

NORM AND CONDUCT. THE PROBLEM OF THE "FULFILLMENT" OF THE NORM

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1. "Relational statements" about conduct as consistent resp. inconsistent with the norm ("fulfilling" the norm, or not) play an important role in legal reasonings (¹). These statements are, according to some authors, statements in logical sense, as giving an "objective account" of the consistency resp. inconsistency of the conduct with the "pattern of due behaviour" constituting the meaning of the norm (²). In other authors' opinion, however, the relation in question is that of the normative (legal) qualification of the conduct, and "relational statements" discussed here constitute a subspecies of value statements (those of "legal valuation") as sui generis statements, differing from those in logical sense (³). The problem is worth investigating, as a thorough explanation of the character of these statements would contribute to current discussions about legal reasonings, claimed either logical in the sense proper resp. in some wider, inarticulate sense, or non-logical, having some peculiar traits of their own (⁴).

2. Norms (legal among others) belong to a large group of statements, comprising also commands, requests, exhortations, suggestions, advice, rules, and the like, the common feature of all these statements being their directive meaning as a general kind of meaning; norms are, then, directive statements of some particular sort (⁵). Their structure can be presented symbolically as: $N(ut\ p)$, and so their components are: the normative operator, N (which can be either O , positive duty, F , negative duty, or P , permission) (⁶), and the ut -clause, containing a sentence in subjunctive mood, the theme (⁷) of this sentence being some way of conduct, e.g.:

It is obligatory (O) ut the owner would register his car. The conduct is conceived here as " ut would be the case", and not as being the case, and so the sentence in question does

not express a proposition (has no truth-value, is non-extensional) ⁽⁸⁾. The *N(ut p)* compound does not have the "cognitive meaning" ⁽⁹⁾ with respect to extralinguistic reality (conduct), is not "reproducing" this reality, but is conceiving it in a "purposive-prospective" way ⁽¹⁰⁾. The statements of the type *N(ut p)* can be said, however, to refer to a reality created by the very formulation of them, a reality of verbal acts of influencing conduct ⁽¹¹⁾. The relation: language-reality being here the same as in "cognitive meaning" but the sort of reality "meant" being different, we adopt for the latter case the term "directive meaning", stressing, that it is mistaken to seek to define this meaning in terms of some "peculiar" relation of a statement to extralinguistic reality (conduct) ⁽¹²⁾.

3. Returning to our "relational statements", we can say, that they are about the fulfilment / non-fulfilment relation between some norms and conduct. Now, the problem of fulfilment / non-fulfilment of descriptive statements by empiric facts is well known in semantics as the problem of the truth / falsity relation between the statement and the state of affairs the former is referring to. But there is surely no such relation (semantic relation of fulfilment, SF or of non-fulfilment, S-F) between the normative statements and the conduct being actually the case. Norms do not state that such states of affairs are the case, but *ut* they would be the case. SF/S-F of normative statements by the said states of affairs (conduct) could be established only if there would exist "*ut* would be" (directive, normative) states of affairs, apt to S-fulfill the statements in question. However, the existence of such states of affairs, besides the empiric ones, can hardly be accepted ⁽¹³⁾. In the case of normative statements we can find the SF-relation only between statement and (normative) verbal act to which the former is referring, this act being "produced" by the statement by virtue of the latter being formulated in such and such way (comp. 2 above).

4. But surely, there is common sense in saying that a given conduct, actually taking place, "fulfils" (or does not "fulfil") a norm. We deal here evidently, however, with another sort of "fulfilment"/"non-fulfilment" than SF/S-F. One is not speak-

ing, in this instance, about the relation between the statement as a syntactic and semantic entity, and an empiric fact. One is speaking here about the relation of two empiric facts: directive verbal act (which is, admittedly, of a particular and complex sort) - conduct.

There is, then, a relation between two facts: the relation of being done (or not) what was ordered, resp. permitted. It is by no means necessarily a "strong", causal relation, definable, e.g., in stimulus-response terms. As far as instances of such a relation are concerned, we have to take into account both the cases of the "positive responses", motivated by normative acts, and the cases of those "negative responses" in which the normative acts were factors — though not "successful" ones — in the motivational processes of the addressees. But surely, there are numerous instances in which the conduct "fulfilling" or "not-fulfilling" the normative act is by no means motivated by the latter (¹⁴). Whatever the motives of the addressee would be, his conduct can be said either one "fulfilling", or one "not-fulfilling" the directive act. By simply confronting the normative act and a given conduct one can say that the latter "fulfills" the former, or not.

