scheme, something purely mathematical which has no interest for us” (Schapp 1930: 11).<sup>15</sup> Our personal life is marked by our relationship with values and disvalues: we do not experience things as mere physical things, individuated solely, according to the Galilean tradition, by so-called primary, objective qualities, which are the objects of physics and mathematics, or as mere sensory things identified by so-called secondary qualities, the ones correlated to our sensory perception. On the contrary, we always experience things also as (positively or negatively) valuable things. This is a strong claim by Schapp that indubitably places his account on values in the frame of qualitative social ontology (see *supra*, §1.1), and recalls the claims of Scheler (1973), Husserl (1994, 2002), and Stein (1922) on the qualitative being of the things in our lifeworld.

### ***2.2.3. Values Exist Independently of Persons' Enjoyment, but Their Meaningful Existence Depends on Persons' Enjoyment***

According to Schapp, *the existence of values is independent of persons' enjoyment of the values*, just as the existence of objects is independent of whether or not they are perceived by persons (see Schapp 1930: 12).<sup>16</sup> However, *the meaningful existence of values is dependent on persons' enjoyment of them*: “values that are not enjoyed fail to achieve their purpose in relation to human beings” (Schapp 1930: 11).<sup>17</sup> Thus, very interestingly, Schapp distinguishes between the *existence of values*, on the one hand, and the *meaningful existence of values*, on the other. Schapp's argument for this claim is that our enjoyment of values can be more or less complete, that is, more or less adequate. So, there are degrees in enjoying values—just as there are degrees in knowing objects (see Schapp 1930: 11).<sup>18</sup> The crucial point is that values achieve their “fullest vitality” (*vollste Lebendigkeit*) only when they are savored to the full by persons (see Schapp 1930: 12).<sup>19</sup> So, *values exist fully only on condition they are savored to the full*.

Schapp's claim regarding the meaningful existence of values extends the concept of existence and of existential dependence to the idea of “quality of existence.” Values that are not savored to the full do not have a satisfactory and vital existence. The consideration of the quality of the existence of an entity—and not only of its mere existence or inexistence—is a fundamental topic of qualitative social ontology, a topic which is unfortunately neglected in the mainstream social ontology of the analytic philosophy tradition.<sup>20</sup> Indeed, even one of the most complete social ontological theories, that of Searle, neglects this

point. Searle intends to explain how social and institutional reality is created and maintained in existence, but he does not address the issue of the quality of that existence (see Searle 1995, 2010).

Moreover, Schapp's idea of the meaningful existence of values as depending on a person's enjoyment is also a very original and fruitful way in which Schapp elaborates on the qualitative social ontology's fundamental issue of the essential correlation between values and persons' experience of values. Values exist independently of a person's enjoyment, but they exist fully only when they are adequately enjoyed by persons, and the other way around. Let us explore Schapp's idea of such correlation in greater depth.

#### **2.2.4. *The Interdependence between the Quality of Existence of Values and Persons***

Schapp suggests that the greatest importance of enjoying values for human persons is that "from this enjoyment flows a force for the rest of human life in the most varied directions" (Schapp 1930: 12).<sup>21</sup> "The enjoyment of values seems to be the actual source of life, which supports life and by which life creates the strength and the courage to live on" (Schapp 1930: 13).<sup>22</sup> In other words, through enjoying values, the existence of human persons gains fullness and vital energy: Schapp points out the interdependence between the *quality of the existence of values* that are enjoyed to the full, and the *quality of the existence of persons* who savor values to the full; savoring values to the full brings forth both the fullest aliveness of values and the fullest life force of persons.<sup>23</sup>

Schapp's account of the ontological status of values is both a *realistic and existential* one. It is *realistic* because values are considered as real entities that inhabit our lifeworld and that we experience as value-qualities of the things of the world. It is also an *existential* account because the *quality of the existence of both values and human persons depends the one on the other*: in order to have a meaningful existence, values need to be savored to the full, and correlatively human persons need to savor values to the full; only if this condition is satisfied can both values and human persons reach their fullest vitality, that is, have a *good life*. Indeed, this issue of the "fullest vitality" (*vollste Lebendigkeit*) of values and persons is the original way in which Schapp declines the qualitative social ontology issue of the *good life* of things and persons (see *supra*, §1.1.). I will show soon how this qualitative-existential character of the being of values and persons is essentially connected with the existential character of the law in Schapp's account (see *infra*, §2.4.).

## 2.3. The Sociality of Values

To sum up: I have dwelt upon the ontological *status* of values and highlighted the need of values to be savored to the full, and the need of human persons to savor values to the full, a mutual need on which Schapp insists strongly: only if this need is satisfied, can the existence of the persons and things of the world as valuable things, that is, as things ontologically constituted by values, reach its fullest vitality, that is, can be a real good life. I now address the correlated issue of the sociality of values: Schapp highlights the pervasiveness of values in the existence of both singular individuals and collectives: without values, social life would not be possible; among values, there are specifically “collective values” and values which can be shared and exchanged.

