STATEMENTS ON THE RELATION OF CONDUCT AND NORM

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1. In ordinary discourse, as well as in ethical and legal discourse, one uses various kinds of statements to refer to the relation of conduct and norms regulating that conduct. The standard form of such statements is "behaviour B is consistent with the norm N". Let us call a statement of this kind a "relational statement". A relational statement qualifies a given behaviour from the point of view of a norm which regulates that behaviour. Such a qualification is interesting in many discourses, because it appears in any problem relating to the controlling function of a norm. Hence relational statements are necessary for any functional description of a norm (e.g. psychology, sociology, legal theory) and they are also formulated in practical activities controlled by norms.

2. I am interested here in relational statements formulated in law. I assume that all relational statements can be reduced to the above mentioned formula "behaviour B is consistent with the norm N" or with its negation. The norm in question is to be understood as any legal rule regulating a behaviour B. I assume that the norm in question has a determined meaning. The names or descriptions of B and N are formulated in the same language (that is to say in legal language) or at least can be translated into the same language.

Relational statements can be used as separate linguistic utterances or as parts of complex utterances. I am interested here only in the former situations, but let us mention some of the more essential situations of the latter kind to underline the relevancy of relational statements. A relational statement can form a part of a complex descriptive statement of the efficacy of law (e.g. "norm N is effective in degree D because behaviour of the B type is consistent with N in situation of the S type") and of controlling functions of law (e.g. "behaviour of

the B type, as consistent with the norm N, expresses a con-
formist and/or a ritualist attitude"). A relational statement
can form a part of complex evaluative judgements, when one
evaluates the axiological characteristics of behaviour B ac-
cording to its consistency with the norm N (e.g. "B is good, be-
cause it is consistent with N, and N is good, and each behaviour
consistent with a good norm is good").

3. A relational statement qualifies the consistency of a
behaviour B with the norm N. I call the norm in question — "a
norm of reference". Let us assume that the standard form of
a norm of reference is "when conditions C then there ought
to be behaviour B". This formula is taken here as a simple
convention and it is not to be understood as an expression of
any position in the debate on the structure of a legal norm.
"Ought to be" has here the widest meaning, covering both
duties and rights and other legal modalities of behaviour, if
any. The variables C and B cover an area determined by the
analyzed legal system.

4. Behaviour B determined by the norm of reference can be
analyzed in various ways. For us it is important to single out
two kinds of this behaviour. First, it is a behaviour of competen-
ce (B_c), as a behaviour consisting in the use of legal competence.
It covers such wide area of activities as law-making (defined
as creation of norms of a determined degree of generality and
abstractness), decision-making and certain kinds of legal ac-
tions thought of as the formulation of individual and concrete
norms). All other kinds of behaviour are named «ordinary
behaviour» (B_o).

How does one ascertain the consistency of B with the norm
N ?

For ordinary behaviour (B_o) the situation is relatively simple.
It is sufficient to understand the norm of reference N in a
sufficiently precise way and to state, whether the observed
behaviour (B_o) is designated in legal language by the term B
in the norm in question. If one assumes that conditions C are
fulfilled, then one can formulate the corresponding relational
statement.

For a behaviour of competence (B_c) the situation is more

complicated. The observation of (B_c) is not sufficient, since as a rule, a behaviour is a behaviour of competence only when it fulfills certain conditions determined by other norms. I call these norms — "complementary norms". E.g. a behaviour is law-making only when the norm-creating agency has determined competence, acts according to certain procedural rules and issues norms of certain content. If this activity is not consistent with such requirements, then it is not "law-making" at all. Hence for the qualification of a behaviour of competence (B_c) as consistent with a norm of reference it is necessary to take into account also the relevant complementary norms.

There is, consequently, a fundamental difference between (B_o) and (B_c) behaviour. If the former is designated by the language of the first level, then the latter is designated by the language of the second level, since one has to use complementary norms in the way indicated above.

