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TWO SEMIOTIC SHIFTS IN THE PHILOSOPHY OF NORMS: MEANING SHIFT AND REFERENT SHIFT*

abstract

In this introductory paper the guest editors (Paolo Di Lucia and Lorenzo Passerini Glazel) of the special issue "Norm: What Is It? Ontological and Pragmatical Perspectives" maintain that the word norm *is subject to two kinds of semiotic shifts: shifts in the meaning and shifts in the referents. Philosophical research on norms and on the normative has, indeed, broadened its dominion of investigation in both directions. The phenomena of norms and normativity, intersecting different orders of phenomena, are investigated by different disciplines from different methodological perspectives.*

keywords

norm, normativity, ontology of norms, pragmatics, phenomenology of normativity

Ὁ νόμος ἄρα βούλεται τοῦ ὄντος εἶναι ἐξεύρεσις.
So law tends to be discovery of reality.
(Plato, *Minos*, 315a).

1. What is a norm?

1.1. Ontological and pragmatical perspectives

The present special issue (vol. 13) of *Phenomenology and Mind*, "Norm: What Is It? Ontological and Pragmatical Perspectives", originates from the international conference "Qu'est-ce qu'une règle? Perspectives ontologiques et pragmatiques" held in Milan on October 13th and 14th, 2016 with the support of the Dipartimento di Scienze giuridiche "Cesare Beccaria" (Università di Milano), and of the Dipartimento di Giurisprudenza (Università di Milano-Bicocca).

The five speakers invited to the conference were: Amedeo Giovanni Conte (Accademia Nazionale dei Lincei, Università di Pavia), Paul Amselek (Université de Panthéon-Assas – Paris II), Wojciech Żełaniec (Uniwersytet Gdański), Pedro M. S. Alves (Universidade de Lisboa), and Pascal Richard (Université de Toulon).

Beside the five contributions of the speakers invited to the conference, the present special issue collects eleven papers that were selected through a call for papers issued by the Journal on the same subject of the conference.

1.2. Normativity vs. normality

The philosophical inquiries on the concept of norm run often into difficulties connected to the different uses of the word *norm* (or *rule*),[1] both in ordinary and in technical languages. These different uses bring about a difficulty in determining the object of investigation itself.

As Norberto Bobbio recalls (1964/1994, p. 215-232), when we use the expression "It is a norm that..." (for instance, in sentences like: "In the United States, it is a norm that people shake hands when they are formally introduced") we may refer either to the fact that there is a norm (a rule) prescribing a certain behaviour, or to the mere observation of the constant repetition of a certain behaviour. According to Bobbio, in the former case, the *normativity* aspect of the ordinary meaning of the word *norm* is emphasized; in the latter, the *normality* aspect is emphasized.[2]

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1 Although in some contexts the terms *rule* and *norm*, as well as their equivalents in many languages (*règle* and *norme*, *Regel* and *Norm*, *regola* and *norma*, *reguła* and *norma*, etc.) are not perfectly interchangeable, when emphasis is laid on normativity they are mainly used as synonyms. For the sake of simplicity, and to stress our focus on normativity, we prefer to use in the following the term *norm*.

2 According to Avrum Stroll, the "normality" meaning of the word *norm* is primary, the "normativity" meaning is secondary (Stroll, 1987, p. 7).

But even when research is expressly focused on the *normativity* aspect connected to the word *norm* (as distinct from the *normality* aspect), the object of investigation is hardly uniquely and univocally determined: despite the fact that we are accustomed to deal with a plurality of norms or rules in almost every aspect of our everyday life, the question "What is a norm?" is far from being futile, and the answer to it is far from being obvious.[3]

Some of the difficulties encountered in answering this question, as well as in determining the very object of research on norms and on "the normative", may be explained in terms of the semiotic distinction between *meaning* (or *intension*) and *referent*: both ordinary and technical uses of the word *norm* are subject to two different kinds of semiotic shifts: shifts in the *meaning* (in the intension), and shifts in the *referents* of the word.

2. Semiotics of the word *norm*

2.1. Meaning and referents

On the one hand, indeed, many inquiries on norms and on the normative have progressively laid aside the narrow (prototypical) *meaning* (or intension) of *norm* (and of *normative*) as the "prescription of an obligation" by investigating a wider range of different forms of normativity, both at the level of normative *content* (e.g. permissive norms, derogatory norms, constitutive rules, technical rules) and at the level of normative *force* (e.g. advices, recommendations, pleas).[4]
On the other hand, other inquiries on norms and on the normative have progressively laid aside the narrow identification of the *referents* of the word *norm* with normative *sentences* or normative *propositions* by considering a broader range of possible referents, such as normative utterances, normative acts, deontic states-of-affairs, mental objects or deontic noemata, normative facts, normative events, exemplary behaviours and concrete normative objects.

