

Chapter 2

Legal Orders

2.1 Introduction

Since law-state thinking deals with the abuse of legal orders, it is no doubt called upon to explicate, at least roughly, our notion of “legal order” before we proceed with an analysis of the ways in which the law-state ideology concerns itself with legal orders.

Allow me, right at the outset, to make an important remark concerning the use of the term “legal order”. In everyday language, and in legal practice, it is often used in the sense of “legal directive” or “legal command”. In jurisprudence, however, it is not infrequently used in a more general way, where it is understood as roughly comparable to “legal system”. This becomes apparent in such uses as “the legal order of Scotland”. In some instances the two terms, “legal order” and “legal system”, are used more or less synonymously, in other instances legal orders are regarded as a species of legal system or as something closely related to that. In this book, as you will see, I treat legal systems as integral parts of legal orders.

I regard legal orders as abstract entities, created by men. They are products of human culture, not something inherent in human or extra-human “nature”. I profess a humanistic conception of legal orders. More precisely, I see them as inter-personal structures of normative ideas, maintaining their temporal permanence through language. Like other human ideas, legal ideas and, hence, legal orders can be morally good or bad. Indeed, if they could not be bad, the law-state ideas would be superfluous. This conception of legal orders belongs to the family of positivistic theories of law.

I also regard legal orders as instruments for achieving goals outside the legal orders themselves. Legal orders have many and varied social functions. These instruments are handled by professional functionaries of various kinds. The relationship between a legal order and the juridical handling of it is a highly complex phenomenon. One might, of course, deny that there are such things as abstract legal orders at all, looking upon “law” as a certain kind of practice, or certain type of behaviour. However, although legal behaviour—both that of the public and that of the functionaries—is, after all, what really matters, this conception of law is, in my opinion, an over-simplification. Legal behaviour is idea-governed behaviour and

the explanatory component of law and legal life is not legal behaviour but the very ideas guiding it. These ideas exclusively are what make law law. No doubt it is true that, when looking upon legal orders as separate and discernable entities, we ascend to a very high and lofty level of abstraction. But in order to formulate a satisfactory “general conception of law” we inevitably have to reach this level of abstraction.

Legal orders can be studied from many different points of view. The main task of legal science is of course to study them from the point of view of their *content*. The study of the law-content (i.e., *the law*) is in the first place the task of legal dogmatics (civil law, criminal law, procedural law, etc., also including comparative studies in these fields).

But legal orders can also be studied on a more general and “formal” level than can legal dogmatics. The most basic branch of legal science is *the ontology of legal orders*: what kind of entities are they (or, rather, their elements)? Closely related to the ontology of legal orders is *the morphology of legal orders*: which elements constitute a legal order, which is the logical structure of the different kinds of norms forming such elements and which are the legal-technical relationships between the different elements (a question closely connected to the logical question)?¹

The clarification of conceptions related to legal orders in operation, i.e., how they influence the public and how their functionaries handle them, belongs to the *praxeology of legal orders*. Within praxeology, legal orders are studied in the social context in which they function. Praxeological concepts are concepts about *the handling of legal orders* by the general public as well as by the legal functionaries.

Praxeology, on its part, is based upon certain more basic ideas concerning the general goals of legal orders. The study of these foundations of praxeology belongs to *the teleology of legal orders*.

In Sect. 2.2 I shall present an outline of some basic ideas in the fields of the morphology and ontology of legal orders and in Sect. 2.3 ideas in the fields of praxeology and teleology.

2.2 Some Morphological and Ontological Points of View

I regard the concept of an (advanced) *legal order*, LO , as a (binary) relation $LO(N, O)$ (i.e., a set of ordered couples $\{ \langle N, O \rangle \}$) between a set of norms (legal rules), N , and an organisation (a set of legal positions), O , such that

- (i) norms of N constitute O
- (ii) the function of O is (mainly) to handle (create, apply, execute) norms of N , i.e., it is the task of the functionaries of O to handle norms of N
- (iii) the function of N , in its totality, is to regulate, by the handling of N by functionaries in O , social life in its fundamental parts and in a comprehensive way

¹ Å. Frändberg, “Morphological levels as a tool for the general study of law”, in *Justice, Morality and Society. A tribute to Aleksander Peczenik on the occasion of his 60th birthday 16 November 1997*, A. Aarnio, R. Alexy, G. Bergholtz, eds. (1997), pp. 147–158.

