In his reading of the *Social Contract*, Paul de Man points out one fundamental paradox of the propositions of law. The propositions of law, he indicates, are general, yet they are at once about cases which are particular and varied.1 “In a word,” writes Rousseau, where he describes the form laws can possibly take within the meaning of the concept of a *general will*, “no function which has a particular object belongs to the legislative power.”2 Generality, de Man reads, is the defining quality of the text of law. Amongst the antinomies to which law yields in order to achieve itself, in turn, are those between rules and rights, and legislative action and history, or time. Law appears to mark itself as a generality through its negation of the individuality of rights and the elusive manifestations of history. While it is conceivable only as a timely enterprise and applicable only on an individual basis, perversely, in order to remain in this capacity, at once law has to resist time and that which is individual. “The indifference of the text with regard to its referential meaning,” writes de Man, “is what allows the legal text to proliferate ...”3 The law will apply so long as it transcends its particular applications. The law becomes what it is only through a negation of its other.

My contention in what follows is that the paradox is a false one. It

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3 *Supra* n.1, at 268.
arises because of a positivistic notion of legal validity presupposed. This
notion makes the relation of the law to that which accords with it an
_intrinsic_ one. Relying on Wittgenstein’s concept of rule-following, I
argue, on the other hand, that the rule of law is a possibility precisely
because there can be no immanent relationship between the law and its
specific manifestations.

The generality paradox has formed the backbone of the realist
criticisms of the state of law across diverse terrains of jurisprudence.
“General propositions,” notes Holmes in his dissenting opinion in
_Lochner v New York_, “do not decide concrete cases.” ⁴ Considered to be a
precursor, Holmes has been much cited by the later realists. In a private
letter he reiterates the point, and adds: “I will admit any general
proposition you like and decide the case either way.” ⁵ In formulating
the paradox, however, the realist positions have risked greatly
reproducing the formalism of the traditional theory. For the generality
paradox owes much to a formalistic, pictorial notion of language. In a
seminal piece of American legal realism, Felix Cohen urges lawyers to
expel from the conceptual scheme of law “[a]ny word that cannot pay up
in the currency of fact.” ⁶ As with the so-called “picture” theory of
language, of the early Wittgenstein, words are expected to have fixed,
one-to-one references to facts.

To probe into the realist predicament premised on a pictorial notion
of language, I focus in this essay on the writings of Scandinavian legal
realists, to whom a critique of legal language from this perspective has
been far more central than in American realism. I contrast in this essay
the critical attitude towards legal language by Scandinavian legal
realists — which is not dissimilar to the critique in Wittgenstein’s early
work — with the approach favoured by the later work by Wittgenstein
on the phenomenon of rule-government. While the early Wittgenstein
assumes an intrinsic, immanent relationship between language and that
which it is about, the rule and that which agrees with it, his later work
refers to a relationship that is more _political_ (communitarian) than
technical.

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⁴ 198 U.S. 45, 76 (1905).
⁵ Holmes-Laski Letters: The Correspondence of Mr. Justice Holmes and Harold J.
Laski, ed. D. Howe, vol. 1, at 243; cited in W.E. Rumble, American Legal