

**FESTSCHRIFT FOR
JULIUS STONE**

*A Tribute to Julius Stone on his Retirement from the
Challis Chair of Jurisprudence and International Law at
Sydney University*

Introduction

The Pragmatic Realism of Julius Stone

Julius Stone and the Adventure of the Idea of Justice

Legal Sociology and Historical Materialism

*Revolution—A Spiritual Phenomenon: A Study in the
History of Ideas*

The State as a Secular Phenomenon

*The Meaning and Role of Prescriptive and Descriptive
Statements: Particularly in the Legal Universe of
Discourse*

*Two Arguments for an Empirical Foundation of Natural-
Law Norms: An Explanation of Johannes Messner's and
Victor Kraft's Approaches*

On the Objective Foundation of Natural-Law Norms

*The Counter-Formula Method and its Applications in
International Judicial Reasoning*



THE MEANING AND ROLE OF PRESCRIPTIVE AND DESCRIPTIVE STATEMENTS: PARTICULARLY IN THE LEGAL UNIVERSE OF DISCOURSE

Ivanhoe Tebaldeschi*

I.

In a sense, any positive legal system can be considered as a body of prescriptive statements. Prescriptive statements represent indications of models of conduct. They include most often the linguistic expression "ought" (or "ought not") which works as a link between the grammatical subject and the predicate of the relevant sentence. Accordingly, prescriptive statements have also been called "ought-statements." This name has been mainly adopted in order to contrast prescriptive statements with descriptive statements, which are accordingly called "is-statements."

Another label for prescriptive statements is "deontic statements" or "statements having a deontic quality." Deontic quality imports a conceptual reflexion or conceptualization of the ought-sign. Both in a general sense and in a specific legal sense, deontic quality constitutes a central concern of legal thought on its theoretically highest level. Inquiries according to different views and perspectives have been developed about this topic. Different approaches have been followed. There has been, on the one hand, a merely semantic approach in which the "ought" has been viewed as a special modality of reasoning. On the other hand, there has been an approach in which the legal ought has been referred to requirements of justice and needs of social life.

These approaches either have at times developed independently of each other or have evolved in interference with each other. In this field mutual independence and mutual uncontrolled interference are both to be regarded as negative states of affairs. A comprehensive and satisfactory approach is here possible only through a general view of jurisprudence, able to conciliate and harmonize its formal requirement with its ethical and social ones. Only a unitary and yet differentiated jurisprudential approach can in fact offer a

* Research and Teaching Fellow, Salzburg University; Dr. Jur., Bari University; Dr. Jur. Habil., University of Rome.

ground for a historical understanding of the past multiform relevant literature and an adequate and up-to-date theoretical view, able to match these different and yet converging requirements.

In mentioning these requirements, the work and the creative contributions of Julius Stone come immediately to mind. The understanding of the legal "ought"—as far as it is requisite for a global understanding of the legal universe of discourse—has greatly benefited from the Stonian clarification and penetration of the relevant topic in a formal and socio-ethical perspective as well as in their correlations. This article owes much to Stonian teachings.

II.

According to a prevailing opinion, "is-statements" are verifiable, for they can always be regarded either as true or as false. Conversely, "ought-statements" have been considered to be unverifiable. Admittedly, they have no cognitive status. They do not describe a state of affairs; they do not indicate how things *are* but merely state how they *ought to be*. Thus a statement that "something ought-to-be" cannot *ex hypothesi* be styled either as true or as false. Any attribution of truth-values to such statements, seems to be utterly inappropriate and even senseless. This opinion has given rise to a postulate which has played, and is still playing, a primary role in the field of practical reasoning. It consists of the assumption that no is-statement can ever function as a premise to, or as a consequence of, ought-statements. The idea of an inferential process in which either an ought-statement is inferred from is-statements, or vice versa, has come to be regarded as a specific and striking kind of fallacy.

The above postulate is now regarded as a key principle in the field of practical reasoning. It appears linked with unquestionable requirements of formal correctness and it has proved itself resistant to any attempt at criticism. But in spite of its formal impeccability, this view has aroused a feeling of uneasiness. It seems to imply irrationalism in both practical argumentation and morals. It assumes that justification of rules of conduct or conduct itself does not rest on any objective ground. Thus the field of practice comes to be regarded as a realm of mere impulses, of unmotivated choices, and ultimately of whims. It seems to be surprising that human reason may have nothing to say about the main choices and decisions which men have to make in their lives or about evaluative comparisons of conflicting values.

Attempts have been made even in modern thought to provide an objective ground to prescriptive statements. These attempts have resulted in the assumption that some facts or a body of facts (*e.g.*, human nature conceived either as a static or as a dynamic entity) exist as sources from which fundamental principles of conduct can be inferred. An important instance of these attempts is the recent revival of natural law theories.

