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Alf Ross on Practical Reason

Alf Ross en la Razón Práctica.

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Resumen

En uno de sus primeros trabajos, *Kritik der Sogenannten praktischen Erkenntnis. Zugleich Prolegómenos zu Einer der Kritik Rechtswissenschaft*, el eminente filósofo del derecho danés Alf Ross pretendió proporcionar las bases filosóficas para la construcción de su Teoría de la ley. El elemento central de estas bases es su crítica de la razón práctica (cognición práctica). El propósito de este trabajo es evaluar esta crítica. Se argumenta que en su análisis Ross oscila entre dos concepciones diferentes de la razón práctica. De acuerdo con la primera, la razón práctica es una capacidad especial de conocer y establecer las normas morales objetivamente existentes (valores, o fines); de acuerdo con la segunda, es una capacidad especial para meramente conocer las normas morales objetivamente existentes (valores, o fines). Se ha discutido que sus argumentos más interesantes y plausibles (señalando hacia inconsistencias lógicas) en contra de la razón práctica aplican solamente para la comprensión anterior de la misma, no a las subsecuentes. En consecuencia, su trabajo no proporciona razones concluyentes para rechazar el concepto de la razón práctica como una capacidad especial para la cognición de las normas morales objetivamente existentes (valores, o fines).

Palabras clave: ética formal; ética material; duplicación metafísica; razón práctica; teleología; valores.

Abstract

In his early work *Kritik der Sogenannten Praktischen Erkenntnis. Zugleich Prolegomena zu Einer Kritik der Rechtswissenschaft* the eminent Danish legal philosopher Alf Ross intended to provide the philosophical foundations for the construction of his theory of law. The central element of these foundations is his critique of practical reason (practical cognition). The purpose of this paper is to evaluate this critique. It is argued that in his analysis Ross oscillates between two different understandings of practical reason. According to the first one, practical reason is a special capacity to cognize and establish the objectively existing moral norms (values, or ends); according to the second one, it is a special capacity just to cognize the objectively existing moral norms (values, or ends). It is argued that his most interesting and plausible arguments (pointing at logical inconsistencies) against practical reason apply only to the former understanding thereof, not to the latter. Accordingly, his work fails to provide conclusive reasons for rejecting the concept of practical reason as a special capacity for the cognition of the objectively existing moral norms (values, or ends).

Keywords: formal ethics; material ethics; metaphysical doubling; practical reason; teleology; values.

1. INTRODUCTION

The attitude to practical reason, i.e., a special capacity guaranteeing an access to the objectively existing moral norms (values, or ends), is a useful criterion for classifying the views of moral and legal philosophers. Roughly speaking, the existence of practical reason is denied by the naturalistic and the non-naturalistic-intuitionist moral and legal philosophers, whereas its existence is affirmed by the non-naturalistic-rationalist ones. The basic argument of naturalists for the rejection of practical reason is that it is a metaphysical concept and thereby incompatible with their scientific outlook, implying that only those entities can be accepted as existent which are postulated by (thus far un-falsified) scientific theories. However, this general argument for the non-existence of practical reason is relatively uninteresting and also unimpressive for those who accept a different – non-naturalistic – philosophical outlook. The more interesting arguments are those which can be called ‘internal’, i.e., which do not appeal to strong philosophical assumptions but point at some ‘internal’ problems connected with the very concept of practical reason. In the present paper we shall present and analyze the arguments of this kind advanced by the eminent 20th century Danish legal philosopher Alf Ross. His critique of practical reason appears in virtually every book he wrote but is most explicit in his early treatise (from 1933) *Kritik der Sogenannten Praktischen Erkenntnis. Zugleich Prolegomena zu Einer Kritik der Rechtswissenschaft*. The very title is meaningful: it attests Ross’s deep conviction that prior to constructing a theory of law, one must tackle the ‘perennial’ philosophical problem of the existence of practical reason. As we shall see hereafter, Ross questions the existence of practical reason in the strict or proper sense, i.e., as a special capacity guaranteeing an access to the objectively existing moral norms (values, or ends), but, as should be stressed, he does not question the existence of practical reason if it is understood weakly, i.e., either as the reason’s capacity to find means for given ends (the first variant of the weak understanding) or as the reason’s capacity to know what in fact determines our will (the second variant of the weak understanding). But, as Ross himself notices, this first variant of weak understanding of practical reason is misleading, as it blurs the very distinction between practical and theoretical reason, since virtually every kind of knowledge (even purely theoretical, e.g., theoretical physics) can in some circumstances be helpful in attaining given ends and thereby become practical. As for the second variant, he aptly remarks those philosophers who accept the existence of practical reason tend to treat it not as a capacity for knowing what actually determines the will of human beings but as a capacity for knowing what *ought to determine* their will. In consequence, Ross concludes that practical reason, properly so called, is neither a capacity to select means for realizing given ends, nor the capacity to know what people take to be those ends. This conclusion regarding what practical reason *is not* is very convincing: most philosophers agree that neither instrumental reason (the first variant of the weak understanding) nor the empirical knowledge of what moves the human will (the second variant) can plausibly count as practical reason; to give one example: John Rawls¹, while analyzing Hume’s moral philosophy, wrote that Hume does not have a conception of practical reason, even though Hume admits of the instrumental role of reason. The question we have to answer in the next stage of our analysis is how Ross *exactly* understands the concept of practical reason. As we shall see, the answer is not straightforward because Ross oscillates between two different accounts of practical reason.

