

---

PAOLA PREMOLI DE MARCHI

*Università degli Studi di Padova*

*paola.premoli@unipd.it*

---

# NORMS WITHOUT VALUES. PHILOSOPHICAL REFLECTIONS ON CARL SCHMITT'S *TYRANNY OF VALUES*

*abstract*

---

*In his work on The Tyranny of Values (1954) Carl Schmitt argues that the use of values to justify norms necessarily leads to fanaticism and violence, and therefore must be rejected. This paper aims to show Schmitt's philosophical assumptions that result from the view of man as dangerous and selfish, and of value as dependent from human will and not from some objective knowledge. As Scheler objected to Weber, the rejection of objective values cannot defend man from arbitrariness and irrationality. Schmitt himself tried to justify norms with the sovereign's decision, but later realized that this way is not sufficient.*

*keywords*

---

*Schmitt, Scheler, values, decisionism, concrete order thought*

---

On October 23, 1959 the German jurist Carl Schmitt took part in a seminar organized by his student Ernst Forsthoff in Ebrach, with a paper titled: *The Tyranny of Values. Reflections of a Jurist on the Philosophy of Values*.<sup>1</sup> The text was published in a limited edition in the following year, then had a remarkable success and saw several reprints and translations. By using the expression “tyranny of values”, Schmitt meant that the use of values to justify norms necessarily leads to fanaticism and violence, and therefore must be rejected. Schmitt chose the topic of his paper because of the great influence that Scheler’s philosophy of values held on German legal thought in the 20<sup>th</sup> century. After the Second World War, there was a reawakened interest in values, as part of the process of cultural reconstruction that was meant to repair the horrible crimes against humanity perpetrated in the previous decades. A new foundation was invoked, capable of rehabilitating and protecting legally the wounded dignity of human beings (TW 21). A philosophy of values was seen as the way to justify the sphere of human freedom, as a response to the proclaimed value-free realm of science. Especially the material value ethics of Scheler presented itself as the ideal solution for the need to justify legal rules. Yet, in the text mentioned, Schmitt argues not only that values are unable to offer a scientific and therefore universal justification to norms, but are the harbingers of hostility and conflict.

This paper focuses on the premises of Schmitt’s perspective and aims to show that the rejection of values as foundation of civil laws depends upon some *philosophical* assumptions, even though Schmitt defined himself a jurist and not a philosopher. This paper is then divided into five parts: (1) The first part is dedicated to explain the historical background of Schmitt’s notion of value (2) The second part introduces the content of *Tyranny of Values* concerning the relation between norms and values. (3) The third part explains the main thesis defended by Schmitt, namely the relationship between the posing of values and aggressiveness, and investigates its theoretical premises (4). The fourth part addresses the question of how norms can be justified without values, in Schmitt’s view. (5) The fifth and final parts aims to reply to Schmitt’s rejection of values by drawing on some insights by Scheler, who is the main exponent of the value theory attacked in the *Tyranny of Values*.

---

1 Schmitt 2011, in the text indicated as TW. Quotations are taken from the German edition of his work and all translations are my own.

### The History of the Modern Meaning of Value

In order to understand Schmitt's argument, we need to know the precise meaning he attributes to the word "value". The notion of value has had an increasing success in ethical and political modern philosophy. Thomas Hobbes played an important role in this history, for he denied the ontological justification of the good; many thinkers who speak of values shared his view and thus influenced the meaning of value adopted by Schmitt (see Hobbes 1651, I, 6).

In his *Groundwork for the Metaphysics of Morals*, Immanuel Kant distinguishes between the "price", which is the relative value of a thing, and its "intrinsic value" or *dignity*, which belongs only to man and is an "unconditional, incomparable worth", "infinitely above all price" (Kant 1997, 41-42). Among several expressions used by Kant, we see that the notion of value was also influenced by the development of modern political economy and in particular by the theories of value by William Petty, Adam Smith, David Ricardo and later Karl Marx. According to these theories, value has a quantitative character, is not a feature of things in themselves, but is given by its specific historical conditions, like the amount of work necessary to produce something within economic processes, its use and its exchange value (Lunghini-Ranchetti 1998). In other words, value stems from human valuating faculties.