These theorizations and specifically the iusnaturalist view, have indeed been formulated in a way in which the postulate of non-inferability of ought-statements from is-statements (and vice versa) has been neither confirmed nor satisfactorily confuted. Theoretical constructions of various kinds have indeed been excogitated which have tried to avoid or to outflank the problem of whether and how is-statements and ought-statements might be conceived as compatible within a unique process of reasoning. Although some of these views have been acutely and subtly articulated—as Julius Stone himself has recognized in his treatment of the problem—yet such a problem, also clearly illustrated in Stone's treatment, can by no means be avoided.

The relevant efforts of the modern iusnaturalist theories have indeed been inspired by a more than laudable purpose—the struggle against ethical irrationalism and relativism. So far, however, these efforts, at least in the form of revived iusnaturalism, do not seem to have been successful.

III.

Despite the lack of success of the above attempts, the motive which has inspired them still remains significant. It seems that a possible clarification of the topic can only be achieved by a specific analysis of the “ought”-nexus. This requires a parallel and complementary inquiry into the “is”-nexus. The ought-statement can actually be understood only if considered in the context of the distinction between the “is-statements” and the “ought-statements.”

This distinction has been formulated in explicit terms only in modern times. It was originally inspired by a critical attitude towards some earlier views. These were, on the one hand, “essentialism” and, on the other hand, “rationalism” in the guise of rational theology and rational ethics. According to the essentialists, any individual belongs to a typical class of beings; any such class has some characteristic features which are necessary attributes of it; they reveal not only what a given class *is* but what it *must be*. This

essential "must" includes not only a material but also a "final" necessity. It has a compelling power which is stronger than that of the expression "ought." It may be regarded as absorbing the "ought" in itself. In its historical origin, essentialism can be traced back to Aristotle and Aquinas.

Rationalism belongs to a more modern state of thought. It has no link with qualitative early physics or the physics which approaches nature by considering its final causes—the teleological physics. Rationalism assumes that reason can demonstrate the existence of a creator God and the dualism between spirit (thinking reality) and matter (extended reality), a dualism that rationalists regard as the root or ground of any precept of conduct.

Essentialism and rationalism are different as general theories, but their views about practical experience and morals had similar aspects. They regarded moral principles as apprehensible by reason in the mode of cognition. Both views have aspects that are not only unfounded but even naive. They may be considered a step backward when compared with some philosophical concepts of ancient and medieval thought (*e.g.*, the notion of Plato's *agathón* and of Augustine's *veritas*), and are open to criticism from several points of view. Actually, criticism was levelled against them mainly (if not only) by exponents of English nominalism.

English philosophy had already been antagonistic to classic essentialism. It was also hostile to the theological trends of rationalism: Descartes's and Leibniz's "providentialism." For English philosophers, there was no ground whatsoever for the view that reason was capable of comprehending the final causes of existing entities and of natural phenomena. Nor did they consider it possible to draw the existence of a spiritual and moral order from cognitive data. They aimed at a knowledge which could be grounded on actual contacts with reality. They thought that such contacts could only be provided by sense experience, that is, by sensory perceptions. This conception of experience was accompanied by a view underrating the significance of discursive knowledge, which was regarded as consisting merely in an association and combination of signs in accordance with conventions. Discursive knowledge was therefore thought of as having no bearing on objective reality. It was conceived as being capable of yielding true statements only in the sense of a formal truth.

English criticism towards essentialism and rationalism was actually formulated within the perspective of a sensationalist nomi-

nalism. Sensationalism and the related nominalism are traditional in English empiricism. These corresponding views were expressed throughout the centuries in different versions and subjected to progressive intellectual refinement which developed them from Oxonian scholastics to Hobbesian materialism and from Locke's and Hume's antirationalism to Stuart Mills's associationism. The overall line of thought is still alive and operative in contemporary English philosophy. The topic of the relation between "is-statements" and "ought-statements" found a specific formulation in David Hume, a formulation which has remained basically unchanged, and to which the postulate of mutual uninferability of the is- and the ought-statements is still to be traced back.

As is well known, a movement of thought emerged which was opposed not so much to English empiricism as such as to its apparently paradoxical consequences. This movement was the "Critical" philosophy of Immanuel Kant. He tried to confute the main points of English philosophy, considering it nevertheless as a stimulating and awakening approach, at least as far as Hume was concerned. Although Kant opposed sensationalism, he accepted a large part of it. Kant's conception of the analytical statement (which he considered to be cognitively empty and endowed with a merely formal validity) may be regarded as a hangover of sensationalism. Kant tried to reform radical sensationalism by introducing a new concept, that of the "synthetic a priori." This concept however cannot be regarded as a real correction of sensationalism.

The main point of sensationalism is that it admits a double kind of truth: material truth and formal truth. Of these, the former is the truth of experiential observations; it is the "true" truth, the truth in its most full and proper sense. The latter is the truth of discursive procedures, a fictitious or at most a second-class truth, namely a truth which accounts only for the correctness of a discourse and has no bearing on objective reality. A real alternative to sensationalism can only be offered by submitting to criticism the assumption that discursive truth is merely formal. Kant did not do this. He accepted the view that inferential processes as such must be regarded as a mere game with signs, capable of no other truth-value than formal correctness. Indeed Kant postulated an additional use of the intellectual faculty by his notion of creative knowledge (creative for him only as to the appearance of reality and not as to reality in itself).