### 2.3.1. Values and Persons' Social Life

Where are values? Where do we enjoy values? According to Schapp, values are firstly in the human persons we deal with and live with. Persons are *valuable individuals*. Schapp means both the single individual and multiple collective forms which persons give rise to and in which they live together: environment, town, country, etc (see Schapp 1930: 13).<sup>24</sup>

Besides values, Schapp also focuses on *value relations* (*Wertbeziehungen*), which take place in and with all these kinds of collective forms and are constitutive of peoples' *social life*: “value relations, which of course are mutual relations, are the social life indeed. Without value relations, it would not make sense to speak of social life” (Schapp 1930: 13).<sup>25</sup> Without the value relations of social life, peoples' lives would be very meager: “it is enough to consider what the life of a single individual would lose, if in his/her life there were no more playing children, no more women and men we care about” (Schapp 1930: 13).<sup>26</sup> Schapp's claim is true: without social life's value relations, grounded in intersubjective and interpersonal relations, our lives would be very meager indeed. Values pervade our existence, and the persons we deal with and live with are themselves bearers of values.

It needs to be pointed out that the examples of the value relations of social life presented by Schapp are still characterized by Schapp's confusion between values and goods: the “playing children” and the “women and men we care about” are neither examples of values nor of value relations as such; rather, they are examples of goods that realize values or value relations. The problem is that Schapp does not distinguish between the *value* as such and the *bearer* of the value that is a *valuable objectuality*, a *good*. So, coming back to Schapp's examples, he does not

distinguish between *love* as a value and my wife as a bearer of love, as a good in which the value *love* is embodied, and, moreover, he does not distinguish between *love* as the type of the value *love* and *love* as the token of the value *love*, which is embodied in my wife. Similarly, he does not distinguish between *vital energy* as a value and my playing children as bearers of such vitality, that is, as a good in which the value *vitality* is embodied.

### **2.3.2. Collective Values as a Specific Class of Values**

Nevertheless, Schapp's analysis of values is very precious and insightful, he addresses the issue of *collective values* as values that can be *enjoyed only collectively* and that cannot be enjoyed by a single individual. He points out that there are *values that are essentially collective*: values that can be enjoyed only by a community of individuals together. Examples of collective values are a town's cathedral (see Schapp 1930: 20),<sup>27</sup> and more generally, values connected to the state: the state itself is a collective value. According to Schapp, cathedrals and states are examples of collective values because they require the "converging of many individuals" (*Zusammengehen von vielen*) (for instance, the religious community, in the case of the cathedral, or the citizens) to be adequately enjoyed. Thus, *collective values need to be enjoyed collectively* in order to be enjoyed adequately, that is, in order to be fully savored and to reach their fullest vitality. Collective values have to be distinguished from *values that can be enjoyed by more than one individual, but that do not need to be enjoyed collectively*. For instance, the sunset may be a value for many individuals, but everyone can enjoy this value individually, solitarily, without sharing anything with others (see Schapp: 25).<sup>28</sup>

Schapp's distinction between collective values that need to be enjoyed collectively, and values that can be enjoyed both individually and collectively, is a very perspicuous and original insight for social ontology. However, a question is not answered by Schapp, a question typically addressed by philosophers interested in the topic of collective intentionality: in the case of collective values, who, ultimately, is the subject of collective intentionality? Who is the subject who enjoys collective values? Is that subject the individuals within the community or rather the community itself? More in general: Is there a genuine collective-we or only the sum of individual-Is (see Schapp 1930: 20)?<sup>29</sup>

Moreover, we should point out that Schapp continues to confuse values and goods. He does not distinguish between religiousness as value and the cathedral as the bearer of the community's religiousness, as good in which the religiousness is embedded, and he does not even distinguish between

religiousness as a value-type, and religiousness as a value-token that is embodied in the cathedral.

### 2.3.3. *Sharing Values*

It is in virtue of the possibility of exchanging, transferring, and sharing values that there can be collective values. Schapp tackles the problem of the collective intentional modes by which values can be shared by persons and transferred from one person to another. This is a crucial point of Schapp's account of the foundation of the law in values.