Another thinker who influenced the debate on values is Hermann Lotze, who in his *Logik* (1884, §316-17) introduces the distinction between *being*, of things that really exist, and *values* (*Werte*), which instead have validity (*Geltung*). Even if Lotze thought that values have a metaphysical status, although different from that of beings, this distinction favoured the beginning of discussions on the separation between statements of fact and value judgments.

Nietzsche made a decisive contribution to connect values to the human will, with his theory of the devaluation of traditional values (good, beauty and truth) and the transvaluation of all values, namely the overthrow and the search for new values. In his attempt to release ethics from prohibitions and obligations, Nietzsche uses the term value to express self-fulfillment and happiness. Thus, value is that which enhances life, negative value that which denies it. For Nietzsche all values are subjective and prospective, because they are the result of assessments arising from the will to power (See Volpi 2009, 88).

In his famous work on *Science as a Vocation*, Max Weber (1946, 148 f.) is indebted to Nietzsche for this view. He asserts that science must be value-free, neutral with respect to values (*wertfrei*) and thinks that values are

posed by the free and subjective will of the human individual. The act of establishing values is bound to the perennial conflict between values and world views. He therefore speaks of a polytheism of values that are emptied of their original foundation, but which are nevertheless a source for wars. The opposite side of the modern debate about values is represented by that “philosophy of values” that initially developed as neo-Kantianism under Wilhelm Windelband and Heinrich Rickert, and then flourished within phenomenology under the influence of Max Scheler’s work *Formalism in Ethics and non-formal Ethics of Values*. For Scheler, values are qualities that we experience, but which cannot be reduced to the empirical goods through which we grasp them, nor to mere psychical phenomena. Just like colors are distinct from coloured things, but are experienced in those things, values are different from goods, but are experienced with them. Each individual, people and nation has his own perspective with regard to the objective order of values (*ethos*), but this does not contradict the fact that there are objective values, because the total fullness of the realm of values cannot be given to one individual, people, nation, or at one moment in history. Therefore, the existence of the historical differences in morals “is not an objection to the *objectivity of moral values*, but is on the contrary required by it”. (1973, 493) Scheler in other words sees the variety of perspectives about values more as an asset than as a cause of conflict (See Simonotti 2011, Ch. 1). Among the strongest opponents to the concept of values as “valid in themselves” is Martin Heidegger (1950, 209), who rejects the idea of objectively valid values as monstrous and without foundation. He attributes to Nietzsche the primary responsibility for spreading the concept of value in neo-Kantian philosophy and even in Christian theology. Nevertheless, he believes that, as a result of this paradigm, value becomes a surrogate for metaphysical concepts. In his *Letter on Humanism*, it becomes evident that his criticism is motivated by his desire to overcome metaphysics, an interest which is not shared by Schmitt. Yet the German jurist adheres to Heidegger’s critique, because he agrees with the idea that value is the result of an “act of valuing” and this act—Heidegger says—is always a subjectivizing. Thus, it is simply impossible to speak of objective values, even more, according to Heidegger, “thinking in values is the greatest blasphemy imaginable against being” and “when one proclaims God the altogether highest value, this is a degradation of God’s essence” (1993, 265).

*The Tyranny of Values by Carl Schmitt*

Schmitt’s notion of value stems from Heidegger’s position and its theoretical background. There are three main characteristics of value to be found in *The Tyranny of Values*.

First, Schmitt says, “the specific characteristic of value lies in the fact that instead of a *being*, it has only *validity*”. (TW 41) The question if values have some ideal existence or not is therefore irrelevant.

Secondly, and consequently, for Schmitt the value “aspires to be actualized”: it is not real, but aims to become real (TW 36). Thus, “the validity of values is based on acts of taking position” (*Setzungen*) (TW 39) and “values, though they may be considered high and holy, always are valid only for something or for someone” (TW 40), that is, always involve “subjects with a sense of value (*wertfühlende Subjekte*)” (TW 41). The conclusion is that value always results from an act of *establishing*, which is always an *asserting*, but also an *imposing*; therefore, “he who says they are valid, without somebody making the assertion, is cheating” (TW 57).

