

SOME PROBLEMS OF THE THEORY OF NORMS

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1. *Introductory Remarks on the Meaning, Functions and Effectiveness of Norms. The Concept of "Social Norms"*

1.1. When considered from the standpoint of their (basic) meaning and function, norms can be said to belong to a larger group of statements — statements expressing commands, prohibitions, permissions, wishes, advice, approval, disapproval, and the like. All these statements have the same general kind of meaning characterized by R. Carnap as "the optative meaning" ⁽¹⁾, and the function of influencing behaviour. In connection with this group of statements many difficult problems arise, such as their cognitive (descriptive) meaning components ⁽²⁾ and differentiating these statements into sub-groups among which the so-called norms and value judgments are attracting most attention. Several attempts have been undertaken to introduce some division into this large group on a semantic basis e.g. by introducing the concepts of emotive, evaluative, directive and critical meaning). Many authors are emphasizing the differences in function of utterances (which involves some difficult problems concerning the relation between functions and meaning), and, more recently, on the uses of linguistic expressions (the ordinary-language approach) ⁽³⁾. These conceptions having their merits (they cannot be discussed here) are in need of further discussion and elaboration. It should also be stressed that the efforts of different circles of scholars working separately on these problems should

⁽¹⁾ R. CARNAP, "Abraham Kaplan on value judgments" in *The Philosophy of Rudolf Carnap*, ed. P. A. SCHILPP, *The Library of Living Philosophers*, v. XI, La Salle, 1963, p. 1001.

⁽²⁾ Comp. the penetrating analyses in R. G. BROWN, I. M. COPI, D. E. DULANEY, W. K. FRANKENA, P. HENLE, Ch. L. STEVENSON, *Language, thought, and culture*, II ed., Ann Arbor, 1959, ch. 5 and 6.

be brought together. As now the matter is standing, there is some gap between the efforts of a group of philosophers concentrating on the problems of value judgments and of scholars interested in norms (mostly legal theorists).

Trying to distinguish roughly — for the sake of our present considerations — norms from other statements with optative meaning, we can say that norms are statements expressing (direct) prescriptions of certain ways of conduct ⁽⁴⁾. Here objections could be raised in connection with some interpretations of permissions ⁽⁵⁾; this point being worth going into separately is of no relevance, however, for problems we are about to discuss. There are also questions about the status of statements typical of some parts of contemporary law, national as well as international (planning and management directives, recommendations etc.). This status seems to be intermediary between advice and norms, or "seminormative" ⁽⁶⁾.

1.2. Thus norms are distinguished here on a semantic basis as statements vested with prescriptive meaning. As there are also different forms of use for norms, the syntactical basis for their identification is insufficient ⁽⁷⁾. Their main function is that

⁽³⁾ On the emotive, evaluative, directive, and critical meaning — C. WELLMAN, *The language of ethics*, Cambridge Mass., 1961, ch. VII-X; on the relation between meaning and functions — A. KAPLAN, "Logical empiricism and value judgments" in *The Philosophy of Rudolf Carnap*, cit. above, pp. 831 ff.; the conception of the uses of linguistic expressions represented by many authors; J. AUSTIN's *How to do things with words*, London, 1962, seems to be here of basic importance.

⁽⁴⁾ Z. ZIEMBIŃSKI, *Logiczne podstawy prawoznawstwa* ("The Logical Bases of the Study of Law"), Warszawa, 1966, pp. 45 ff.; comp. R. M. HARE, *The language of morals*, Oxford, 1952, pp. 1 ff., 18 ff.

⁽⁵⁾ E.g. G. H. VON WRIGHT, *Norm and action*, London, 1963, pp. 85 ff.

⁽⁶⁾ N. BOBBIO, "Per una classificazione degli imperativi giuridici", in *Scritti giuridici in memoria di Piero Calamandrei*, Padova, 1956, pp. 109 ff.; same author, "Comandi et consigli" in *Raccolta di scritti in onore di Arturo Carlo Jemolo*, v. IV, pp. 75 ff.; same author, "Norma giuridica", in *Novissimo Digesto Italiano*, stresses in this connection the differences (same sort of gradation) in function.

⁽⁷⁾ J. LANDE, *Studia z filozofii prawa* ("Studies in Legal Philosophy"), Warszawa, 1959, pp. 755 ff., 930; M. BLACK, *The Analysis of Rules*, in *Models and Metaphors*, Ithaca, 1962, p. 106.

of influencing behaviour⁽⁸⁾. The actually intended or exerted influence of norms may, of course, vary. There can be norms which were in operation once, more or less long ago (e.g. the norms contained in the Polish King Casimir the Great's Statutes, or a moral norm of yesterday: "I feel bound in duty to attend my friend's funeral"). Now they do not operate any more, although as statements of a definite meaning they do not differ from norms actually operating. There can be also norms which within the context of a given empirical situation are deprived of any kind of operative power. Thus there can occur a case where the utterer has no evident intention to exert any influence and so, accordingly, the influence is not exerted. Or there can be another case when the utterer has an earnest intention to exert influence, but fails to exert the intended effect upon his addressees' behaviour. A total absence of influence would be here an extreme case: more frequent are situations where the effect is disproportionately narrow and weak as compared to the intended effect of such norms (e.g. when somebody proclaims a highly extravagant fashion). But there can occur also a case where despite the utterer not having any intention to exert influence, the effect nevertheless does take place (when e.g. somebody in blind obedience carries out another's preposterous order issued in jest). This type of norm operation from the sociological point of view is usually deprived of importance, although it may be an interesting subject of psychological research.