According to Schapp, each person has their own world of values, and that world of values is characterized by a great variety (see Schapp 1930: 21):<sup>30</sup> the sunrise in my birthplace, the people I love to meet, and an infinity of other things (see Schapp 1930: 21).<sup>31</sup> Now, the point is that the *world of values of the one can be shared with and enriched by the world of values of the other*: the values of a person can be exchanged with, transferred to, and shared with the values of another person. "There is the possibility to supply certain values to others, to transfer values to others [. . .]. I can in some way facilitate others in accessing the values. I can point out to others the values which they have chanced upon without having assumed them into their world of values."<sup>32</sup>

Schapp very interestingly claims that the sharing of values does not imply a diminishment of the values for the person who is sharing her world of values with another person. *Shared values* are not decreased values; rather, they are *increased values*: "a shared joy is a doubled joy" (Schapp 1930: 23).<sup>33</sup> Indeed, under Schapp's perspective, a shared joy is no longer only the joy I feel or the joy you feel, singularly, the shared joy is the joy we feel together that is therefore a doubled joy since it is no longer one single joy. It is the joy that is personally felt by me and the joy that is personally felt by you, but on the contrary, it is the joy felt by me with respect to you and the joy felt by you with respect to me. Actually, Schapp does not dwell on this in order to clarify exactly how it can happen, but we know from phenomenological analyses on empathy that empathy and reflexive empathy are some of the principal ways in which individual feelings may become collective feelings (Stein 2008, "The essence of acts of empathy," shows this very well).

Moreover, Schapp points out that persons can share their world of values in a very strong sense of sharing that brings forth a unitary world of values which is enjoyed by more than one person at a time. For instance, the worlds of values belonging to a husband and a wife build together a "unitary world of values" that the two individuals "enjoy as a unity."<sup>34</sup> Here Schapp mentions,

without analyzing it, a very important feature of the sharing of values: sharing values creates social unity. This is a crucial issue for a social ontology that inquires into the problem of the stability and solidity of collectives: sharing values makes collectives stable and solid.<sup>35</sup> However, Schapp does not inquire into the problem of *what it really means to share values*. What does it mean to share a “unitary world of values” and to enjoy it “as a unity”? Can all kinds of values be shared? The neglect of these problems is also due to the fact that Schapp is still confusing values and goods, and now even values and feelings. Schapp speaks of sharing one’s own world of values with the world of values of another individual, but in his examples, what is shared seems to be more like the bearers of values (goods) or feelings, than values themselves—for instance, the cathedral, the sunrise, the people I love to meet, etc., and joy. Fortunately, Scheler’s axiology can help us to outline an answer to these issues. Indeed, it includes not only a very accurate distinction of values and goods but also a very precise analysis of what kinds of values can be shared and what not. According to Scheler, there are sharable values, such as cultural, moral, aesthetical values (values of the person) and the values of the holy, on the one hand, and values that are not sharable and that can only be divided, such as “values of the sensibly agreeable” and economic values. The former can be shared without any diminution of their being, and their sharing even increases social unity among the persons who share them: in this sense, the sharing of these values constitutes an intensification, a doubling in Schapp’s perspective, of the experience of values. On the contrary, the latter can only be divided, and their division involves a diminution of the values and creates conflict of interest and social divisions between the persons who want to divide them. Thus, by applying Scheler’s insights to Schapp’s account, the collective experience of divisible values could not involve an augmentation of the value’s experience: no doubling of value, but, on the contrary, its diminution (Scheler 1954: 111-112; Scheler 1973: 93-94).<sup>36</sup>

Nevertheless, both the points Schapp makes, that is, the one on the sharing of values as implying an increase of the enjoyed values, and the other on enjoying two different worlds of values as “a unitary world of values,” are very important and original points of Schapp’s qualitative social ontology, and they play a crucial role for Schapp’s argument for the foundations of the law on values. It is because shared values are doubly enjoyed values, and it is because persons are able to acquire values from one another (in sharing and exchanging them), to enjoy the acquired values as their own values and build a unitary world of values, which is enjoyed as a unity, that persons who need to savor values to the full in order

to achieve a meaningful existence, tend essentially to share and exchange values with other persons, and therefore, they perform mutual contracts.

## 2.4. The Passage from Values to Law

I have addressed the issues of the ontological status of values and of the sociality of values in Schapp's account of values. As I have just pointed out, these two issues constitute the two necessary steps for Schapp's foundation of the law in values. I deal now with the issue of the relation between values and the law, between the "world of values" and the "rational mutual contract" (Schapp 1930: 26), that is with the decisive passage from values to law.

### 2.4.1. *The Creation and Enrichment of Worlds of Values, and the Foundation of the Law*

Dies Verschaffen von Werten, die Bereicherung einer anderen Wertwelt durch meine Handlung, ist ein Hauptgebiet der Jurisprudenz. Daß diese Möglichkeit besteht, ist eine Vorgegebenheit für die Jurisprudenz. Zwei große Gebiete der Wertwelt, in welchen diese gegenseitige Bereicherung möglich ist, haben die Römer kurz mit ihren Ausdrücken *jus commercii* und *jus connubii* angedeutet. Ein anderes Hauptgebiet der Jurisprudenz ist der Schutz der dem Ich zugeordneten Wertwelt gegen Beeinträchtigung, das Recht der unerlaubten Handlung. Die enge Beziehung dieses Teils der Jurisprudenz zur Moral leuchtet von selbst ein. *In einem Kosmos, der keine Werte enthielte, würde die Jurisprudenz den größten teil ihrer Bedeutung, wenn nicht alle Bedeutung verlieren.* (Schapp 1930: 22)

The above quotation encapsulates the main claims advanced by Schapp on the relation between the creation and enrichment of the world of values, and on the foundation of the law in its pre-givennesses, which are rooted in the essential relation between qualitative existence of values and persons.

