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The American and Scandinavian Legal Realists on the Nature of Norms

Introduction

There is a large literature on American legal realism and Scandinavian legal realism, individually, or (less often) together.[2] Much has been written on the way the two schools of thought overlap, and on the ways in which they diverge. The present article focuses on one distinct theme that involves both convergences and divergences between the two schools: the problem(s) of the nature of legal norms and the grounding of legal truth.

The problem of legal normativity involves the hybrid nature of legal claims: that they use the moral language of "ought," "right," and "duty," but they purport not to be purely moral claims, but rather something else entirely. Is there a separate type of reality which consists of norms? And, if so, is there yet another world which consists only of legal norms?

The problem of legal truth is the surprising difficulty of determining what it is that makes legal propositions true or false. When we make a claim about what the law requires or what it permits, what facts in the world make such claims true or false, and are there significant periods (e.g., prior to the announcement of a judicial decision on the subject) when legal propositions are neither truth nor false?

Part I sets out the problem of normativity and legal truth. I consider the views of the American legal realists in Part II and the Scandinavian legal realists in Part III, before returning to recurring issues in the area in Part IV, and then concluding.

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[2] E.g. Hart, 1959; Fisher, Horwitz & Reed, 1993; Schlegel, 1995; Martin, 1997; Alexander, 2002; Bjarup, 2005; Leiter, 2007.

I. The Problem(s)

I will begin with the issues relating to legal truth. When we say that "X has a legal right to do N" or that "the contract between A and B is enforceable," what is it that makes statements of that kind true or false? This seems to be, in a way, the easiest of questions. After all, it is the most basic aspect of legal practice, which all lawyers have been trained to understand fluently, and which many non-lawyers believe that they adequately understand. For even non-specialists think they know some basic things about the law, including, at the least, that propositions about what the law requires can be true or false, and the sort of things that make those propositions true or false.

One can push the point, and say, that if there is no straightforward answer to the question of legal truth, then a great deal of the fine words we offer regarding "the rule of law" and of our governments being "ones of laws and not of men," may be nonsensical.

The answer to the problem of legal truth is obvious, we are told by one and all: what makes a legal proposition true are authoritative legal source materials. We have the legal rights and legal duties we do because of statutes that have been lawfully passed, decisions handed down by judges, and written provisions in constitutional documents. However, those who are legally trained, or who have had close dealings with lawyers or litigation know that it is rarely that simple.

Statutes (and other legal norms) are usually written in general language or in legal jargon, which may not apply easily to the facts that are presented, especially when the passage of time creates circumstances, technologies and problems that the statutes' drafters could never have foreseen. Additionally, even when the legal materials seem to apply in straight-forward ways, we might have doubts about those applications, because they seem contrary to the lawmakers' purposes, or the applications may lead to results that seem absurd or unjust. Finally, there may be multiple legal texts, all of which seem to apply, but the different texts appear to be inconsistent in the outcomes they indicate.

Thus, while most people may think that the truth of legal propositions is a straight-forward matter, on reflection, we also aware of two commonplace truths about our legal system(s): first, that a large part of the need for lawyers is in the interpretation of complex and seemingly inconsistent legal materials; and second, that for many harder legal questions, competent lawyers can disagree about what the law requires.

A third point: even where the answer to a legal question appears to be easy, and all competent legal commentators agree on what the answer is, there is still a chance that the legal officials (say, the judges on the highest court) will put forward a contrary legal result as part of deciding some dispute. Such an outcome might be, in a sense, a "mistake," but with our legal system, "mistakes" promulgated by authoritative actors are often treated (if sometimes not initially, then in due course, if not corrected or overruled) as valid law.

The point – and this has been noted by many legal commentators[3] – is that the ontology of law is doubly strange: it seems to use conventional normative language, about what "should" or "should not" be done, but simultaneously holds itself separate from conventional normative discourse – thus, one can say that "according to law, I ought to do X" and, at the same time, "morally [or prudentially or all things considered], I ought *not* to do X." All of modern legal positivism (especially the works of Hans Kelsen, H.L.A. Hart, and Joseph Raz) can be seen as attempts to create a way of talking about the normative discourse of law without, on one hand, reducing it to purely empirical terms, but also, on the other hand, without treating law (as some natural law theories appear to do) as merely a subset of morality.[4]

In the discussions that follow, it should be noted that while there were numerous theorists described (and self-described) as part of the American legal realist movement, there are few positions that can be ascribed to all of them, so the following characterization of their views is a generalization that will fit many, but by no means all of them.[5] For the Scandinavian legal realists, I assume that there is a similar problem with generalizations, though the English-speaking world is only broadly aware of four theorists connected with that school – Axel Hägerström (actually more the inspiration for the movement than part of it), Alf Ross, Karl Olivecrona, and A. V. Lundstedt – so we may well not be aware of the full variety of that school.