2. ROSS’ ACCOUNT OF PRACTICAL REASON

Ross’s basic definition of practical reason (cognition) is as follows:

The practical cognition is the kind of cognition which, by virtue of the fact that it is the knowledge of the final end constituting the unconditional ground of the will, simultaneously either establishes

1 RAWLS, J. (2001). *Lectures on the History of Moral Philosophy*, Harvard University Press, Cambridge Mass., London, England, pp. 21-101.

this ground for the will or is itself this ground (*Die praktische Erkenntnis ist eine Erkenntnis, die dadurch, dass sie Wissen von den letzten Zweck, dem unbedingten Grunde des Willens ist, zugleich diesen Zweck für den Willen setzt oder dieser Grund selber darstellt*)².

In this definition Ross demands from practical reason not just discovering the a priori valid moral norms (values, or ends), but *establishing these norms (values, or ends)*; practical cognition (i.e., cognition by practical reason) must therefore be at the same time “a direct request or demand imposed upon the will (*unmittelbare Forderung oder Aufforderung an den Willen*)”³. This definition, as we shall see in more detail in the next section, enables Ross to criticize on logical grounds the very idea of practical reason as exhibiting “dialectical nature”, i.e., as being two incompatible things at the same time: a cognition and a basis for the determination of the will⁴. But this definition of practical reasons is not the only admissible one. On a different account of practical reason the a priori validity of moral norms (values, or ends) is a *prerequisite of practical cognition, not its product*. In fact, in his *opus magnum*, *On Law and Justice*, Ross, while discussing idealism and realism in legal philosophy, puts forward this definition of practical reason: he writes that idealism is the view which assumes that there exists “a world of ideas or validity, comprising a set of absolutely valid, normative ideas which are apprehended immediately by our reason”, and this cognition is a priori, i.e. “independent of our senses”⁵. In his *Kritik der Sogenannten Praktischen Erkenntnis* Ross draws a distinction between ‘formal ethics’ (a paradigmatic example of which is Kant’s ethics of duty) and ‘material ethics’ (embracing value ethics and teleological ethics) and writes explicitly that the former is based on the concept of will establishing the norms, while the latter – on the concept of norms (values, or ends) lying outside the will and cognized by reason. This implies that already in this early work he in fact uses two different accounts of practical reason, corresponding, respectively, to formal ethics and material ethics, though he does not consistently distinguish these two accounts in his critique of practical reason. By way of summary of the hitherto considerations let us define these two accounts in a more precise manner:

Account 1. The claim about the existence of practical reason implies that there is an ideal world of moral norms (values, or ends) and these norms (values, ends) are established by reason and thereby can be apprehended *a priori*, i.e., solely by reason, independent of senses.