Each behaviour can be determined descriptively, evaluatively or in a mixed way. A behaviour is determined descriptively (B_d) if for the observation of its occurence it is sufficient to understand the norm of reference and to observe reality. E.g. for ordinary behaviour (B_o): a killing, a traffic accident are determined descriptively. A behaviour is determined evaluatively when for the designation of a behaviour by the legal term it is necessary to evaluate (B_e). For example an instrumental evaluation for ordinary behaviour (the trespassing of legitimate defence), moral evaluation (causing a moral wrong) or other evaluations (creating a dangerous situation). There are determinations of a mixed nature too. The same differentiation holds for behaviour of competence (B_c), but here the determination is to be precised not only by the norms of reference but also by complementary norms.

5. We divide determinations of conditions C in norms of reference into two groups. The first (C_r) covers all conditions which are determined as "behaviour (in)consistent with a norm N", the second (C_o) covers all other conditions.

We have to do with differences between the levels of language in which C is determined. For ascertaining the conditions of the first of the above mentioned group (C_r) it is not

sufficient to know the norms of reference, but one has to take into account the complementary norm as well. E.g. when the norm of reference is "In the case of behaviour inconsistent with the norm N the state organ S ought to behave in the manner B_c" the conditions C in this norm are described as a behaviour inconsistent with the complementary norm N. In this sense we can say, that here C is determined in legal language of the second level. When, however, conditions C of the norm of reference are not described in this way, then there is no complementary norm, and C is determined in legal language of the first level.

For both groups of C the differentiation of the descriptive (C_d), evaluative (C_e) and mixed ways of determination holds, used analogously as to determination of a behaviour B (point 4 above).

6. The analysis of the two elements (C) (B) of the norms of reference serves for the classification I use in this essay.

6.1. The first classification is based on the criteria of the levels of legal language in which conditions (C) and dispositions (B) of the norms of references are expressed.

C \ B		levels of language	
		first	second
levels of language	first	1	2
	second	3	4

Let us introduce conventional terminology for the grouping of the norms of reference according to this table. "Simple norms of reference" are the norms whose elements (C, B) are expressed with the language of the same level (positions 1,4); other norms are "complex norms of reference" (positions 2, 3). The simple norms of reference are norms expressed in the first

language (position 1) or in the second level language (position 4).

6.2. The second classification is based on the distinction of the descriptive, evaluative and mixed determination of the elements (C, B) of the norms of reference. For simplification of the issue I will deal only with the simple norms of reference and I omit the mixed determinations of conditions and behaviour.

C ⟍ B	descriptive	evaluative
descriptive	1	3
evaluative	2	4

Norms of reference which have both elements determined descriptively are called "descriptive" (position 1), those which have both elements determined evaluatively "evaluative" (position 4), the remaining norms are "mixed" (positions 2, 3).

Both classifications can be combined by taking two criteria simultaneously into question. This is the way of our further analysis, which demonstrates how the semantic properties of relational statements are determined by the characteristics of the corresponding norms of reference.

7. A relational statement is related with the norm of reference as a simple norm expressed in the language of the first level and being descriptive. The formula of such a norm is "when C_d then there ought to be B_d", where C_d is a variable for descriptively taken conditions and B_d for descriptively determined behaviour.

Utterance "X in conditions C_x has behaved in the manner B_x" is based on a statement that in the situation determined by the variables, X and C_x are designated by the name C_d, and B_x is designated by B_d. And, hence, a relational statement of the form "behaviour B_x is consistent with the norm N", where

N stands for the norm of reference we are speaking about, is either true or false.

Relational statements of this kind are, therefore, propositions in the logical sense of this term. A norm of reference functions as a kind of "indifferent standard of comparison" in the sense, that one can non-evaluatively compare a behaviour with the content of this norm to ascertain their consistency. [1]

8. There is a group of relational statements for which the norms of reference are the simple norms expressed in the language of the first level and being evaluative. The formula of such a norm is "when C_e then there ought to be B_e" where the variables C_e and B_e stand for evaluatively determined conditions and behaviour. To state that an X in conditions C_x has behaved in the manner B_x it is necessary to explore whether X, C_x and B_x enter into the area determined by evaluative terms C_e and B_e.