1.3. The most important of all these cases occurs no doubt when the utterer intends to exert influence through norms upon the behaviour of addressees, but the norm appears to be more or less ineffective when applied to them. This occurs not only in such extreme and pathological situations where the norm-giver is an individual (or some narrow group) socially isolated, deprived of authority and of material means by which the effectiveness of his or their norms could be ensured. This occurs

(8) Comp. Z. ZIEMBIŃSKI, *Le caractère sémantique des normes juridiques*, *Logique et Analyse*, V, 17-18, 1962 (pointing out the terminological discrepancies in the considerations on functions).

also, sometimes even to a considerable extent, in the case of socially consolidated normative order — it can apply, for instance, also to legal norms, a fact well known to jurists. The question of conditions of effectiveness and ineffectiveness of norms of that type is an important object of research for the sociology of law.

1.4. One should now consider the relation between the frequently used term “social norms” and the term “norms”. According to some views, all norms are “social norms” for three different reasons, or at least for one. First, any norm, whether created spontaneously, or by conscious enactment, is socially conditioned in its content. Secondly, norms are established by the given individual or individuals in order to direct other people’s conduct, and by the same they establish the social relation of the norm-giver to the addressee. Thirdly and finally, norms concern the addressee’s behaviour not only to the norm-giver, but also to other people.

One can object against points (2) and (3) with respect to situations when a person establishes a norm for himself. Then the relation: norm-giver-addressee as a relation between two persons does not occur, and eventually it can happen (although this is open to discussion) that the relation norm-giver-the others does not occur either, when e.g. the norm refers to some mode of internal self-perfectioning. But, in any case, point (1) can be maintained — the social conditioning of the norm’s content.

In most cases, however, when “social norms” are mentioned, they are conceived differently. “Social norms” are considered a narrower category than “norms”. As “social norms” are understood those functioning in a relatively lasting and effective way in human communities as elements of certain institutions, control systems, or organizations. This is usually associated with “social norms” being attributed the character of prescriptions concerning conceptually characterized addressees and types of conduct (general and abstract norms). The operation of “social norm” is not to be exhausted in a single act of application, but should refer to a number of people and situations, not to be

determined beforehand. But the conception of "social norms" as general and abstract norms is not free from difficulties, as e.g. when one comes up against the question of planning norms ⁽⁹⁾ or individual norms formulated by judges.

2. *The Problem of Autonomous and Heteronomous Norms*

2.1. For quite a long time now literature has known the division between autonomous and heteronomous norms. In the former there has to be identity of norm-giver and addressee, while in the latter there exists some source of norm external to the addressee. Considerations on autonomous and heteronomous norms have led to numerous disputes and misunderstandings. These were due to the fact that the particular authors who admitted the division, were supporters of different philosophical standpoints, and above all they failed to distinguish between the linguistic-logical, psychological and sociological problems here involved. The divergences in the treating of the so-called autonomy and heteronomy in the sphere of norms may be characterized as follows.

2.1.1. The crucial point lies in the interpretation of the source of norm, external to the addressee. It may be a narrow interpretation, the source being conceived as a real act by which one consciously enacts a given norm (e.g. legislative statutes, international conventions, party statutes, tennis regulations established by a sport federation, etc.). Or it may be a wider interpretation where also "anonymous" sources are included; this will happen, for instance, when some custom generally accepted within the given community is treated as a source of norm (e.g., one should not eat fish with a knife because it is not "customary" in that particular community). Finally, it may be a still wider interpretation, when the discussed notion is made to include also the supernatural sources of norms. These again may be either limited to strictly personified sources (God's decree), or ex-

⁽⁹⁾ K. OPALEK, *Über Probleme der Normentheorie des sozialistischen Rechts*, *Wissenschaftliche Zeitschrift der F. Schiller Universität Jena*, IV, 3, 1966, pp. 459 ff.

tended to comprise less defined sources (nature of things, man's reason), or quite undefined (the idea of good, justice, rightfulness, upon which the given norm is founded). Scholars concerned with norms having positive sources, and jurists in particular, are often inclined to overlook the supernatural sources and to treat as heteronomous these norms only whose sources are empirically definable. Where references are made to supernatural sources, the norms are interpreted as autonomous. Incidentally, scholars with a more professionally practical attitude, and jurists certainly are among them, tend to disregard these problems, or altogether to deny any relevance to norms of that type.

These norms are also not infrequently included into the sphere of "morality", this being intended to settle matters without the necessity to undertake any detailed inquiry into the character of different norms. It is not surprising that in later analysis morality appears to be a non-specific, non-compact category ⁽¹⁰⁾.

Objections are sometimes raised against restricting "heteronomy" merely to norms based on the above-characterized empirical facts, — by scholars representative of the psychologist or sociologists standpoint. They, of course, deny the objective or supra-empirical existence of the so-called transcendental facts, supporting the opinion that what actually takes place here are certain empirical phenomena — some people's conviction about the existence of such facts; a conviction of that type, when shared by a group and to a certain degree objectivized assuming the developed form of ideology or value system, can become an important factor supporting group norms and the behaviour convergent with these norms. There is no reason, therefore, to deny a heteronomous character to norms referring to such facts.