[3] See, e.g., Kelsen, 1992, 8-14; Raz, 1990, 170-77.

[4] Raz, 1996, 16 & n.16.

[5] For the range of views among the American legal realists, see, *e.g.*, Llewellyn, 1931.

II. The American Legal Realist Response

The American legal realists were a diverse group of theorists active during the 1920s, 1930s, and 1940s, whose work challenged ideas about legal reasoning and adjudication dominant in judicial and legal academic writing at the time. Their work has remained strongly influential in American legal scholarship and legal education, though the nature and value of their legacy remains a matter of contention.

The American legal realists were strongly influenced by the work of Oliver Wendell Holmes, Jr (1841–1935), and the sociological jurisprudence that Roscoe Pound (1870–1964) wrote early in his career (later Pound was to become a critic of the realists), as well as theorists from the European "Free Law" movement.[6] Prominent figures in the American legal realist movement included Karl N Llewellyn (1893–1962) and Jerome Frank (1889–1957).

The American realists asserted that a proper understanding of judicial decision-making would show that it was fact-centered, and that judges' decisions were often based (consciously or unconsciously) on personal or political biases and constructed from hunches. They also argued that public policy and social sciences should play a larger role in judicial decisions. The realists claimed that judicial decisions were strongly underdetermined by legal rules, concepts and precedent (that is, that judges in many or most cases could, with equal warrant, have come out more than one way). Feeding into this central focus on adjudication was a critique of legal reasoning: a claim that beneath a veneer of scientific and deductive reasoning, legal rules and concepts were in fact often indeterminate and rarely as neutral as they were presented as being.

The form of legal analysis dominant at the time the realists were writing was criticized as "formalistic." "Formalism" (also sometimes called "conceptualism" and "mechanical jurisprudence") was an extreme view about the autonomy of legal reasoning, and entailed judicial analysis that moved mechanically or automatically from category or concept to conclusion, without consideration of policy, morality, or practice. The argument against formalism was that the rushed move from category to legal conclusion was both unwarranted and unwise.

[6] See Herget & Wallace, 1987

The American legal realists grounded their approach on an instrumental view of the law: that it was a tool meant to serve social purposes, and to whatever extent it did not serve those purposes, or did not serve them well, the law should be changed. This attitude was also reflected both in the law reform work that many American realists did for President Franklin D. Roosevelt's "New Deal" programs, and in Karl Llewellyn's later efforts, as the primary author of and moving force behind Article 2 of the American Uniform Commercial Code (UCC), a code regulating the sale of goods.[7]

American legal realism can be seen as the forerunner of more recent jurisprudential schools of thought – e.g., law and economics, critical legal studies, critical race theory and feminist legal theory. By undermining confidence in the "science" or autonomy of law and the ability to deduce unique correct answers from legal principles (as well as questioning the "neutrality" of those legal principles), the American realists created a need for a new justification of legal rules and judicial actions. Also, they offered a set of arguments (*e.g.* arguments about the indeterminacy of law and challenges to a "public"/"private" distinction in law) that later critical approaches would use to support claims of pervasive bias (against the poor, against women and against minorities) in the legal system.

Regarding normativity and legal truth, the American legal realists, led by the proto-realist, Oliver Wendell Holmes, Jr., equated the existence of a legal norm with a prediction of enforcement by a judge (or some other legal official). Holmes once famously characterized this approach as "the bad man's view of law."[8]

Under this approach, to say that one had a legal right would be to say that under the appropriate circumstances a judge would rule in one's favor in a dispute. (Holmes went further in this sort of reduction, arguing that a contractual right meant nothing other than that one had a right to *either* performance or the payment of a certain level of damages.[9])

Like the Scandinavian legal realists (discussed below), there was a demystifying element to much of the work within the American legal real-

[7] UCC Article 2 reflects a realist approach, in that its legal standards purport to reflect the customs and expectations of business people, rather than trying to impose legal technicalities upon them.