As a consequence of the heterogeneity of these two kinds of semiotic shifts occurring in the use of the word *norm*, the question: "What is a norm?" can be split into two different questions:

2.2. What is a norm? Splitting the question

(i) the question concerning the possible *meanings* (the intension) of the word *norm*, and particularly: "What *forms of normativity* exist, and what *kinds of norms* are consequently to be distinguished?"

(ii) the question concerning the possible *referents* of the word *norm*: "What *kinds of entities* can be norms?"

It is worth recalling (*a fortiori* on a journal devoted to phenomenology) that a precursor of these kinds of enlargements in the field of philosophical research on norms and on the normative was the German phenomenologist Herbert Spiegelberg in his work *Gesetz und Sittengesetz* (1935).
On the one hand, Spiegelberg anticipated the theories of constitutive normativity (and in particular that of *thetic* normativity) in his analysis of the *Gestaltungsnormen*, which he contrasts with the *Verhaltensnormen*.

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3 Even the Finnish philosopher Georg Henrik von Wright, in his pioneering book on *Norm and Action* (1963) underlines the intrinsic difficulties implied in the philosophical challenge of constructing a general theory of norms and of the normative. (It is worth to recall that *General Theory of Norms* – in German *Allgemeine Theorie der Normen* – is the title of a famous posthumous book by Hans Kelsen).
4 In 1963 von Wright laid the basis of an enlargement of the research on norms and on the normative by soliciting to investigate such phenomena as *technical* rules and *constitutive* rules, which transcend the category of prescription (von Wright 1963, first chapter); nonetheless, in his book he confined his investigation to *prescriptive* norms. An analogous enlargement of the research concerning different forms of normative *content* and of normative *force*, was solicited by Norberto Bobbio (1964). In the second section of this special issue, Pedro M.S. Alves (2017) specifically distinguishes, in a phenomenological perspective, the *matter* and the *quality* of nomothetic acts.

On the other hand, he anticipated the investigation of the possible referents of the word *norm* through the determination of sixteen different *Bedeutungsmöglichkeiten* of norm (*Norm*), which he sorted into six categories.[5]

3. A plurality of perspectives in the investigation of norms and normative phenomena

Along with the semiotic shifts connected to the *meaning* and *referents* of the word *norm*, there is another fact that contributes to making the philosophy of norms and of the normative even more challenging.

Normative phenomena intersect different orders of phenomena, such as psychological and mental phenomena, linguistic phenomena, logical phenomena, biological phenomena, behavioral phenomena, social phenomena, ethical, legal and political phenomena, etc.

As a consequence, norms and normative phenomena are made objects of investigation (or at least their existence is presupposed) in a plurality of different sciences and disciplines.

Since every science and every discipline is based on its own constitutive theoretical and methodological assumptions, which make it possible for each of them to investigate a specific order of phenomena to the consequent detriment of others, the results achieved by different disciplines only partially overlap, and often tend to refract into a plurality of heterogeneous perspectives.

However, just as the analysis of the different sections of the visible spectrum contributes to our understanding of what light is, the different perspectives adopted in the investigation of norms and normative phenomena can contribute to our comprehensive understanding of what a norm is.

The papers collected in this special issue of *Phenomenology and Mind* reflect this plurality of perspectives.[6]

The issue is divided into five sections: the *first* section is devoted to the concepts of norm and to the referents of the word *norm*; the *second* section, to the phenomenology of the normative; the *third* section, to the existence of norms and to normative events; the *fourth* section, to the logical and epistemological dimensions of norms; the *fifth* and last section, to the relationships between norms, language and social practices.

3.1. Concepts of Norm, Referents of *Norm*

The semiotic shifts concerning the meaning and the referents of the word *norm* are well documented in the four papers collected in the first section ("Concepts of Norm, Referents of *Norm*") of the present special issue. In these four papers, the *ontological* and *pragmatical* perspectives intertwine, and the question "What is a norm?" is confronted by proposing both an analysis of the *concepts* of norm and an analysis of the *entities* which the word *norm* can refer to.

