ANTONIO INCAMPO
Professore straordinario di Filosofia del diritto
II Facoltà di Giurisprudenza
Università di Bari
Piazza Cesare Battisti 1
I – 70121 BARI
Tel. +39.080.5717234 - +39.080.5717370
Cell. +39.339.6640904
a.incampo@lex.uniba.it

SCHULZE THE THIEF
From Truth to *Non*-Truth in the Process of Law
by Antonio Incampo

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1. *Non*-true sentences.

The question goes back to the Kelsenian theory of the "dynamic" character of legal system. Legal norms derive their validity from their form, rather than from their contents. This means that a legal norm is a (valid) legal norm only if there is an underlying qualified act, performed by an authority - and in compliance with procedures - defined for laying down the norm in question. This is not *necessarily* so but the legal phenomenon certainly has, as a matter of fact, this character, at least in a broader view of things.

I will try to discuss this model on the basis of law created by judges. Judges create law by passing verdicts. Thus, perhaps, a legal system is, first of all things, a *Richterrecht,* a system of laws created by judges.

Hans Kelsen wrote:

> *Die Geltung der individuellen Norm: "Schulze soll ins Gefängnis gesetzt werden" ist nicht in der Geltung der generellen Norm: "Alle Diebe sollen ins Gefängnis gesetzt werden" und der Wahrheit der Aussage: "Schulze ist ein Dieb" impliziert. Denn die individuelle Norm gilt nur, wenn sie durch den Willensakt des zuständigen Gerichtes gesetzt ist.*
>
> The validity of the individual norm "Schulze shall be put into prison" is not implied in the validity of the general norm "All thieves shall be put into prison" and in the truth of the assertion "Schulze is a thief". In fact, the individual norm is valid only if it has laid down by the act of will of the competent Court[1].

The individual norm "Schulze the thief shall be punished" may be valid as a positive norm only if it has been laid down by a competent judge. The established existence of the general norm "All thieves shall be punished, that is put into prison" is not a sufficient condition. It is necessary that a Court should actually pronounce the verdict "Schulze the thief shall be put into prison". It is possible that the Court should pronounce a completely different verdict: "Schulze the thief is acquitted". This would, however, be a valid verdict if it could not be annulled by a Court of Appeals. It otherwise is valid verdict because it has been laid down by a competent authority.

The validity of the inferior norm is not, therefore, directly derivable from the validity of the superior norm. "One must not confuse the validity of inference (in the practical syllogism) with the inference of validity"[2]. It is not enough to ascertain certain premises in order to arrive at a conclusion.

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[1] Hans Kelsen, *Allgemeine Theorie der Normen*, herausgegeben von Kurt Ringhofer und Robert Walter, 1979: 185. The English translation is mine.

[2] Michel Troper, *Cos'è la filosofia del diritto*, 2003: 100. I translate this passage by the Italian edition.

According to Kelsen, what matters for the validity of a norm is its correspondence with the established form of the legal system in which it is a norm. It does *not* matter what the norm is saying. In this sense, the decisions of judges are of *constitutive*, not just *declarative*, nature. They do not depend simply on inferences of truths from truths. Quite a different thing is the finding that five plus seven equals twelve. Here, there is no need for a judge.

This fact puts new questions on the logic of legal process.

2. Three models of truth.

If one analyzes the process of law, three (at least) models come to the fore under the aspect of the judicial syllogism.

2.1. The *analytic* model.

According to the first model, the legal reason connected with the activity of the judge is deductive in the exact sense. This one is a model of the *analytic* or *formal* syllogism. The premises are *certainly* true. The verdict passed by the judge expresses a true judgement as long as the premises are true. This model is sustained, among other things, by the famous "school of exegesis" (the French "*Ecole de l'exégese*") looming large in the whole XIX century and founding the idea of the certainty of law on the decisive goal of the *Code Napoléon* (code inspired by Napoleon Bonaparte and promulgated in 1804 under the title *Code civil des Français).* The *Code Napoléon* represents a singular achievement in the codification of law, motivated in particular by the need to render the civil law "calculable". The analyses by Max Weber have made this aspect sufficiently clear.