5. The relation of "fulfilling"/"not-fulfilling" of the said normative verbal acts by other empiric facts (conduct) is not the SF/S-F relation as characterized above. It can be termed the PF/P-F relation, that of pragmatic fulfilment/non-fulfilment.

One has to note some interesting differences between SF/S-F and PF/P-F relations. Leaving out of account the complex problems of the verifiability of empiric statements (¹⁵), one can say that their SF/S-F is a "total" one: such statement is either S-fulfilled (true) or not (false). The PF/P-F can surely be a "total" one, in the case of concrete-individual norms, but it is only a "partial" one in the case of abstract-general norms which are always open to further, unforeseen as to their number, possibilities of their being P-fulfilled or not. The PF/P-F is always treated as one in a concrete instance. While it is evident with concrete-individual norms, it holds also truth for the abstract-general ones. As far as the latter are concerned, one is always considering some concrete conduct, as

being in accordance with one (or some) of them. It is quite another matter that *ex post*, for different purposes, the number of the cases of PF and P-F is being counted (as, e.g., in criminal statistics⁽¹⁶⁾).

The SF/S-F of empiric statements (and statements in logical sense in general) amounts simply to their being true or false statements; in the latter case they are surely abandoned for cognitive reasons, while it would be quite unjustified to claim that they do not fulfil the conditions of being accepted as statements in logical sense⁽¹⁷⁾.

The PF/P-F does not alter anything in the semantic features of normative statements: whether P-fulfilled or not, they retain their character of statements having directive meaning, as fulfilling the conditions of being accepted as normative statements. Pragmatically, however, both PF and P-F of normative acts amounts to their being "abandoned" (to their "extinguishing") as far as the concrete cases of their PF and P-F are concerned. And so, both PF and P-F of a concrete-individual normative act amounts to its total pragmatic "extinguishing". When we are dealing, however, with an abstract-general normative act, both its PF and P-F in a concrete case does not amount to such normative act being pragmatically "abandoned" (or, in other words, to its "extinguishing") as far as its potentialities to be P-fulfilled, or not, in other cases possible to occur are concerned.

6. The PF/P-F relation of the normative act and conduct is a peculiar one. It is not, as already shown, a semantic relation, it is also not a logical one, as relation between two facts: normative verbal act-conduct. Saying that a given conduct P-fulfils (or not) a normative act does also not amount to claiming that there is a factual relation of the latter being "successful" (or not) in influencing the former, that there is any question of influence or effectiveness at all. The factual relation of the normative act being "successful" (or not) in influencing or motivating the given conduct can coincide with the PF/P-F relation, but has to be discerned from the latter. The PF/P-F relational statements do not imply (contain as components) the statements about influencing, motivating conduct by the nor-

mative acts, about the effectiveness of the latter, and the like⁽¹⁸⁾. They are "pure" statements of qualifying the conduct from the point of view of the normative acts⁽¹⁹⁾.

7. Now let us formulate the PF/P-F relational statements as:

PF $N(ut\ p)that\ p$

P-F $N(ut\ p)that\ -p$

It is unnecessary to present here all the varieties of such statements (the O, F, P statements).

It seems important to note that the conduct referred to by p as being the case (and said to P-fulfil the normative act) does not have empirically any characteristics in common with the normative act referred to by $N(ut\ p)$; and vice versa, the normative act referred to by $N(ut\ p)$ does not have any empiric properties of the conduct referred to by p as being the case (and said to P-fulfil the normative act). There is also surely no such empiric link between the act referred to by $N(ut\ p)$ and the conduct referred to by $-p$. At the same time, it is peculiar about the normative act on the one hand, and the conduct being the case on the other, that they are mutually excluding themselves. The statements of the types:

$N(ut\ p).p$

$N(ut\ p).-p$

are untenable⁽²⁰⁾. The normative act referred to by $N(ut\ p)$ formula can be the case as far as it is not yet the case that p , resp. $-p$. The former is excluding the situation referred to by p (resp. $-p$), and the situation referred to by $N(ut\ p)$ ceases to exist when it is the case that p (resp. $-p$).