This concept of creative knowledge is objectionable, especially

in its post-Kantian version. Apart from this objectionability it should be considered that its very formulation rests on a negative assumption, the assumption that what Kant called analytical procedures have a merely formal validity. This assumption is here viewed as open to challenge. By criticizing the concept of formal truth and the related assumption that truth can be distinguished into formal and material, the subsequent discussion will propose a different approach to the understanding of descriptive statements as well as of the basic distinction between what are usually called "is-statements" and "ought-statements."

IV.

The procedures of discursive or rational processes may be regarded as chains of statements containing comparisons and relations between meanings. According to modern prevailing opinion, the above procedures can be styled as true only in the sense of a merely formal truth. This view is usually alleged as a corollary of the postulate according to which definitions of meanings are a matter not of knowledge but of linguistic conventions. It should be noted that this view is to be regarded not as a mere corollary, but as an "over-inference" from the conventionalist approach to definitions. Conventionality is not arbitrariness. The fact that the definitions considered as valid are those which apply a given linguistic convention in a correct manner does not entail that definitions themselves are to be conceived as imperatives or commands.

A definition of a word is not a mere act of will. Above all, a definition cannot be regarded as an isolated and per se complete decision. A definition can make sense only if it is conceived as a link within a chain of definitions. Any definitional statement comprehends a word to be defined (*definiendum*) and a defining formula (*definiens*). The *definiendum* does not relate only to its immediate *definiens*. It relates also to any definition of the words that make up the defining formula. This imports that any definition does not constitute an isolated semantic decision: it springs from a complex decision or deliberation. A definition can be semantically valid only if it is compatible with and complementary to a series of definitions.

In any definition, *definiendum* and *definiens* must be assumed as equivalent in their meaning. The assertion of this equivalence constitutes the very core of any definitional formula. As any equivalence, this equivalence of meaning must be regarded as "transitive" in the sense that if two elements are assumed to be both equivalent

to a third one, they must also be equivalent to each other. A *definiendum* can therefore be defined not only by uttering its corresponding *definiens* but also by uttering the *definiens* of all words contained in the *definiens* itself.

The operation of transitivity of equivalences within a series of definitional statements requires that all the definitional statements must include a specific sign of equivalence which works as a link between their grammatical subject and their predicate. This equivalence-sign has been traditionally expressed by a variant of the verb "to be," usually by "is." According to the most up-to-date semantic conceptions, the use of the verb "to be" in this context has been regarded as inappropriate because it is reminiscent of essentialism. A stipulation has therefore been issued according to which the traditional formula "X (*i.e.* the *definiendum*) is A (*i.e.* the *definiens*)" is to be transformed into "by X, I mean A." Not even this formula can, however, be considered adequate for rendering the specific function of definitional statements. This function can be adequately accounted for only if the alleged formula would explicitly mention the "equivalence of meaning" so as to imply the corresponding "transitive" property. For such a purpose the typical definitional formula should be rendered, "by A, I mean a meaning equivalent to X" or more briefly, "X is linguistically equivalent to A" or even "X is A." Although the last formula does not differ from the traditional one, yet it is to be understood in a quite different way. The "is" here uttered is not meant to recall essentialism. It refers on the contrary to the conventionalist approach, provided that this is correctly understood as implying the transitive property of the equivalences stated in linguistic conventions.

As a whole, the words constituting the ordinary language are to be considered as links within a chain of definitional statements. A word can be considered completely defined when definitions have been formulated not only of its immediate *definiens*, but progressively, of all further *definiens* until the entire series of the words has been exhausted. Considering that the meaning of any word is here regarded as a function of the meanings of some other words, the ordinary language cannot be conceived as including any meanings stylable as "linguistic primitives," that is, as ultimate defining words or *definiens non definienda*." The global series of definitions (in which any word is indirectly defined by all the other words and is, in its turn, a direct or indirect *co-definiens* of any of them) is, as has been pointed out, a series of equivalences.

A series of equivalences must imply a basic unique quality, a quality which must be common to all its terms. It becomes therefore necessary to postulate in the field of language a meaning-quality common to all the words, *viz.*, a basic unity or identity of meaning. The recognition of this basic unity seems to be indispensable in order that the single meanings of a language can be conceived as composing a complete system of equivalences. The recognition of a unitary operation of language is ultimately necessary in order that meanings can both singly and as a whole be really meaningful.

V

The basic unity of language can be thought of in various ways. One of them is to consider it as an area, namely the general "meaning area"—that area in respect to which all single words are to be regarded as parts included in it. The expression "meaning area" is a metaphor. As such it must not be taken to the letter. Yet it can be helpful in order that the mutual relations between the single words may be more clearly understood. To think of an area suggests that it can be divided in various ways and that figures of different sizes and forms may be freely constructed within it. The only limitation encountered in establishing the sizes and the forms of the "figures" within either a spatial area or a "meaning-area" lies in that figures must neither be put upon each other nor allowed to leave empty spaces, and that the totality of them must be equivalent to the global area.