- (iv) some part of *O* (i.e., some organs within the organisation system *O*) has the function of settling disputes among persons in accordance with norms in *N* and to take a standpoint to alleged non-compliance with obligations or prohibitions in *N* (i.e., courts of law)
- (v) some part of *O* has the function to impose and execute sanctions (punishment, damages, etc.) on persons under certain conditions, stated by *N*, as the ultimate resource for obtaining the goals of the rules of *N*.

A *legal system* is any such set, *N*, of norms.

A *legal norm* is any member, *n*, of a legal system.

A *legal organisation* is any such organisation (or constellation of organisations), *O*. As being a special set of legal positions, *O*, as well as *N*, has a normative character (see below). A *particular legal order* (e.g., the Swedish legal order), then, is a legal order-relation holding between a certain system of norms and a certain organisation. The nature of this relationship is roughly indicated by clauses (i)–(v).

The study of *legal systems* from the formal viewpoint of structure and technical function is primarily a concern of general jurisprudence, and has been so since Bentham and Austin laid the foundations of that discipline.² Examples of such morphological analyses of legal systems are Merkl's and Kelsen's genetic-hierarchical *Stufenbau*³, Hart's distinction between primary and secondary rules (and within the latter category between rule(s) of recognition, rules of change, and rules of adjudication), the discerning of norms of competence (or power-conferring rules) as a separate norm-type⁴ and the distinction between rules and principles.⁵ Most legal theorists (myself included) are, I think, of the opinion that any entity being an integral part of a legal system in the last analysis has a normative character (although there are certain divergencies of opinion concerning permissions, statutory definitions and principles). It might therefore be justifiable to regard all members of legal systems as (different kinds of) norms.

The nature and make-up of *legal organisations*, and the requirements that the law-state ideology lays down on them, will be dealt with in further detail in Chap. 9. Let me here just briefly hint at what I have in mind when I talk about legal organisations.

In a society that has a legal order—or, in other words, in a legally organised society—there are certain typical bodies (authorities, but also private institutions) which are to be found in every (advanced) legal order: courts of law, legislative bodies, police, prosecutors, advocates, etc.⁶ They all belong to the legal organisation

² J. Bentham, *Of Laws in General*, ed. H.L.A. Hart, (1970), J. Austin, *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence*, ed. H.L.A. Hart (1954).

³ A.J. Merkl, "Prolegomena einer Theorie des rechtlichen Stufenbaus", in *Gesellschaft, Staat und Recht*. Festschrift für Kelsen (1931), pp. 252–294. H. Kelsen, *General Theory of Law and State* (1945), *Reine Rechtslehre*, 2nd ed. (1960).

⁴ A. Ross, *On Law and Justice* (1958), H.L.A. Hart, *The Concept of Law* (1961), J. Raz, *The Concept of a Legal System* (1970).

⁵ R. Dworkin, *Taking Rights Seriously* (revised ed., 1978).

⁶ Cf. M.P. Golding, *Philosophy of Law* (1975), ch. 1.

of that society. But also a parliamentary assembly, a government, and administrative authorities are parts of the legal organisation (in a wider sense), since they are constituted by legal norms. The state belongs to, and is the main constituent of, the legal organisation.

What, then, is the ontological status of such “bodies”?

Legal systems fulfil their social tasks by creating normative relations between individuals. An individual standing in some such relationship to another individual is in a *legal position* (towards that other).⁷ Such legal positions, or relationships, are, e.g.:

- (a) *A* has the obligation to pay rent to *B*
- (b) *C* is married to *D*
- (c) *E* owns the cow Rosita
- (d) Judge *F* shall sentence *G* to imprisonment.

The relationship between legal positions and legal norms is a deductive one.⁸ Sentences about legal positions are deduced from (perhaps unstated) sentences expressing legal norms in conjunction with sentences about certain operative facts, e.g.:

Example (a')

- (1) Anyone who rents a house has an obligation to pay rent on the day of maturity
- (2) *A* rents a house from *B* and the day of maturity has arrived
- (3) Thus: *A* has the obligation to pay rent to *B*.

Example (b')

- (1) Anyone who has completed a marriage ceremony [along with certain other operative facts] is married
- (2) *C* and *D* have together completed a marriage ceremony [along with such operative facts]
- (3) Thus: *C* is married to *D*.

Example (c')

- (1) Anyone who has bought a thing [along with certain other operative facts] owns that thing
- (2) *E* has bought the cow Rosita [along with such operative facts]
- (3) Thus: *E* owns the cow Rosita.