2.1.2. In considerations on autonomous and heteronomous norms not always a proper distinction has been drawn between the linguistic-logical, psychological and sociological problems involved. In formulating a norm one may fail to mention what

⁽¹⁰⁾ Comp. M. OSSOWSKA, *Podstawy nauki o moralności* (The Foundations of the Study of Morals), Warszawa, 1947, pp. 296 f., 340 f.

it is founded on, but nevertheless in some social circles it will be well known that a heteronomous norm is involved (like, for instance, in the case of Dior's fashion, a norm transmitted by a popular weekly). Thus, a norm with regard to its form apparently autonomous, can by virtue of its meaning be a heteronomous one. But on the psychological plane changes will occur. For instance, can it be decreed on the grounds of linguistic and logical considerations, how one will experience the norm by which manslaughter is forbidden? He can experience it as a heteronomous norm derived from the penal code then in force, or he can experience it as an autonomous norm based on inner conviction. On the sociological plane — the plane of norm operativeness — autonomy and heteronomy will appear again in the light of certain agents supporting norms in their operation, such as one's principal's authority, compulsory measures, ideology, value system, etc. One can observe here a tendency to extend the heteronomy of norms while simultaneously levelling the differences between the sources of norm and the factors ensuring behaviour conforming to norms. An individual, being socially conditioned, will be under every respect subject to a widely conceived "heteronomy".

2.3. The original and best suited field for the division of norms is the psychological one. Actually, the main point is whether the individual considers the given norm to be obligatory "on intuition", out of his own inner conviction, or whether he thinks it to be obligatory in view of the existence of some outside source of norm. The concept of that "outside" source has a fairly extensive range. It can comprise both real, empirically provable enactments and references to *diuturnus usus* within a certain mode of behavior, and supra-empirical sources imagined and believed in by the individual. Personal inner conviction about the validity of the given norm may have varying degrees of intensity, just like the conviction founded upon the admission of the existence of some external or outside source of norms. The latter conviction may be erroneous, not only when supernatural sources are involved, but also when natural, factual sources are at play. Thus, an erroneous conviction of the latter

type will occur when one attributes binding force to a norm established but no more in force, when he considers, referring to an allegedly empirical source, as being in force a norm actually never passed, or when he mistakenly identifies the source of a particular norm. Such extensive interpretation of heteronomous norms is inevitable in psychological considerations, if they are made consistently and thoroughly. This does not mean, however, that it becomes useless for these reasons, as it permits to enter into the motivational processes which lead up to respect or disrespect of norms, processes which take place under the effect of external events. In certain cases a socially dependent individual does not realise the fact and hence experiences the norm as self-derived, while in other cases he accepts a norm as one coming from outside, which occurs usually as a result of several complex factors again not fully grasped by the individual. In fact, when a given norm is accepted because of its outside source, this is a result of the individual's deeply rooted attitude and mental disposition evolved under the effect of social conditioning. Finally, this admission may be a result of inner conviction, but also because the individual is for other reasons inclined to admit the given norm (for instance, simply because it is convenient to him) and finds a good motivation for that admission in an external source.

2.3. Autonomous norms should, in our opinion, comprise not only "categoric" norms, representing absolute conviction that one should behave in that particular way, but also the so-called teleological norm, or at least most of them. For instance, the norm "I should do my morning's exercises every day to keep fit" is a "self-established" technical norm. But this will be also the case with every norm where there is no binding external authority feeling, and the acceptance of norm proves to be dictated by the individual thinking in categories of his own interest. Thus both the norm "I should stop going to night-clubs in order to shield my opinion", and the norm, "I should pay the amount I have been ordered to in order to avoid execution" will be autonomous norms. With heteronomous norms we have a conviction of the existence of an external authority de-

termining the particular way of behaviour. This authority may be either personal (a norm established by a Divine Power, by the Parliament, etc.), or impersonal ("one should behave in this way, for everybody does so — this is the accepted way of behaviour"). Authority may have attribution of "legitimacy" (power entitled to require obedience), of good or justice (power prescribing what is good, just, etc.), or of effectiveness — i.e. of an actual ability to ensure obedience to its own orders or prescriptions. One authority can also combine in itself these various attributes. In the case of a heteronomous norm based upon an "effective" authority there is convergence of considerations founded upon teleological, interested criteria with those admitting a source of norm external in regard to the addressee ("I should behave b, because this has been prescribed by external authority, effectively counter-acting facts of norm violation"). Norms of that type will be teleological but heteronomous.

2.4. Considerations on autonomous and heteronomous norms have an incontestable value for the determination of norm effectiveness or non-effectiveness in their operation: they are, therefore, closely related to the above discussed question. Here we have to do with motivational pressure of autonomous convictions as well as of those based on external authority, with the relevance of categoric motivation, whether autonomous or heteronomous, for the effectiveness of norms (orders or prescriptions issued by legal or just authority), as well as with the relevance of teleological motivation of either type (orders issued by effective authority).

The division, as we see, has its intrinsic value and is not to be overlooked. But it would be hardly right to suppose that on these grounds one can group or classify the currently listed norm categories like norms of law, morality, custom, language, sport games etc. The not infrequent opinion according to which legal norms are heteronomous, and moral norms in toto autonomous⁽¹¹⁾ is certainly erroneous, since legal norms may be auto-

(11) Comp. e.g. H. Kelsen, *Hauptprobleme der Staatsrechtslehre*, Tübingen, p. 346, et passim.

nomous (if it were only in some interpretations the so-called promise norms, where the State — to say it briefly — takes an obligation to do something), while moral norms may be heteronomous (e.g. a norm referring to divine authority). The same can be said of the remaining categories. The currently enumerated types of norms are not to be compressed into that division.

