THE EXPRESSIVE CONCEPTION OF NORMS – AN IMPASSE FOR THE LOGIC OF NORMS

The recent development of the ontology of norms has taken a surprising turn. Some writers in deontic logic (or perhaps more appropriately, in the logic of norms) and in the philosophy of law have adopted a conception of norms which stresses a close connection between norms and acts of commanding, and which either abolishes any possibility of developing a logic of norms or leads to a transfer of logical relations and inference operations from the field of norms into the field of descriptive norm-contents, all of which looks rather similar to a proposal made by Jørgen Jørgensen in the thirties.1

1 J. Jørgensen, ‘Imperatives and Logic’, Erkenntnis 7, 1937/38, p. 291. “It is not possible to issue a command without commanding something to be done or to express a wish without expressing a wish for something. Any imperative sentence may therefore be considered as containing two factors which I may call the imperative factor and the indicative factor, the first indicating that some thing is commanded or wished and the latter describing what it is that is commanded or wished.” “Imperative sentences are not capable of being either true or false. According to the logical positivist testability-criterion of meaning they must therefore be considered meaningless. However, they are nevertheless capable of being understood or misunderstood and seem also to be able to function as premises as well as conclusions in logical inference.

This puzzle may be dealt with by analysing the imperative sentences into two factors: an imperative and an indicative factor, the first being merely an expression of the speaker’s state of mind (his willing, wishing, commanding etc.) and therefore of no logical consequence, whereas the last may be formulated in an indicative sentence describing the contents of the imperative sentences and therefore being capable of having a meaning and of being governed by the ordinary rules of logic.

The ordinary rules of logic being valid for the indicative sentences which can be derived from the imperative ones, and no specific rules for the imperatives being known (unless it should be the rule governing the derivation of the indicative sentence from the imperative one) there seems to be no reason for,
We remember, of course, criticisms of the imperative theory of legal norms, at least in the writings of Kelsen and Hart. But it seems that now an immediate connection between norms and acts of will has gained the assent of many philosophers of a positivist vein: there is no imperative (or norm) without an act of commanding (positing a norm). This view is not only a positivist one in a straightforward way; it is also an argument for conceiving norms as not being subject to the qualifications ‘true’ or ‘false’.

The main attempts in this direction include the following.

1. Hans Kelsen’s latest work, contained mainly in his posthumously published book *Allgemeine Theorie der Normen*;