[8] Holmes, 1897, 460–461.

[9] *Ibid*., 462; Holmes 1963, 236.

ist tradition.[10] While with Holmes on one hand, and the Scandinavian realists on the other, the object was to remove the moralistic language that (they argued) put nonsense where reality should be, for many of the American realists the need to demystify came from a suspicion that the rhetoric of legal and (especially) judicial reasoning hid political biases.

The American realist Karl Llewellyn famously wrote of the distinction between "real rules" and "paper rules," emphasizing how doctrinal rules are often (though not always) both poor summaries of past decisions, and poor predictors of future decisions. "Real rules" were rules that actually affected the decisions judges reached, and could be used both to summarize past decisions and accurately to predict future decisions. "Paper rules," by contrast, were merely decorative: justifications or labels attached after the fact for decisions that were in fact reached on other grounds.[11]

Jerome Frank focused on a different source of uncertainty in predicting court decisions: that both jury and judicial fact-finding are frequently the product of bias, error, or simple perjury. He located the source of much of the unpredictability or indeterminacy of law in trial court fact-finding rather than (as many of his fellow realists had, as well as many later critical theorists) in the understanding and application of the legal standard itself.[12]

To varying degrees, to be sure, but the major American legal realists – from Holmes to Llewellyn to Frank – all focused on the actual decisions of the judges, dismissing much discussion of purported legal rules and doctrine as language, at times nonsensical, that had the effect (and perhaps the intention as well) of misleading people about the law.

[10] The best example is probably Cohen, 1935. Demystification was also an important objective for the great English commentator on law and politics, Jeremy Bentham. See Hart, 1982.

[11] Llewellyn 1930, 434.

[12] *E.g.*, Frank, 1949.

III. The Scandinavian Legal Realists

The Scandinavian legal realists wrote around the same time as the American legal realists, but they had significantly less long-term influence, and they are now only rarely read (even in their home countries). The movement's intellectual leader was the philosopher, Axel Hägerström (1868–1939); and its most prominent theorists were Alf Ross (1899–1979), Karl Olivecrona (1897–1980), and A.V. Lundstedt (1882–1955).[13] Scandinavian legal realism was based on a skeptical approach to metaphysical claims in general, and metaphysical language in law in particular.

Much of the work by the Scandinavian legal realists attempts to translate references to "rights", "duties", "property", etc., to more empirical terms, rejecting any explanation that seemed to posit unworldly entities. Instead, these theorists sometimes offered psychological and anthropological explanations to fill the vacuum (*e.g.*, that these terms referred to subjective feelings of empowerment or constraint, or were connected to ancient beliefs in magic). Other times, the normative terms were reduced to predictions of, or authorizations for, institutional sanctions.

The Scandinavian legal realists, like their American counterparts, were uncomfortable with mere assertions of the reality of legal rights and duties. They looked for a more "scientific" approach to law and legal theory, one analogous to (and sometimes influenced by) the ideas of logical positivism. That is, the Scandinavian legal realists wanted to focus on what was factual, verifiable, "real."

The English political and moral theorist Jeremy Bentham had once referred to talk of "moral rights" or "natural rights" (what many would now call "human rights") as "nonsense … nonsense on stilts."[14] His primary complaint was that a claim of a moral right has nothing in the real world to which it corresponds. Interestingly, Bentham did not have a similar complaint about legal rights, as he believed that there were things in the world to which one could point in making a claim of legal right: authoritative legal texts, and the possibility of enforcement actions being taken by legal officials. In this sense, Bentham was more like the American legal realists than the Scandinavian legal realists, for the latter had doubts about the real-world correspondents for legal rights as well.

[13] Most of the focus of this paper will be on Ross and Olivecrona. For more on Hägerström and Lundstedt, see Hägerström, 1953; Lundstedt, 1956; Olivecrona, 1959, Passmore, 1961.

[14] Bentham 1987, 53.