In *Norme: cinq référents*, Amedeo Giovanni Conte challenges the very question: "What is a norm?" by making explicit, and criticizing, one of its presuppositions: the presupposition that

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5 The six categories in which Spiegelberg (1935) sorted the sixteen *Bedeutungsmöglichkeiten* of the word *norm* (*Norm*) are:
(i) *konkret-gegenständliche Normbedeutungen* (concrete-objectual meanings of norm);
(ii) *sachverhaltige Normbedeutungen* (factual meanings of norm);
(iii) *logische Normbedeutungen* (logical meanings of norm);
(iv) *sprachliche Normbedeutungen* (linguistic meanings of norm);
(v) erkenntnismässige Normbedeutungen (epistemic meanings of norm);
(vi) *produktive Normbedeutungen* (productive meanings of norm).
On Spiegelberg's philosophy of norms see Cacopardi (2013-2014) and Di Lucia (2003, pp. 43-68).
6 A recent collection of works also documenting this plurality of perspectives can be found in Lorini & Passerini Glazel (2012).

the word *norm* denotes *at least* one, and *only* one kind of entity. He shows, on the contrary, that there are (at least) five possible referents of the word *norm*: a deontic *sentence*, a deontic *proposition*, a deontic *utterance*, a deontic *state-of-affairs*, and a deontic *noema*. The existence of deontic *state-of-affairs* and deontic *noemata* as possible referents of the word *norm* contradicts the claim that *all* norms are *linguistic* entities (a thesis that Conte also challenges through the claim that it is impossible – it would be a sortal incorrectness – to predicate the violation, infringement, or transgression of a deontic sentence, of a deontic proposition, or of a deontic utterance).[7]

In *Comment je vois le monde du droit*, Paul Amselek adopts the methods of Husserl's phenomenology to construct a theory of rules and norms as mental tools. In the first part of the paper, Amselek, going beyond the limits which legal philosophy is often restricted to, moves from an analysis of the ontology of rules and of norms in general, and rejects the "logicism" of many conceptions of norms as linguistic or propositional entities: norms are mental tools (which cannot be reduced to propositions), and more precisely they are immaterial samples "giving the measure of what is possible". In his original analysis, he also reinterprets from a new perspective the distinction between *normative norms* (*practical* rules), seen as tools for acting, and *scientific laws* (*theoretical* rules), seen as tools for thinking. In the second part of the paper, Amselek investigates, in the light of J.L. Austin's theory of speech acts, the pragmatics of normative acts, making direct reference to the world of law: normative acts are thus analysed as *authoritative* acts on the one hand, and on the other hand as *mental* acts, which need be communicated through linguistic signs.

In *Les critères et l'ordinaire de la norme*, Pascal Richard moves from the circular definition: "law is what the law considers as law" (a definition useful for the practice of law, but useless for philosophical inquiry) to investigate, in a pragmatical perspective, how the criteria shared in the background of a form of life are the unavoidable place of an unfounded certainty. The norm as a "mental tool" transmitted by (but not reducible to) a speech act has "no foundation but its acceptance in a form of life". The practice of litigation shows that background shared criteria (and, only as a consequence, legal concepts) are always open to scepticism; at the same time, it is impossible to go beyond them. Drawing inspiration from Stanley Cavell and Hilary Putnam, Richard directly examines the paradoxes of scepticism, and criticizes the perspectives both of "regulism" and "regularism", while adopting an "embodied" pragmatical perspective that puts shared criteria, rather than concepts, at the very basis of normativity.

In *Constitutive and Regulative Rules: A Dispute and a Resolution*, Adriana Placani gives a contribution to the analysis of the concept of norm by investigating the phenomenon of *constitutive* rules, as opposed to *regulative* rules. Placani examines, in particular, Joseph Raz's challenge of the distinction between regulative and constitutive rules as formulated by John R. Searle, taking Raz's critique concerning the inadequate clarification of the criteria by which the differentiation can be made very seriously. According to Placani, a clearer criterion for this differentiation can be found in the pragmatical analysis of how agents make use of rules, and specifically how rules are capable of guiding practical reasoning.

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7   A similar remark has been made by Jovan Brkić, who neatly distinguishes "linguistic expressions of normative discourse on the one hand from ontological entities called norms, imperatives, and judgments of value, on the other hand" (1970, p. 9).

**3.2.
Phenomenology of
the Normative**

The second section ("Phenomenology of the Normative") of the present special issue collects three papers investigating normative phenomena and norm-creating legal acts in a phenomenological perspective.

