

Guglielmo Feis

PROPOSITIONS AS (NON-LINGUISTIC) OBJECTS AND PHILOSOPHY OF LAW: NORMS-AS-PROPOSITIONS

ABSTRACT

The paper distinguishes two accounts of legal normativity. One-source accounts claim there is only one source for legal normativity, which is ultimately linguistic. Two-source accounts claim legal normativity is both linguistic and non-linguistic. Two-source accounts claim we need to go beyond language and beyond propositions taken as linguistic entities, while they are one-source accounts' main conceptual tool. Both accounts construct propositions as linguistic. There is, nevertheless, a documented analytic tradition starting with G.E. Moore that constructs propositions as non-linguistic entities. Today, the problem of the unity of proposition and structured propositions are highly debated in metaphysics. How does such debates fit into the one-source vs. two-source picture of legal normativity? Why has analytic legal philosophy failed to consider such an option concerning propositions (arguably calling descriptive sentences about norms “normative propositions” did not help)? This paper thus (I) reconstructs the argumentative dynamics between one-source and two-source accounts; (II) presents the less considered philosophical view of propositions as non-linguistic entities and (III) discusses how to include or dismiss such a philosophical view in the one-source/two-source debate on legal normativity.

KEYWORDS

Non-linguistic propositions, legal normativity, non-linguistic normativity, normative propositions

Analytic legal philosophy often draws on analytic philosophy: from conceptual analysis to analytic jurisprudence, from the analysis of normative language to analytic (meta)jurisprudence.¹

1 Examples abound. See e.g. Bix 2003 or Marmor 2005, Marti & Ramírez-Ludeña 2016, Plunkett & Sundell, 2013a, 2013b; Stavropoulos 1996: Chapter 2–4 (esp.). In the Italian circles see the mentions of early day “heroic” (i.e. Frege and Russell) analytic philosophy in Jori & Pintore 2015. The connection with (early day, pre-Kripkean and somehow pre-Quineian) analytic philosophy is also clear in Guastini, e.g. Guastini 2012. Scarpelli 1959 draws on Hare, while Amedeo Giovanni Conte was the Italian translator of Wittgenstein’s *Tractatus*. The lexicon of intensions and extensions is well spread in the Italian tradition and also in the Argentinean tradition that draws on *Normative Systems*, e.g. Alchourrón & Bulygin 1971, Chiassoni 2007, Guastini 2011, Roversi 2007. Completeness is not the purpose of this note. All the note wants to show is that different authors and traditions are acquainted (in different ways) with authors familiar with the notion of propositions used here (see §2-3).

In this paper, I shall consider one of the old doctrines of analytic philosophy, i.e. the thesis according to which propositions are *objects*, i.e. non-linguistic entities. The view was held by (G.E.) Moore and Russell and is what motivates contemporary research on (structured) propositions as well as the problem of the unity of proposition.² I take such thesis as a (philosophical) fact because – factually – there are philosophers holding that propositions are objects (see later §2).

Such a thesis is interesting for legal philosophy and for non-linguistic normativity. In fact, if we accept this thesis, the spectrum of non-linguistic normativity increases.

Non-linguistic normativity is characterized as making reference to objects like deontic states of affairs exhibited by conventions, customs or non-written laws. (Conte 2007) offers such a characterization. For him the linguistic referents of the term ‘norm’ are (1) ‘deontic sentences’, i.e. written deontic phrases; (2) ‘deontic propositions’, i.e. meanings of deontic sentences; (3) ‘deontic utterances’, i.e. worldly utterances of normative phrases. The non-linguistic referents are (4) ‘deontic states of affairs’, i.e. norms that “are there” as states of affairs, e.g. customs, that are not written down nor pronounced and (5) ‘deontic noema’, i.e. norms as objects of thought, (Husserlian) intentional objects.³

To this Contean view you can oppose more standard views in legal theory drawing on the distinction between written *provisio* [*linguistic disposition*] and normative meaning [*norm*]. Such a distinction is present every time we need to construct different normative meanings starting from the same law-in-books (e.g. legal interpretation, argumentation, discussion about principles). Now, if propositions are no longer linguistic entities but objects, i.e. non-linguistic entities, non-linguistic normativity expands.