Axel Hägerström, the philosophical inspiration for the Scandinavian realists, argued that legal rights and duties were thought of in magical terms in ancient Roman times, as one was said to fight harder in battle when one had "right" on one's side. Having a *legal* right was said to make one feel that one had power over the correlative duty-holder, and the duty-holder felt that he or she had a burden, or felt beholden to or tied to the right-holder.[15]

Similarly, for Karl Olivecrona, legal rights raise the challenge of, on one hand, implying a metaphysics that the Scandinavian legal realists deny, but, on the other hand, being seemingly indispensable to any discussion about law.[16]

While Olivecrona asserted a vague anti-metaphysical position (associated with Hägerström[17]), and without affirming logical positivism as such, the endpoint of his approach seems similar to that of logical positivism: skepticism of any object or claim that cannot be translated into an empirical observation or prediction.

At the same time, Olivecrona rejected the American legal realists' effort to translate legal rights into summaries of past official actions and predictions of future official action.[18] The American legal realists attempted to equate legal rights with certain facts in the world – a project with which Olivecrona sympathizes – but their conclusions were insufficient. Contrary to the American realists, a legal right does not equate with the state's having enforced the right-holder's interest, or a guarantee that it would do so if and when a conflict arises.[19]

Olivecrona compared legal rights with money: that legal rights can operate as central elements in our (legal) life, even without having an object, just as "dollar" and "pound (sterling)" operate as central to our (economic) life without having any object they describe (at least since the end of the gold standard).[20] And, like H.L.A. Hart in his earliest works,[21] Olivecrona thought that insight on the nature of legal rights

[15] See Hägerström, 1953; Passmore, 1961; Olivecrona, 1971, 175–176.

[16] See Olivecrona, 1962, 166–69; see also Olivecrona, 1971, 158–9, 165–7, 184.

[17] A good summary of the connections between Olivecrona and Hägerström is given by Bjarup, 2005.

[18] Olivecrona, 1962, 156–60.

[19] *Ibid.*, 156–60, 185; see also Olivecrona, 1971, 171–4.

[20] Olivecrona, 1962, 170–3.

[21] Hart, 1948–49.

could be found by reference to J. L. Austin's idea of "performative sentences".[22]

Olivecrona's theoretical end-point regarding legal rights was emphasizing their psychological effects on other participants in the legal system. Where there is sufficient regularity in legal practice and social expectations, the declaration that someone has a legal right (or legal duty) brings forth in hearers ideas of powers, permissions, and prohibitions, rights are "an instrument of social control and social intercourse",[23] even though there is no objective entity that corresponds to "legal right" (or "legal duty").[24] Rights serve as "signs" telling us what to do and what not to do (*e.g.*, that we can do what we like with the objects we "own", but should not interfere with objects that "belong" to another); legislation establishes and regularizes the standards by which rights are created and modified; and court decisions, backed up by official means of enforcement, serve both to effect and reinforce claims and expectations connected with legal "rights" and "duties".[25]

Alf Ross's approach to jurisprudence was simultaneously simple and radical: he wanted to rid from our thinking about law all the mystifying references to abstract concepts and metaphysical entities:

> The leading idea of this work is to carry, in the field of law, the empirical principles to their ultimate conclusions. From this idea springs the methodological demand that the study of law must follow the traditional patterns of observation and verification which animate all modern empirical science; and the verification demand that the fundamental legal notions must be interpreted as conceptions of social reality, the behavior of man in society, and as nothing else.[26]

[22] Olivecrona, 1962, 177–81; on "performatives", see Austin 1956, 235.

[23] Olivecrona, 1962, 191.

[24] *Ibid.*, 177–89; see also Olivecrona, 1971, 183–216.

[25] Olivecrona divides the functions of legal rights into their "directive function" ("signs"), their informative function (how, *e.g.*, being informed that X owns property A gives us likely information about the relationship of X and A, as well as what legal procedures will be required should one wish to purchase A, or rent space in A); and their role in the administration of justice (how judicial declarations regarding rights necessarily take precedence over any pre-existing "truth" regarding those rights). Olivecrona, 1971, 186–216.

[26] Ross, 1959, ix; see also Ross, 1989, 10 ("The way to conquer dualism and its unfortunate consequences is … to interpret the ideas of a superempirical 'validity' as rationalisations of certain emotional experiences and thus include them in the world of facts.").