The activity of the judge consists in deriving new laws from laws already established, by means of rigorously logical operations. If the judges derived less or more (than what rigorously logical operations afford), adjudication would turn into legislation.

Considered under this aspect, legal reason is the same as the one called by Aristotle "analytic" or "formal". The jurist-judge, according to this notion, does not do anything else than make explicit the meaning of norms already laid down. When Aristotle affirms, in an analytic syllogism, after two premises, "All men are mortal" and "Socrates is a man", the conclusion "Socrates is mortal", he in fact is not adding any new truth to the old ones but confines itself to making explicit the contents of the premises. In fact, whoever says "All men are mortal" already sustains the proposition "Socrates is mortal", because Socrates belongs to the scope of the universal quantifier 'all'. Thinking of "all men" one is thinking, albeit implicitly, also of Socrates.

The *Richterrecht* (law made by judges) has the form of deductive or analytic reason. One says: (i) There is an objective data, the law; (ii) There

is an objective historical event, the fact; (iii) there is, finally, a syllogism that establishes deductively the link between the norm and the fact, and derives one sole conclusion.

There are two premises and one conclusion. In the *major premise* (or "*legal premise*") are expressed normative propositions to which the fact involved in the controversy is referable. In the *minor premise* (or "*factual premise*") are expressed these selfsame facts. The *conclusion* is the individual norm corresponding to the verdict to be passed by the judge.

The form is as follows: "In any case, if *p*, then *q*, in the case in question *p*, then *q*". The contrary is not possible: "In any case, if *p* then *q*, in this case *p*, but not *q*". To affirm a conclusion like that would amount to running afoul of the law of contradiction[3].

The intrinsic value of the form of inference is that there is no single case in which the premises were true and the conclusion would be false. If the conditional is true, and the apodosis is true, too, then the protasis is to (in the sense of the German '*Müssen*') be true. Stoic logician, posterior to Aristotle, dubbed this form of inference "*modus ponens*".

From the form of "*modus ponens*" it is easy to pass to that of "*modus tollens*". It is the formal name for indirect proof or proof by contraposition (contra positive inference), on the way that denies by denying. The rule expresses, in this case, the mode that does not affirm, but denies the truth of the antecedent: "In any case in which *p,* also *q;* but in the case in hand non-*q*, then non-*p*." I am quoting a reasoning which could be one of Sherlock Holmes, a personage of Conan Doyle. The investigative method of Holmes is complex and simple at the same time. The reasoning would be of this form: "There was a dog in the stable which barked every time (without any single exception) a stranger came. The dog did not bark when the horse got stolen, therefore whoever committed the theft was an acquaintance".

Even using "*modus tollens*" one arrives at the same rigorous conclusion. From the truth of the conditional proposition ("The dog barks always when a stranger arrives") and from that of the proposition which asserts the antecedent of the incriminated fact ("The dog was not barking when the horse was taken away") can with certainty be derived the truth of the conclusion ("Whoever entered the stable to steal the horse was an acquaintance, not a stranger").

2.2. The *rhetoric* model.

The second model is that of the *dialectic* or *rhetoric* syllogism, in the still Aristotelian sense. At stake is no longer the logic of propositions which

[3] Cf. Neil MacCormick, *Ragionamento giuridico e teoria del diritto*, 2001: 35-41.

are certainly true but, much rather, that of propositions *possibly* true. A priest preaching to the faithful of his Church presupposes the faith of all of them in the truth of the sacred texts and the received dogmas. The faithful are convinced of the truth of the propositions in the priest's sermon. The very same sermon, preached before an audience consisting of sceptical philosophers or adherents of a different religion would run the risk of appearing ridiculous. Even the theorically well-made arguments by Aquinas are not in the position to convince everybody. Philosophers have been arguing about it for centuries. This is not the case with Pythagoras' theorem, establishing a fundamental relation among the sides of a right triangle in the Euclidean space.