In *Vers une phénoménologie de la normativité. Une circonscription préliminaire du domaine*, Pedro M.S. Alves outlines a phenomenological theory of "normative consciousness", understood as the intentionality that originally creates norms through "nomothetic acts". He criticizes Husserl's distinction between *norms* and *judgments*, which he considers inapt to rightly account for the sense and content of "normative intentionality"; Alves specifically rejects, in the light of Hans Kelsen's theory of norms, the thesis according to which normative intentionality is founded upon objectifying acts. However, on the basis of the phenomenological distinction between *matter* and *quality* of intentional acts, Alves argues, in contrast with Kelsen, Felix Kaufmann and Carlos Cossio, that an ought-proposition (*Sollsatz*) cannot be a good rendering of the sense-content of norms. Alves thus proposes an original account of normative intentionality based on the novel concept of "ductive force". The ductive force of norms cannot be identified with simple coercion: a variety of ductive forces can be found even within the legal sphere, ranging from sheer coercion to advice and recommendation.

In *Eidetics of Law-Making Acts: Parts, Wholes and Degrees of Existence*, Francesca De Vecchi, drawing inspiration from the works of Adolf Reinach and Edith Stein, applies the phenomenological method of eidetics to the analysis of law-making acts *as wholes*. De Vecchi argues that the parts of law-making acts can be subject to varying degrees of constraint (necessary, possible or contingent parts), and investigates the hypothesis that the difference between *existence* and *validity* of law-making acts is to be found in the possible parts of law-making acts. She also argues, through the concept of "essential relationship of tendency", that these parts of law-making acts, in spite of being *possible*, are nonetheless constitutive of the essence of law-making acts.

In *Normative Experience: Deontic Noema and Deontic Noesis*, Lorenzo Passerini Glazel examines Conte's distinction of the five referents of the word *norm*, and focuses on the concept of deontic *noema*. Assuming a perspective complementary to the one assumed by Alves, Passerini Glazel investigates normative experience not as the intentionality that *creates* norms, but as the intentionality that *makes experience of* norms, and raises the question concerning how a deontic *noesis* of a deontic noema can be understood. Through the analysis, in terms of deontic noema, of some specific normative phenomena investigated by Hans Kelsen, Ota Weinberger, and Leon Petrażycki, Passerini Glazel examines different possible noeseis of a deontic noema: he makes a distinction between *theoretical* noeseis (either cognitive or hypothetical) on the one hand, and, on the other hand, genuine *deontic* noeseis, which are at the basis of specifically *normative Erlebnisse*; he then stresses the relevance of the concept of deontic noema on the hypothesis that no normative phenomenon would be possible without a consciousness capable of *normative Erlebnisse*.

**3.3. Norms,
Existence, and
Normative Events**

The third section ("Norms, Existence, and Normative Events") of the present special issue collects three papers investigating the problem of existence and validity of norms, and the concept of normative event.

In *On the Question of How Social Rules and Social Norms Exist*, Christian Bispinck-Funke investigates the mode of existence of norms. Arguing for a characterization of a norm as "a multi-dimensional phenomenon that encompasses mental and linguistic realizations as well as

socially organized bindingness", he develops an answer to the question of how social rules and norms exist by analysing different pragmatic roles played by mental representations of norms in social life (in deliberating, in expecting, in demanding, in requesting, in rewarding, in punishing, and in evaluating). Special attention is also given to the crucial question of the bindingness of norms, which Bispinck-Funke examines in the light of the works of the two philosophers and deontic logicians Georg Henrik von Wright and Ota Weinberger.

In *Norms, Norms, and Norms: Validity, Existence and Referents of the Term* Norm *in Alexy, Conte, and Guastini*, Alice Borghi and Guglielmo Feis challenge the well-known validity-as-existence thesis formulated by Hans Kelsen by putting it into relation with the possible referents of the word *norm* as admitted respectively in Amedeo Giovanni Conte's and Robert Alexy's theories. Borghi and Feis further analyse the philosophical presuppositions of Riccardo Guastini's rejection of the validity-as-existence thesis, and of the contrasting adoption of the existence-as-legal-membership thesis.

In *Normative Events*, Federico Faroldi introduces the novel concept of "normative event" and distinguishes "nomophoric" and "nomogonic" normative events. Although these two kinds of normative events are *normatively* heterogenous, they are *metaphysically* homogeneous, according to Faroldi: making use of the categories of analytical metaphysics, he maintains that both nomophoric and nomogonic events are to be understood as "abstract particulars".