Account 2. The claim about the existence of practical reason implies that there is an ideal world of moral norms (values, or ends) and these norms can be apprehended *a priori*, i.e., solely by reason, independent of senses.

As we shall argue in section 4, Ross arguments against practical reason are efficient only with respect to *Account 1*.

3. ROSS’S CRITIQUE OF PRACTICAL REASON

The arguments of Ross against practical reason can be divided into the philosophical, the logical, and the psychological. The distinction between the philosophical and logical arguments is of course conventional: the logical arguments are also philosophical. But, for the purposes of this paper, by ‘philosophical’ we shall mean those arguments which *are not empirical and do not aim at revealing some inner logical inconsistencies in the analyzed concept (of practical reason)*.

2 ROSS, A (1933). *Kritik der Sogenannten Praktischen Erkenntnis. Zugleich Prolegomena zu Einer Kritik der Rechtswissenschaft*, trans. H. Winkler, G. Leistikow, Felix Meiner, Leipzig, p.19.

3 *Ibidem*.

4 *Ibid.*, p. 432.

5 ROSS, A (1958). *On Law and Justice*, University of California Press, Berkeley, p.65.

(*The philosophical arguments*) The first philosophical argument can be put this way: the concept of practical reason is in a twofold manner incompatible with the naturalistic outlook. It is inconsistent 'on the side' of practical reason's *object of cognition*: the object are moral norms (values, or ends) existing in the 'world of ideas' – which are, for naturalists, "queer entities", to use John Mackie's celebrated phrase⁶. It is also inconsistent 'on the side' of practical reason's very mechanism of cognition: the cognition is supposed to be a priori, independent of the senses, and this kind of cognition is unacceptable for all (*ex definitione* empirically-minded) naturalists. The second argument is in fact similar to the first one but more specific. It says that the concept of practical reason implies the "queer" concept of metaphysical will as distinct from the empirical will. This is so because the 'final end' which is to direct the empirical will can be established only by the will which is not empirical, and thereby is metaphysical (otherwise, i.e., if the 'final end' were determined by the empirical will, there would be no reason to treat this end as a distinguished one, i.e. imposing on human beings unconditional moral duties). These two arguments are in fact variants of the 'general' argument from naturalism mentioned in Introduction. They are not original and do not constitute Ross's special contribution to the debate about practical reason. The third argument casts a shadow of doubt on the belief in the existence of a coherent ideal world of norms by pointing out that those who assumed its existence proposed their mutually incoherent sets. As Ross put it in a memorable, though (as shall be argued hereafter), quite superficial remark:

Like a harlot, natural law is at the disposal of everyone. The ideology does not exist that cannot be defended by an appeal to the law of nature. Evidence as the criterion of truth explains the literally arbitrary character of the metaphysical assertions. The historical variability of natural law supports the interpretation that metaphysical postulates are merely constructions to buttress emotional attitudes and the fulfillment of certain needs⁷.

This third argument is different from the previous ones, as it does not rely on the general naturalistic assumptions of Ross's philosophy; though, similarly to them, it is not original either. Ross's main contribution to the debate are his logical arguments.

(*The logical arguments*) According to Ross, the very concept of practical reason (cognition) contains a logical contradiction: practical reason is supposed to simultaneously *cognize* (as reason) the final end of the human will and *establish* this end (as *practical reason*)⁸. But, as Ross says, it is a contradiction, since these two activities – cognition and establishing (i.e., in fact creating) – are incompatible, and thereby cannot be performed at the same time. The contradiction which Ross means can be made more manifest by putting it this way. The cognitive function of practical reason implies that its object exists independently of the human mind, and the 'establishing' (i.e., creative) function of practical reason implies that its object arises as a result of the activity of the human mind. But, and here is the contradiction, the object cannot at the same time exist independently of the human mind and be its creation. Ross attaches much importance to this argument, saying, in the context of its presentation, that the judgments of practical reason are not real judgments but the masked expressions of emotional experiences. In the concept of practical reason Ross sees also a different contradiction. As was mentioned before, Ross maintains that this concept implies the idea of the metaphysical will. Now, he criticizes the latter concept not only on the ground that it is 'metaphysical', i.e., referring to metaphysical entities, and thereby not fitting into his naturalistic outlook, but also, on the ground that it leads to the "metaphysical doubling (*metaphysische Verdoppelung*)", i.e., to the contradiction consisting in treating different – the empirical and the metaphysical – entities as identical, or more precisely, as treating the empirical will as a manifestation (*Offenbarung*) of the metaphysical will. Ross calls this mistake the