In drawing the line between linguistic and non-linguistic we have to specify what does it mean to be ‘linguistic’. There would be plenty of approaches to spell this out (theoretical, cognitive, anthropological, semiotics, etc).

2 Non-linguistic propositions are found in Moore 1899 and then used by Russell in 1903. See Gaskin 2008: 9 and chs. 2–3. Moore is pretty clear in saying his propositions are not linguistic entities. They are rather made by concepts (see later, §3). In legal philosophy and deontic logic Woleński 2018 claims propositions are non-linguistic entities.

3 For such researches see at least Conte 1970, 2007 and Roversi 2007, Żelaniec 2007. Elsewhere I showed how authors such as Guastini or Alexy are able to encapsulate more than the linguistic referents (1) to (3), even though the research line which is more interested in a research on non-linguistic normativity does not seem to consider that, see Feis and Borghi 2017. Another interesting – and interestingly underrated and under-mentioned – remark is found in Bulygin 1982: 137. In fact, Bulygin uses ‘normative proposition’ to mean something way closer to Conte’s deontic state of affairs than to philosophers’ propositions (i.e. the idea of proposition of Moore and Russell that led to what we will see in §2). For Bulygin a normative proposition “[...] describes a much more complex social fact, viz. The fact that a given social rules exists, i.e. it is accepted by a social group. This is exactly what we understand by a normative proposition”. Emphasis on non-linguistic normativity is present in Moroni & Lorini 2016, B. Smith 1995, Studnicki 1970.

We can rely on a hyper-naive definition of ‘linguistic’ as “verbal or written language” and get started. It is a cheap solution, but at least it allows us to develop an argument. Be it as it may, this issue of “what is ‘linguistic’?” is relevant but orthogonal to our issue: in fact, when two-sources Contean-inspired accounts distinguish themselves from one-sources there is no disagreement nor misunderstandings on what ‘linguistic’ means nor on what ‘propositions’ are (i.e.: both accounts neglect non-linguistic propositions of §2). Further, in this paper I am already bridging two different disciplinary areas that, despite the interdisciplinary spirit, are not that well aware of each other.

In fact, there are *two* intended audiences for this paper. On the one hand, there are the metaphysicians and the analytic philosophers working on propositions. They are well aware of the issue of the unity of the proposition – i.e. answering to the question of what’s the difference between a list of words and the proposition made of such a list – and of different proposals on propositions (e.g. different accounts of structured propositions) as well as of attacks on the concept of propositions (e.g. the one by Quine). We shall briefly recap some of these issues in §2.

This first reader would be interested in knowing a bit more on the relevance of these issues for the legal domain, i.e. a domain in which the key elements – norms – are assumed to have no truth-values (the issue of truth-conditions is more complex). Further, the legal domain is permeated by the concept of *validity* which is not into play in the metaphysics debate.

On the other hand, there are the philosophers of law and scholars in jurisprudence. They are aware of how validity adds layers to our talk of propositions: we have the written text of the norm (sometimes called *disposition* or *normative proposition*), then its meaning (the “real” norm): both are often assumed to have no truth-values. Then we can have descriptive statements about norms, like “it is truth that, according to the legal system X, it ought to be the case that Y” and also “in the history of legal system X, it is true that a certain law proposal has been approved according to the procedures of that legal system”.

Unfortunately, the two audiences are mostly not aware of each other. Given the limited word-range I can (ab)use, I leave the reader to refer to the literature of the other side (notes are going to be a bit heavy for that reason).

Such an absence of mutual recognition is nonetheless important as it gives rise to terminological misunderstandings. In fact, for legal philosophers *propositions* are most often metaphysicians’ *sentences*, i.e. concrete tokens of linguistic entities rather than non-linguistic entities.

‘Normative propositions’, in legal philosophers’ jargon, are taken to be descriptive *sentences* about the law. So, for the analytic (non legal) philosophers, these “normative propositions” are *not* propositions in the metaphysicians’ usage, but *sentences*. Legal philosophy frames the propositional side of norms by calling them *norms* (quite a straightforward choice). Those are the *Sollen/Ought* normative elements, that is where (normative) *meanings* come into play.