3. *Categoric and Teleological Norms*

3.1. There is another division, rather akin to the one into autonomous and heteronomous norms, the division into categoric and teleologic norms. Sometimes even categoric norms are mixed up with the autonomous ones as being founded on inner conviction. As we have seen, however, a conviction of that type may have also a teleological character. The starting-point for this particular distinction can be also the psychological standpoint. The division has a bearing upon the line of distinction between the two types of motivation for human behaviour — the categoric and the teleological motivation. Some authors interpret the issue rather in its behavioural aspect: thus they do not speak of motivational experience but of behaviour attitudes. Sometimes they advocate the synthesis of behaviourism with psychology (A. Ross). Categoric and teleological experience (or attitudes) are sometimes termed, respectively, "disinterested" and "interested" ⁽¹²⁾. Several other terms are used, moreover, to describe motivational processes and attitudes. Thus one finds mentions of conformistic, legalistic, and opportunist attitudes, while the categoric attitude is sometimes identified with the ethical one ⁽¹³⁾. The "legalistic attitude" seems to be a variety

⁽¹²⁾ The distinction between categoric and teleological norms, based psychologically, in Petrażycki's classification of "judgments", *Nowe podstawy logiki i klasyfikacja umiejętności* ("New Foundations of Logic and Classification of Sciences"), Warszawa, 1939, discussed by J. LANDE, *o.c.*, pp. 390 ff., 788 ff. A. Ross on interested and disinterested behaviour attitudes in *Towards a Realistic Jurisprudence*, Copenhagen, 1946, ch. IV.

⁽¹³⁾ Comp. M. BORUCKA-ARCTOWA, *Legalizm a konformizm i oportunizm* ("Legalism, conformism and opportunism"), *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2, 1964, and the literature cited there.

of the categoric one (one should behave in this particular way because it is required by law or by legal power). The "opportunistic attitude" is again some sort of teleological attitude where a special stress is laid on personal advantage, the fear of sanction, etc. The "conformist attitude" — is a concept coined under the strong influence of behaviourism, registering only the external conformity of behaviour to the socially accepted norms. The psychological aspect of the question remains somewhat in abeyance. "Conformism" may result, not only from teleological motives but from categoric ones as well, although there is a frequent tendency to interpret it rather in its teleological-opportunistic aspect. It seems both better and more lucid to use the notions of categoric and teleological motivation (or, disinterested and interested motivation), for these are general enough, and simultaneously draw a clear line of distinction between the discussed phenomena. This does not exclude, however, a further, more detailed division of these categories.

3.2. Some authors are satisfied with having just two basic types of motivation: in fact, they associate interested motivation with the individual's rational consideration about means and ends, advantages and losses resulting from the given behaviour, while attributing to disinterested motivation the character of irrational (even though socially conditioned) impulses towards a certain way of behaviour. Beside this there is, however, another tendency, a tendency to split teleological motivation or interested motivation, into two types — on the one hand motivation where the elementary incentives of fear of punishment and expectation of profit are at play (opportunism as above defined), and on the other hand the "superior", as it were, motivation, where on a scientific basis, one determines the way of behaviour as a means leading up to the chosen goal. We will disregard the fact that the "splitting" of teleological motivation leads up to the creation of a rather vague and fluid line of distinction. What should be stressed, however, is that a frequent over-emphasis laid on that second variety of teleological motivation can produce serious effects, namely the whole question at issue becomes de-psychologized. In fact, a teleological statement which in a "scien-

tific" way determines the means conducive to certain ends, may be considered — as it is often done — a variety of the statement describing certain factual connections, and so, from the logical point of view, a true or false statement with descriptive meaning, as a result commonly regarded as fit to be examined on the linguistic-logical plane, while the psychological plane is disregarded⁽¹⁴⁾. Thus the opposition between "categoric" and teleological statements ceases to be an opposition between norms, becoming instead a distinction between "categoric" norms and teleological *propositions*. According to that distinction statements of "categoric" character (psychologically defined) would be norms, while statements of teleological character (logically defined) would be propositions. True, this obscures to a certain extent the position of statements where to the particular behaviour one ascribes the character of a means for avoiding punishment or for obtaining some profit. Such statements are not "categoric" while on the other hand they do not seem to differ so much from "scientific" teleological statements to deserve the name of norms, not of propositions. But the deeply rooted tradition of legal thought in categories of sanction induces a tendency to consider statements of that type as norms.

3.3. Like the previously discussed division, the distinction between categoric and teleological statements in a way cuts through the existing, currently distinguished groups of norms. These particular groups of norms cannot be classified either as categoric or as teleological statements. Thus e.g., even though everybody must agree that moral norms in their prevailing part are categoric, they nevertheless include also such teleological statements as "In order to reach perfection I ought to commit myself to contemplation". Law will comprise categoric norms of the type "One should behave b, for behaviour b is prescribed

(14) On the different views in this problem K. OPAŁEK - J. WRÓBLEWSKI, *Aksjologia — dylemat pomiędzy pozytywizmem prawniczym a doktryną prawa natury* ("Axiology — a dilemma between legal positivism and the natural law doctrine"), *Państwo i Prawo* ("State and Law"), 9, 1966; pp. 258 f.

by law", but also teleological statements of the type "One should behave b because behaviour b is the means of avoiding the (negative) sanction". The same will apply to other traditionally distinguished groups of norms.