8. The PF/P-F relational statements are neither "pure" normative ones, nor "pure" factual p resp. $-p$ statements, nor conjunctions of the former and the latter. They are sui generis statements formed on the basis of some practical comparizon of the given normative acts and the given conduct. As already explained, it would be mistaken to assume that here an S-relation (between the normative *statement* and conduct as *fact*) comes into play, such semantic link being out of question. There is here only the pragmatic link between the normative act and the given conduct, this act having primarily the pragmatic function of influencing behaviour (and secondarily the infor-

mative function), and being "understood" as P-fulfilled (or not) when the given conduct is (or is not) the case. By "understanding" we mean here that there exist among people learnt ways of forming normative acts and of "properly" reacting to them (²¹).

The PF/P-F relational statements constitute another group of peculiar statements-acts, that is to say, of statements referring to verbal acts of qualifying (evaluating) the conduct being the case from the point view of the normative act "given". We deal here, then, with pragmatic links between facts of three kinds: normative, verbal, act-conduct-evaluative act. As the given conduct taking place is understood as P-fulfilling (or not) the respective normative act, a new situation arises — that of pragmatic extinguishing of the normative act, and of its being substituted by the act of satisfaction (or dissatisfaction), "laudatory" (or of reproof) with respect to the conduct in question (²²). In the act of the latter sort a qualification of the conduct is given by way of "projecting" the normative act on what actually took place, the conduct being characterized as "such (or not) as N ut it were".

9. The PF/P-F relational statements constitute, then, in the light of this analysis, some sort of value statements about conduct (of the structure $V \text{ that } p$). Such value statements have to be termed value statements proper, in contrast to quasi-value statements of the structure $V(ut p)$, the latter statements being veiled directives (veiled norms in some instances), or veiled optatives (²³). According to the view presented here the V-operator is standing for a complex $PF/P-F N(ut p)$ operator as far as norms are concerned. In fact, it is standing also for other varieties of $PF/P-F D(ut p)$ operators, for all instances of PF/P-F of directives, and also for PF/P-F *Utinam p* (optative) operators. This general problem cannot be, however, dealt here with. We shall also not consider the kinds of V-operators (V_p - positive, V_n - negative, V_o - neutral (²⁴).

10. Some authors would not agree with our view on the PF/P-F relational statements, claiming that there is a marked difference between "genuine" value statements and "genuine" relational ones; according to these authors, we would deal

with valuation only in the former statements, while the latter would be said to give only an "objective account" of accordance resp. disaccordance of some conduct with a norm (or, more generally, a directive). Let us discuss in brief this objection. As already shown, the difference between these categories of statements could hardly consist in the latter being statements in logical sense, and the former being *sui generis* value statements. The fact that some of the statements in question are "emotionally loaded" ("engaged"), while the others not, can be explained by the difference between the instances of PF/P-F of the "own" (internalized) norms (directives), and the instances of PF P-F of "external" (heteronomous) ones⁽²⁵⁾. In both instances we deal, nevertheless, with value statements proper.

11. Two conclusions of importance have to be drawn from what was said above. Firstly, the intellectual activities consisting in qualifying a given conduct from the point of view of a norm, are surely not the formal logical reasonings, but have a practical-pragmatic character. The most vital for us is here evidently the problem of the normative qualifications in law⁽²⁶⁾. Secondly, norms (and, more generally, directives, but also optatives) are primary in relation to value statements. It is not meant in this sense that the latter would imply (contain as components) the former, but in the sense of the normative (generally directive, and also optative acts) being pragmatically presupposed by the evaluative act. In this sense the directive and optative world is prior to that of valuation⁽²⁷⁾.

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NOTES

(1) K. OPAŁEK-WRÓBLEWSKI, *Zagadnienia teorii prawa*, in *Problems of legal theory*, Warszawa, 1969, p. 50 f., 308 ff.

(2) J. NOWACKI, *O rodzajach ocen ze względu na normę*, *On the kinds of value statements based on norms*, *Zeszyty Naukowe Uniwersytetu Łódzkiego*, *The Łódz Univ. Review*, 14, 1959, Comp. J. WRÓBLEWSKI, *The problem of the meaning of the legal norm*, in *Österr. Ztschr. f. öff. Recht*, XIV, 3-4, 1964, and *Statements on the relation of conduct and norm*, in *Logique et*

Analyse, XIII, 49-50, 1970. (The views of the latter author being less categorical than those of J. Nowacki).