I want to point out that here, at the *norms* level, we may have propositions (in the philosophical usage) i.e. as non-linguistic entities. We can choose to

call these *norms-as-propositions*. With reference to the terminology of legal philosophy, *norms-as-propositions* are *norms* and *not* normative propositions (i.e. sentences about norms).⁴

Further, in legal philosophy these various philosophical entities (propositions, meanings, sentences) are taken as primitives which are not (in general) discussed. You have a definition of them. Full stop. Despite legal philosophers' proud attitude of doing *analytic* legal philosophy, propositions as non-linguistic entities – which are found at the core of the proud heritage and masters of Frege, Moore and Russell – are hardly discussed.⁵

To be even more explicit and outright simplistic: we have two terminologies that are supposed to describe the *same* conceptual endeavour. Unfortunately, the distinctions one terminology made are not kept in the other one (which is assumed to be equivalent to the first one and have the same expressive power). The paper starts to show that. Empirical confirmation may be obtained by way of mapping references and quotations of the less-inclusive terminology to problems and issues of the broader conception. I point out why it is important to notice and be aware of the fact that two terminologies that are not interchangeable are used as if they were. (For two other approaches in reading the paper, see the last footnote).

Of course the choice of which terminology to use and consider in a supposedly interdisciplinary (and scientific) enterprise it wholly up to the reader.

1. Legal Philosophy, (Normative) Propositions and Non-Linguistic Normativity

The fact that laws and (normative) propositions and normative sentences often interact is noted and discussed in many theories of legal philosophy. One of the main theoretical acquisitions is the distinction between the written text (call it the (written) norm or the *provisio*) and its (interpreted) meaning, i.e. the content it expresses (the proper proposition, sometimes called *norm* in a technical term).⁶

4 I thank Luka Burazin for pointing me out the necessity of this clarification so that the two audiences can fruitfully interact.

5 The conjecture which needs a paper to be completely proved is that the analytic they have in mind is the Oxford style linguistic philosophy of ordinary language. Most of the pillars of “Continental” (i.e. European) analytic legal philosophy refers to (J.L.) Austin or Hare and other “ordinary language approach”. Formal approaches are hardly mentioned.

6 Dworkin (at least according to Marmor 2005: 39) seems to use propositions together with interpretation (i.e. attributing meaning). Marmor quotes that passage from Dworkin to support his interpretation: “Legal practice, unlike many other social phenomena, is argumentative. Every actor in the practice understands that what it permits or requires depends on the truth of certain propositions that are given sense only by and within the practice; the practice consists in large part in deploying and arguing about these propositions” (Dworkin 1986: 13–14).

At this point, many (well-known) complications arises. (Descriptive) Propositions – but the same holds for statements, discourses and sentences – are said to have truth-values; still, items in the normative domain do not have truth-values (or, at least, that seems to be a sort of “standard view”). Be it as it may, even granting that normative propositions have no truth-values, we can have a descriptive usage of normative propositions, i.e. when we describe the composition of real-world legal system.⁷

This suffice to show that: (i) legal philosophy talks about propositions; (ii) propositions play a fundamental role in the legal domain (e.g. it seems we need to resort to propositions to allow norms of a code to be translated into another one, to say that N1 in L1 and N2 in L2 are the same).

Given that, it is no surprise that we find propositions at the core of our divide between one-source and two-sources accounts of normativity. These two accounts are not distinguished that way and this is no “common knowledge” nor “standard distinction”. In fact, as it emerged from above (e.g. fn. 3), what I am isolating as two different accounts tends to be rather “conservative” and respectful of their own traditions and standardized sets of references and sources and they rarely dare to explore the different tradition. (You may say that the present article is interdisciplinary and untraditional, if you like).

According to one-source view, all legal normativity is *linguistic*. According to two-sources view, we have two different kinds of normativity, linguistic normativity and non-linguistic normativity.