Example (d')

- (1) Any judge who finds the defendant guilty of theft shall sentence him to imprisonment
- (2) Judge *F* finds the defendant *G* guilty of theft
- (3) Thus: Judge *F* shall sentence *G* to imprisonment.

In example (d'), then, judge *F* stands in the normative relation (is in the legal position) vis-à-vis *G* that *F* shall sentence *G* to imprisonment.

⁷ For a thorough analysis of legal positions, see L. Lindahl, *Position and Change* (1977).

⁸ Cf. H.L.A. Hart, “Definition and Theory in Jurisprudence” (70 *Law Quarterly Review*, 1954).

The main component of a legal organisation is public *authorities* of different kinds. An authority is, as I see it, a system of legal positions (juridico-normative relations)—just as the relationship between a seller and a buyer or a husband and his wife (i.e., a marriage) are systems of legal positions. In the case of authorities, the position-holders are that special kind of individual we call *officials*. A *legal organisation* is (or, at least, includes) an ordered set of official legal positions.

I regard norms as a kind of abstract entities (ideas, or thought-contents). Legal positions, including authorities, have the same ontological quality as norms, deductively derived, as they are, from legal norms.

Two important features concerning authorities shall be pointed out already here.

1. Authorities are not the only products of legal systems. There are others, e.g., limited companies and marriages. I am well aware of the fact that, in practice, it is not difficult to distinguish the marriage between Mr. and Mrs. Jones from the local sanitary authority—but how shall we draw the line between authorities and other products of a legal system as a matter of principle?

As far as I can see, the difference lies in the fact that authorities are *obligatory* according to a given legal system. There are norms in the system stating, or at least presupposing, that certain bodies shall exist—e.g., the Stockholm Court of Appeal, the Swedish Government or Uppsala University, according to the Swedish legal system—while, on the other hand, this is not the case with respect to limited companies and marriages. The legal system does not state, or presuppose, that such entities *shall* in fact exist. It only states that if persons want to create them, this must be done according to rules in the legal system.

2. Authorities are, as a rule, *institutions*. By an institution I mean, roughly, an organisation such that individuals can be replaced by other individuals as position-holders in it without any change in the identity of the organisation.⁹

So, when we say that norms of *N* constitute *O*, we mean that the legal positions which together form *O* are deduced from norms in *N*. On the other hand, position-holders in *O*—people of flesh and blood—create, remove, change, interpret and administer norms in *N*, or give advice to persons on how to act given the existence of *N*—in short, they *all handle norms of N* (in that way *maintaining the legal order*). In more developed legal orders we can discern different kinds of position-holders, with corresponding separate professional roles. This fact is of utmost importance from the viewpoint of realising the values of the law-state ideology.

The clauses (iii)–(v) in our characterisation of the concept “legal order” are justified by the following considerations.

Clause (iii), which states that legal systems have, as it were, general social ambitions—their norms, taken together, regulate social life as a whole and constitute a kind of framework for it—has the function of excluding from the class of legal orders, on the one hand moral systems, and on the other social orders such as trade unions, religious communions (churches) or the Mafia. Certain difficult borderline cases may appear, but that gives us no reason to despair: we can never draw sharp lines of demarcation around social concepts of such a high degree of abstraction as, e.g., “legal order”.

⁹ It should be obvious that my concept “institution” is something completely different from the concept named by the same term in N. MacCormick and O. Weinberger, *An Institutional Theory of Law. New Approaches to Legal Positivism* (1986).

Clause (iv) makes the existence of courts of law (or bodies with essentially the same functions) a necessary component of legal orders. Surely, one can imagine social orders satisfying clause (iii) but not clause (iv); such orders would be a kind of legislative-administrative orders, and in societies organised by such orders the rule of law may well be applicable to a large degree. But one might argue that, for a social order to be a genuine *legal* order, some kind of institution trying disputes and alleged non-compliance with the social norms, which institution is distinct from, and independent of, other, purely administrative authorities, must be a necessary ingredient of a legal order. On the other hand, clause (iv) cannot be a sufficient condition for a social order to be a legal order; also the Mafia may have its special “courts of law” (cf. the medieval *Feme-courts*).

A social order lacking a mechanism of sanctions (clause (v)) is little more than institutionalised morality. As a last resource legal orders resort to force and violence, and that is a characteristic feature of them. It also seems strange to imagine the existence of courts of law without a mechanism of sanctions attached to them.