A third characteristic is that value is always due to a perspective, related to a point of view (TW 41). This can be explained as a consequence of its second feature: if a value is produced by an act of posing, it always depends on the point of view of its creator. Values are always inserted in a “system of pure perspectivism, a system of relations” and acquire value through their mutual position, because, says Schmitt, “points of view do not exist to be fixed and maintained for themselves” but “it belongs to their function and their meaning, to be changed when the reference plane is changed” (TW 42). Now, and this is Schmitt’s crucial argument, every position of value involves a potential aggressiveness. Since value must be actuated, each value must also be imposed on others, who want to assert different values.

Aggressiveness is inherent to thethetic-posing structure of value, and continues to be produced by the concrete actuation of value. [...] The ambivalence of values causes it to become more and more virulent as soon as these values are invoked by concrete people against other people as well concrete. (TW 45)

According to Schmitt, then, “as soon as the imposing and enforcing become really serious, [...] the conflict between evaluators, de-valuators, re-evaluators and exploiters is inevitable” (TW 46). The destructive potential of values includes subjective values, but also objective values, such as those in Scheler’s material ethics: the higher values have the “right and duty” to subdue the lower ones, and values should destroy the disvalues. This, Schmitt concludes, is the *tyranny of values*. (TW 48)

This expression is taken from Nicolai Hartmann, The significance Schmitt gives it, however, is different from its original meaning. This is already evident in the passage quoted by Schmitt himself of Hartmann’s *Ethics*

(2002-2004, II, 425-6). Hartmann says, “every value – when once it has gained power over a person – has the tendency to set itself up as sole tyrant of the whole human ethos, and indeed at the expense of other values”. This tendency “does not adhere to values as such”, but to them as determining human conduct and feeling: Hartmann simply wants to show the potential danger of values in the moral behaviour of individuals or groups, when they take on a leading role at the expense of other values, for example when justice prevails over brotherly love or *vice versa*. For Hartmann the remedy to this danger is a mature *Ethos* in which a balance between the values involved is found.

Schmitt, on the contrary, applies the term *tyranny of values* to the political sphere, to indicate that any attempt to justify the rule of law with values necessarily leads to an ideological war with those who have different value perspectives. For Schmitt, those who appeal to values first discriminate between values and non-values, then between friends and enemies, and finally impose their own values by attempting to annihilate their opponents.

### The Relation between Values and Aggression

Schmitt's notion of tyranny of values is based on his equivocal understanding of “asserting values” and “aggressiveness”. To understand the reason for this confusion a broader inquiry of Schmitt's philosophy is needed. Even though Schmitt does not seem to be interested to investigate the ultimate philosophical foundations of his assertions, his idea of a tyranny of values presupposes some more general beliefs concerning anthropology, value theory and epistemology.

### a) The Anthropological Premise

Regarding his view on the human being, Schmitt is clearly influenced by the modern idea of man shared by Hobbes and Machiavelli, which, in last analysis, is based on a pessimistic view of individuals and social relationships. In the *Concept of the Political* (Schmitt 1996), as well as in *Dialogue on Power* (Schmitt 2008, 18) he states that man is not by nature good and pacific, but bad and dangerous. This view helps us to understand why Schmitt's *Tyranny of Values* asserts a relation of cause-effect between the posing of values and aggressiveness. However, in his comments on *The Concept of the Political*, Leo Strauss notices that the affirmation of man's bellicosity is not “unshakably certain”, since “Schmitt himself qualifies the thesis of man's dangerousness as a ‘supposition’”, and the choice between pessimism and optimism as an “anthropological confession of faith” (Schmitt 1996, 58). Therefore, Strauss concludes, Schmitt's anthropological premise is not demonstrated, and the opposite could be true (Strauss 1996, 111).

### b) The Axiological Premises

If we turn to the initial question of the relationship between values and norms, then we can say that, from Schmitt's perspective, it is correct to conclude that values cannot justify rules nor have in themselves a normative force. If values, as Schmitt thinks, are only the result of a subjective act of "valuing and asserting", the attempt to base norms upon them cannot but lead to bankruptcy and the only way to impose values is force. We find this conclusion already in Hobbes and Machiavelli (see Berlin 1980, 75).