The second model is the model of "new rhetoric", the model developed in particular by the Belgian school of Chaïm Perelman. It is the logic of legal language as a theory of argumentation *sensu stricto*, or a theory of controversy and persuasion.

The rhetorical argumentation in a legal process is unlike a formal system made of rules abstract with respect to the given historical and social context. A formal system makes abstraction from any context and behaves like a game. The rules of a game do not change in virtue of any particular belief or of a certain disposition (on the part of the players) to be persuaded of the meaning of the same rules. Let us consider the game of chess. Certainly, we should not confound the king with the queen (in the same way we understand the difference between odd and even numbers in the arithmetic sequence). And the chess-players know full well when there is checkmate. Only certain moves can check the king.

The legal argumentation does not know similar results, and behaves in a fashion quite different from that of a formal system. Taking one and the same point of departure it is possible to arrive at different solutions. The same moves do not have the same meaning.

According to Perelman, it is a fact that a legal process arrives at conclusions which are not univocal results of a proof.

The model of "new rhetoric" would explain, among other things, what happens when a jury takes a majority decision. For example, in the case of English and Scotch Courts, the Courts of Appeal are constituted almost invariably of three or more judges, every one of whom expresses discursively his opinion on the issues raised in a case. In such a way, the verdicts passed are based on a decision taken by a simple majority of judges, some of whom may quote arguments opposing each other.

2.3 The *fuzzy* model.

The third model is furnished by the categorial apparatus of *fuzzy* logic. Fuzzy logic is not logic of propositions which are certainly true, nor of those which are only possibly true. It is the logic of propositions the truth-value of which is estimated only *approximately*, or by degrees on the scale of fuzzy truth-values adopted in virtue of a certain calculation. Such propositions are not true or false, nor possibly true or possibly false, but "more or less true", "true enough", "not quite true" or "not quite false"[4].

Supporters of fuzzy logic try to give account of the forms of approximate reasoning as encountered in the judicial decision-making. They emphasize the fact that even a judicial decision is marked, in its genesis, by that fuzziness, indeterminateness, vagueness and/or genericity which characterises diverse forms of legal language. Here are a few examples.

There is the case of "insufficient motivation". The insufficiency is not the lack of motivation for a verdict. The results (of insufficiency and of lack) are quite different. If the motivation is *manifestly illogical*, the verdict will be invalid, whereas an insufficient motivation will leave the verdict amendable. An insufficient motivation is an example of fuzzy logic, because it formulates in an approximate way (not quite true) the judgement on which the verdict is founded. The admission of fuzziness could have the result of letting stand verdicts expressing right, but poorly motivated, decisions. The "rightness" of the decision saves the motivation, while the unfoundedness militates against it.

Fuzzy logic seems to pertain directly to the judicial syllogism due to the particular technical character of incriminating norms. As a rule, in a judicial syllogism, one starts from a hypothetical major premise like: "If Schulze commits a theft, he is to be punished by imprisonment". But in reality, in our legal systems there is seldom an incriminating rule setting up a fixed punishment. The punishment usually varies from a minimum to maximum, and in such space of indeterminacy or approximation (fuzziness) is the place for the discretion of the judge in the choice of the legal conclusion. The "perfect" syllogism of our first example becomes more complicated. The major premise is no longer, simply "If p then q", but: "If p (a legal offence), then q_1, or q_2, or even q_3 (the diverse possible legal conclusions)". And it would be possible, on this very basis, of a fuzzy verity with respect to a judgement of fairness.

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[4] I am summarising some characteristics of fuzzy logic formulated by Lotfi Asker Zadeh (*Fuzzy Logic and Approximate Reasoning*, 1975), the author of the probably first draft of fuzzy logic.