This is the power – and the mystery – of Scandinavian legal realism, its efforts to translate legal concepts into the stuff of verifiable social sciences.[27] For Ross, concepts like "right", "validity" and "obligation" have to be translated into observable behavior (including perceptions of bindingness, inclinations for behavior or likelihood of behavior).[28] Consider the following example: "That A is 'bound' to perform a certain action F, then only means that the opposite behavior, non-F, is one of the conditions determining the expected occurrence of a reaction of compulsion against A."[29]

For Ross, references to legal rights and duties did not correspond to anything real in the world, but he was willing to argue that the terms did play a role in legal discourse (and not just one of mystification). He thought "legal right" and "property" and similar legal terms played a role in legal discourse, even if they did not name anything that actually exists. Such legal terms, Ross argued, work as a kind of shorthand. The legal term connects a wide range of factual predicates to a long list of possible legal consequences: thus, one can obtain property through discovery, invention, gift, bequest, etc., and the resulting "ownership" gives one the right to exclude, the right to sell, a right to give as a gift, etc.

It is important to note that though Ross was critical of the metaphysical implications of much talk of rights, he dissented from the views of other Scandinavian legal realists who would excise the term from legal discourse.[30] He thought that concepts like "right" (or "ownership") simply were useful short-hands, "tools of presentation" for rephrasing the legal

[27] H.L.A. Hart's description of Axel Hägerström's work was meant also as an overview of all of Scandinavian legal realism:

> [It] is a sustained effort to show that notions commonly accepted as essential parts of the structure of law such as rights, duties, transfers of rights, and validity, are in part composed of superstitious beliefs, "myths", "fictions", "magic" or rank confusion.

Hart, 1983, 161.

[28] See, e.g., Ross, 1959, 17–8 (offering an analysis of "valid law" that is meant "to raise doubts as to the necessity of metaphysical explanations of the concept of law").

[29] Ross, 1989, 176. One should note the similarity of Ross's analysis of rules (here discussing not legal rules, but the rules of chess): "The rules of chess have no reality and do not exist apart from the experience of the players, that is, their ideas of certain patterns of behaviour and, associated therewith, the emotional experience of the compulsion to obey." Ross, 1959, 16. (Ross makes it clear that he means a similar analysis to apply to legal rules. *Ibid*., 17–8.)

[30] Ross, 1957, 817–25 & n. 4; Ross, 1959, 186–8.

consequences of a series of loosely related factual circumstances.[31] A "legal right" is a convergence point: a variety of different factual predicates (all the ways that one can come to 'own' property or have a contract-based 'right') will lead to identical, or highly similar, remedial or punitive consequences (e.g., the ability to recover money damages in court from those who act in an unauthorized way regarding the property or the contract).[32] "Sentences in which [the word 'right'] occurs can be rewritten without making use of the term, yet indicating the connection in the directives of the law between conditioning facts and conditioned consequences."[33]

Still, Ross was concerned that we not fall into the trap of believing that "rights" or "claims" represent some entity, or indeed a magical sort of force:

> We … express ourselves as though something had come into being between the conditioning fact (juristic fact) and the conditioned legal consequence, namely, a claim, a right, which like an intervening vehicle or causal connecting link promotes an effect or provides the basis for a legal consequence. Nor, really, can we wholly deny that this terminology is associated for us with more or less indefinite ideas that a right is a power of an incorporeal nature, a kind of inner, invisible dominion over the object of the right, a power manifested in, but nevertheless different from, the exercise of force (judgment and execution) by which the factual and apparent use and enjoyment of the right is effectuated.[34]

The temptation to this sort of conclusion is encouraged by the "grammar" of rights statements: "The use of the concept of rights occurs in statements which do not seem to give an account of rules of law but to

[31] See Ross, 1957, 817–25 & n. 4, Ross, 1959, 170–5.

[32] Ross, 1959, 174.

[33] *Ibid*., 172–3.

[34] Ross, 1957, 818. For a similar analysis, see Hägerström, 1953, 1–6; Olivecrona, 1971, 183–5. Hägerström writes:

> It seems, then, that we mean, both by rights of property and rightful claims, actual forces, which exist quite apart from our natural powers; forces which belong to another world than that of nature, and which legislation or other forms of law-giving merely liberate. The authority of the state merely lends its help to carry these forces, so far as may be, over into reality. … We feel that here there are mysterious forces in the background from which we can derive support. Modern jurisprudence … seeks to discover facts corresponding to these supposed mysterious forces, and it lands in hopeless difficulties because there are no such facts.