The semantic properties of relational statements based on the norms of reference in question depend on the kind of evaluations determining C_e and B_e. For our purposes we have to single out three kinds of evaluations based on the criteria for their justification. We have then non-relativized evaluations, evaluations relativized instrumentally and evaluations relativized systemically. [2]

Non-relativized evaluations are not justified by any reference to a means-end relation or to assumed systems of values and/or norms. Then one states "X is valuable" without any justification outside its own "self-evidence". According to the non-cognitivist attitude which I share, such kind of evaluations cannot be qualified as true or false utterances.

Evaluations relativized instrumentally are justified by the corresponding description of means-end relation, based on some descriptively stated relations (causal, statistical, functional etc.) of events. One states, then, "X is valuable as a means for achieving goal G". The semantic character of an

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[1] Comp. H. KELSEN, *Reine Rechtslehre*, Wien 1960, p. 17 and ff.

[2] Comp. K. OPAŁEK, J. WRÓBLEWSKI, Axiology — Dilemma between Legal Positivism and Natural Law, *Österr. Zit. für öff. Recht* 18, 1968, p. 357 and ff.

evaluation relativized instrumentally is controversial.[3] Even anti-cognitivists assert that the means-end relation corresponds to the descriptively stated relations of facts, e.g. cause-effect relation. If, then, one can "translate" statements about factual relations into instrumentally relativized evaluations, then one can speak about the truth/falsity of the latter depending on the truth/falsity of the former.

Evaluations relativized systemically are those justified by reference to some axiological system (strong formulation) or to a concrete norm or evaluation (weak formulation). E.g. "X is valuable according to the axiological system AS", "X is valuable according to the norm N".

After these preliminary clarifications of concepts we can proceed to the analysis of relational statements which have simply, first level and evaluative norms of reference. To simplify the issue I assume that both elements of the norm of reference, that is to say C_e and B_e, are composed of the same kind of evaluations.

8.1. A relational statement which requires for its formulation a non-relativized evaluation cannot be either true or false. It is the consequence of the anti-cognitivist attitude, which repudiates any reduction of such kind of evaluations to any kind of proposition.[4]

8.2. A relational statement which requires for its formulation an evaluation relativized instrumentally, can be true or false under the following conditions: firstly, the minimum degree of precision of a goal, and, secondly, the descriptivity of the goal. The former simply requires that the goal be determined precisely enough to enable one to formulate the adequate means-goal relation using an appropriate factual relationship. The latter condition requires, that the goal in question is determined purely descriptively and, hence, that the choice of means can be in principle free from other evaluations than the instrumental one. E.g. these conditions are not fulfilled when

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(3) Comp. G. H. von WRIGHT, Norm and Action, London 1963, ch. I, 7.

(4) About such reductionism comp. J. WRÓBLEWSKI, The Problem of the Meaning of the Legal Norm, Österr. Zft. für öff. Recht 3/4, 1964, p. 254 and ff.

goals are "the good of the community" or "justice" and can be fulfilled, when the goal is "safety in road communication". The relational statement of the kind discussed above can be, thus, under certain conditions a proposition.

8.3. A relational statement which requires for its formulation an evaluation relativized systemically under certain conditions can be a proposition.

When used in a strong formulation — e.g. " X is valuable according to the axiological system AS" — a relational statement is a proposition if the evaluation in question is treated as a description of the content of this system. Two conditions must, however, be met: firstly, the axiological system must be formulated in such a way that consistency with it can be stated in propositions; and, secondly, the system in question must cover all values needed for the formulation of relational statements within a given legal system. It is evident, that these requirements cannot be fulfilled, and even theoretically raise essential doubts. Therefore I leave out, this possibility of the propositional character of relational statements.