Schapp's general claim is on the *dependence of the law on values: without values, jurisprudence would not make sense*: "the creation of values and the enrichment of the world of values of the one through the activity of the other is the main field of jurisprudence." This possibility of "mutual enrichment" of one's own world of values is a "pre-givenness for jurisprudence."

More in detail, Schapp also advances a historical claim: the ancient Romans used the legal expressions *jus commercii* and *jus connubi* for two great domains of mutual enrichment of the world of values. Moreover, he affirms that there are other pre-givennesses of the law, like the pre-givenness that norms "the

protection of the world of values belonging to a person against damage”: “the law of the forbidden action,” that is, penal law. Finally, he advances a strong claim on the relation between law and morals: he suggests that the law is grounded in morality. The foundation of the law in values is ultimately a foundation of law in moral values, at least as regards the domain of law concerning the protection of the world of values, that is, the “law of the forbidden action”: “The close relation of this aspect of jurisprudence with the Moral is manifest.” Unfortunately, Schapp’s account of values and his analysis of the different kinds of values we enjoy—be they moral, aesthetical, religious values, etc.—is not sufficient for providing an adequate justification of his claim on the foundation of the law in morality. One could easily object that the law may even be grounded in moral disvalues, as some positive laws of the human history show.

In general, it should be noted that Schapp’s claims here are weakened in their credibility by the same problem I have already pointed out several times: Is Schapp actually speaking of values, or rather of goods? When he speaks of *jus commercii* and *jus connubi*, is he not rather talking about goods that are exchanged and shared? These goods are, of course, bearers of values, and their exchange or sharing may constitute the creation of a new world of values or the enrichment of preexisting worlds of values, but they are primarily goods, and not values.

#### **2.4.2. *From the Worlds of Values to the Rational-Mutual Contract: “Infrastructure,” “Superstructure” and a Priori Structures of the Law***

Let us now examine in more detail the passage from the worlds of values of two persons to the mutual contract between them: “The rational-mutual contract consists in the fact that from the world of values of the one something is transplanted into the world of values of the other, and the converse.” The worlds of values and the exchange between the worlds of values constitute the ground for the rational-mutual contract: “without relation to a world of value, the mutual contract makes no sense” (Schapp 1930: 27).<sup>37</sup> Now, the question to address is how that exchange between the worlds of values can take place. Schapp’s answer is that *the exchange between worlds of values takes place through the law*: the law norms the practice of the exchange of values (see Schapp 1930: 27).<sup>38</sup>

If two pieces of two worlds of values are to be exchanged, the one with the other, then *the question is how that exchange happens*. According to the ignorant, nothing is easier than this. *From that exchange, the jurist has made a science, which is treated in rather developed laws in thousands of paragraphs*. For the

jurist, the way of the exchange is the *mutual contract*. [. . .] The requirement for the mutual contract is the particular relation of two worlds of values, in which a piece of the one urges to be exchanged with a piece of the other. We define this requirement as the *infrastructure* of the mutual contract, while the exchange itself represents the *superstructure*. (Schapp 1930: 28)<sup>39</sup>

According to Schapp, the legal figure that regulates the exchange between two different worlds of values is the rational-mutual contract. The worlds of values and the relation between two worlds of values that are about to exchange something constitute the motivational requirement for the mutual contract: indeed, they are the ground or the “*infrastructure* of the mutual contract,” while “the exchange itself represents the *superstructure*” of the mutual contract.

Schapp describes very concretely the process that flows from the world of values of (at least) two persons into the conclusion of the mutual contract.

*Firstly*, “in the mind of the individuals who are involved in the performance of the mutual contract, a series of reflections (*Überlegungen*) take place”: these reflections are “evaluations” (*Wertungen* or *Abschätzungen*) of the values in play (Schapp 1930: 2). The persons involved in the contract evaluate whether and how the exchange of values can enrich their own world of values.

*Secondly*, based on those evaluations, some decisions (*Entschlüsse*) are taken. These decisions lead to the will-declarations (*Willenserklärungen*).