The unity of language can also be thought as "preverbal"—it constitutes what is ineffable, *par excellence*. Any theory of definition must imply the dimension of the preverbal. In essentialist terms the preverbal is given by the universal essences which are supposed to be ideal and eternal. In nominalism the "preverbal" is given by the data perceived through the senses. In a consistently conventionalistic view, the preverbal cannot be identified with any elements or entities already mutually delimited and differentiated. The preverbal datum can only consist in an indefinite and undifferentiated horizon. Any differentiations and delimitations within such a horizon can only take place to the extent that they come to be translated into linguistic terms. *Ex hypothesi*, the "preverbal" datum is indistinct and unutterable. It can neither be perceived nor imagined. It can less than ever be designated by specific meaning. The preverbal can be recalled or hinted at only indirectly. A reference to it is, however, implicit in any statement. What is here called

the preverbal is to be identified with that basic unity of meaning which is to be presupposed in order that the series of meaning-equivalences may be intelligible.

When the verb "to be" is used in definitional statements it must be regarded as expressing equivalences. As it is so used the verb "to be" adumbrates and recalls the basic meaning-unity. In definitional statements this unity is what imposes its cogency on the statements themselves. In definitions the expression "is" may be regarded as a synonym for "must." For example the statement "all mammals are vertebrate" can also be expressed as "all mammals must be vertebrate." This necessity operates only within the assumed convention: it is an intra-conventional necessity. The fact that the link of necessity is to be referred to the relevant convention does not imply that this link is to be regarded as a fictitious or as a weak link. The above reference implies only that the necessity-link is to be conceived as stated not in isolation but within the context of a system of meanings which, considered as a whole, constitutes a complete and consistent linguistic convention.

A complete series of definitional statements constitutes a reasoning process. This process may be articulated through different ways. It is, however, bound by laws of global balance, that is, the requirements that the meanings must be mutually compatible and that together they must offer a complete system. If it is assumed that definitional statements are steps of a specific reasoning process, it becomes possible to recognize that definitional processes are homogeneous to other processes of reasoning.

In a general sense, the procedures of reasoning (in logic, in mathematics, and in the area of non-stringent reasoning), if carried out properly, lead to cogent conclusions. In sensationalist terms this cogency is interpreted as a mere function of the formal correctness of a discourse. This view has already been shown to be inadequate in the foregoing discussion about definitional statements. What has been said there may be extended to reasoning procedures in a general sense. This cogency can only be understood if these procedures are viewed as articulations of a basic unity. This is the unity and identity of meaning, necessarily presupposed in any linguistic utterance. It is not merely a rule of correctness and compatibility, a formal rule to be observed in any use of words or symbols as well as in any formation of clauses or formulae and in any concatenation of statements. It is also and above all the basic rule for meaningfulness. The violations of this rule do not import merely that formally

incorrect statements are issued. Ultimately these violations can nullify the meaningfulness not only of singular words or statements, but of the entire universe of discourse.

A primary requirement of unity underlies the rules of correctness in a formal sense. This requirement imports that any linguistic utterance must remain anchored to the basic unity, the unity which the chains of equivalences between meanings imply and to which all reasoning procedures refer. This unity may be regarded as the primary norm of linguistic usage, that is, the objective law of this usage. In a strict sense it is not only objective but actually identifiable with what used to be called objectivity itself.

VI.

According to the sensationalist view, truth is a function of self-evident statements that are true in a material sense. Formal truth is regarded only as a vehicle by which the veracity of statements that are true in the material sense can be transferred to other statements (though it remains somehow difficult to explain how this transference or extension of the material truth-value may be given any authentically objective ground). The central concern of sensationalism is the area of empirical observation. It must, however, be noted that this area is such that it cannot be strictly scrutinized without the risk of it vanishing altogether.

Ex hypothesi, a merely experiential knowledge must be immune to any intellectual contamination. It must consist in the reception of a sensorial datum. However, a knowledge characterized by such purity seems impossible. A cognitive statement, even if it is most simple and elementary, must require a summary interpretation of the sensorial datum and at least a rudimental correlation of such a datum with other data. What is to be presented as given through an immediate and uninterpreted observation is always the conclusion of a reasoning process, even if this may be so simple and elementary that it may have been easily forgotten or overlooked by the reasoner himself.

In the light of these considerations, descriptive statements cannot be regarded as depositaries of the material truth-value. The concept of material truth, as a truth altogether independent of any conclusions by reasoning processes, seems to be unsustainable. This implies that the very denomination of "is-statements," as applied to descriptive statements, is challengeable. It seems in fact to be linked to the concept of material truth. Apart from its reference to

the above concept, this very denomination seems to be redundant (considering, *inter alia*, that descriptive statements do not necessarily include the verb "to be"). Therefore, the name "descriptive statements" is preferable. The expression "ought-statements" may still be accepted as a synonym for prescriptive statements as the reminder that the verb "ought" is very often used in this kind of statement.

