

A definitional truth with modifications – a comment on Jens Ravnkilde’s concept of source of law

In an article published in Danish in *Ugeskrift for Retsvæsen* (Weekly Journal for Legal Affairs), iCourts researchers ass. prof. Jakob v. H. Holtermann and prof. Henrik Palmer Olsen address the fundamental issue of identifying sources of law for the purposes of academic inquiry. The article, which is a rejoinder to former Supreme Court Advocate Jens Ravnkilde (title in Danish: “En definitionssandhed med modifikationer – kommentar til Jens Ravnkildes retskildebegreb”), addresses the issue of how definitions of basic legal concepts should be formed for the purposes of scholarly inquiry. The article raises among other things the question of whether it is possible to obtain objective knowledge about the law by relying on a lexical definition of the sources of law (i.e. by recording the meaning assigned to the term “source of law” in ordinary use by legal practitioners) or whether the sources of law for the purposes of scholarly legal analysis should be identified through an explicative definition, which more clearly reveals the ideological assumptions which are built into or presupposed by the doctrine of sources of law as endorsed by legal practice. The authors argue that employing a lexical definition may be prima facie attractive because such a definition would allow practice based perceptions to inform analytic concept formation and thereby ensure that legal analytics remain closely associated to its object of study. A lexical definition could be said to function as a guard against speculative legal analysis. However, relying on a lexical definition simultaneously prevents analysis from uprooting the underlying legal ideology, and prevents a critical examination of the extent to which the doctrine of the sources of law functions as a formalistic ritual covering over the real sources of law, that may not be immediately revealed in the ordinary language of legal practice.