4. Norms in Relation to Value-Judgments

4.1. Ethical, aesthetic, logical, and religious norms are often said to differ in some important aspect from other categories of norms, this aspect being their close relation to value-judgments. This relation is a direct one in the case of ethical, aesthetic and logical norms, and indirect in the case of religious norms (based on the assumed properties of their Creator). We shall try here to consider the relations of these types, and of other types of norms to value judgments without discussing or making a choice between various philosophical interpretations of value judgments. It seems sufficient for our present purposes to regard value judgments as meaningful linguistic expressions (their meaning belonging to the same general kind of "optative meaning" as that of norms).

4.2. How could one characterize the differences of ethical norms, aesthetic norms, as well as the so-called logical norms, in the respect mentioned above, as set against the other currently enumerated kinds of norms? The answer to this is that ethical, aesthetic and logical norms can be said to be derived from value judgments. It must be added, however, that the so-called logical norms differ from ethical and aesthetic norms since they do not prescribe that a given behaviour should be undertaken, merely determining the way of that behaviour once it has been undertaken. The norms of the above-listed categories are valid by virtue of the evaluation of the given behaviour (one should behave in this particular way for this way of behaviour is good and right, and this mode of reasoning — and so of a certain behaviour — logically correct). A number of other currently enumerated categories of norms such as legal norms, statutory norms, conventional norms etc., differ from logical, aesthetic and ethical norms by the fact that they cannot be deduced from

the evaluations of that type. These norms are valid not because they prescribe a given behaviour, acknowledged i.e. originally recognized as valuable, but because they have been established. Thus the basis of their validity is formal, not material, i.e. determined as regards their contents. One can say that those norms express the "formal ought", not deduced from the evaluation of the given behaviour, while the formerly discussed norms express the "material ought" deduced from this kind of evaluation ⁽¹⁵⁾.

4.3. Norms expressing the "formal ought" may, however, be subject to evaluations which are secondary in respect to these norms. Evaluations of that type occur when we consider whether the given norms (e.g. legal, conventional, or statutory norms) are good, just, or equitable. Thus the situation is, at is were, diametrically opposed to the one formerly examined. While there evaluation provided a basis for the formulation of norm, here the norms is the basis for formulating the evaluation. Nevertheless the evaluations upon which the logical, ethical and aesthetic norms are founded, are evaluations of human behaviour whereas the latter kind are evaluations of norms. If a particular norm is evaluated as wrong, it may lead up to evaluate behaviour conforming to that norm as equally wrong. In such cases the evaluation of behaviour is secondary in respect to the evaluation of norm.

4.4. Without going into all the complex problems of different evaluations of behaviour and of norms, we will concentrate upon the interrelation between two types of evaluations secondary in respect to norms expressing the "formal ought". What is meant here are evaluations of justice and legality, the corresponding terminology being distinctly interconnected with legal issues; but evaluations of that type are as well applicable to other types of norms here involved, like religious, supra-Statat, or statutory norms. The differences between these evaluations are as follows: firstly, the evaluation of justice secondary in respect

⁽¹⁵⁾ K. OPAŁEK - J. WRÓBLEWSKI, *o.c.*, pp. 254 ff.

to the norm is an evaluation of norm, while the evaluation of legality is one of behaviour in respect to the norm (as being either in conformity with the norm or not). Secondly, the evaluation of justice has a contentually defined (material) character, while the evaluation of legality has a formal character establishing merely the conformity or non-conformity of behaviour to norm regardless of its content. But still another version of the evaluation of legality is possible, where legality is valued because law and other similar groups of norms independent of their content ensure social order, peace etc. Thus, when evaluating from that angle the given behaviour as legal, we will say not only that it is conforming to norm, but that it is good as well, since it puts into life — automatically, as it were — values related to the operation of the given system of norms. Evaluations of that type share certain characteristics with those of "material" justice, and some others with the evaluations of "formal" legality. They are akin to the former by their defined content ("material"), while their affinity to the latter consists in that they are just like them, evaluations of behaviour, not of norms. While the value judgment on the justice — or, alternately, on the injustice — of a given norm is a direct ethical evaluation of that norm, the value judgment of "material" legality is an indirect ethical evaluation of the particular behaviour: indirect, because derived from the ethical evaluation of the given system of norms.

We have touched upon the problem because there is an essential difference between the evaluations of "material" justice and legality on the one hand, and of "formal" legality on the other. Evaluations of "formal" legality are virtually speaking statements concerning empirical facts, whereas the two remaining kinds of evaluations listed above — which, ever way we interpret them — are devoid of that character. Therefore one can hardly consider the evaluations of "formal" legality as evaluations in the strict meaning of the word. Their meaning as statements is, strictly speaking, descriptive, not evaluative⁽¹⁸⁾.

(18) K. OPAŁEK - J. WRÓBLEWSKI, *o.c.*, pp. 257, 262. The distinction between the norm of "material ought" and "formal ought" has an affinity with the distinction between axiological and thetical norms, comp.