Descriptive statements are far from being the only area in which the values of truth and falsity can find their original and most proper application. Although these statements can properly be referred to either as true or false, it is not possible to consider their truth-value as a mere function of these statements or of their self-evidence. Truth-value may be related to descriptive statements only as far as these statements are regarded as conclusions of valid processes of reasoning.

It may indeed be observed that these processes themselves are always related to some statements which constitute their original premises. It must, however, also be noted that these very statements are in their turn conclusions drawn through other reasoning processes. The processes through which true premises can be secured or proved are therefore inevitably circular. This circularity becomes no more disconcerting if truth is viewed as being primarily a function not of purported self-evident statements but of processes of reasoning in their unitary significance already emphasized. At this point it may be recalled that one of the main tasks of non-stringent reasoning is that of providing and justifying statements which can work as premises for further procedures of reasoning.

The premise that the cogency of reasoning processes has an objective significance entails that any evaluation in terms of truth or falsity must be regarded as a primary function of discursive thought. Any argument purporting to establish that prescriptive statements may be founded on objective grounds must therefore make a primary reference to the objectivity and truth of discursive procedures.

VII.

A further aspect of the basic unity of discursive procedures is still to be examined, an aspect that opens the way to an understanding of the nature of the ought-statements. As already pointed out, the discursive unity is what renders the inferential procedures cogent; this cogency must be regarded as strictly linked with the final

or teleological significance of the basic unity itself.

The inherent function of language is a constructive function. In the actual usage of language new meanings are constructed and compositions of meanings or clauses are established, conveying a sense which is new in itself. Compositions of signs and combinations of statements may lead to results which are not only new but even surprising. Obviously these results cannot be predicted. However, they can by no means be regarded as fortuitous.

This suggests, on the one hand, that a final intention must be presupposed as underlying any constructive power of language, and, on the other hand, that this final intention must be unexpressed and "non-verbal." The fact that this final intention is non-verbal does not entail that it is to be conceived as irrational. Its accomplishment includes, as an integral part, its translation into verbal and reasonable terms. The final intention which appears to underlie all linguistic formulations cannot be considered as different from the basic unity of meanings. It is an inherent aspect of this unity. The basic unity seems to be in turn not only the norm governing any linguistic formulation but also *la raison d'être* or final cause of any such formulations.

At this point, the question arises as to whether or not a teleological connotation may be included in the concept of truth. In ordinary language, words such as "true" and "truth" as applied to a statement do not only mean that a statement is to be regarded as a non-falsity or a non-error. They mean also that the pertinent statement denotes an aspect of reality which not only corresponds to truth in the strict sense, but is also relevant. It is to be noted that a true statement, when taken in the strict sense, means merely a statement that is not false, a statement hinting at some aspects of the reality which are "real" aspects, not fictitious ones; but these aspects are not necessarily central and essential. In this sense, true statements can also be marginal, inessential, quite unimportant or even misleading in respect of a wider cognitive concern. In the ordinary or idiomatic usage of the word "true," a true statement is that referring to aspects of reality which are not only veracious but also important and essential. This extended meaning of the word "truth" is, as already noted, merely idiomatic, inapplicable as such in the field of semantics, logic and epistemology. This idiom is not lacking any significance. It may adumbrate an enrichment of the meaning of truth with a teleological connotation.

An integral part of consciousness and reasonableness consists

in what may be termed the basic theoretical curiosity. This can be identified with the aptitude of any single mind to ask: "Why?" A unitary and simple "why" underlies any theoretical curiosity, a why that can be split into a causal why (how or by what cause) and in a final why (for what reason or what purpose).

As is well known, modern science does not include research on final causes in its scope. This scientific unconcern with final causes does not mean that "finality" itself has no sense whatsoever. It may have a final significance. This derives from the fact that science has a need for circumscribing its field of attention in order that its research may develop with the necessary maximum of precision. Validity of science inquiries is, indeed, a function of the fact that the field of the relevant research has been previously delimited according to a criterion of homogeneity of the knowable contents.

As far as physical knowledge is concerned, the complex and organic development of it has become possible only since knowledge itself has started to operate within a perspective that prescind from all "final" aspects.

However, these "final" aspects are (or should be) taken into consideration (though within appropriate limits) in some specific areas of inquiry, like psychology, sociology and existential phenomenology.

The achievement of valid and veracious knowledge is one of the human purposes. It requires that the inquiries into some phenomena must be developed by totally prescinding from their final significance. This does not preclude, however, that the most complete and exhaustive comprehension of facts and situations—the answer to the integral primary "why"—is only conceivable as is only conceivable as a comprehension inclusive of teleological aspects. The tendency to consider reality or the world in teleological terms seems to be connatural with reason. The operation of reason itself seems to presuppose that the universe must have its final reason of being, even if this very reason appears unknowable and indefinite. This assumption of a unique final cause is indispensable for the operation of reason. However, as to this unique final cause, it is to be noted that neither any specific knowledge about it nor any idea whatsoever about its theoretical approachability has yet been provided.