Some further analysis of Schmitt's notion of value would however be needed. First, Schmitt seems to have the tendency to separate ethics from the other fields of human action, without a clear description of its essential features. Hobbes describes man in the state of nature as *evil*, that is, like beasts that are moved by their drives and thinks that this is an "innocent" evil, because moral duty is given by social structures. In *The Concept of the Political*, Schmitt, as noticed by Strauss, speaks with sympathy of this "evil" that is not to be understood morally. Nevertheless, Strauss has shown that this presumed moral neutrality is wrong, and thus that sympathy is inappropriate, since what Schmitt admires is not morally neutral, but a deficiency. Therefore, "man's dangerousness, revealed as a need of dominion, can appropriately be understood only as moral baseness" (1996, 115) In *The Tyranny of Values* we see a similar lack in distinguishing clearly between what is morally neutral and what is morally relevant. Schmitt is inclined to ignore the difference and the relationship between the political and the ethical sphere.

Schmitt also says that "for the realization of the supreme value no price is too high" (TW 51). If the supreme value is the one that has no price, according to Schmitt you must conclude that everything can be sacrificed to pursue that value: the principle that the end does not justify the means is not valid anymore, because no price will be too high to get the value that is regarded as invaluable. Here again we can see the influence of Hobbes, who in the *Leviathan* (1651, X) says: "the value or worth of a man is, of all other things, His price". In Schmitt's argument, however, we see that the analogy with the economic concept of value can be misleading. In fact, to say that the supreme value is priceless does not necessarily mean that any price can be paid for its sake, as Schmitt thinks, but it can also mean that some values are outside the logic of price, and require qualitatively different criteria than that of market relationships to be valued. Kant's notion of dignity suggests this second meaning: priceless here means that the person's dignity makes her incommensurable to any impersonal being, which has a price, and therefore she must be appreciated and respected as an end in

itself, because her value is outside of our power.

Another concept used by Schmitt to argue in favor of a necessary connection between values and aggressiveness is the relationship between denial and duty. Schmitt mentions Scheler's assertion that the destruction of a negative value is a positive value and interprets it as a dangerous invitation to "repay evil with evil, and thus transform our world into a hell, but hell into a paradise of values" (TW 51). This is because the value for Scheler implies an *ought-to-be*, which is especially evident when the value is absent. If the duty emerges as a call to eliminate the non-value, this implies, Schmitt concludes, that the annihilation of what is declared as a non-value is a right and a duty (Scheler 1973, 82). This argument would clearly require further research on why the difference among values must necessarily lead to exclusion and cannot admit some kind of coexistence, and on the relation between value and duty, but both inquiries are impossible if values are subjective and one cannot find any objective reference for discussion. The crucial question posed by the tyranny of values, then, is to be found in Schmitt's epistemological premises.

### c) The Epistemological Premises

The notion of values as "valid for someone" is in fact nothing else than a restatement of the view of Protagoras that "man is the measure of all things", namely of a theoretical relativism and ethical arbitrariness. Schmitt seems to be aware of this. In *The Tyranny of Values*, he says that the attempt to give an objective foundation to values is just a new tool of the arrogance that leads to strengthen the fight, "without the slightest increase of their objective evidence for those who think differently" (TW 46). It is not possible to distinguish between "values" and subjective "beliefs" and "interests" (TW 49), and the concept of a blindness of values defended, for example, by Dietrich von Hildebrand is senseless (Hildebrand 1922, TW 68). He also notices that the act of valuing as such does not save the goods, interests and purposes to which it is applied, because is not sufficient to create legitimacy (TW 24).

### How can Norms without Values be Justified?

If therefore, for Schmitt norms cannot be justified with a reference to values, one might ask how norms can be established. To answer this question would require an investigation that transcends the limits of this paper. Here, however, I suggest starting the research from the reading of Schmitt's *On The Three Types of Juristic Thought* (2004). In this work, Schmitt introduces three forms of legal thought: normativism, decisionism, and the theory of the concrete order. They correspond to three conceptions of the essence and foundation of the law, since "even in any natural or rational law [...] one will find the ultimate notion of *Recht* as either norm [rule] or decision



or order” (ibid. 43). In every legal theory there are elements of all three views, but one concept of law is the fundamental one from which the others are derived.