4.5. One should analyse, moreover, some other currently enumerated groups of norms, like norms of language, custom and fashion, or game regulations. All these categories of norm seem to possess certain features in common — which, however, are attributed as well to certain legal, conventional, statutory, or supra-Statal norms — in general to some of the norms expressing the “formal ought”. In fact, these norms comprise criteria for evaluating a certain behaviour (correct speech, proper or decent conduct, fashionable dress, playing according to rules). Similar criteria are to be found in certain legal norms, namely in norms of competence or secondary norms⁽¹⁷⁾ (a valid legal act, a valid election etc.). This is also the case in statutory norms (e.g. in valid party voting), in ecclesiastical norms (a marriage valid from the viewpoint of Canon Law), or in supra-Statal norms (a valid treaty), etc. These norms have certain elements in common with those expressing the “formal ought”, but also with those expressing the “material ought”. With the latter they share the “material” element of evaluation of human behaviour (e.g. a certain way of speaking is correct), but with the former they have this in common that the evaluation is not imposed from outside in some absolute and categoric way, but is established in a conventional way. Thus, evaluation here is not primary in respect to norm, as it is the case with norms expressing the “material ought”. On the other hand, the norms here discussed differ from the two remaining categories by not prescribing, at least primarily, any particular behaviour (e.g. that a game should be played, a contract concluded, etc.). In this they are similar to logical norms.

on this division Z. ZIEMBIŃSKI, *Normy tetyczne i aksjologiczne w koncepcji Cz. Znamierowskiego* (“The tetical and axiological norms in the conception of Cz. Znamierowski”), *Studia filozoficzne* (“Philosophical Studies”), 2, 1963.

⁽¹⁷⁾ On these concepts, A. Ross, *On law and justice*, London, 1958, § 10; H. L. A. HART, *The concept of law*, Oxford, 1961, ch. V.

5. *The Sociological Standpoint: Division of Norms into "open" and "closed"*

5.1. Now we are going to discuss problems from the sociological point of view, and we suggest that social norms be divided into two groups: the "closed" and the "open" norms. The sphere of application and functioning of the former is determined by their pertaining to the particular social group (or by a closely designated position within that group). The sphere of application and operation of the latter is comprised within the entire global society, or even exceeds its boundaries; more or less extensive, it is constantly oscillating and not too strictly defined as regards its border lines. Norms of the former type are, for instance, party norms, norms of professional, youth or other organizations etc., as well as legal norms. Among the norms of the latter type one can include, e.g., fashion and *savoir-vivre* norms, as well as moral norms. True, "open" norms have as a rule an original — more or less exclusive and distinct — sphere of addressees (a group of "believers", certain social circles, etc.), but, first, even that original sphere is not strictly delimited, and, secondly, the "accession" to these norms by other groups, social milieus and individuals is not to be excluded; actually "accession" processes of that kind can be observed all the time. The groups who originally have accepted the validity of such norms thus turn into groups of reference for other groups.

A particularly relevant example of "open" norms are those of morality. Even though there is some relation between morality and social groups, nevertheless the scope of application and operation of moral norms is not "closed", it is by no means limited to one particular social group. What we can assume is only that the given system of morality is adhered to, as a rule, within a certain group (or groups), that there are even some cause-and-effect connections between the conditions of existence of these groups and their morality. But "accession" to the given morality is open to other groups or individuals, while within the given group one can easily detect deviations from the predominant morality towards other different systems of moral norms.

5.2. The "closed" social norms are those which designate formalized social groups. "Open" social norms are, above all, typical of non-formalized groups as well as of other, often loosely knit together, forms of life in human communities. "Open" social norms play, however, a definite, frequently even vital part in the existence of formalized groups. This applies particularly to moral norms. Moral norms which functionally prevail in the given group, although "open", not exclusive (for their application is not necessarily tantamount to group membership), are, nevertheless, "group adapted" and as such they usually support the formalized system of institutions, control and organization of the group.

As regards the "closed" social norms it is possible to delimitate strictly the range of their addressees, which is identical with the range of persons belonging to the formalized social group (or, of those performing some clearly designated functions within that range). As regards "open" social norms one can just approximately indicate the centers of the "highest intensity" of their acceptance as binding rules of conduct.

As one can see, "closed" norms constitute an essential element of the social tie of formalized groups (an element which, incidentally, is responsible for that formal character) — and particularly an element of formalized institutions, control and organization systems. In view of the vagueness of border cases this applies also to some extent to the functioning of norms of that type in some non-formalized groups⁽¹⁸⁾. The addressees of the "closed" norms constitute a strictly defined category of people belonging to the given social group. To become the addressee of "closed" norms one must necessarily accede to a group; the accession may be an "automatic" one (being admitted to a State group by the fact itself of having been born upon the given territory), it may be easy (admission to a students' association), difficult (as, for instance, being admitted to the nobility in feudal Poland), or even quite impossible, like in a case of an entirely exclusive group — barring the cases of birth

(18) On the vagueness of the term "social group" comp. e.g. J. J. WIATR, *Spółeczeństwo. Wstęp do socjologii systematycznej* ("Society. Introduction to systematic sociology"), Warszawa, 1964, pp. 99 ff.

of parents belonging to such group. On the other hand, to become an "addressee" of "open" norms it is not necessary to be admitted a member of a particular social group.