The fourth section ("Logical and Epistemological Dimensions of Norms") of the present special issue collects three papers investigating logical and epistemological problems connected to norms.

3.4. Logical and Epistemological Dimensions of Norms

In *The Challenge of the K-Principle in Deontic Logic* (*and Well Beyond*), Wojciech Żełaniec investigates the meaning and the validity of the K-principle of deontic logic – the principle according to which if it is obligatory that if p, then q, then, if it is obligatory that p, then it is obligatory that q: $O(p{\rightarrow}q){\rightarrow}(Op{\rightarrow}Oq)$. Żełaniec confronts this seemingly abstract problem with the explicit intent to test whether the principles of deontic logic are able to account for real-life deontic (moral or legal) discourse. The K-principle is, indeed, something of a challenge in this regard. Żełaniec argues that the standard Kripkean semantics in terms of possible worlds is not suitable for deontic logic, if deontic logic is to give an account of real-life deontic discourse.

In *Logical Semantics and Norms: A Kantian Perspective*, Sérgio Mascarenhas confronts the question of the possibility of applying a logic to norms, given that norms, according to a long-held perspective, are not capable of truth values. Moving from Kant's theory of practical judgment, he explicitly argues for the possibility of building a logical pluralistic semantics for norms, originally enriched by the introduction of three sets of bivalent values into the analysis of modalities ("problematic/unproblematic", "assertoric/non-assertoric", "apodictic/non-apodictic"), and by the association of logical form with a matter corresponding either to the domain of nature or to the domain of freedom.

In *The Epistemic Novelty of Norms*, Giovanni Tuzet raises the question: "What kind of knowledge is the knowledge that a norm is the case?". Assuming the definition of *norm* as "the content of a prescriptive sentence", he maintains that knowledge of norms is a propositional knowledge, i.e. a form of "knowing-that". Starting from considerations about the way we learn about norms, Tuzet introduces the notion of the "epistemic novelty of norms", and distinguishes

an *absolute* epistemic novelty (the epistemic novelty of a non-inferable norm) from a *relative* epistemic novelty (the epistemic novelty of an inferable norm). This distinction is then applied to interpret Kelsen's distinction between *static* and *dynamic* normative systems.

3.5. Norms, Language, and Social Practices

The fifth section ("Norms, Language, and Social Practices") of the present special issue collects three papers focusing on the intersubjective and social dimensions of norms, both in relation to language practices and to the possible practical conflicts between social and moral norms. In the perspective according to which linguistic practices as social practices contain implicit norms concerning how it is correct to use certain expressions, the first two papers join the long-lasting debate stemming from Ludwig Wittgenstein's reflections on language games and rule-following, and they both explore the possibility of a naturalistic account of questions about the origins of norms and conceptual normativity.

In *Expressing Rules*, Giacomo Turbanti starts from Wittgenstein's dilemma about rule-following and the metalanguage of rules, and briefly examines the different strategies advanced in literature to confront the dilemma (by Wilfrid Sellars, Richard Rorty, Robert Brandom, Donald Davidson, John McDowell). Regarding the problem of realism and objectivity, Turbanti, following Joseph Rouse, advocates a non-reductionist naturalistic approach, capable of integrating both the social and the biological dimensions of cognition; he draws inspiration from Michael Tomasello's view that human thinking is essentially cooperative. Distinguishing the selective pressure exerted by *natural evolution* and *cultural learning* (which can only be explained in the context of existing discursive practices) respectively, he opts for an expressivist strategy based on a pragmatic, rather than a semantic, metavocabulary for expressing rules.

In *Reconstructing Intersubjective Norms*, James Trafford challenges Richard Brandom's attempt to ground norms in intersubjective practices. In opposition to Brandom, Trafford argues that the forms of interaction implied in dialogue and in the institution of norms are to be investigated primarily as *sub-intentional* processes. In this sense, according to Trafford, norms are just "the regularities produced by adjustment and correcting mechanisms of feedback internal to interactions with each other" leading to the "reinforcing of stabilities in those interactions" and to "their recognition as being appropriate or inappropriate".

In *The Imperative of Reputation Between Social and Moral Norms*, Gian Paolo Terravecchia investigates the phenomenon of reputation and the possible conflict between the imperative to maintain or to improve one's reputation – regarded as a pre-moral social norm "blind to values and to moral good" – and the moral sanctioning of hypocritical efforts to improve one's reputation.

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