There is a work by Tecla Mazzarese, *Forme di razionalità delle decisioni giudiziali*, 1996, which is among the best-documented on the relevance of the categorial apparatus of fuzzy logic in the theory of explicative models in judicial decisions.

The last observation is *de iure condendo.* The fuzziness could be seen as a dimension indispensable for the drafting of rules capable of solving open legal questions. It is known that, despite special measures taken to protect minors accused of offences, many rights provided for adults in the same circumstances of offence have not been automatically extended to minors. This would be a case of laws establishing a different status for majors and for minors, with the intent of anticipating a motley series of "limit situations" relevant for the determination of one special mode of legal treatment of the suspect. In such a way, the laws would adopt not neat, but fuzzy distinctions[5].

3. A critical observation.

On closer inspection, one sees that all three models that I have just expounded make clear that the judge-made law has a logic, but they do not at all make clear what that logic is. Not even the presuppositions of this logic are clear. One takes for granted what one ought not, namely that the legal discourse is based on the predicates of truth and falsehood. One speaks of premises and conclusions which are certainly true or certainly false, or possibly true or possibly false, or not quite true or not quite false. Are things really like that? Can one predicate truth and falsehood of norms[6]? And does not the discourse of judges contain norm [*Soll-Norm*]? Certainly, the verdict passed by a judge is a norm. In the syllogism formulated by Kelsen the conclusion ("The thief Schulze shall be put into prison") would be a norm, an individual norm. Perhaps, though, the major premise of that same syllogism, the proposition "All thieves shall be punished, that is put into prison", is not a norm but only a proposition *about* a norm [*Soll-Satz*].

The questions fall back, then, inevitably on the beginning of logic of legal discourse. The beginning is very general. We assert of norms that they are *valid* or *invalid*, not *true* or *false. Truth* leaves room to *validity*. What is the logic of that validity? This question should ask oneself everyone who wishes to handle the topic of the logic of a discourse consisting of norms.

In reality, there is no science of legal duty without logic of legal *validity*; in the same way, there would have been no science of the "*principia mathematica*" without logic of truth about mathematical propositions.

4. Valid verdicts.

From true propositions it is possible to deduce other, no less true propositions (that is to say: *certainly* true propositions, or *possibly* true proposi-

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[5] Cf. James D. McCawley, *Everything that Linguists Have Always Wanted to Know about Logic but Were Ashamed to Ask*, 1981: XII.

[6] I have just asked this question in *Sul dovere giuridico*, 2003: 55.

tions, or *not quite* true propositions). The question is about the possibility to deduce, in the same way, from true propositions such propositions that truth and falsity are not predicable of them. Norms are such that neither truth nor falsity is predicable of them, and the logic of the classical syllogism does not seem capable of providing for them.

The minor premise (that is the "factual premise") is a sentence about a fact. Truth and falsity can be predicate of it. Let us suppose that also the major premise (that is the "legal premise") is not a norm, but a sentence about a norm, a sentence that asserts the existence of a norm, namely, of the norm "All thieves shall be punished, that is to put into prison". If these are the premises, truth and falsity can be predicated of them: (i) the minor premise is true if the fact that it asserts is actually happened (Schulze, as a matter of fact, is a thief); (ii) the major premise is true if there *is* a norm of which it (the sentence) predicates that it is valid, and the same premise is false if there is not such norm (the norm is: "All thieves shall be punished, that is to put into prison").

The question is if it is possible to derive a norm (to repeat, the norm that I have in mind is the norm "Schulze the thief shall be punished") from premises like those, or, in other words, if it is possible to derive a sentence of which truth and falsity cannot be predicated from one of which both (truth and falsity) can be predicated. In other words, the question is if it is possible to derive a norm.

5. The difference.

Is there a difference between truth and validity? I just think there is.