In this light the "closed" norms become an important factor of a group's "groupness", of its internal compactness and its distinctness from the outside. "Closed" norms usually come from an identifiable norm-giver controlling the group: in this they differ from the "open" norms, whose sources are often anonymous. This is interrelated with the closed system of social relations within a group, with the fact that just like the range of norm addressees does not go beyond the set of people belonging to the group, so the power held over a group does not exceed its boundaries, but strictly refers only to those who are members of that group.

We have said that the "closed" norms come usually from a particular norm-giver, since there are also "closed" norms of anonymous origin (e.g. legal-customary norms, some supra-Statal and ecclesiastical norms, etc.). But these norms are valid as "closed" norms of a group by virtue of their being recognized by the proper authority as belonging to the given system of a group's valid norms. On the other hand, the "open" norms may sometimes have a definite norm-giver, as e.g. some authority in the field of linguistics, fashion, or *savoir-vivre*, not to mention the founders of moral systems. These authorities, however — at least as far as the modern developed communities are concerned — have no character of controlling authority of formalized groups. It is impossible here, between norm-givers and addressees, to designate the reach of authority or of the subjects under its control. Under other circumstances, however, as e.g. in primitive communities, it is possible that the norm-giver of morality, custom, etiquette or ceremonial, is not only a determined person but also a group's controlling authority. Then, however, moral norms, customary norms, or any other norms are functioning simply as "closed" norms of that group. It must be stressed, nevertheless, that the typical norms of that kind usually function as "open" ones.

5.3. The "open" norms perform a great many functions in the life of individuals and communities. The subjects of their regulation are not strictly related to the functioning of the particular social groups. These norms have a bearing both on the fields of regulation having no vital importance for the existence of a group (such as ways of speech, dress, one's personal relations, questions of aesthetic appearance, etc.), and on those having an importance of that type, but that importance not being coextensive with the range of issues particularly vital for the given group. Regardless, however, of the importance — whether great or slight — of the particular categories of "open" norms for the particular social groups, these norms usually extend the range of their application, without any definite boundaries. And even though one may follow the ways by which these norms win over a new range of addressees, by analysing the intricate social conditions leading up to the "accession" to these norms, still that range cannot be established in any fixed way, as it was the case with "closed" norms. Categories of "open" norms which, as it happens particularly with moral norms, are of vital importance for the existence of a group, constitute, when converging with the group's "closed" norms, the so-called systems of norms co-operating towards the attainment of behaviour required by "closed" norms⁽¹⁹⁾.

5.4. "Closed" norms have a compulsory character: not only in the sense that they are, as a rule, invested with formalized sanctions (both positive and negative), but also that group members are subject to them in a compulsory way (this applies as well to norms which establish evaluations — standards), because in order to reach the intended normative effects, group members must act in a way provided for by these norms. On the other hand, the acceptance of "open" norms is, as a rule, subjectively voluntary, though of course objectively it is socially conditioned. However, the fact of that social conditioning may

(19) On such systems of norms comp. e.g. F. STUDNICKI, *Przepływy wiadomości o normach prawa* ("The flow of information on legal norms"), Kraków, 1965; M. BORUCKA-ARCTOWA, *O społecznym działaniu prawa* ("On the social functioning of law"), Warszawa, 1967, ch. V.

sometimes cause that the acceptance of such norms will be subjectively felt as compulsory (for instance, when they are recognized as divine orders). In any case one may say that submitting to "open" norms is reached by the individual "by himself" or, in other words, under a certain aspect it is an autonomous act, while the "closed" norms are heteronomously "given from outside", imposed upon the individual. That is why accession to an "open" norm as a subjective psychic act is very often connected with its fulfillment (although there can be also, evidently, indecision and conflict between the recognition of such norm and its violation). On the other hand, submitting to a "closed" norm, objectively compulsory, is a considerable way off from the fulfilling of norm. Internalization of "closed" norms may occur, but not necessarily so, and to overcome that distance the "closed" norms prescribe sanctions directed against the "bad man", i.e. one in whom the internalization processes did not take place. These sanctions are of vital importance as far as the effective operation of a closed group system is concerned. The value of the above-mentioned systems of co-operating norms for the particular group consists also in the fact that their acceptance by group members is tantamount to a non-conflicting fulfillment of norms with contents analogical to "closed" norms.

But "open" norms have also certain sanctions of their own, sanctions of non-formalized character, such as disapproval by a particular social circle, a disapproval which may be expressed in different ways, sometimes in a very acute and pungent way. The non-formalized character of the sanctions of "open" norms is a symptom of their spontaneity (as set against the character of the sanctions of "closed" norms), a spontaneity which means, first, that these are not organized sanctions (or, if they are organized, it is only to a small extent), and secondly, that these sanctions represent a spontaneous reaction based on inner conviction — a reaction to somebody else's conduct not conforming to norm. As it has been said above, "open" norms possess usually certain centers where their application is more intense than elsewhere and where accordingly the intensity and concentration of sanctions for violating them is higher. When those

centers assume the character of more compact human communities (though not yet being formalized groups), their sanctions will possess a character to some extent organized. The spontaneous character of the "open-norm" sanctions usually differs from the objectively-formal character of the "closed-norm" sanctions. And even though the establishment and administration of the latter type of sanction may be accompanied also by spontaneous inner convictions, these derive their source above all from the "open" co-operating norms, mostly from moral ones.