There are many possible debates on this paradigm, e.g. one may challenge that we need *contents* also in non-linguistic normativity and say that what is presented as a 1/0 dichotomy is rather a matter of degrees or *expressibility*.⁸ A different way would be to go deeper into what ‘linguistic’ means and what ‘being linguistic’ amounts to in the present debate. If ‘linguistic’ means ‘being representable (with some symbolic device)’ it is likely that everything will be somehow “linguistic”.⁹

From all we have said above – the importance of propositions for legal philosophy and the distinction of two views on legal normativity – we saw that

7 This can actually be used to solve this “need to find truth-values”. See, e.g. Marmor 2005: 3: “It is a widely acknowledged fact that we can make propositions about the law in any given legal system which are true or false.” Still, no-truth-values theories will press you saying that descriptive usage of norms are nor “real” norm. You may reply that it is up to them to enlighten us on what this “real” norm really is. Of course, we have attempt to retain logic even when we lack of truth-values, e.g. Alchourrón & Martino (1990). (A “chronological” note: working on deontic logic von Wright realized that logic may have a wider reach than truth).

8 I.e. we can take customs, graphic norms or other examples of non-linguistic normativity and say we can express them linguistically after various cognitive steps. The harder are the cognitive steps the more “non-linguistic” will be the corresponding normative material.

9 I thank Adriano Zambon for a discussion on that point. Specifying how also in such an “all linguistic” framework we are able to distinguish different sorts of “languages” (e.g. ordinary language, musical notation, logic, C#, etc.) is beyond the previous point.

both views include propositions. The main conceptual dynamic concerning the kinds of normativity is that two-sources accounts try to show that there is more to legal normativity than what one-source accounts say there is. Often, one-source accounts are mainly associated with saying that law is nothing but (a set of) normative propositions¹⁰ (which may, of course, be classified in different terms).¹¹

Summing up, propositions are: (i) key terms for both parties (one-source and two-sources); (ii) the two views agree on what propositions are, i.e. they are something associated with meanings and, more importantly for our purposes, (iii) they are *linguistic* devices.

Here comes our conceptual twist: analytic philosophy has a view according to which propositions are non-linguistic objects. With respect to one-source and two-sources accounts of legal normativity, such a view is found into a shared philosophical heritage that goes back to analytic philosophy (it is your choice to invoke “tradition” or “Masters”, here). We now present this neglected philosophical view (§2) and then see how one-source and two-sources accounts may react to it (§3).

2. Propositions as Non-Linguistic Entities

Presenting the issue of structured propositions or the question of the unity of proposition is a daunting task. First, it is an issue that metaphysicians discuss without connections to the legal domain. Further, the issues are rather complex and abstract, at least way more abstract than “what’s the nature of law?” or “how do we define a legal system?”¹²

Nonetheless, despite its abstractness and its absence in the legal debate, the issue is relevant for legal philosophy because, as we have seen in the previous section, legal philosophy makes an extensive use of the concept of proposition. Such a concept is (i) moved in the legal domain (remember: as *norm*, not as *normative propositions*) and, arguably, (ii) legal philosophy borrows the

10 See for example these excerpts: “In this perspective, the main purpose of this article is not to suggest using more normative images than normative linguistic sentences in plans and building codes; it is instead to advocate greater awareness of the peculiarities of both and of how they can complement each other” (Moroni & Lorini 2016: 320). Actually, if propositions are non-linguistic entities, we have way more peculiarities to be aware of. Compare also: “graphic rules are more widespread and important than usually recognized by, in particular, philosophers of law and legal thinkers (who generally assume, explicitly or implicitly, that rules are formulated in words)” (Moroni and Lorini 2016: 320).

11 I.e. claiming that all the law is a matter of normative propositions does not imply saying that all normative propositions are of the same kind. For example: one-source accounts can freely distinguish primary and secondary rules or meta-norms, or constitutive rules.