The assumed teleological vocation of human reason does not authorize, at the present state of human culture, any formulation of specific teleologies. These particular teleologies, as far as they have been provided, remain ungrounded and archaic. Specific final

causes as instrumental in the pursuit of knowledge, may be argued for only in limited areas of experience; those areas concerned with the human world. These relevant conclusions are seldom, if ever, validated by adequate proofs. In a general sense, specific final causes present themselves as unknown terms which seem destined to remain such.

This notwithstanding, any admission of an ultimate primacy of change or fortuitousness in the universal order seems not only disconcerting but quite destructive. An actual belief in such a primacy seems to deprive reasonableness itself of any sense. The fact that men are able to think in terms of projects and purposes seems to presuppose the notion of general and primary finality. The apprehension of the final cause of particular events, as well as of the whole would fully satisfy the aspiration towards an integral and exhaustive truth. Though this kind of truth cannot be achieved, it must be borne in mind as a final ideal of any awareness; it denotes a truth that is also value, or a value which is also truth (something that recalls Plato's idea of *Agathón*).

In current human experience, the truth, as both a theoretical ground and a unitary end, remains a pre-verbal postulate never formulated but always implied, something that can be never specifically stated, for it must always be indirectly stated in any utterance related to anything known or expressed. The present discussion about objectivity and truth as recognizable in discursive procedures has been laid down mainly with an instrumental purpose. It has been developed in order that the concept of the end and a teleological perspective might be presented; a concept and a perspective assumed here as helpful for a constructive approach to ought-statements as well as to the question of whether and how they can be provided with any objective ground.

VIII.

According to the view which has developed in accordance with the sensationalist approach, the practical universe of discourse does not grant any room to "practical" statements different from the ought-statements. No recognition is thus given to teleological statements, that is, those statements whose task is to point out means-ends relations. Even when, if ever, such a statement is taken into account, it is still assumed as ultimately translatable into ought-statements.

The ought-statements are usually perceived as arranged in hi-

erarchical systems. Hierarchy seems to be connatural with them. This kind of hierarchical system may present itself as a deductive system: its higher ought-statements, or norms, operate as premises for the lower ones. Such a system does not include either descriptive statements or any practical statements different from ought-statements (such as teleological statements).

The above pattern of the ought-system must be regarded as different from the so called system *à la* Kelsen. First of all, the Kelsenian dynamic system is concerned not so much with norms but with acts creating norms. The relevant hierarchy rests in fact not on the extension or scope of the norms but on the authoritative status of the acts enacting the norms. Besides, a declared purpose of Kelsen's doctrine is that of explaining the legal universe of discourse, not in terms of an ought-nexus placed inside any legal statement, but in terms of an inter-statement nexus establishing a correlation between an hypothesized violation of a norm on the one hand and the enforcement of a corresponding sanction on the other hand.

The view, according to which the ought-statements are arranged in hierarchical systems, rests on the assumption that a hierarchical system of such statements is possible in a semantic sense. Though this presupposition has always been taken for granted, it could be liable to challenge. In the following discussion the idea of a "pure" deontic system will be called into question.

In a "pure" deontic system the relation between an inferior norm and a superior norm must be such that the former is included in the latter in the same way in which a particular statement may be regarded as included in a general statement. In this system, one or more norms are given at the highest hierarchical level, from which all the other norms are derived by a process of stringent inference. Such ultimate premises consist of one or more patterns of conduct that can be analytically developed by applying the features of the assumed "genus" to all the "species" comprehended in it. However, this kind of articulation, the only possible one for a pure deontic system, imports a semantic difficulty. Such a difficulty lies in the fact that the major premises, as any statements, can be meaningful only if the words composing them are regarded as definable and if the global sense of any statement is intelligible with reference to a wider context. The words composing such premises would be definable only if each one of them could be rendered by other words which in turn should be definable within a consistent and complete linguistic convention. These conditions do not seem

to be met within a deontic system. In its formulation this system does not offer either a set of definitions of the words employed by it, or a frame of reference for a univocal understanding of the words themselves.

When this is borne in mind, it appears that the only way in which correct and univocal inferences can be drawn from the relevant premises is by sticking to the very letter of the premises themselves. If this course is followed, then the inferred evaluations of conduct must appear quite rigid and formalistic. This rigidity and poverty of content is most apparent when the deontic system is governed by a unique highest premise, by a unique pattern of behavior to be analytically developed. In such a case the system has a very limited, if any, articulation. If the governing premises are more than one, then the system, although seemingly richer in its articulation, is afflicted by an inevitable pluralism of the principles assumed to be supreme, for they are *ex hypothesi* uncoordinated elements. Nor is any unitary frame of meaning available to coordinate them. Whatever the contents of the relevant deontic system may be, the above rigid formalism confers on it either a whimsical ambiguity or a dull pedantry and lack of human sensitivity.