6. *Conclusions*

6.1. We have discussed here several classifications of social norms — classifications already known from previous publications on the subject, or suggested by ourselves. We have found that the revealed problems of the theory of norms are inadequately worked out and very complex. A number of the above-mentioned issues calls for further detailed consideration: for this, however, our present scope is too narrow.

When discussing the different bases for the classification of norms we have tried to stress that as a rule the lines of division founded upon these bases — were other from those currently appearing in the traditional divisions of norms (legal, moral, aesthetic, customary, religious norms etc.). It is hardly possible to classify these groups of norms in a uniform, logically correct way, particularly since the traditional divisions unconsciously mix up different criteria of classification. In this situation the confrontation of currently used distinctions with the classifications based on theoretical reflection can only, on the one hand, point out to the distinction of the "most typical" or "characteristic" norms within the particular, traditionally enumerated categories; secondly, it can reveal certain affinities between norms currently considered as entirely different; thirdly, it can reveal certain lines of division not perceived "with the naked eye".

6.2. Let us examine once more, in order to attain more clarity in these complicated problems, the above-discussed bases of

classification, as set against the currently made distinctions of norms. As regards the distinction between effective and ineffective norms, the question is simple enough: the division is feasible, but from the standpoint of the theory of norms — of small use since it fails to reveal the theoretically interesting peculiarities of the represented groups of norms. On the other hand it is not to be denied that a detailed research on the conditions under which various social norms are apt to be either effective or ineffective is of great practical importance.

6.3. The division of norms into autonomous and heteronomous ones does not correspond to the currently made distinctions. In fact, moral norms, although frequently regarded as autonomous, may have also their norm-giver — not just an imaginary one, but some definite sect leader, “moral teacher” etc. Even the norms which regulate the most personal aspects of an individual’s life are frequently felt by this individual as coming from some external authority — and sometimes this authority is by no means a product of imagination (e.g. the authority of some close friend or relative, or of a person mesmerizing with his influence the people around him: this was the case, for instance, with the Polish nineteenth-century “Messianist” Towianski). This distinction, objectively treated (on the one hand, norms based on provable normative facts; on the other, norms not founded upon such facts) has permitted to establish that, for instance, legal norms, or norms of other formalized groups are more and oftener “heteronomous” than other categories of norms (moral norms, aesthetic norms, etc.). Still, this does not permit to draw any strict border line. This distinction when treated more extensively, on a psychological platform, can serve as starting-point for an interesting inquiry into the causes leading up to the formation of notions about normative authority as well as about autonomous norm-giving, independent of authority. This is a subject of research for those concerned with psychology as well as with social psychology (notions of authority as shared within a group, or in another human collectivity).

6.4. The next distinction, that between categoric and teleological norms — introduces some clarity into the theory of norms by the very fact that it permits roughly to isolate from norms "in the strict meaning" a highly extensive group of statements pointing to a particular behaviour as a means proper to attain a given goal. It must be added, however, that this division again does not correspond to the distinction into groups of norms according to their current characteristic. On the one hand there are to be found teleological statements among those usually classified as categoric norms (or, in other cases, categoric norms are given a teleological interpretation), while on the other hand teleological statements can have some elements typical of the categoric norms. Thus, for instance, legal norms occur in the teleological interpretation of statements concerning the means to avoid negative sanctions; moral norms — in such interpretation of statements concerning the means to attain happiness, perfection etc. ⁽²⁰⁾; moreover, legal norms are sometimes treated as the instrument for attaining certain social aims (e.g. the "social engineering" as expounded by Roscoe Pound ⁽²¹⁾). Again, teleological norms contain sometimes an element of categoric norms under the form of establishing the goal to be strived for (a goal which in a "categoric" way is recognized as valuable). The above presented distinction is most important in psychological inquiries on the motives of behavior ("interested" and "disinterested" motives).

6.5. For the distinction of moral norms (or at least, of their basic group) of the greatest importance is the division of norms according to their relation to value judgments. Norms founded upon categoric evaluations, may be defined also as norms of the "material ought", while norms without such basis and subject to evaluations, may be called norms of the "formal ought". The latter group (norms of "formal ought") includes also legal norms. Among the norms of "formal ought" it is possible to distinguish norms which establish standards — evaluations.

⁽²⁰⁾ M. OSSOWSKA, *o.c.*, pp. 296 ff., 302 ff.

⁽²¹⁾ K. OPAŁEK - J. WRÓBLEWSKI, *Współczesna teoria i socjologia prawa w U.S.A.* ("The contemporary legal theory and sociology of law in U.S.A."), Warszawa, 1963, pp. 142 ff.

6.6. As to the analysis of norms from the sociological and functional standpoint, most important seems to be their classification into "open" and "closed" norms, a classification which reveals the properties of norms regulating the institutions, organization and control of formalized groups as opposed to properties of norms operating in a more lax way in social collectivities — norms sometimes supporting the functioning of "closed norms", sometimes opposing them, and finally sometimes functioning on the margin of the latter, particularly when the subjects of regulation of "open norms" are not included into the range of subjects of regulation of "closed norms". This classification seems to be comparatively significant for the distinction of legal norms.

As we have said at the beginning, the above presented classifications of social norms are coextensive with the traditional norm grouping. On the other hand, however, they make it possible to deepen and enrich the characteristics of the semantic field covered by the word "norm" as well as of the distinctions which can be detected within that field.

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