Hägerström, 1953, 5–6.

be descriptions of pure facts."[35] Instead, Ross would have us remember that the statements are at most "factual, within the context of a particular set of legal rules."[36]

Ross does not claim that the people who first used such terms necessarily thought that they in fact represented strange entities or forces; Ross thinks it better (perhaps, in Donald Davidson's terminology, "more charitable"[37]) to think of concepts like 'rights' and 'ownership' as an intuitive, 'pre-scientific' simplification and rationalization.[38]

IV. Normativity and Reduction

Thus, one sees how both the American legal realists and the Scandinavian legal realists offer distinct responses to the question of the grounding of legal facts. In each case, they refuse to take the law at its face value. The discussions of "legal rights" and "legal duties" imply that there is something in the world that makes claims about such rights and duties true or false. The American legal realists grudgingly state that there is something in the world that makes the statements true or false, but that it is not what most of us think: it is the eventual decision of a judge or another legal official. This is a clear deviation of the "surface grammar" or apparent sense of legal propositions, if only in that the judge rendering the decision does not treat himself or herself as creating a new legal truth, but as reflecting an existing legal truth.

Some of the Scandinavian legal realists go further, and deny any sense in the normative references in the law, beyond a general correlation between such references and the subjective psychological feelings of strength or burden in the individuals who perceive themselves has "having" these legal rights and obligations.

[35] Ross, 1959, 173. The later work of Ludwig Wittgenstein also emphasized how sometimes grammar can mislead us. See, e.g., Hacker, 1996, 109 (summarizing Wittgenstein's analysis about the grammatical similarity but real differences between first-person avowals of pain and normal descriptive sentences, 'I have a pain' vs. 'I have a pin').

[36] Ross, 1959, 15–8, 173–5. This aspect of Ross's analysis seems similar to that of his teacher Kelsen (*ibid.*, x). See, e.g., Kelsen, 1992, 32–35. There are a number of other similarities between Ross's analysis and that of Kelsen – though many significant differences as well. One such convergence is in the view of legal rules as primarily directives to judges authorizing the imposition of sanctions. Compare, Ross, 1968, 90–2, with Kelsen, 1967, 203.

[37] See, e.g., Davidson, 1984, 136–7, 152–3, 196–7, 200–1.

[38] Ross, 1957, 821; Ross, 1959, 172.

It is important to note that one need not be a skeptic about legal normative facts to perceive difficulty in the question of the grounds of legal truth. As some other commentators have pointed out, it is difficult to speak about the truth of legal propositions, because law itself has different aspects, which are often in tension: law as a series of historical official actions, and the efforts of judges and commentators to impose coherence and structure on those decisions, and law as a process of dispute resolution, a process that may require or result in the (intended or unintended) modification of existing rules.

One path some legal theorists have taken to try to explain (legal) normativity without recourse to metaphysical entities is by reference to "reasons for action." A (legal) duty is a reason to act as the duty requires. A (legal) right creates reasons for action for the person who holds the corresponding duty, or for the judge or other legal official who is in charge of enforcing that right. One can have reasons for action without any complex metaphysical entity creating or mediating those reasons. One's being hungry is a reason for eating; one's wanting a good job is a reason to get an advanced degree; and so on.

However, "reasons for action" may merely push the analysis back one step. It may be relatively straight-forward to state that one's hunger gives one a reason for action, but another matter to state that a legal right or legal duty gives one a reason for action. For the legal realist (Scandinavian or American) can still ask about the nature, or reality, of that reason-giving entity, the (legal) right or duty. So it may be that practical reasoning analysis may not offer us any easy way of circumventing the objections the realists raise.

Conclusion

The American and Scandinavian legal realists have arguably done more than any other group of legal theorists to bring the problems of legal truth to the attention of legal scholars (and, to a lesser extent, the general public).

With both movements, many theorists were suspicious of conventional legal discourse, with its frequent discussions of legal rights and duties, but no clear sense of what those terms refer to. They wanted to reduce legal-normative language to something more empirical. In the case of the American legal realists, it was the actions of legal officials, and predictions of those actions. For the Scandinavian legal realists, it

was either subjective psychological feelings, or combinations of official actions and rules for linguistic usage.

And yet, these answers, too, feel inadequate. And I am not sure that this is merely because we have all been indoctrinated in a myth that we cannot easily give up. It is not merely in law where we (most of us, at least) take normativity seriously. We speak about what we "should" do or what we "must" do, not only in law, but also in morality and religion, in games and in etiquette, just to name some of many contexts where norms are, well, normal.

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