Clauses (i) and (ii) can be said to define a concept of “social order”, while clauses (iii)–(v) state the additional conditions necessary for distinguishing legal orders from other social orders.

The reason why it is justifiable to lay down both (iii) and (iv) as necessary conditions for something to be a legal order is of a historical nature. Legal orders, such as they have developed in the Occidental world, are a joining of two, somewhat different social functions: *adjudication*, aimed at “solving” individual cases, and *legislation*, aimed at regulating society in its entirety, ideally without any adjudicative interference at all. In former times, these two functions were not separated from each other but pursued, both of them, by bodies like the Germanic *Thing*. Later in the development of the legal organisation the two functions are to a large extent—though to a greater or lesser degree in different countries—separated from each other and pursued by different bodies within the legal organisation. But whether or not this separation has taken place, there is a genuine difference between the two functions and they might even conflict. This built-in tension within legal orders is of a special interest from the viewpoint of law-state thinking.

Conceived in this way, legal orders are abstract objects: intersubjective systems of ideas, structured normative thought-contents (or meaning-contents) and as such artefacts, products of human culture, usually constructed and amended by a collective effort often ranging over a very long period of time.

A legal order, so defined, can function (be at work) in a society, *S*, at a given time, *t*, and thus be the valid law of *S* at *t*; or a legal order may have been valid law during some past period of time but is no longer valid, e.g., classical Roman law, whose rules are no longer applied and whose authorities, e.g., the praetor, no longer function; or legal orders can be programmes, projects for the future, drafted by official legislators or, why not, by yourself in your study, and thus no valid legal orders now (or ever). Not all legal orders are valid legal orders. Hence, the existence and the validity of legal orders are two different things. Existence is a matter of ontology, validity a matter of praxeology.

2.3 Some Praxeological and Teleological Points of View

Legal orders are not ends in themselves. They are, ultimately, means for ends outside the legal orders themselves. They are instruments pure and simple, and their handling is a kind of technique. In stating this I join those who have an *instrumental* (teleological, finalistic) view on legal orders.¹⁰ For a legal theorist with this standpoint, it is an urgent task to analyse, on a general level, the ways in which this instrument is handled and functions, and to evaluate its fitness as an instrument for achieving the goals which it is supposed to achieve.

Legal orders are designed for certain functions. But one thing is to have a function, another to be actually functioning. Valid legal orders are tools at work, legal orders as such mere tools—just as the hammer in the cupboard has a function but the hammer in the hand of the carpenter in addition to that also functions.

Like other instruments, legal orders can be misused. In order to avoid this, some juridico-ethical restrictions must be laid down with respect to the handling of a legal order by its functionaries. Law-state thinking puts forward some such restrictions. Its principles are, logically, situated on a meta-level in relation to the law—or, if they are incorporated in the legal system, to the rest of the law. By regarding legal orders as instruments which can be dangerous, sometimes deadly dangerous, weapons in the wrong hands, the importance of law-state thinking stands out all the more clearly. The existence of a valid legal order in a society is not at all in itself a guarantee for the protection of individual freedom or security in that society.

When we regard legal orders in their relations to social reality, i.e., how they are *handled* in different respects, we lay a *praxeological aspect* on them; those relations are *praxeological relations* and the concepts we use to characterise them are *praxeological concepts*.

In order to articulate ideas concerning praxeological matters, four concepts seem to be necessary and, hence, basic praxeological concepts:¹¹

- (1) A legal order, *LO*, is *expedient* in relation to a set of goals, *G*, if and only if it is suitable as a means for achieving *G*
- (2) *LO* is *realised* if and only if it is on the whole observed (followed) by the public
- (3) *LO* is *efficacious* if and only if it is (i) expedient, and (ii) realised
- (4) *LO* is *valid* if and only if it is on the whole observed by its functionaries (judges, prosecutors, lawyers, policemen, legislators etc.), when brought to the fore.

Legal orders function as instruments mainly by directing human behaviour. A legal order is an action-oriented idea system. To any legal order, *LO*, corresponds a set of human actions, A_{LO} , such that A_{LO} is the realisation of *LO* (A_{LO} is the set of adequate

¹⁰ I have found ideas concerning the ontology and instrumental character of law very similar to my own in P. Amselek, “Le droit dans les esprits”, in *Controverses autour de l’ontologie du droit*, ed. P. Amselek and C. Grzegorzczak (1989), pp. 27–49.