6 MACKIE, JL (1991). *Ethics: Inventing Right and Wrong*, Penguin Books, London, pp. 38-41.

7 Cfr. ROSS, A (1958). *Op. cit.*, p. 248.

8 Cfr. ROSS, A (1933). *Op. cit.*, p. 30.

"identity of the different (*Identität des Verschiedenen*)"⁹. This is a contradiction, since, according to Ross, the empirical will is not identical with the metaphysical will, for the simple reason that the former is 'empirical', and thereby individual and located in the spatio-temporal continuum, while the latter is 'metaphysical', and thereby supra-individual and transcending the spatio-temporal continuum. But, as Ross¹⁰ remarks, they have to be treated as identical by the adherents of the formal ethics since otherwise it would be impossible to understand how human beings may gain access to the 'verdicts' of the metaphysical will (we may have such access only if we treat the verdicts of our empirical will as the 'verdicts' of the metaphysical will); on the other hand, we must treat them as different since there are no reasons to treat the verdicts of individual, empirical will as formulating valid moral norms. This argument seems very insightful and convincing. One may only reflect on whether the name Ross gave to the mistake which this argument is intended to disclose (the mistake of "identity of the different") is an apt one. Perhaps it would be more apt to say that the mistake consists in treating the different things (the metaphysical and the empirical will) as simultaneously identical and different, rather than in treating them as simply identical (Ross writes explicitly that the adherents of practical reason tend to treat the two different kinds of wills as *both* identical and different).

(*The psychological arguments*) As was mentioned before, Ross criticizes the idea of practical reason by claiming that its object – the world of moral norms (values, or ends) – is merely a projection of our emotional attitudes and needs. But he does not provide any good arguments for this claim; the claim seems to be rather an expression of his neo-positivist *credo*. A more interesting version of psychological argument is connected with his critique of one of the variants of material ethics, viz. teleological ethics, called by Ross also "ethics of potentiality" (*Potenzethik*) because of its Aristotelian pedigree. Now, according to Ross, the concept of the 'final end', fundamental for this ethic, is a testimony to our anthropomorphic tendency to see nature, including human nature, as endowed with 'ends', which have to be attained if a given entity is to fully realize its 'potential'. Ross elegantly develops this critique, describing in much detail the very mechanism of this anthropomorphic generation of the concept of the 'final end'. He claims that the view of nature as endowed with the "power, tendency, striving (*Kraft, Tendenz, Streben*)" to realize its "end" is a result of the two processes: injection and projection. First, human beings take these notions (power, tendency, striving) from the simple observations of behavior of animals in order to express or understand their own subjective experiences (*Injection*). Then, they apply these notions back to nature in order to make sense of it as striving towards the realization of some immanent ends, as realizing their inner "longing (*Sehnen*)" for ontological fulfillment (*Projection*)¹¹. By doing projection, man therefore perceives nature in analogy to himself. The result is a "primitive – animalistic, teleological – view of nature (*primitive – animistische – teleologische Naturanschauung*)", which found its most sophisticated and pure form in the Aristotelian philosophy. This view of nature permeated also the Medieval philosophy, within which it was supplemented with additional – theological – assumptions; this philosophy assumed that: "the course of the world is completely determined by the fact that things strive towards their 'purposes' assigned to them by God (*der Gang der Welt is gänzlich dadurch bestimmt, dass die Dinge vorwärts zu ihrer göttlichen 'Bestimmung' streben*)"¹².

4. WHAT IS WRONG WITH ROSS'S CRITIQUE OF PRACTICAL REASON?

A quick answer to the question from the title of this section is that the main part of this critique seems to be efficient only with regard to the first account of the concept of practical reason. As was mentioned

9 *Ibid.*, pp. 23-24..