According to normativism, the norm is an absolute and creates order, elevating itself above the individual case and the concrete situation. As expressed by Chrysipp “law is king, master over morality and immorality, right and wrong”. (Schmitt 2004, 45). Schmitt was always very critical of this theory, and in *On The Three Types of Juristic Thought* says that normativism is wrong because it ignores that laws always presuppose concrete persons who apply them. He therefore rejects this theory not because it cannot justify the norm’s content, but because it ignores that norms cannot be applied without a reference to the concrete society, individuals, and communities (ibid. 51).

The second legal theory is decisionism. Schmitt is considered the founder of this theory, which he introduced in the 1920s, to solve the question of the political situation called *state of exception*. In *Political Theology* he says that norms demands “a normal, everyday frame of life” to which they can be applied and “there exist no norm that is applicable to chaos”; therefore, when the normal order has been destroyed or endangered, the sovereign is called to decide about what is right and therefore legal. (1996, 13). Thus, he quotes a principle mentioned by Hobbes in the Latin edition of the *Leviathan* (even within a different context), that “*auctoritas, non veritas, facit legem*”. In *On the three Types of Juristic Thought* he explains that “it is not the command as command, but the authority or sovereignty of an ultimate decision with which the command is given that is the source of all *Recht*” (2004, 60). The sovereign decision is “the absolute beginning” (ibid. 62).

Over the years, Schmitt recognized that decision must not be the only source of law. Probably the access of the Nazis to power and their attack against values and traditions prompted Schmitt to take interest in protection of certain institutions of state such as marriage, property and churches (1965, 170-182). Even if *On the Three Types of Juristic Thought* was published a few months after that Schmitt joined the Nazi Party, in this work Schmitt seems to defend another source of law, namely, the concrete order of the already existing institutions, communities and interpersonal relationships. According to this third legal theory, norms stem from the already existing social order, so to reflect the views about justice and values of social groups, associations and institutions.

Unfortunately, after the work *On the Three Types of Juristic Thinking*, Schmitt no longer addressed in detail the issue of the foundation of law. The reason probably is that, as a jurist, he was more interested on how laws can become effective and order social life than on their justification. Nevertheless, the

mentioned work shows that even the jurist cannot avoid any reference to objective values: Schmitt clearly refers to notions as “legal order”, peace, normalcy, right, as well as to some basic communities like family, as they were endowed by positive importance in themselves. He probably did not see the inconsistency between the defense of these entities, and the thesis introduced twenty years later in the *Tyranny of Values* that norms cannot be justified with objective values.

**Conclusion:** In a short essay of 1923 on Weber, Scheler says that he “abandons all questions which go beyond his concept of science [...] to a completely a-rational, individual option of the will – and therefore to the mere struggle between parties and group”. Then we read:

**a Reply of  
Scheler to  
Schmitt**

His [Weber's] radical error is the assertion that the material values have only subjective significance, and that there can be no binding knowledge of objective phenomena and values, goods or systems of goods beyond positive science, nor is it possible for representatives of different systems of values to “convince” one another or to fructify one another intellectually (Scheler 1989, 94).

This critique can also be applied to Schmitt: values are rejected because their meaning is considered a mere option of the will. But Scheler says that the abandonment of issues that refer to morality, religion and the view of the world to irrational powers is a complete misunderstanding of their nature and therefore exclusion of philosophy and wisdom. The wisdom pursued by philosophy is the only knowledge that is able to bind together things like “knowledge of being, the consciousness of value *and* systematic readiness of the *will* to obey the demands of obligation which arise from the synthesis of the knowledge of *being* and the consciousness of *value*”. Through wisdom, continues Scheler “the soul maintains the beautiful dynamic equilibrium of the manifold energies which constitute it, by constantly transforming goodness into knowledge and knowledge into goodness.” (ibid.)

Schmitt cannot pursue this ideal because of his negation of both terms of the relation: knowledge and goodness. He attacks a philosophy of values by rejecting any objective foundation to *values*, but the result is that he denies any foundation also to *philosophy*. The deepest root of the notion of tyranny of values, then, is above all of an epistemological nature: in denying that human knowledge can inquire into essential data of human experience, Schmitt also rejects any autonomous status to philosophical

thinking. According to Schmitt, the condition of the human being requires not philosophy, but a political structure, which alone can protect the life of men against war and conflict. Scheler, on the contrary, thinks that *all* the different human activities (i.e. science, action upon the world, leadership of men) are “simply differing means to form the human personality under the guidance of wisdom and with the aim of leading steadily upwards towards it”, and “have as their *ultimate justification* this formation of man” (1989, 95). The outcome of the resort to values as justification for norms, then, should be the exact opposite of the tyranny described by Schmitt: if laws reflect the hierarchy of importance in the world, they contribute to enrich the wisdom, which allows humanity to flourish.