¹¹ Cf. Å. Frändberg, “Some Aspects on Rationality in Legislation”, in *Juristische Logik, Rationalität und Irrationalität im Recht*, eds. A.-J. Arnaud, R. Hilpinen, J. Wróblewski, *Rechtstheorie*, Beiheft 8 (1985), pp. 123–137, at pp. 129–134.

actions by which *LO* “is fulfilled”). “Law in action” is idea-guided behaviour of legal functionaries and the public. The study of normatively determined actions within the legal sphere, and the interrelations between such actions and the legal order, belongs to the praxeology of legal orders.

A tacitly implied presupposition (or ideal) is that if *LO* is realized by A_{LO} , the social goals (purposes) of *LO*—or, rather, the social state of affairs, G_{LO} , such that these goals are fulfilled in them—will be achieved as well; either because A_{LO} is identical with, or includes, G_{LO} or because some state of affairs which includes A_{LO} causes some other state of affairs which includes G_{LO} . Of course a legal order can exist even if it is not realised (to any degree).

But this tacitly implied ideal might surely turn out to be false (not achieved). It might well be, as a matter of empirical fact, that some rules of $LO—r_1, \dots, r_n$ —are realized by actions $a_1, \dots, a_n$ but their goals, $g_1, \dots, g_n$, are not achieved. In such a case, *LO* cannot be said to be effective as an instrument. Nor is *LO* effective, however expedient it is, if it is not on the whole observed by the public subject to it.

Legal orders function as an instrument to a high degree through linguistic behaviour. Legally adequate action consists very often, not to say usually, in the use of (oral or written) language. Disputes are settled legally by words, not by violence. In a law-state violence is monopolised by the state (with a few exceptions, such as self-defence) and is used only as a last resort and in forms stipulated in advance. Apart from that, legal orders preserve peace in society mainly by the help of linguistic behaviour. And many socially important legal positions—contractual relationships, marriages, private and public institutions—are created, changed and, to a certain degree, also extinguished, not by muscular activities or natural events, like death, but by performative utterances. Performatives play a crucial role in legal behaviour and “law in action” cannot, in fact, be properly understood without a thorough analysis of performative legal language.

A necessary condition, in practice, for a legal order to be realised is that it is valid. For if its functionaries do not do their job, it is highly unlikely, at least in the long run, that the public, on its part, will adhere to law. This puts the legal functionaries at the centre of the legal endeavour and gives them a decisive role there.

Legal orders can be more or less “juridicalised”. A legal order is juridicalised when its organisation is manned by professional functionaries, especially when they are academically educated and trained in law faculties, law schools and the like. The “juridicalisation” of legal orders in Europe had a break-through with the revival of the *Corpus Juris* and the scholarly study of it in the twelfth century and onwards. The classical Roman legal order was to a high degree a juridicalised one, while the legal order of ancient Athens was not. There the borderline between politics and legal activity was not yet marked out in a more thorough way. In a juridicalised legal order, more or less elaborated juridical techniques (principles and methods of interpretation and other kinds of argumentation) were developed in the course of time. In theory, a completely non-juridicalised legal order—a functioning legal order without professional lawyers—is perfectly possible. But the development in the Occidental world has been towards an increasing division of labour and professional specialisation within its legal orders—that is, towards a greater juridicalisation. Di-

verse, specified legal roles have crystallised: the role of the judge, the advocate, the prosecutor, the draftsman of statutes, the jurist (legal dogmatist), etc.

A valid legal order is composed of a very close relation between the four phenomena *legal norm*, *legal position*, *legal role* and *legal argument*. This relationship can, indeed, be seen as the main characterisation of any valid legal order. Legal norms create legal positions, some of which, viz. the authorities, are manned by professionals with certain functions within the legal order. Such functions contribute to the development of certain professional traditions, or roles. These roles, on their part, influence the style of argumentation among the functionaries acting in them. And, to close the circle, through legal argumentation legal norms are created, changed, repealed, interpreted, used analogically, and so on. The argumentative intercourse with the law is considerable; the law allows itself freely to be influenced by argumentation.¹² And this is perfectly in line with the fundamental peace-keeping function of legal orders: ideally, arguments, not stones, are what counts.

What is, then, in general terms, the relation between legal orders and judicial processes of thought?

“Valid law” may mean two different things:

- (i) It might be used as an elliptic expression referring to certain people’s acting according to a system of normative ideas.
- (ii) It might refer to such an actually functioning system of normative ideas itself.