The difference is, first of all, that of that which both terms designate. By *truth* of a sentence here we understand the correspondence between the sentence and the state of affairs which the sentence in question is describing. This is the classical conception of truth as correspondence. The sentence "Students sleep during philosophy lectures" is true if the corresponding fact obtains, and false in the contrary case.

The validity of a norm, by contrast, is the existence of a norm in a legal system. What matters, as can clearly be seen, is not the correspondence between one thing and another, but simply the existence of a thing. A *valid* norm is a norm which exists in a legal system, an *invalid* norm, by contrast, is a norm which does not exist in a legal system.

The consequences of this distinction, on the logical plane, are varied, too. I am referring to the sense [*Sinn*] or the way in which the logical predicates of validity and invalidity work. An invalid norm is not at all a norm, while a false proposition continues being a proposition. To call something a

"norm" is to presuppose that the thing so called exists in a legal system. An invalid norm (a norm not existing in a legal system) is simply not a norm.

This is not the case with the truth and the falsity of a proposition. If the falsity of a proposition consists in the relation of non-correspondence with a state of affairs, namely the one which it describes, even this relation presupposes the existence of the proposition. A false proposition is nonetheless a proposition. Although the proposition "The chimera is immortal" is false, because it does not correspond to the state of affairs which it describes (the chimera was speared by Bellerophon), it is, nonetheless, a proposition.

5. Logical passages.

The conclusion asserted by Kelsen claims that the competent Court has the power to lay down the verdict according to a formal qualified procedure. The power by the Court has only procedural, not logical relations. The individual norm "Schulze the thief shall be put into prison" is not valid because the competent Court has not laid down this individual norm. The Kelsenian theory maintains this result.

On the contrary, the passage from truth to validity does not, either, support the affirmation that there is no recognisable logic of legal validity. Legal power is not merely procedural.

To understand this better, it matters to reconsider the concept of validity. If we follow Kelsen in identifying validity with the "specific existence" (to use his expression) of a legal act or norm - to mention just these two essential objects of legal process - one must again ask the question of what is legal act or legal norm. The existence of a thing is never unprincipled. It is always supported by principles. The logic of validity is a science of these principles; it considers, for instance, the question of what is at the basis of the existence of legal facts. It is an ontology of law because it asks questions about *being*. The more specific object shall be, for us, that act and that norm that give life the verdict of the judge.

To conceive law on the basis of legal validity does not mean that one is committed to thinking about simple facts without logical and ontological relations. On the contrary, principles of law are discovered which cannot be negated and which goes far beyond the mere decision of a jurist (the legislator, if he lays down laws, and the judge, if he applies them). Such "law" could be called the law that goes beyond the law (as a system of statutes) which presents logical and ontological limits of political decisions. Such "law" could be called a "*superlegal* law" [*übergesetzliches Recht*][7]. At the

[7] The expression (if not directly the concept) '*übergesetzliches Recht*' is borrowed from the very well known essay *Gesetzliches Unrecht und übergesetzliches Recht* by Gustav Radbruch, published in 1946 in the review "Süddeutsche Juristen-Zeitung".

moment when irrationalism raises again its ugly head, the legal reason takes up anew the threads of metaphysics [*Metaphysik*] in a Kantian sense, or an *a priori* theory of law.

The argument is not merely philosophical, but also strongly legal. Among other things, the German Constitutional Court [*Bundesverfassungsgericht*] and the German Supreme Federal Court [*Bundesgerichtshof*] make an explicit reference to an objective order of values. It must not be forgotten that the German Constitutional Court says about paragraph 2, comma 3, of the German *Constitution*:

> Law [...] does not coincide with the totality of written laws (statutes)[8].

6. Metaphysical passages.

Are there *a priori* conditions of validity of a verdict? I experience immediately a fundamental legal feeling, a substantial *Rechtsgefühl.*

Nor can I imagine, by any stretch of imagination, that the legal decision has been made on the basis of pure phantasy, or someone's momentary caprice. Nor can I think that justice be equivalent to "pounding the table". I cannot see how it could be admitted that the judge at the end of his verdict could be adding: "And this is, in every aspect (that is, both formally and substantially) deprived of any motivation and, thereby, unjust".