*Third*, the will-declarations represent the moment in which the evaluations of values and the following decisions on the values to exchange are made known by the contracting parties to each other. The moment of the declaration and of the making-known represents the superstructure of the contract: “in any contract, the infrastructure (*Unterbau*) consists in the evaluations (*Abschätzungen*) of the values to exchange (*umsetzen*), and the superstructure (*Oberbau*) consists in the making known (*Kundgeben*) which produces that exchange (*Umsetzung*)” (Schapp 1930: 34).<sup>40</sup>

Schapp points out that “the *will-declarations*,” in which the superstructure of the contract consists, “are not, in fact, just any will-declarations; rather, they are *social acts* (*soziale Akte*)” (Schapp 1930: 40),<sup>41</sup> and that the *mutual contract* is precisely a variation of the social act of promising: it is a *mutual act of promising*. Thus, just as promising produces an *obligation* and a *claim*, so also the mutual promising-contract (*gegenseitiger Versprechensvertrag*) brings forth a *claim* and an *obligation* that arise in the parts involved in the contract, independently from any positive law.<sup>42</sup>

According to Schapp, all the forms that the mutual contract can assume, as for instance, the “buying contract” and the wedding contract, are not dependent on positive law and “are not obtained through universalization of the known positive laws.” Rather, these forms constitute “the foundations of any positive law”: “the positive law finds these forms and chooses the forms which seems to it appropriate and gives to such forms a more important meaning” (Schapp 1930: 356).<sup>43</sup> In other words, all the typical forms of the mutual contract are a priorilegal forms.

Finally, Schapp identifies the *Rechtsfigur* of any kind of mutual contract: this would be a *whole* (*Ganze*) whose parts (*Teile*) are the *infrastructure* (worlds of values, evaluations of the values, the urge to exchange values, decisions to exchange values) and the *superstructure* (utterances of decisions and declarations of will) of the rational-mutual contract that brings forth *obligations and claims* (see Schapp 1930: 63-64).

### **2.4.3. *The Existential Character of the Law and the Essential Tendency of Human Persons to Savor Values to the Full***

It is in *values' need to be savored to the full* and in *human persons' need to savor values to the full* that Schapp lays the *foundations of the law in values*: it is because the meaningful existence of values and that of human persons are so interconnected and interdependent upon each other, that the law and, even more so, the “pre-givennesses” of the law exist. It is in virtue of the mutual dependence of the quality of existence of values and of the quality of existence of human persons that the law, whose *raison d'être* is to regulate the relation between values and human persons, is characterized by pre-givenness, that is, a priori structures that precede and are independent of the institution of any positive law.

The need of values to be savored to the full and the need of human persons to savor values to the full, on which Schapp builds his account of the ontological *status* of values, and consequently, his foundation of the pre-givenness of the law in values, raises the issue of the significance of this need. This need is a tendency that is essential for the being of values and human persons: the satisfaction of such a need is a necessary condition for the meaningful existence of both values and persons. This need implies that without values, there is no personal existence worthy of being lived and no rational-mutual contract worthy to be concluded. As already noted, the concept of “existence” involved here by Schapp is always a qualitative one: it is the quality of existence of persons as well as the quality of the existence of mutual contract based on the quality of existence of

values. Indeed, Schapp is not interested in the conditions of a merely physical, space-time individuated existence, be it that of human persons, values, or the rational-mutual contract. Schapp's phenomenology of law has therefore, the great merit of showing that the law is a human and "personal issue," not in the sense of a subjective and relativistic issue, but in the sense that its fundament is the qualitative and motivational, but constitutively pre-given, structure of the existence of persons.

It is because human persons tend essentially to savor values to the full in order to make their existence a meaningful one, that they tend to evaluate their world of values and the world of values of other persons, that they tend to take decisions on certain values to be exchanged with other persons, that they tend to declare such decisions to each other, and so tend to perform mutual contracts. None of these passages is necessary, but still, each of these passages is motivationally grounded in that essential tendency of human persons.

In other words, Schapp's idea of the existence of "pre-givennesses" of the law, that is, the idea of the existence of legal structures that preexist the positive law and are a priori with respect to the positive law, is a humanly and anthropologically deep-rooted idea: there are pre-givennesses of the law because the meaningful existence of both values and persons depends one upon the other, and the law, in particular the rational-mutual contract, regulates the process by which values can be savored to the full by persons, and persons can savor values to the full. Indeed, the need of human persons to savor values to the full leads them to exchange and share values, and, by doing so, human persons satisfy also the need of values to be savored to the full. This is the fundament on which the rational-mutual contract takes place, as a pre-givenness of the law that permits the regulation of those sharing and exchanging of values.

Schapp's phenomenology of law opens up a perspective on the *existential foundation* of the law, grounded on the essential tendency of human persons to savor values to the full, on the one hand, and on the *relation of motivation* between values and the rational-mutual contract, on the other, that represents the beginning of a completely new and compelling inquiry by social ontology into the *quality* of the existence of legal entities.

## Notes

- 1 I coined and used for the first time the expression "qualitative social ontology" in De Vecchi (2016a), and then, I developed my account of a qualitative social

ontology phenomenologically embedded in De Vecchi (2017), (2020), 2022), (2023). I previously worked on Schapp's phenomenology of law, precisely on its a priori foundation of the law and its relation with Reinach's *A priori foundations of the civil law*, in De Vecchi (2016b), where I also pointed out Schapp's position in the phenomenological tradition. In this chapter, I take up again the work I have already done, and I develop it further by placing it in the frame of the qualitative social ontology.