(iii) is a more abstract notion and the one I refer to in this essay by the term “valid legal order”. A valid legal order is “an objectification of” a set of normative ideas guiding juridical behaviour. This objectification brings about a certain order among the disparate legal phenomena and *provides us with a general framework of legal thought*, which in practice is a necessary condition for interpersonal legal communication over space and time.

Legal orders—or, more precisely, the thought-content of legal orders (*the law*)—are integral parts of legal thinking. That is apparent in two respects:

- (a) Legal orders are products of collective legal thinking.
- (b) Portions of legal orders are components of individual processes of legal thinking.

A legal order is a latent mass of normative ideas from which portions can be mobilised and incorporated in the thought process of some judicial functionary. Pieces of a legal order may be the starting-point of a certain process of thought, but such pieces may also enter into the course of such a process. They may also be a result of a legal thought process. In that case, the result may involve a change of the legal order in question. The analogy between a hammer and a valid legal order as an instrument breaks down, as we see: the valid legal order is not a thing, separate from its use, but an entity created by abstraction from the behaviour of “the users”. The concept “legal order” *simpliciter* (i.e., valid or non-valid legal orders) is, in its turn,

¹² For a painstaking discussion of the arguable character of law and its relation to the rule of law see N. McCormick, *Rhetoric and the Rule of Law* (2005).

an abstraction from the concept “valid legal order”. Legal life is idea-guided behaviour, and a legal order *simpliciter* is a set of normative ideas such that it is logically qualified to become a valid legal order. Legal orders *simpliciter* are legal phenomena which “transcend” the behaviour of individual human beings—their existence is independent of particular human beings and their actions.

One important consequence of the juridicalisation of legal orders is that legal thinking (legal argumentation) itself has been a subject of debate and normative regulation. Already in the medieval law schools methodological programmes were formulated and discussed and that medieval tradition, by way of, e.g., Savigny’s *canones*, still continues. The scientific study of such programmes may be regarded as a meta-discipline of the praxeology of legal orders, viz. *the methodology of legal orders*. This discipline is of utmost importance from the viewpoint of law-state thinking since that thinking has distinct requirements when it comes to the methodological programmes.

If we have an instrumental view of legal orders, a highly important task for general jurisprudence is, of course, to discern and classify the goals which legal orders, typically, are designed for. The branch of general jurisprudence which deals with this task I refer to as *the teleology of legal orders*.^{13,14}

Now, it might seem to be a totally impossible task to give an account of all the various uses men make, and have made over the centuries, of the legal instrument. Legal orders are, indeed, both powerful and highly flexible instruments—with respect both to their intended and their unintended consequences—and in these qualities are embedded its greatest advantages as well as its most perilous disadvantages. Legal orders can be used to maintain peace among members of society, organise men in the task of cultivating land, developing industry and taking care of children and old people. They can also be used, and have indeed been used, to keep people in misery and slavery, harass individuals, limit freedom of speech and hold witch-trials and legal proceedings against pigs, hens, dogs and oxen, before sentencing them to capital punishment.¹⁵ Legal orders surely are chameleon-like phenomena.

However, I find it justified to distinguish between *perpetual* and *variable functions of legal orders*. The latter are those functions for which legislators and others from time to time choose to use the legal orders at hand. The perpetual function, on the other hand, is a function more closely connected with legal orders as such. Since my view on the perpetual function of legal orders has some bearing upon my view on law-state thinking, some words about it might be appropriate.

¹³ Cf. J. Raz, “The Functions of Law”, in J. Raz, *The Authority of Law* (1979), Ch. 9 (first published in A.W.B. Simpson (ed.), *Oxford Essays in Jurisprudence*, 2nd series (1973)).

¹⁴ When reading literature within the field of general analytical jurisprudence, or philosophy of law, or listening to speakers lecturing in this field, I have developed a habit of diagnosing what is discussed by means of the following 7-piece typology of problems—(i) ontological, (ii) morphological, (iii) teleological, (iv) praxeological, (v) methodological, (vi) ideological (evaluative) and (vii) epistemological problems—which, I have noticed, helps a bit. While methodology has a meta-character in relation to praxeology, ideology has a meta-character in relation to both praxeology and methodology. The present essay is, on the whole, a study in the ideology of legal orders. Epistemology has, by its very nature, a meta-character in relation to each of (i)–(vi).

¹⁵ See E.P. Evans, *The Criminal Prosecution and Capital Punishment of Animals* (1906).

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