10 *Ibid.*, pp. 431-434.

11 *Ibid.*, p. 197.

12 *Ibidem*.

in section 2, Ross uses in fact two accounts of practical reason. According to the first one, practical reason *cognizes and establishes* moral norms (values, or ends), and according to the second one, it just *cognizes* moral norms (values, or ends). The common point of the two accounts is that there exist objective moral norms (values, or ends), but while the former assumes that they are established by reason, the latter assumes that they exist prior to any activity of reason, and thereby are not established by it. Now, the most interesting arguments of Ross against practical reason, i.e., those arguments which do not appeal directly to the naturalistic assumptions, are efficient only with respect to the first account. The arguments in question are the logical ones: they point at two serious problems of those ethical views, viz. formal ethics and also some variants of teleological ethics, which imply that practical reason simultaneously cognizes and establishes moral norms (or ends), and thereby rely on the concept of the metaphysical will which is supposed to perform the task of 'establishing' these norms (or ends). Let us recall that the first problem is a logical contradiction involved in the postulate that practical reason cognizes and establishes norms; the second problem is connected with treating two different types of will – the empirical and the metaphysical – as identical (or rather, as we have argued, as simultaneously identical and different). These logical arguments do not apply to those variants of material ethics (viz. to value ethics and to those versions of teleological ethics which dispense with the concept of the metaphysical will), which imply that moral norms (values, or ends) are not established by practical reason, and thereby do not require the concept of the metaphysical will as part of the concept of practical reason. Accordingly, the efficiency of Ross's critique of the second account of practical reason (which is implied by value ethics and teleological ethics not appealing to the concept of metaphysical will) depends on the strength of the philosophical and psychological arguments. The strength must, in turn, be assessed separately for these two variants of material ethics, viz. value ethics and teleological ethics. There is undoubtedly much too be said in favour of Ross's psychological claim that the very idea of the 'final end', lying at the centre of teleological ethics, is a manifestation of anthropomorphism, i.e., of reading the idea of the 'ends' taken from our psychological experience "into" the nature. This psychological claim proves to be all the more convincing if one takes into account the achievements of modern science, which eliminated from the description of nature the ancient and medieval idea of *causa finalis*, and thereby, indirectly, undermined the idea of the 'final end' of *human nature*. Thus, even though material ethics in its teleological variant (in so far as it is free from the commitment to the idea of the metaphysical will) is unaffected by the logical arguments, it is strongly undermined by the psychological ones. *But neither logical nor psychological arguments apply to material ethics in its axiological variant (i.e. value ethics), because it does not imply either that practical reason simultaneously cognizes and establishes moral values (and thereby does not commit its adherents to accept the concept of the metaphysical will) or that there exists the 'final end' of human nature.* What it implies is that there exist objective moral values which can be discovered by (practical) reason (it should be mentioned, though, that some of its variants, e.g. Max Scheler's, dispense with the concept of practical reason, and rely instead on the concept of intuition or emotional sensitivity as capacities for cognizing moral values). The only arguments that are relevant for it are two philosophical arguments: from the truthfulness of naturalism, and from the historical variability of moral systems. The first of these two arguments is the weakest one of all the arguments formulated by Ross against practical reason, because the claim about the truthfulness of naturalism is highly debatable: which general philosophical outlook – naturalistic or non-naturalistic – one chooses is to a large extent or even entirely (given the current state of philosophical and scientific knowledge) a matter of personal choice. Accordingly, only the argument from the historical variability of the purportedly objective and immutable moral systems remains. But this argument is much overestimated by Ross. It is true that different philosophers often treated as objective different moral norms (values, or ends), but this does not *ipso facto* mean that the very concept of objective moral norms (values, or ends), implied by the concept of practical reason as its correlate, is a fiction – an expression of our emotional experiences. It does not have