My argument reclaims not just feelings, though, but also metaphysics.

The verdict of the judge stands in need of a motivation. The motivation is the fundamental legal rule of the verdict.

7.1. *Secundum legem*.

The law acknowledges the motivation in the quality of the essential function of the verdict. The acknowledgement is either explicit or implicit.

7.1.1. The acknowledgement is explicit in the Italian legal order. According to the *Constitution* of Italy, paragraph 111, comma 1, adjudication must not take place without motivation. This is a fundamental principle of legal system. The motivation is a means which allows making sure that judges observe laws, and assures the independence of the judicial power from other powers. To that obligation of providing a motivation is linked to the possibility of turning to a Court of Appeals (paragraph 111, comma 2, of the *Constitution*). In collegial deliberations the duty of providing a motivation is assured by the obligation to provide their motivation by all judges. The paragraph 527, comma 2, of the *Code of penal procedure* says: "All judges state the motives of their opinion".

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[8] BVerfG E ["*Entscheidungen des Bundesverfassungsgerichts*"], 34, 269 (287), des Ersten Senats vom 14. Februar 1973.

On the other hand, even for a simple business contract which involves only subjective and particular interests, the paragraph 1375 of the *Civil Code* establishes that all parties are obliged to interpret the clauses of the contract in a way which renders them meaningful, and this notwithstanding the fact that an argumentation in Court is a far cry from negotiations on a contract.

We are leaving aside, finally, the general obligation of providing a motivation for all administrative acts[9].

7.1.2. There are, however, procedural systems which do not provide for the legal form of motivation. There are systems based on the concept of "jury" (enough to think on the Anglo-American judicial system). Those who "are on the jury" are citizens with no technical knowledge of law, picked by the parties and issuing "unmotivated" verdicts.

In this institution the influence of Lockean empiricism is clear. The proof has to constitute itself under the eyes of the jury, because it (the proof) contains element which are not necessarily communicable in a verbal language. The mere behaviour, too, of the parties is a live element of truth which has to be taken into consideration. By consequence, the value of legal proof is being given up, in favour of free practice of convincing the jury, which involves intuitionist issues. The "intimate conviction" of the jury is being formed as an effect of immediate considerations, evaluations insusceptible to extended analytic or rational elaborations. A motivation requires arguments, an intuition does not.

This, however, does not remove from this system the legal link with the rectitude of the decision. Certain circumstances show this. Enough to think of Scotch or English law which provides all the same that judges in Courts of Appeal should discursively expound their own opinions on questions raised about the examined case. Apart from that, if there is no obligation to provide motives, there is certainly the obligation to publicise. Now, the function of the publicity [*Öffentlichkeit*] is to allow control of the verdicts on the part of the public. The public is always the soul of the justification.

The parties constantly raise pretensions to rectitude even if they in fact only pursue their interests. Especially before Supreme Courts the arguments are handled much as they were doctrinal discussions.

7.2. *Praeter legem*.

[9] See paragraph 3, statute no. 241 of 1990.

The motivation is a transcendental condition of validity of the verdict. Even if there had been no norm, there would, however, be the rule that the verdicts ought to be motivated.

7.2.1. The motivation is an *a priori* condition of validity of the verdict *qua* legal act. It would not be possible to admit, nor even think a verdict that declared: "And this, in every aspect - formal as much as substantial - is deprived of any motivation, and, for this reason, unjust".

7.2.1.1. A situation like that would, in all evidence, be that of a paradox, a pragmatic paradox: an impossibility of action. The paradoxality, in fact, would be inherent to that which is being done while saying a thing, thus precisely to the *action*, not to the *diction:* to "doing", not to "saying". In particular, a verdict like that would be one that undoes itself, instead of coming into existence by being done. It would, to strain words a little, a *doing* that *undoes* itself.