12 For an overview see at least King 2011, McGrath & Frank, 2018. Book-wise, see Gaskin 2008, King 2007. A great grasp at the different views is found in a relatively short paper: Soames 1987.

concept of proposition without bothering too much about the philosophical problems of propositions *per se*.¹³

The best way to introduce this issue is probably that of going back to one of the first accounts introducing this concept of non-linguistic proposition. According to (Gaskin 2008: 9), (G.E.) Moore's paper *The Nature of Judgement* (1899) is awarded such precedence. Here's Moore's (1899) account of proposition as non-linguistic entities:¹⁴

"A proposition is composed not of words, nor yet of thoughts, but of concepts. Concepts are possible objects of thought; but that is no definition of them. It merely states that they may come into relation with a thinker; and in order that they may do anything, they must already be something. It is indifferent to their nature whether anybody thinks them or not. They are incapable of change; and the relation into which they enter with the knowing subject implies no action or reaction. It is a unique relation which can begin or cease with a change in the subject; but the concept is neither cause nor effect of such a change. The occurrence of the relation has, no doubt, its causes and effects, but these are to be found only in the subject. It is of such entities as these that a proposition is composed. In it certain concepts stand in specific relations with one another." (Moore 1899: 179).

Such a view influenced Russell that, in his *Principia*, developed a theory for propositions. Long story short, what are now called 'Russellian propositions' are non-linguistic entities. These entities are identified and can be defined as follow: a Russellian proposition (i.e. a proposition as a non-linguistic entity) is an "ordered n -tuples of objects and properties (including relations)".¹⁵ Such technical construction boils down to this definition: "Russellian propositions are meanings of declarative sentences, and contain as literal constituents the wordly entities—centrally objects and properties (including relations)—introduced by semantically significant parts of those sentences".¹⁶

So objects, i.e. real-world entities, are parts of a proposition. This means that, in the proposition:

(P) "The Statue of Liberty is in Manhattan",

the statue is part of the proposition as is Manhattan and the relation "being inside". We have two objects and one relation. Though we may express (P) linguistically and I am writing about it, the Russellian proposition P is *not* a

13 Quick proof: search the legal literature on normative propositions and find some references to the unity of propositions problem or structured propositions. Report if the result is different from \emptyset .

14 Nothing hinges on this pseudo-philology. Arguments matters not being first. Or, to use Moore's own words: "The question is surely not of which is "better to say," but which is true" Moore 1899: 176.

15 Gaskin 2008: 56.

16 Gaskin 2008: 57. Though Gaskin in the quote qualifies sentences as "declarative" elsewhere in his book (e.g. §2) he considers the impact of propositions also in the case of orders and questions.

linguistic entity.¹⁷ If we take proposition “Take the A Train if you want to go to Manhattan” then the A Train, Manhattan, you, the relation of taking a train, a desire to go to Manhattan and the relationships between you and the desire to go to Manhattan are all parts of the proposition. (Things get quite complex pretty soon).

Given this characterization, Russellian propositions end up being not only *non-linguistic* but also *abstract* entities.¹⁸ Other popular conceptualizations of philosophers’ propositions is that they are: (a) set of (possible) worlds in which such proposition is true or (b) sets of concrete situations or facts.¹⁹ Still, concrete situations and facts are non-linguistic, and neither are worlds (for sets: you express them linguistically or graphically, still there is no necessity for sets to be linguistic entities).

3. Non-Linguistic Propositions, Norms-as-Propositions and Legal Philosophy

Let’s recap. Assume propositions are non-linguistic as analytic metaphysics says (i.e. the view presented in §2 above). What happens to a debate we find in legal philosophy about normativity in which such an options is not considered? Propositions cut through the boards of our two parties’ picture of legal normativity. We have no room to say: the distinction is not important as it is not relevant for the debate. Both one-source and two-sources accounts of normativity feature propositions as *linguistic* entities. Even worst, analytic legal philosophy sometimes (see fn. 1) links its research to that of Frege and Russell and the rest of analytic philosophy.

17 A further way to point out how Russellian propositions are not linguistic would be the following. Assume facts to be non-linguistic entities (again, though we can express facts linguistically). Then, true Russellian propositions yield facts: you have objects exhibiting certain relations that correspond to how things are in the world. See further Neale 1995: par. 2. (Some) facts play a role in King’s own theory of propositions, see King 2007: Chapter 2. King 2007: chs. 1-2 is a great tool to grasp more of how such problems developed. For a recent (mathematical) theory of propositions as non-linguistic abstract objects see N. J. J. Smith: 2016.