to be fiction for two reasons. *First*, one may argue, as many philosopher did (e.g. Nicolai Hartmann), that what really changes are not the objective moral norms (values, or ends) themselves (which are thereby not pseudo-objective) but only our cognition thereof: this cognition may become more or less clear, depending on various social and psychological factors. The optimistic view is that, with the historical development, the picture that human beings develop of the realm of objective moral norms (values, or ends) asymptotically approaches its real picture. *Secondly*, one may argue that the historical variability of moral norms (values, or ends) tends to be exaggerated by the critics of objective morality. As was plausibly demonstrated, e.g., by Clive Staples Lewis in his insightful work *The Abolition of Man*, human beings, throughout their history, accepted very similar values; the only real differences between their value systems, as was in turn noticed by Gilbert Keith Chesterton¹³ lay not in their content but in their ranking; for instance, for the Chinese people, as Chesterton claims, the norm "Honour thy father and thy mother" stands above the norm "Thou shalt not kill", while for the European people the ranking of these two norms is reverse.

Let us conclude this section by tracing the consequences of Ross's view of practical reason for his definition of the task of moral philosophy. The straightforward consequence is the narrowing down of the field of moral philosophy to, as Ross calls it, 'moral science', i.e., an empirical science of morals¹⁴.

Its task is to describe the moral ethos assumed by people in a given society, i.e., to discover the rules people actually accept, and its method for the realization of this task is the "tentative induction from concrete, real reactions (*versuchsweise Induktion an den realen Einzelreaktionen*)"¹⁵. Ross makes a (very plausible) conjecture that the rules actually accepted by people, to be discovered while pursuing his 'moral science', will prove to be complex, detailed, and conditional, and thereby quite dissimilar to the simple, general, and unconditional rules of traditional doctrine of natural law. But, the plausibility of these claims notwithstanding, Ross, in our view, unjustifiably confines the limits of moral reflection to *non-normative issues*: the problem – crucial for most moralists from the pre-neo-positivist era – of which moral norms are the right ones, is treated by Ross, with a strange intellectual nonchalance and a barely disguised feeling of superiority, as a pseudo-problem, based on metaphysical prejudices, and purportedly testifying to our "metaphysical hunger" and the fearful attitude to life¹⁶. This nonchalance and the feeling of superiority are easy to detect especially in the following passage:

The driving force of metaphysics in the field of moral and religion is the fear of the vicissitudes of life, the transitoriness of all things, the inexorability of death, or, conversely, the desire for the absolute, the eternally immutable which defies the law of corruption. This fear, in moral matters, is associated with the fear of having to make choices and decisions under changing circumstances and on one's own responsibility. Therefore, by seeking justification for our actions in immutable principles outside ourselves, we try to relieve ourselves of the burden of responsibility¹⁷.

This passage is intellectually nonchalant because Ross, for all his brilliance, does not seem to notice the fact that in the absence of any objective moral criteria for making ethical choices, we could never treat those choices with due seriousness: the adequate attitude in this situation would be that of carelessness, since if all options are equally good (or more precisely, since there are not and cannot be any criteria for ascertaining whether a given option is morally better than another), there is no reason to ponder over which of them to choose; the very concepts of moral choice and moral responsibility dissolve as a result. And the feeling of superiority is by no means justified: the claim that people believe in objective moral norms because

13 CHESTERTON, GK (2008). *Obrona człowieka*. Trans. J. Ryzewska, Zabki, Warsaw, p. 173.

14 Cfr. ROSS, A (1933). *Op. cit.*, pp. 445-456.

15 *Ibid.*, p. 446.

16 *Ibid.*, p. 434. ROSS, A (1958). *Op. cit.*, p. 263.

17 ROSS, A (1958). *Op. cit.*, p. 262.

it helps them to dispel their fear of death and of the unpredictability of life is a piece of idiosyncratic and poor psychology; it is difficult to discern any connection between the acceptance or non-acceptance of objective moral norms and the 'level' of this fear. More generally, in our view, the impoverishment of moral reflection (its confinement to purely descriptive tasks), which is a direct consequence of the assumption of the consistently naturalistic outlook, can be most plausibly interpreted as an argument against this outlook.

In summary: Ross's most insightful arguments against practical reason (the logical ones and one of the psychological ones) apply only to Account 1 of practical reason and to *Account 2* in so far as it is connected with teleological ethics; they do not undermine *Account 2* in so far as it is connected with axiological ethics.