- 2 This is a thesis shared by Husserl 1994: Third Section, Stein 1922, Scheler 1954. I further developed this thesis as one of the main theses of the qualitative social ontology in De Vecchi 2022. It needs to be pointed out that Husserl's position about values is less clear-cut than that of Stein and Scheler. See, for instance Husserl's *Crisis of the European Sciences*, where he limits himself against the Galilean mathematization of the *plena*, to a rehabilitation of the solely sensory qualities and also not of value-qualities in his account of the lifeworld (Husserl 1976); see the distinction he continues to make between "real predicates" (*reale Prädikate*) that are sensory and natural qualities and "meaning predicates" (*Bedeutungsprädikate*) that are cultural qualities in *Nature and Geist* (Husserl 2002: 124–5), and see also how he continuously returns to and addresses the issue of the ontological status of value-qualities without reaching a definitive position, in his manuscripts on *Gefühl und Wert* (Husserl 2020).
- 3 On the personal or "personalistic attitude," see Husserl 1994: Third section on *The constitution of the spiritual world*.
- 4 Of course, the main reference here for the idea of different spheres of value is Scheler (1954).
- 5 I do not have time here to develop this point on the structure of the wholes as unitary foundation, see De Vecchi 2022, Ch. II.
- 6 The "personally living" has to be distinguished from the "naturalistic way of living": on the one hand, we live in the personal attitude that is our natural attitude toward the world, on the other hand, we can also assume a "naturalistic way of living" that extracts all the qualitative from things, as it is irreducible to the data of positive sciences (Husserl 1976, 1994).
- 7 This is also the title of the second chapter of the first part of Schapp's book: *Der Unterbau des gegenseitigen Vertrages. Die Welt der Werte*.
- 8 "Der vernünftige gegenseitige Vertrag besteht nun darin, daß aus der Wertwelt des andern etwas verpflanzt wird und umgekehrt" (Schapp 1930: 27).
- 9 In the philosophy of law, existential, and phenomenological approaches to the foundations of the law are, among others, those of Bobbio (1934), Weil (1949), Cossio (1983), Hersch (2008).
- 10 Very surprisingly, Schapp does not refer to Scheler at all and behaves as if Scheler's phenomenology of values (Scheler 1973) did not exist, see Schapp 1930: 184.

Schapp's neglect of Scheler's account constitutes a real theoretical *lacuna* in his theory. If he had considered Scheler's account, he would have avoided problems like the confusion, or the insufficiently clear distinction, between values and goods. Schapp's neglect of Scheler is truly puzzling because Schapp was aware of Scheler's account on values, see Schapp 1959.

- 11 Scheler's characterization of values implies a very strong distinction between values and goods, see Scheler 1954: First part, first section on "Materiale Wertethik und Guter-Respektive Zweckethik," §1 on "Guter und Werte."
- 12 See Schapp 1930: 7. It is necessary to remark that the early phenomenologists' works on values had already identified the act of grasping values as an affective act, the so-called "*Wertfühlen*," and spoke of a capability to grasp values which can be more or less developed, and in some cases not developed at all (as is the case of blindness to values). Concerning all these issues, see Scheler (1954), Hildebrand (1916 and 1922) and Reinach (2012).
- 13 "Wir erleiden z.B. einen Schmerz. Der Schmerz als Qualität hat dabei den Charakter des Unwertes" (Schapp 1930: 10).
- 14 Also concerning the issue of the double polarity of the world of values, positive values and negative disvalues, see Scheler (1954), Hildebrand (1916 and 1922) and Reinach (2012).
- 15 "Diese Welt der Werte und der Unwerte ist die eigentliche Welt in welcher wir leben. [. . .] Ohne diese Werte wäre sozusagen die Welt nur noch ein Schema, etwas rein Mathematisches ohne jedes Interesse für uns" (Schapp 1930: 11).
- 16 "Der Gegenstand hat diesen Wert, auch wenn er zufällig nicht genossen wird, ebenso wie der Gegenstand existiert, d.h. nach unserer Meinung existiert, auch wenn er nicht wahrgenommen wird" (Schapp 1930: 12).
- 17 "Die Werte, welche nicht genossen werden, haben für den Menschen ihren Zweck verfehlt" (Schapp 1930: 11).
- 18 "Ebenso wie die Erkenntnis dem Gegenstande mehr oder weniger adäquat sein kann, kann auch das Genießen mehr oder weniger vollkommen sein" (Schapp 1930: 11).
- 19 "Diesen Begriff der Adäquatheit müssen wir festhalten. Er bedeutet ein Auskosten des Wertes bis zum Letzten. Erst im so verstandenen Genuß erreicht der Wert die vollste für ihn mögliche Lebendigkeit" (Schapp 1930: 12).
- 20 It is worth noting that Reinach makes a similar observation on the quality of existence of claim and obligation: the meaningful existence of claims and obligations is the one which is satisfied by the corresponding realizing action, by which they end their existence "in a natural way" and thus, are not compelled to last in senseless agony. This quality of the existence of claim and obligation is something inscribed in the ontological paradigm of these entities, see Reinach 2012: 32). On this passage by Reinach, see De Vecchi (2013), and on the issue of the "quality of

