
Normative Systems. *Carlos E. Alchourron and Eugenio Bulygin.* Springer-Verlag, Library of Exact Philosophy, New York and Vienna. 1971. 208 p. \$21.50.

This book is an attempt by two Argentinians to apply the tenets of a positivistic methodology of science to normative questions, especially to legal discourse. They use recent work in deontic logic (the logic of "ought" and "it is permitted," etc.) to systematize legal theory. The authors concentrate on the work of South American legal theorists, but there is constant reference to works of Kelsen and Hart. In this positivistic approach, axioms are chosen, presumably, on pragmatic grounds and are vindicated solely by their predictive fruitfulness.

This methodological scheme raises what this reviewer takes to be the largest problem with the book. In formalizing concepts (of case, legal gap, solution, etc.), they assume that one can unproblematically choose the basic sentences with which to define the domain of discourse, the set of facts one wants to talk about. This amounts to an *a priori* selection of properties which are used to construct the system and define the problem requiring solution. For example, the book begins by treating the problem of the recovery of real estate from third holders, i.e. someone is in possession of real estate which he does not own but nonetheless transfers a to a third party. The authors set out the relevant properties as (1) the good faith of the former possessor, (2) the good faith of the present holder, and (3) the onerous character of the act of assignment (the "consideration"). A case is defined by combinations of all three properties holding or failing to hold, and a solution is the resulting obligations on the parts of the three persons involved.

For every case, if the system is complete, there is a correlated solution. A case without a solution is a gap in the system. Lawyers now worry about the problems of legal gaps, consistency, and completeness of various parts of legal codes. But the question here is what value is there in formalizing these problems? The authors, following Carnap and his 30's followers, state that clarity and precision result. But is not such clarity and precision spurious? It results from setting up problems in a very generalized and artificial way, e.g. in terms of only by a certain set of properties. This comes out in two ways: in their too-casual treatment of Hart's problems of the penumbra—the centrality in legal problems of tricky, borderline cases (p. 33-4)—and in their definition of what is to count as a relevant property (p. 103). This latter is defined in a system relative way, so that one must have recourse to his *a priori* intuitions to set up the system (which is defined in part by the properties chosen) in the first place. Such formal moves merely shift the major theoretical problems into the non-systematic area of choosing your axiom system. (This point is not unique with deontic systems—the same problem arises crucially for axiomatic treatments, e.g., of special relativity).

Despite what I would take to be such methodological problems, the book is well written, and should prove useful as a heuristic foil for anyone thinking about legal systems and concerned with clarifying the concepts involved in such systems.

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