18 Gaskin 2008: 57 notes that Russellian propositions are “similar in this regard to (type) sentences”. Of course, “being abstract” and “being linguistic” can be divorced, Russellian propositions being an example of that. Still, (Russellian) propositions being abstract will make them harder to be found in concrete examples of legal codes or textbooks of cases - in which mostly we shall have tokens of them.

19 Soames 1987 offers a critique of (a) and an exploration of (b). In the article (p. 47), Soames presents two conceptions of *semantic theory*, for the first “the meaning of a sentence is a function from contexts of utterance to what is said by the sentence in those contexts”, for the second “the meaning of a sentence can be thought as a function from contexts to utterances to truth conditions of the sentence as used in those contexts”. Soames’ “semantic” is again different from some of the ‘semantic’ we find in legal theory, e.g. the “semantic sting”.

Unfortunately, the metaphysicians' picture of §2 creates a problem to both accounts. On the one hand, one-source accounts have to include non-linguistic normativity as well (i.e.: that coming from propositions as non-linguistic entities). On the other hand, two-sources accounts are no longer distinct from one-source accounts nor original (assuming originality makes a point). In fact, their rival account already has the two sources of normativity inside them, hence there would be no more difference between the two accounts.

Both types of account, in fact, assumed a mistaken (or, at least, partial) view of propositions, conceiving them as *linguistic* entities. Such a mistake is more relevant the more you proud yourself of your "analytic heritage" (if the reader finds that "being proud of an heritage" contradicts an attitude of "free research for the truth" or other academic jargon I am not able to offer any placebo to counter such a feeling).

Given what follows from the above reconstruction, both the one-source and the two-sources account may want to resist the use of propositions as *non-linguistic* entities. Analytic jurisprudence in general, relying on their Hart-Hare-(J.L.) Austin heritage may try to deny this view because it is "metaphysics" (which is bad according to their ideology (tradition?)).

Maybe the two-sources account can reply that non-linguistic propositions are only a minor thread for them. They can keep fighting the (old) one-source account claiming we also need deontic states of affairs and deontic noema, i.e. we need the whole set of Contean five referents (including deontic states of affairs and deontic noema) and not only the first three (deontic sentences, deontic propositions and deontic utterances). That is an available option.

Assuming that, we may need to update the one-source *vs.* two-sources picture. We are now in a position to distinguish *two* different *two-sources* accounts. According to the *strictly propositionalist account*, normativity is all a matter of utterances, sentences and propositions. According to the *extended account*, normativity includes the tools used by the propositionalist plus deontic states of affairs and deontic noema.²⁰

In the long run, this does not look as a promising reply for our former two-sources account: if we go deep into the philosophy of states of affairs and noema (as mental entities, meanings or noema *per se*) they are tightly connected with propositions.²¹ So the two-sources account might end up losing its grip on the (old) one-source. The two sources insisted on being original and in going beyond propositions,²² but if we take into account the new evidence from §2, there is quite a lot of work to be done on propositions in the legal domain.

Now, accepting the evidence from §2, it seems that the contraposition between linguistic and non-linguistic normativity is spurious or – to borrow from

20 As showed elsewhere, more charitable readings of supposed champions of one-source accounts end up featuring more referents than those available in a *strictly propositionalist account*, see Feis & Borghi (2017).

21 See on that McGrath and Frank 2018: par. 9.

22 See the previous quotes from Moroni and Lorini in fn. 10.

Leiter – it is a *pseudo problem* as, for Leiter, is the Demarcation Problem.²³ One way for one-source accounts to avoid embracing non-linguistic normativity through (non-linguistic) propositions would be to retreat their usage of ‘proposition’. One-source account may just commit themselves to utterances and sentences. After all, “normative *propositions*” may be considered as *sentences* relying on the tool-bag of the metaphysician.²⁴

Nonetheless, denying that propositions as per §2 have nothing to do with legal philosophy is difficult. Without propositions (i.e. *norms*), legal philosophy is in need of a new theory of meaning and seems to lose an important distinction (*norms* vs. *normative propositions*). It is way more than possible to develop such a propositions-free theory of meaning (i.e. we have no knock down arguments to that, and, personally I am always sympathetic to extreme reductionism, even if it fails or is hard to defend – see e.g. Feis & Tagliabue 2015. A better option would be to deny propositions exist (as a matter of ontology).²⁵

The most interesting *way around* the problem is that of saying *norms* are something different from non-linguistic propositions (that we called *norms-as-propositions*). One possible reason to say that would be digging in your heels and claim norms have no truth-values (and, also, stressing that truth-values are essential for a theory of propositions as presented in §2). This strategy looks more interesting and promising.