- the existence” and of “degrees of existence” in Reinach (2012) and also in Stein (1925), see De Vecchi (2016a) and (2017). More in general, I developed the issue of “qualitative existence” in De Vecchi 2022: first chapter.
- 21 “von diesem Genießen strömt eine Kraft aus für das weitere Leben nach den verschiedensten Richtungen” (Schapp 1930: 12).
- 22 “Das Genießen scheint vielmehr daneben noch der eigentliche Lebensquell zu sein, welcher das Leben trägt, aus dem das Leben Kraft und Mut zum Weiterleben schöpft” (Schapp 1930: 13).
- 23 See the similar concept of “*Lebenskraft*,” presented by Stein (1922).
- 24 “Dasselbe Verhältnis findet aber nicht nur dem Einzelnen gegenüber statt, sondern der ganzen Umgebung gegenüber, die Kreise, in dem wir leben, der Stadt, in der wir leben, dem Lande in dem wir leben, der Zeit, in der wir leben” (Schapp 1930: 13). See similarly Husserl’s idea of the constitution of the social and cultural world (Husserl 1994: §51).
- 25 “Wertbeziehungen, welche natürlich gegenseitig sind, sind in Wirklichkeit das soziale Leben. Ohne sie hätte es keinen Sinn, von sozialem Leben zu sprechen” (Schapp 1930: 13). See also Husserl’s idea of social reality as grounded in mutual intersubjective and interpersonal relations, Husserl 1994: §51.
- 26 “Man braucht sich nur vorzustellen, was das Leben des Einzelnen verlieren würde, wenn es keine spielenden Kinder, keine Frauen, keine Männer von Bedeutung in seinem Leben mehr geben würde” (Schapp 1930: 13).
- 27 “Man könnte fragen, ob es überhaupt werte gibt, welche der einzelne für sich allein nicht genießen kann, welche nur die Gemeinschaft in der Gemeinschaft voll genießen kann. Zu solchen Werten scheint z.B. ein Dom oder ein Münster zu gehören” (Schapp 1930: 20).
- 28 “Für das Wesen des Staates scheint es uns nun eine Hauptfrage zu sein, ob irgend etwas zum Staate Gehörendes Eigenwert für den Menschen hat und in welcher Weise es diesen Eigenwert hat, ob etwa in der Weise, wie der Sonnenuntergang für viele seinen Eigenwert hat, so dass jeder Einzelne ihn genießen kann, oder eher in der Art des Münsters und Gottes, dass ein Zusammengehen von vielen, ein Zusammengehen der gläubigen Gemeinde dazu gehört, um die Werte auszuschöpfen” (Schapp 1930: 25).
- 29 “Ob dabei der Einzelne in der Gemeinschaft genießt oder ob es Sinn hat, zu sagen, dass die Gemeinschaft genießt, wagen wir nicht zu entscheiden” (Schapp 1930: 20). The problem of the identity of the subject of collective intentionality, whether a “collective subject,” a “group mind,” or rather only single individuals as the bearers of collective intentionality, is a crucial problem in studies of collective intentionality. To cite only a few of the main philosophers’ positions on this issue, see Searle (1995) and (2010), Tuomela and Miller (1988), Gilbert (1989) and (2014). In the phenomenological domain, see the analysis of the “common person” (*Gemeingeist*)