The pattern of deontic system here illustrated is a consistent and rigorous version of the conceptual pattern which has been suggested by modern practical thought as explicative of the semantic and logical features of the existing bodies of social norms, mainly norms of positive morality. When considered as an explanatory pattern of human and social realities the pure deontic system appears to lack any concrete significance. It does not derive from a genuine interpretation of practical experience but it springs from a utopian attempt at rationalizing the irrational, that is, of assuming statements endowed with emotive significance (evocative of feelings or emotional experiences) are premises, or steps, of logical inferences.

It must be noted that the "pure" ought-statements always include words which are endowed with a special sense, a sense evocative of emotive contents. As examples, words like "honor," "country" and "neighbor" can here be mentioned. Words of this kind inevitably occur in any pure ought-statements. They can in no way be made intelligible by definitional procedures. To use such procedures in this field, by asking for example what is really meant by "human brotherhood," "family honor" or "love for one's country" would be considered not only irrational but even scandalizing. This use would appear as a manifestation of hard-heartedness or even of

lack of moral sense. The implied meanings become here intelligible only by being referred to the corresponding emotions. The words in question have not so much a meaning but a significance. The statements containing such words cannot be placed either at the top or in the middle of any inferential chain. The link between different deontic statements cannot be regarded as one of logical concatenation but rather as one of emotive association.

The play of emotive recollection and evocation may permit a wide articulation between ought-statements and may give a deep significance to a body of them. When this has been recognized it appears that the word "system" becomes quite inappropriate when used in relation to the ought-statements. It seems more proper to speak of "bodies" (not systems) of ought-statements, at least as far as they are considered as "pure" ought-statements, that is, not translatable into any different semantic form. A universe of discourse articulated merely through ought-statements can be conceived only within an emotive perspective.

IX.

The practical universe of discourse includes more than pure ought-statements linked by emotive associations. It also comprehends statements which are intelligible within a rational universe of discourse. These statements may happen to be expressed in the ought-form but this form is always assumed as translatable into a different form, so as to permit the organization of the statements themselves within a system. A system of practical statements is possible only if its basic and ultimate principles can be expressed in the form of teleological statements.

The difference between ought-statements and teleological statements has been outlined to a certain extent. It needs, however, a specific semantic clarification. The primary question is that of establishing the difference between expressions like "ought" and "is an end." This difference becomes apparent if a set of paramount ought-statements and ends are assumed and compared. The expression "ought" has inevitably an authoritative feature. An "ought" may be traced back only to a higher "ought." Such a tracing back is not conceivable with the primary or paramount "oughts." This kind of "ought" must therefore remain unjustified—the ultimate reason why one "ought to do something" is because "he ought to do it." This is what in the previous discussion was styled as semantic rigidity. This rigidity is reflected both on the words composing an

ought-statement and on the global sense of this statement itself, a sense that no other statement can complete or clarify.

Statements indicating ends present different features. The tendency to a teleological approach toward the world is connatural with reason. The primary "why" underlying any inquiry developed by reason is not merely a causal "why" but also a final "why." A basic presupposition of reason is that the question about the unitary and ultimate end of the world (regardless whether or not it is answerable) must make sense and must be recognized as inevitable. In this perspective the ends which men may propose to achieve (either as individuals or as members of groups) must be assumed as compatible with the universal end, even if this is regarded as actually unknown and ineffable.

Singular individuals as well as communities are constantly led to a rational effort in order that any of their particular ends may be put into relation with other ends and that the relation may ultimately be enlarged so as to constitute a somehow complete system. This effort towards a general teleological compatibility may be regarded as a constructive effort; constructive in the sense in which constructing is a vital requirement of reason.

An objection could be raised here. It may be observed that thinking in terms of ends is still ultimately a way of asserting an "ought." To say that something is an end is just a different way of saying "something ought to be accomplished." Even if this would be granted, the resulting "ought" should be different from the deontic "ought" already examined. The "ought" into which a teleological statement can be translated is not an atomistic and hermetic ought. A quasi-teleological ought would never stand by itself, but, by referring to a primary principle to be regarded as unique and comparatively ineffable, that is, expressible only through a set of ends which are assumed as mutually complementary and forming an open system, always liable to clarification and implementation. The teleological approach is inherently monistic: teleology expresses the monistic requirement in the field of practice.

Teleological perspective does not prevent the use of "ought-statements" in practical reasoning. In this reasoning ought-statements are regarded as segments of wider contexts. Teleological perspective is the only one which permits the *prima facie* pluralism of the ought-statements comprehended in the same body to break and to suggest a unitary understanding of them.

An apparent confirmation of this assumption may be found

through a survey of "bodies" of positive morality insofar as these may be understood as resting not on emotive but on reasoned justifications. A further confirmation, which will be specifically illustrated below, may be found by a scrutiny and analysis of the ought-statements contained in positive law systems.

X.