Nonetheless, it seems first that the problem of the unity of propositions applies as well in the case of normative propositions. What changes a list of words (which includes normative elements) from the proposition built from these same elements in the list? More generally: it seems law has pieces and parts. This is true from a practical perspective (commas, articles, etc.) and, at least metaphorically, from a theoretical one.²⁶

Further, legal debates on truth-values of norms and some two-sources accounts offered us ways to circumvent this problem. On the one hand, we have theories of (deontic) logic without truth-values (i.e. [Alchourrón & Martino

23 Another great quote from Leiter’s 2011 paper concerns the scarce ability to innovate in philosophy of law: “jurisprudents are rarely, if ever, innovators in philosophy. They, instead, are the jurisprudential Owls of Minerva, bringing considered philosophical opinions in its maturity (sometimes, alas, on its death bed) to bear on theoretical questions that arise distinctively in the legal realm” Leiter 2011: 665–666. In the case of non-linguistic propositions, it seems that the failure consists in not discussing the option presented here in §2. Whether this is a conscious omission or a lack of knowledge of some of the history one borrows from in constructing a traditions’ cultural heritage and pedigree is a matter of sociology (and, maybe, a *curiosum* in philology of legal philosophy and the literary genre of intellectual biographies).

24 This is a costly move, especially in a “ordinary language” philosophical framework.

25 Quine did that and, even though it does not seem he succeeded, at least *practically*, as most legal philosophers seems to show when they talk about propositions. Nothing prevents us from trying harder.

26 See, e.g. the title of Atienza & Ruiz Manero 2007. For more on the “problem of the list” and the analysis of propositions (something that goes back to Russell’s *Principia*) see chapters 1-2 of King 2007.

1990)). This shows we can construct logical structures with normative material even *without* truth-values.²⁷ A similar point is present in Moroni and Lorini. While arguing in favour of two-sources accounts, Moroni and Lorini go back to a paper by Westerhoff on the logical relationships between *pictures*. (Westerhoff 2005) discusses Venn-diagrams to claim we have logical relations between pictures, i.e. non-linguistic entities (actually Westerhoff calls them “non-sentential”).²⁸

Another way to justify talking about *norms-as-propositions* and all their intricacies is to show that legal philosophy has already tried to find other parameters or “values” to figure out how to act in a word of Is (*Sein*) on the base of Oughts (*Sollen*). Actions and performances are often what is used to anchor the “Oughts” to pieces of the “Is”.²⁹

Such a view may well have its list of problems, e.g. the more we go away from norms in terms of obligation of prohibition, the harder it is to capture all the kinds of norms with that view. *Alas*, that does not help the two accounts we are examining here. This “action-based” approach shows how we can connect some descriptive features (most often used to characterize propositions) to norms. Our point was to find ways for the two kinds of accounts of legal normativity reconstructed here to reject non-linguistic propositions *entirely*, not only on *some* difficult cases. So, it seems we have ways to show that what is of conceptual import in the debate on non-linguistic propositions translates in the legal domain as *norms-as-propositions*.

Summing up, the paper rediscovers a doctrine of analytic philosophy that may have an impact on legal philosophy’s discussion of normativity. The paper also points out to further work needed to reframe some questions on the opposition between linguistic and non-linguistic normativity once such a doctrine of

27 By the way, also Kelsen’s idea of hierarchy seems to be a logical concept we can model through the idea of (strict) partial orders. In that way we have to specify the role of symmetry, transitivity and reflexivity, all elements that are important to map out chains of validity or which norm is able to modify another norm.