- by Husserl (1994, §51), of “collective person” (*Gesamtperson*) by Scheler (1954), of “Individual and Community” (*Individuum und Gemeinschaft*) by Stein (1922).
- 30 “Wir haben davon gesprochen, daß eine Wertwelt einer bestimmten Seele zugeordnet sei und daß diese Wertwelt von der größten Mannigfaltigkeit sei” (Schapp 1930: 21).
- 31 “Zu dieser mir zugeordneten Wertwelt gehört der Sonnenaufgang, den ich von Spitzengewebe der Wall-Allee dazu, welche in Winter auf dem lichten Hintergrund in immer neuen Münstern und Formen sich abhebt. [. . .] es gehören dazu die Menschen, denen ich gern begegne, kurz, es gehört eine Unendlichkeit dazu” (Schapp 1930: 21).
- 32 “Demgegenüber scheint die Möglichkeit, andern solche Werte zu verschaffen, auf andere Werte zu übertragen [. . .]. Ich kann wohl anderen auf manche Art und Weise den Zugang zu Werten erleichtern. Ich kann sie auf Werte hinweisen, an welchen sie vorübergehen, ohne sie in ihre Wertwelt aufgenommen zu haben” (Schapp 1930: 21).
- 33 “Ein Wertkomplex, welcher einer Person zugeordnet ist, kann zugleich einer andern Person zugeordnet sein, ohne daß [. . .] der Wert dieses zugeordneten Komplexes für den einzelnen Beteiligten sich mindert, er kann sich sogar durch die Beteiligung mehren. Geteilte Freude ist doppelte Freude” (Schapp 1930: 23).
- 34 “Die dem Mann und der Frau zugeordneten Wertwelten bilden in Wirklichkeit zum großen Teil eine einheitliche Wertwelt, welche zwei zugleich als Einheit genießen” (Schapp 1930: 23).
- 35 See Scheler (1954), Gilbert (2005), Durkheim (1912).
- 36 On this issue, see De Vecchi (2015), and Gilbert (2005) (in Gilbert 2014). Moreover, is the problem of what it means to share a value analogous to the problem of what it means to share a feeling? On the latter, see Schmid (2009): Chapter four, “Shared feelings.”
- 37 “Der vernünftige gegenseitige Vertrag besteht nun darin, daß aus der Wertwelt des einen in die Wertwelt des andern etwas verpflanzt wird und umgekehrt. Ohne Beziehung auf einen Wertwelt gibt der gegenseitige Vertrag keinen Sinn” (Schapp 1930: 27).
- 38 “Wenn nun die Voraussetzungen für den Abschluss eines gegenseitigen Vertrages gegeben ist, d.h. wenn ein Stück der Wertwelt des einen gegen einen Stück der Wertwelt des andern irgendwie ausgetauscht werden soll, so *fragt es sich, in welcher Weise dieser Austausch zustande kommt*. Damit sind wir in dem eigentlichen Gebiet der Jurisprudenz angelangt” (Schapp 1930: 27, my italics).
- 39 “Wenn zwei Stücke aus zwei Wertwelten gegeneinander ausgetauscht werden sollen, so *fragt es sich, wie dies im einzelnen vor sich geht*. Für den Laien ist nichts einfacher als dies. *Der Jurist hat aus diesem Austausch eine Wissenschaft gemacht, welche in entwickelteren Gesetzen in Tausenden von Paragraphen behandelt wird*. Der Weg

- des Austausches ist der gegenseitige Vertrag für den Juristen. Diesen betrachten wir nun genauer. Die Voraussetzung des *gegenseitigen Vertrages* ist das eigenartige Verhältnis von zwei Wertwelten, von welchen je ein Teil zum Austausch mit einem Teil der andern Wertwelt drängt. Diese Voraussetzung bezeichnen wir als *Unterbau* des gegenseitigen Vertrages, den Austausch selbst entsprechend als *Oberbau*” (Schapp 1930: 28, italics mine).
- 40 “Bei allen [Verträgen] besteht der Unterbau in der Abschätzung der umzusetzenden Werte und der Oberbau in Kundgebung, welche diese Umsetzung bewirken” (Schapp 1930: 34).
- 41 “Diese Willenserklärungen sind aber nicht beliebige Willenserklärungen, sondern *soziale Akte*” (Schapp 1930: 40).
- 42 Schapp assumes Reinach’s idea of social acts and affirms that “the essence” of social acts “was established by Reinach, with rare clarity, according to the phenomenological method” Schapp (1930: 56). The fourth section of the first part of Schapp’s work refers very explicitly to Reinach: this section is entitled *Studie über die Kundgebungen im Vertragsschluß. Die Akte*, and takes up Reinach’s analysis of social acts, in particular, the “making known” (*Kundgeben*) of the social acts, pinpointed by Reinach as one of the essential moments of social acts, see Reinach (2012: §3). Moreover, Schapp illustrates two new paradigms of social acts:  
 () Social acts whose *addressee is not a human being*, but either a non-human animal or God (concerning God, Reinach, too, had already pointed out the possibility of social acts addressed to God, such as praying; see Reinach (2012: §3); (2) Social acts that are *original* (*Originalakte*) and social acts that are *artificial* (*Kunstakte*): differently from original social acts, artificial social acts do not have a correspondence in the sphere of the pre-giveness of law (examples of original social acts are: promising [*versprechen*] and commanding [*bestellen*]; examples of artificial social acts are: admonishing [*anfechten*] and contesting [*mahnen*]). See Schapp (1930: 59) and following.
- 43 “Die Formeln, welche wir für den gegenseitigen Vertrag im Unterbau und Oberbau gefunden haben, stehen nicht zu irgendeinem positiven Recht in besonderer Beziehung, und doch sind sie in irgendeiner Weise die Grundlage jeden positiven Rechtes. Die Formeln sind auch nicht auf dem Wege der Verallgemeinerung aus den bekannten positiven Rechten gewonnen, sondern das positive Recht findet diese Formeln vor und wählt die aus, welche ihm zweckmäßig erscheinen und gibt ihnen eine erhöhte Bedeutung” (Schapp 1930: 35–6).

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