

# Normative Propositions Reconsidered

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## ***Abstract***

The author discusses and criticizes the idea that normative propositions (i.e., propositions about norms) can be expressed by means of deontic sentences echoing the norms they claim to describe. He argues that such sentences do not contribute in any way to legal cognition, since they do not express normative propositions – rather, they repeat norms and/or apply them. If this is true, the logic of deontic sentences is a logic of norms, not of normative propositions.

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1. Normative propositions are propositions about norms (von Wright 1963: 106; Bulygin 2015: 188-189) such as, for example,

- (1) The norm N exists (whatever the sense of “existence” may be<sup>1</sup>)
- (2) The norm N was actually issued by a given authority
- (3) The norm N belongs to the normative system S
- (4) The norm N is valid within the normative system S
- (5) The norm N is effective
- (6) The norm N is in force
- (7) The norm N was actually applied in case C

and so forth. All the mentioned sentences give expression to genuine normative propositions.

According to Bulygin, however, a normative proposition can also be expressed

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<sup>1</sup> See, e.g., Bulygin 2015: 243 ff.

by stating «that something is obligatory or forbidden according to a given norm or set of norms»<sup>2</sup>.

This idea can be traced back to von Wright, according to whom «the deontic sentences of ordinary language [...] exhibit a characteristic ambiguity. Tokens of the same sentence [e.g., “Murder ought to be punished with imprisonment”] are used, sometimes to enunciate a prescription [...], sometimes again to express a proposition to the effect that *there is* a prescription» (von Wright 1963: viii; see also von Wright 1965).

Bulygin (2015: 193) states the same point by saying: «normative propositions are usually expressed by elliptical sentences stating that a given state of affairs *p* has a certain normative status (is prohibited, permitted or obligatory) according to some unspecified normative order. This means that in this order there is a norm to the effect that *p* is prohibited (permitted, obligatory)».

Remark that in Kelsen’s view the only proper way of stating the existence of a norm is precisely by means of a deontic sentence echoing the norm itself (Kelsen 1967: § 16; see Hart 1963, Guastini 1998).

According to this view, normative propositions look quite different from the examples suggested above. For example:

(8) According to the normative system S, *p* is forbidden (or *p* is forbidden in S)

(9) According to the normative system S, *q* is permitted (or *p* is permitted in S)

and so on.

The normative proposition (8) is supposed to be true if, and only if, within the system S there is a norm prohibiting *p*. The normative proposition (9), in turn, is supposed to be true if, and only if, within the system S either there is a norm permitting *q* (positive or strong permission) or there is no norm prohibiting *q* (negative or weak permission).

2. Now, a simple question can be raised – how do normative propositions, *conceived in this way*, as claimed by Kelsen, von Wright, and Bulygin, contribute to “legal science”, i.e., to the cognition of the normative (namely, legal) system concerned?

Imagine a legal system including the statutory provision: «Murder is [ought to be] punished with imprisonment». According to the view mentioned, a normative proposition concerning this norm could assume one of the following forms:

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<sup>2</sup> Bulygin 2015: 188.

- (i) Murder ought to be punished with imprisonment
- (ii) Mr. Smith, the murderer, ought to be punished with imprisonment

The normative status of classes of actions (such as murder), however, is (already) determined by the lawgivers. The normative status of individual actions (such as the murder committed by Mr. Smith) is determined by law applying organs, namely judges. How do sentences like (i) or (ii) increase legal cognition?

It seems to me that:

(a) in the first place, sentence (i), at least *prima facie*, does not bear upon any norm whatever – it is about the punishment of murderers, not about the norm commanding to punish them;

(b) in the second place, and this is of great significance, sentence (i) does not give any kind of new information about the normative content of the legal system at hand, since the obligation to punish murderers is already stated by a legal provision, and the sentence at hand adds nothing to it. The legal scholar (or the lawyer) stating (i) just «reproduces the command [issued by the legislator], conserving its prescriptive force», which stems, however, not from the jurist himself, but from the legislator<sup>3</sup>.

Is sentence (i) a genuine normative proposition? It does not seem so. Rather, it looks like a mere iteration of the norm at stake (Scarpelli 1967), that does not contribute in any way to the cognition of the legal system at hand.

As to sentence (ii), it is clearly an instance of application of the norm at issue to a particular case – not a proposition, but some sort of “internal” statement, that is, a «disguised prescription» (Bulygin 2015: 198) that lacks any truth-value. It could be argued that it is but a directive *de sententia ferenda* addressed to judges (Ross 1958: 47).

3. There is, however, a third possibility. Suppose the word “murder” is ambiguous in such a way that it can be interpreted either as (a) the premeditated killing of a human being or (b) any killing of a human being although unintentional. Such a (real or imaginary) ambiguity could give rise to a couple of sentences like these:

- (iii) (Only) Premeditated killing ought to be punished with imprisonment
- (iv) Unintentional killing (too) ought to be punished with imprisonment

Both of these sentences are interpretive sentences that ascribe two competing meanings – hence two different norms – to one and the same statutory provision.

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<sup>3</sup> Bulygin 2015: 195; see Hart 1963.

But neither of them looks like a normative proposition.

First, neither of them is a proposition since it can be argued that interpretive sentences resemble (have the same logical form as) stipulations – and that amounts to say that they have no truth-value (Guastini 1997).

Second, and most important, neither of them bears upon a norm – both bear upon a sentence enacted by the legislature, and each of them gives rise to a different norm (strictly understood as the meaning content of a normative sentence).

4. If the preceding reasoning is correct, the only possible conclusion is that deontic sentences *do not* express normative propositions (Guastini 2000) – they repeat norms like an echo, they apply norms, and the like.

By the way, if this is true, then there is no need of (maybe, no sense in) constructing a special logic of deontic sentences considered not as norms, but as normative propositions<sup>4</sup>.

We do not need a logic of normative propositions to discover that the non-issuance of a prohibition does not entail the issuance of a permission and that the issuance of any norm whatsoever does not entail the issuance of another norm. This is so since issuance is a fact and no logical relationships exist among facts.

Suppose the sentence “*Op*”, as claimed by Kelsen, von Wright, and Bulygin, is not an iterated norm, but a genuine proposition whose meaning is “‘*Op*’ exists in the legal system *S*”. Well, it seems a matter of course that such a proposition does not entail any further proposition stating the existence of another norm.

To be sure, one can claim that, on the contrary, “*Op*” entails “*Pp*”, understood in the sense that “‘*Pp*’ (too) exists in the legal system *S*”. But this conclusion presupposes a logic of norms (namely, of deontic modalities: “obligatory” entails “permitted”; see Ratti 2017: ch. 3), not of normative propositions. It is the norm *Op* which entails – provided it does – the norm *Pp*, while there is no relation of entailment between the corresponding normative propositions, “‘*Op*’ exists in the legal system *S*” and “‘*Pp*’ exists in the legal system *S*”, respectively.

Suppose further that “*Op*” exists within the legal system and *p* entails *q*. One could argue that the system at hand also includes the norm “*Oq*”. But, once more, if this is true, it depends on the logic of norms, not of normative propositions – indeed, the actual existence of any norm whatsoever, if existence is understood as a matter of fact (e.g., actual enactment), does not entail the existence of any other norm.

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<sup>4</sup> See, e.g., Alchourrón 1969; Bulygin 2015: ch. 15; Rodríguez 2003; Navarro and Rodríguez 2014: ch. 3.

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