The evaluations relativized systemically appearing in legal practice do not assume the whole axiological system, and are, therefore, used in a weak formulation — e.g. "X is valuable according to the norm N". The requirements necessary for the establishment of the propositional character of a relative statement of this kind are analogous to those formulated for the strong formulation and are relatively more easily fulfilled. The norm in question ex hypothesi justifies the evaluation and the only requirement is that the consistency with it can be stated descriptively. Then the relational statement is a proposition.

9. The norms of reference can be also simple norms of the first level of language with the mixed characteristics, i.e. descriptive and evaluative. Hence these norms have the form "when conditions C_d then there ought to be B_e" or "When conditions C_e then there ought to be B_d". One of the elements of the norm-formula is evaluative. The semantic character of a relational statements depends, thus, on the qualities of the evaluations of an evaluative component of the norm of refe-

rence. We have to apply here our comments from the point discussed above at 8.

10. The following group of relational statements characterised by their norms of reference includes all simple norms of reference of the second level of language. Their formula is "when conditions C_r then there ought to be B_c" where both variables are determined by the complementary norms in the language of the second level. Conditions C_r are determined as a behaviour consistent or inconsistent with certain complementary norms (e.g. non-observance of the norm N; making a contract according to the norm N). Behaviour of competence B_c can have various characteristics, e.g. voting a statute, formulation of a sentence etc.

Conditions C are determined by the relational statement of the second level of the form "C_r is consistent with the complementary norms NC_1, NC_2 ... NC_n". Behaviour of competence (B_c) is determined by a relational statement of the second level in the form "B_c is X as consistent with the complementary norms NC_1, NC_2 ... NC_n" where X stands for e.g. law-making, concluding a contract, formulating a sentence etc.

We can divide the relational statements in question according to the characteristics of the corresponding complementary norms. Complementary norms are divided into descriptive, evaluative and mixed. Accordingly relational statements based on descriptive complementary norms are propositions, based on their evaluative or mixed complementary norms — can be propositions or evaluations depending on the particularities of the evaluations involved. All our considerations concerning the evaluative and mixed norms of reference of the first level (points 7-9) do apply analogously to the complementary norms and, hence, to the corresponding relational statements.

11. The last group of relational statements covers all cases, when the norms of reference are complex norms, i.e. their elements belong to the various levels of language. The norms in question can be reduced to the formulas "When conditions C_r then there ought to be B_o" and "When conditions C_o then there ought to be B_c". In the first formula for the determination of the conditions C_r it is necessary to use a complementary

norm, as where the behaviour B_0 is "ordinary" e.g. the norm prescribing the activity of a citizen when a crime is committed; in the second formula we have the determination of behaviour of competence B_c in situations, which are described without any use of complementary norms, e.g. activities during the elemental disaster of a flood.

For the typology of such norms and relational statements one should use the classifications of norms of reference of the first level (point 7-9) and of the second level (point 10).

12. Summing up our analysis of the semantic characteristics of relational statements we can conclude, that a relational statement can be a proposition depending on the properties of the corresponding norms of reference.

Relational statements are propositions if: (a) the norm of reference is a first degree simple descriptive norm (point 7); (b) the norm of reference is a first level simple evaluative norm, when the evaluation is instrumental and fulfills certain conditions (point 8.2); (c) the norm of reference is a first level simple evaluative norm, when evaluation is relativized systemically in the weak formulation and fulfills determined conditions (point 8.3); (d) the norm of reference is a simple norm of the first level with a mixed character and its evaluative component fulfills the conditions of the norms (b) (c) above (point 9); (e) the norm of reference is a second level simple norm and is linked with a complementary norm fulfilling the conditions of the norms (a) (b) (c) (d) above (point 10); (f) the norm of reference is a complex norm and fulfills the conditions of the norms (a) (b) (c) (d) (e) above (point 11).