(3) E.g., J. LANDE, *Studia z filozofii prawa*, in *Studies in legal philosophy*, Warszawa, 1959, p. 772 ff.

(4) Comp. *Le raisonnement juridique et la logique déontique. Actes du Colloque de Bruxelles, 22-23 Décembre 1969*, in *Logique et Analyse*, XIII, 49-50, 1970 and various standpoints represented there.

(5) K. OPAŁEK, *The problem of "directive meaning, Festkrift til Professor, Dr Jur. et Phil. Alf Ross*, København, 1969, p. 405 ff.

(6) The complex problems of the different kinds of "permission" (P1^{df}-0, P2^{df}-0-, P3^{df}-0.-0-) will be not discussed here.

(7) The term "theme" adopted from A. Ross, *Directives and norms*, London 1968, p. 107.

(8) On "intension" and "extension" comp. R. CARNAP, *Meaning and necessity*, II ed., Chicago 1958, ch. I, esp. paragr. 6.

(9) Comp. the discussion by J. WOLEŃSKI, *Spór o znaczenie normatywne, Contention on the subject of "normative meaning"*, in *Naturalistyczne i antynaturalistyczne interpretacje humanistyki, The naturalistic and anti-naturalistic interpretations of humanities*, Poznań 1966.

(10) K. OPAŁEK, *On the logical - semantic structure of directives*, in *Logique et Analyse*, XIII, 49-50, p. 191.

(11) K. OPAŁEK, *The problem of directive meaning*, cit. above, p. 420.

(12) Comp. the remark by A. Ross, o.c., p. 35.

(13) The conception of the "normative states of affairs", in F. STUDNICKI, *Traffic signs*, in *Semiotica*, II, 2, 1970, p. 164 ff.

(14) Comp. K. OPAŁEK, *The complexity of law and of the methods of its study*, in *Scientia*, CIV, 5-6, 1969, p. 187 f.

(15) R. CARNAP, *Philosophy and Logical syntax*, London, 1935, paragr. 1.

(16) Comp. F. STUDNICKI, *Przepływ informacji o normach prawa*, in *The flow of information on legal norms*, Kraków 1965, in connection with the problem of the effectiveness of the legal norms, p. 35 ff.

(17) Comp. A. Ross, o.c., paragr. 37.

(18) Such relational statements, however, appear in the role of components of the statements of the latter kind, comp. J. WRÓBLEWSKI, *Statements on the relation of conduct and norm*, cit. above, p. 157 f.

(19) Comp. R. CARNAP's thesis of pure optatives, A. Kaplan on value judgments, in *The philosophy of Rudolf Carnap*, ed. by P. A. SCHILPP, La Salle - London 1963, p. 1001 ff.

(20) It is rather striking that the value statements are quite often reconstructed as conjunctions of descriptive and some *sui generis* (directive etc.) statements.

(21) Comp. M. BLACK, *Analysis of rules*, in his *Models and metaphors. Studies in language and philosophy*, Ithaca 1962, p. 121 f.

(22) Comp. Ch. L. STEVENSON, *Facts and values, Studies in ethical analysis*, New Haven and London 1963, p. 21 f, "laudatory" - "derogatory".

(²³) The problem is much more extensive than the one discussed here. It is analysed by K. OPAŁEK, *Directives, optatives, and value statements*, not published yet.

(²⁴) *Ibidem*, and comp. by G. H. VON WRIGHT, *The logic of practical discourse*, in *Contemporary philosophy. A survey*, ed. by R. KLIBANSKY, Firenze 1968, p. 143 f.

(²⁵) Comp. K. OPAŁEK-J. WRÓBLEWSKI, *o.c.*, p. 21 ff., but the problem has to be discussed in detail.

(²⁶) Comp. in this connection e.g. Ch. PERELMAN, *Le raisonnement juridique*, in *Les Études Philosophiques*, 4-6, 1965; J. HOROWITZ, *La logique et le droit*, in *Études de logique juridique*, ed. Ch. PERELMAN, Bruxelles 1967, v. II, p. 43 ff.

(²⁷) This problem is widely discussed, and at least some directives (axiological norms) are said to be in some sense secondary to value statements. G. H. VON WRIGHT, *An essay in deontic logic and the general theory of action*, Amsterdam 1968, p. 12, inclines "towards a position according to which values are basic and primary, norms derivatives and secondary. Norms, according to this view, are often said to be instrumental towards realisation of some values." Our view differs from this one.