If, by means of performative utterances the subject does (in the Austinian sense) that which he is saying, in virtue of this self-same saying, in the case of an *openly* unjust verdict the judge ends up *undoing* that which he is saying. The question is not of performativity but, much rather, of "counterperformativity" [10].

A sentence of this sort defeats, in fact, its own legitimacy *de iure*. It makes itself invalid. This consequence is inevitable.

It is a consequence dictated by that which the procedural law (law *secundum legem*) is saying: the adjudication, according to legal systems, must not take place without a motivation. But, first of all, it is the consequence derivable from the very idea of lawfulness: the law *praeter legem* which, in this case, is the fundament of the verdict in the process. The motivation, as it has been seen, is a transcendental rule of validity of verdict. This rule is also valid independently of legal system in force.

7.2.1.2. The paradox of which we have spoken before is a *praxeological* paradox. It is a paradox in order to the idea [*eîdos*] itself of this act as verdict. Why do we ever take to the Court? What kind of idea do we have as "verdict"?

If we take to the Court, it is certainly because we yearn for justice, not for injustice. It is from the very idea of a judgment in a process of law that the necessity for a justification derives. The process of law has the function of justifying the legal consequence of an offence and to effectively compensate for the breach of law. For this reason, a verdict that declared of it-

[10] The neologisms 'counterperformative' and 'counterperformativity' show up for the first time in an essay by Maria-Elisabeth Conte, *Coerenza testuale* (1980).

self the negation of all justification and thereby also its radical injustice would fail to satisfy a necessary condition of validity. It would be a self-defeating [*selbst-widrig*] act.

Many examples could be given of such paradoxes. One document is to be found as early as in Aristotle. In a passage of his *Sophistic Refutations* (180a34-180b1) Aristotle hypothesizes about someone who swore to commit perjury. A man like that would swear to breach the oath that he is making: "I swear that my oath is a perjury"[11]. It is not clear its meaning such an act would have.

The paradox of perjury has the same paradoxality as that of the "liar". The statement "The present descriptive statement is false" is undecidable: if it is true it would be false, and then if it is false it would by the same token be true[12]. As it is well known, it was possible to put side by side with this paradox, with the Gödelian incompleteness theorems, the line limiting the ability of axiomatic systems to deduce all their formulas from their axioms[13].

7.2.2. The duty to provide a motivation is connected with the very nature of linguistic acts involved in communication (among them, evidently, there is also the sentence of the judge). There are conditions that do not depend on the desires of the speakers but, rather, from the rules that are at the basis of linguistic acts. One of these rules establishes that the speaker should justify what he affirms unless he can quote reasons justifying the refusal to provide a justification. Whoever affirms that "*p* implies *q*", given that an interlocutor maintains that "non-*q*" ought to either accept "non-*q*" or refute "non-*q*" or give up his affirmation "*p* implies *q*". It is a question of a general rule of motivation[14]. This holds good in equal measure for normative, as well as non-normative propositions.

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[11] This passage of Aristotle is quoted by Maria-Elisabeth Conte in the essay *Pragmatica linguistica*, in: Angiola Filipponio (ed.), *Ricerche praxeologiche*, 2000: 27.

[12] See about the construction of a "deontic paradox" on the basis of the paradoxality of the "liar" a very important essay by Amedeo G. Conte, *Ricerca d'un paradosso deontico*, in: Amedeo G. Conte, *Filosofia del linguaggio normativo. I. Studi 1965-1981*, 1995: 83-84.

[13] I specifically analyze the relationship between the "paradox of the liar" and the Gödelian incompleteness theorems in *Sul fondamento della validità deontica. Identità non-contraddizione*, 1996: 330-351.

[14] According to Robert Alexy this is a fundamental rule of "general practical discourse". Cf. Robert Alexy, *Teoria dell'argomentazione giuridica*, 1998: 152.

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