The importance of a teleological perspective is most apparent in relation to the norms of positive law. Any positive law system is based on some authoritative materials, be they statutory norms or judicial precedents. These materials become fully intelligible only if the implied ends have been quite understood. This does not imply that the postulates of jurisprudential movements such as the *Interessenjurisprudenz* or the *Freirecht* must be viewed as necessary implications of a teleological perspective. Far from it, such a perspective should be viewed as not restricted to any specific movement of thought. It is a perspective which can be considered implicit in any constructive legal approach. It is flexible enough to be compatible with, and (even unconsciously) implicit in, quite different trends of jurisprudential thought.

A teleological trait is recognizable even in the *Begriffsjurisprudenz*. The fact that this movement was concerned with conceptual formations much more than with social experience does not mean that its approach to legal norms was not guided by any end or teleological idea. The purpose of *Begriffsjurisprudenz* was in fact establishing the so-called "certainty of law" and emphasizing the authoritative feature of law itself. Of course the teleological trend is not only implied but explicitly recognized when more flexible and articulated views about interpretation and enforcement of law are followed.

An explicit recognition of the teleological trend in interpretation and enforcement of law becomes requisite in order that flexibility of norms in relation to social change may find an appropriate theoretical explanation. Only within a teleological perspective can a flexible relation between given precedents and new judicial decisions be reasonably established. On the other hand, general constitutional principles, expressed most often in a teleological form, and legal prescriptions, expressed *ex hypothesi* by ought-statements, can appear mutually compatible only within the above framework.

A teleological approach is also essential for the understanding

of legal rights. A legal right attributed to a given subject appears *prima facie* translatable into a number of obligations towards the subject, imposed either on all members of the community (*iura erga omnes*) or on some of them (*iura erga aliquos*). This translation, however, is far from being adequate, for something important seems to have been missed by it. The utterance of a legal right is actually something more than an indirect way of mentioning one or more duties. The legal statement attributing a right must not be conceived as an indirect way of mentioning some duties. Its primary concern lies instead in stating that a certain interest of a certain subject is considered endowed with a final value within the legal order, and is therefore assumed as a teleological criterion for the interpretation and the explanation of other legal norms, stipulating commands or prohibitions on members of the relevant community.

XI.

A topic in which the teleological approach may appear most enlightening is the relation between a positive legal system and the theories of justice. Ideals of justice are to be regarded both as a ground for extra-legal norms and as a criterion of interpretation and understanding of positive legal norms themselves. Two questions can be asked about justice and its relation to positive law. One question is whether or not justice may be based on any objective foundation. The other question is whether and how considerations of justice may be taken into account by those who interpret and enforce law. These topics would require an extensive discussion. In the present article only some very general points will be made.

Justice may be viewed as related to positive morality though their specific concerns seem to need a conceptual distinction. As to morality, positive law may either subscribe to the contents of its norms (which in such a case become enforceable as legal norms) or support, to a certain extent, moral precepts as such. In the latter case, the problem arises whether or not it is regarded as "just" that law may impose some specific moral values on those who do not accept them on the ground of different moral views. It seems that this question could not be asked (let alone be answered) unless a distinction had been established between general morals and justice, a distinction which should be concerned not with contents but with approaches.

Positive morals expresses itself through norms, that is, through indications of patterns of conduct. A theory of justice may be re-

garded as a sector of teleological outlook. Its primary concern rests in a comparison between individual subjects so far as these are conceived as "co-final" in the sense that none of them may be regarded as an instrument for the others.

This "co-finality" may appear an objective principle, a principle which is not merely formal but is contential as well. Though this principle may seem clear and univocal in its general sense, it appears vague and indefinite when applied to the infinite variations of particular situations. For practical operation, this principle requires translation into normative statements. A guideline for this translation may be offered by the traditional rules of equal or proportioned treatment with reference to individual merits or needs. Equality and proportionality, while theoretically significant only by their reference to the "co-finality" principle, cannot become practically operative without having been adjusted to different historical and social conditions.

In this perspective, justice-value does not appear as specifically determined; it does not establish immediately and univocally what one ought or ought not to do in a given specific situation. In spite of this indeterminacy, justice (in the sense here attributed to it) cannot be regarded either as an empty or as a (per se) relative value. The principle according to which individuals are co-final is always operative in any legal or moral settlement of human relations so far as this settlement is constructed in terms of pure reasonableness without influence of emotions or irrational motivations. Particularly, "co-finality" of individuals can be often viewed as implicit in attribution of individual rights and in their relations. It certainly relates to rights of personal dignity and liberties granted by democratic constitutions. It relates to many particular provisions in various fields of positive law.

The above remarks could be further elaborated but the relevant discussion would go beyond the scope of this article. The specific purpose of this article was to show that a teleological perspective is to be viewed as underlying all the ought-formulations intelligible in rational terms, both in the field of morals and of positive law. In other words the assumption of this perspective may be regarded as the most suitable way (if not the only one) in which practical and legal problems can be examined and understood within a framework of reasonableness.