28 Still Westerhoff *has* a logic, that of diagrams, even assuming pictures have no truth-values. Dropping truth-values does not drop a logic. Further, in order to develop structured views of propositions it seems truth-conditions can be more important than truth-values and (see fn. 29 below) finding truth-conditions in the normative domain looks easier than getting truth-values). On a different note, Gaskin 2008: §2 offers reasons to extend his analysis of propositions from mainly descriptive propositions to questions (often neglected by friends of no-truth-values objection) and orders.

29 Here’s Marmor’s 2005: 114 presentation of the idea: “To understand a rule is to be able to specify which actions are in accord with it (and which would go against it), just as to understand a proposition is to be able to specify its truth conditions. In other words, it does not make sense to say that one has understood a rule if one cannot identify the actions which are in accord with it”. Another “chronological” consideration: Marmor is by no means the first to have had this idea which goes back to many different authors (e.g. Scarpelli, Hart, von Wright, Munzer, Hofstadter and McKinsey, Hamner Hill) under different guises: obedience-statements, satisfiability, doability, etc.

proposition is considered and not excluded *a priori*.³⁰ Maybe legal philosophy is really just a matter of sentences without propositions and we need to replace propositions with sentences. I have nothing against exploring this possibility, but I would like to be sure that a relevant part of legal philosophers (i.e. those with a one-source account) are aware of that and willing to go in that direction.³¹

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30 Such a further work cannot be pursued here. Hints were given: there are two audiences and disciplines to bridge. What can we do about it? What happens taking propositions as set of possible worlds *and including laws into these worlds*? Do we need an extra parameter to track validity? Is deontic possible world fine? Is there a special unity problem for legal propositions? (Tentative answer: no, unless some special value is given to deontic modals and/or legal validity).

31 There is also another way to read this paper considering it as a “history of philosophy” or “sociology of legal analytic philosophy” paper (assuming the latter exists). As such, it constitutes a partial sketch of some attitudes of constructing ‘analytic’ as equivalent to ‘ordinary language philosophy’. This, coupled with a strange attitude according to which ‘metaphysics’ and ‘ontology’ are bad philosophical words (ignoring Russell’s, Frege’s, Quine’s, Lewis’, Kripke’s and you-name-it contributions to analytic philosophy in those fields), made it possible to ignore a main tenet of analytic philosophy about propositions that contrast with the ordinary assumed definitions of the analytic jurisprudence. A further further work would be to compare and contrast what theories of meanings are in philosophy (e.g. Davidson’s programme) with theories of meanings in analytic jurisprudence (i.e. issues in legal interpretation, often referring to Hart’s park example).

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Guljelmo Fejs

Propozicije kao (nelingvistički) objekti i filozofija prava: norme-kao-propozicije

Apstrakt

U radu se razlikuju dve pozicije u pogledu pravne normativnosti. Pozicije jednoizvornosti tvrde da postoji samo jedan izvor pravne normativnosti, koji je naposljetku lingvistički. Pozicije dvoizvornosti tvrde da je pravna normativnost i jezička i nejezička. Pozicije dvoizvornosti tvrde da treba da prevaziđemo jezik i propozicije uzete kao lingvistički entiteti, glavno konceptualno sredstvo pozicije jednoizvornosti. U obe pozicije konstruišu se propozicije kao jezičke, ali je zabeležena analitička tradicija počevši od Dž. E. Mura koja propozicije konstruiše kao nejezičke entitete. Danas se u metafizici jako raspravlja o problemu jedinstva propozicija i strukturiranih propozicija. Kako se takva teorija uklapa u sliku jednoizvornosti protiv dvoizvornosti pravne normativnosti? Zašto analitička filozofija prava nije uzela u obzir takvu opciju u vezi sa propozicijama (nesporno, nazivanje opisnih *rečenica* o normama „normativnim propozicijama“ nije pomoglo)? Članak: (I) rekonstruiše argumentativnu dinamiku između pozicija jednoizvornosti dvoizvornosti; (II) predstavlja manje razmatrani filozofski pogled na propozicije kao nejezičke entitete i (III) razmatra kako uključiti ili odbaciti takav filozofski pogled u raspravi o pravnoj normativnosti u pogledu jednoizvornosti i dvoizvornosti.

Ključne reči: nejezičke propozicije, pravna normativnost, nejezička normativnost, normativne propozicije