## REFERENCES

- Bendersky, J.W. (2004), "Introduction", in C. Schmitt, *On the Three Types of Juristic Thought*, trans. J.W. Bendersky, Praeger Publisher, Westport, pp. 1-39;
- Berlin, I. (1980), "The Originality of Machiavelli", *Against the Current. Essays in the History of Ideas*, The Hogarth Press, London, 25-79;
- Hartmann, N. (2002-4 [1926]), *Ethics*, Transaction Publishers, New Brunswick, 3 voll;
- Heidegger, M. (1993 [1949]), *Letter on Humanism*, Trans. F. A. Capuzzi in *Basic Writings*, Harper Collins, New York;
- Heidegger, M. (1950), "Nietzsche Wort Gott ist tot", In *Holzwege*, Klostermann, Frankfurt a.M.;
- Hildebrand, D. von, (1922), „Sittlichkeit und ethische Werterkenntnis“, *Jahrbuch für Philosophie und phänomenologische Forschung*, 5, 462-602;
- Hobbes, T. (1651), *Leviathan or the Matter, Form and Power of a Common Wealth Ecclesiasticall and Civil*;
- Kant, I. (1997 [1785]), *Groundwork of the Metaphysics of Morals*, trans. M. J. Gregor, Cambridge University Press, Cambridge;
- Lotze, H. (1884 [1843]), *Logic in Three Books*, trans. B. Bosanquet, Clarendon Press, Oxford;
- Lunghini G.-Ranchetti F. (1988), "Valore, teorie del", *Enciclopedia delle Scienze Sociali Treccani*;
- Meier, H. (1995), *Carl Schmitt and Leo Strauss. The Hidden Dialogue*, trans. by J. H. Lomax, University of Chicago Press, Chicago;
- Scheler, M. (1989 [1921-3]), *Max Weber's exclusion of Philosophy*, trans. R. C. Speirs, in M. Weber, *Science as a vocation*, P. Lassman & I. Velody (ed.), Unwin Hyman, London, 92-98;
- Scheler, M. (1973 [1916]), *Formalism in Ethics and Non-Formal Ethics of Values: A New Attempt Toward the Foundation of an Ethical Personalism*, Northwestern University Press, Evanston;
- Schmitt, C. (1965 [1928]), *Verfassungslehre*, Duncker & Humblot, Berlin;
- Schmitt, C. (1985 [1922]), *Political Theology, Four Chapters on the concept of Sovereignty*, trans. G. Schwab, The University of Chicago Press, Chicago;
- Schmitt, C. (1996 [1932]) *The Concept of the Political*, trans. G. Schwab, The University of Chicago Press, Chicago;
- Schmitt, C. (2004 [1934]), *On the three Types of Juristic Thought*, trans. J.W. Bendersky, Praeger Publisher, Westport;
- Schmitt, C. (2008 [1954]), *Gespräch über die Macht und den Zugang zum Machthaber*, Klett-Kotta, Stuttgart;
- Schmitt, C. (2011 [1960]), *Die Tyrannei der Werte*. 3. Rev. ed., Duncker & Humblot, Berlin. Engl.: *The Tyranny of Values*, trans. S. Draghici, Plutarch Press,

Corvallis, 1996;

Simonotti, E. (2011), *Max Scheler. Universalismo e verità individuale*, Morcelliana, Brescia;

Strauss L. (1996), *Comments on Schmitt's Essay*, in C. Schmitt, *The Concept of the Political*, trans. G. Schwab, The University of Chicago Press, Chicago, pp. 81-107;

Volpi, F. (2009), "Anatomia dei valori", in C. Schmitt, *La tirannia dei valori*, Adelphi, Milano, pp. 69-107;

Weber, M. (1946 [1922]), "Science as a Vocation", *Essays in Sociology*, H. H. Gerth and C. Wright Mills (ed.), Oxford University Press, New York, pp. 129-159.