Relational statements are not propositions if: (a) the norm of reference is a first level simple evaluative norm, and evaluation is non-relativized (point 8.1); (b) the norm of reference is a first level simple evaluative norm where the evaluation is instrumental but does not fulfill the conditions necessary for the propositional character of a corresponding relational statement (point 8.2); (c) the norm of reference is a first level simple evaluative norm, where the evaluation is relativized systemically in the strong formulaton or n the weak formulation, but, in either case, does not fulfill the conditions neces-

sary for the propositional character of the corresponding relational statement (point 8.3); (d) the norm of reference is a simple norm of the first level and has a mixed character and the evaluative element fulfills the conditions of the norms (a) (b) (c) above (point 9); (e) the norm of reference is a second level simple norm and is linked with a complementary norm fulfilling the conditions of the norms (a) (b) (c) (d) above (point 10); (f) the norm of reference is a mixed norm and fulfills the conditions of the norms (a) (b) (c) (d) (e) above (point 11).

The assertions formulated above hold only with the assumption, that the norms of reference and complementary norms, if any, have a meaning precise enough for the formulation of corresponding relational statements. This assumption is an obvious simplification and aims at avoiding the whole problem of the interpretation of norms. If we reject the view that legal interpretation is a valuation-free process, as I do, then in all cases where the interpretation of the norms in question takes place the corresponding relational statements are involved in a net of evaluative choices, of interpretative directives, and evaluations inherent in their use. [5] Then a relational statement of the simplest form, that is when the norm of reference is a first level simple norm of a descriptive character (point 7) should be reduced to the formula "behaviour B is consistent with the norm N in the meaning M, according to the directives of interpretation DI_1, DI_2 ... DI_n and evaluations V_1, V_2 ... V_n" ([6]).

13. From the analysis of relational statements follow some consequences of general theoretical relevance. Firstly, the propositional character of relational statements depends on the properties of the formulation of the norms of reference and complementary norms. Hence the technique of formulation

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[5] J. WRÓBLEWSKI, *Semantic Basis of the Theory of Legal Interpretation*, *Logique et Analyse* 21/24, 1963 p. 405 and ff., p. 414 and ff; the same author, Właściwości, rola i zadania dyrektyw interpretacyjnych, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 4, 1961, passim. G. GOTTLIEB, *The Logic of Choice*, London 1968, chpt. VII.

[6] For more ample formulation see J. WRÓBLEWSKI, *Legal Reasoning in Legal Interpretation*, *Logique et Analyse*, 45, 1969.

of the norms in question influences the characteristics of relational statements.

Secondly, the complexities associated with the propositional character clearly show the inadequacy of simplified formalist versions of legal practice. Not all relational statements are propositions and hence, their formulation is not value-free, the application of law has not a purely "mechanical" character etc. This is an argument for the "anti-formalism" in the so-called "formalist-antiformalist controversy", which deals with the crucial issues of legal science and law.[7]

Relational statements are common in all legal discourses. The semantical characteristics of relational statements are, hence, of importance for all discussions about the relations of conduct and norm and of their descriptions. The simple formula of relational statement "behaviour B is consistent with the norm N" conceals many complicated problems. I have tried to analyse above some of these problems.

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(7) Comp. J. HOROVITZ, La logique et le droit (in) *Études de logique juridique,* ed. Ch. Perelman, Bruxelles 1967, vol. II, p. 43 and ff. J. KALINOWSKI, Logique formelle et Droit, *Annales de la Faculté de Droit et des Sciences Économiques de Toulouse,* vol. XV, fasc. I, 1967; CH. PERELMAN, *Justice et Raison,* Bruxelles 1963, chapt. XI, XIV, XVI; CH. PERELMAN, L. OLBRECHTS-TYTECA, *Traité de l'argumentation,* Paris 1958, 2 vol.; TH. VIEHWEG, *Topik und Jurisprudenz,* München 1963. J. STONE, *Legal System and Lawyers Reasonings,* Stanford 1964, chapt. VIII, §§ 7-9.