5. IMPLICATIONS FOR LEGAL PHILOSOPHY

The rejection of practical reason has indeed, as Ross claimed, direct consequences for legal philosophy, viz. it leads to the rejection of the dualistic accounts of legal validity, which assume the distinction between the factual and non-factual aspect of law, the former referring to law's being embedded in factual – social – reality, the latter – to its being valid in the realm of ideas¹⁸. In fact, the rejection of practical reason has also further legal-philosophical implications (e.g., for his views of democracy, freedom and justice¹⁹; but their examination lies beyond the scope of this paper; we can formulate here only several brief remarks on the problem of legal validity. Now, Ross argumentation against its dualistic accounts is complex and sophisticated. But undoubtedly one strand of this argumentation is directly connected to his critique of practical reason: he believed that given that the dualistic conceptions of legal validity assume the existence of practical reason, and that practical reason cannot exist, the dualistic conceptions are wrong. This argument is correct, since the concepts of dualism and practical reason (with its object: objectively existing moral norms, values or ends) are connected to each other by their non-naturalistic background and relations of mutual entailment. He also tried to psychologically "unmask" the dualistic accounts of legal validity, writing that "like most other metaphysical constructions, the construction of the immanent validity of positive law rests on a misinterpretation of certain experiences – the experience that the law is not merely a factual, customary order, but an order which is experienced as being socially binding"²⁰. This psychological argument resembles the psychological arguments, discussed in section 2, which he formulated against practical reason. The conception of legal validity he finally proposed, starting from his critique of practical reason, is based on his central, naturalistic assumption that "fundamental legal notions must be interpreted as conceptions of social reality, the behavior of man in society, and as nothing else"²¹. This conception is well summarized in the following passage:

valid law means the abstract set of normative ideas which serve as a scheme of interpretation for the phenomenon of law in action, which again means that these norms are effectively followed, and followed because they are experienced and felt to be socially binding²²; [and in the same vein - WZ]: "All propositions about law refer, in the last analysis, to a social reality. The basis of jurisprudence must be a sociological outlook"²³.

This definition relies on purely factual phenomena, making no recourse to metaphysics. Another definition puts a stronger stress on the predictive function of propositions about law: "legal norms serve as a

18 Cfr. ELIASZ, K (2015). 'Obowiązywanie prawa w ujęciu skandynawskiego realizmu prawnego', in: STELMACH, J; BROZEK, B; KUREK, L & ELIASZ, K (Eds) (2015). *Naturalizm prawniczy. Stanowiska*, Wolters Kluwer, Warsaw, pp. 193-194.

19 Cfr. SERPE, A (2013). 'Su democrazia libertà e uguaglianza. À propos del Ross di Hvorfor Demokrati', *i-Jex*, 20, pp. 453-478 (www.i-lex.it).

20 ROSS, A (1958). *Op. cit.*, p. 38.

21 *Ibid.*, p. IX.

22 *Ibid.*, p. 19.

23 *Ibid.*, p. 27.

scheme of interpretation for a corresponding set of social acts, the law in action, in such a way that it becomes possible to comprehend those actions as a coherent whole of meaning and motivation to predict them until certain limits"²⁴.

More generally and by way of conclusion: the result of Ross' naturalistic outlook, within which the task of philosophy is construed as a logical analysis of empirical statements, was his methodological conviction that philosophy of law can only be analytic – focused on a logical analysis of legal notions. Accordingly, he believed that there is no place for normative or ethical jurisprudence, i.e. the philosophy of natural law. However, given our critique of his critique of practical reason, we must conclude that his narrowing down of the task of legal philosophy (as well as his narrowing down of the task of moral philosophy of which we wrote in the preceding section) is unconvincing: the perspectives for metaphysical or normative legal philosophy are by no means so dim, as he maintained them to be, since the basic concept for developing this kind of philosophy – the concept of practical reason – is alive, notwithstanding Ross's efforts to make it dead or prove it to be already dead. In other words, the foundations which Ross wanted to provide for his legal philosophy are shaky or at least by no means as solid as he thought they are.

24 *Ibid.*, p. 29.



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