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ATHETIC VALIDITY¹

abstract

Starting from the analysis of three conceptual paradigms formulated by Theodor Geiger, this paper elaborates the concept of the athetic validity of a norm, in contrast to the concept of thetic validity. Thetic validity is the deontic validity that is the product of a thetic act of position, of an act of *thésis*, such as the enactment of a norm; athetic validity is conversely the deontic validity that is not the product of a thetic act of position. The concept of athetic validity sheds a light on the distinction between subsistent norms and deontic sentences and explains how a norm can exist and be valid independently of any act of position, and even independently of any linguistic formulation of that norm in a deontic sentence. It also makes it possible to dissolve a seeming paradox implied in Geiger's notion of declarative deontic sentences, which ascertain the athetic validity and at the same time constitute the thetic validity of a subsistent norm.

keywords

norm, Normsatz, deontic sentence, athetic validity

1 Amedeo G. Conte, *Validità atletica*, in Silvana Castignone (ed.), *Studi in memoria di Giovanni Tarello*. Milano, Giuffrè, 1990, vol. II, pp. 163-176; translated from the Italian by Gaea Zélie Vilage, edited by Olimpia G. Loddo (University of Cagliari) and Lorenzo Passerini Glazel (University of Milano - Bicocca). The paper *Validità atletica* was republished in Amedeo G. Conte, *Filosofia del linguaggio normativo. II. Studi 1982-1994*, Torino, Giappichelli, 1995, pp. 409-424. The editors of this translation updated the bibliography and introduced in square brackets the most recent (and more easily available) editions of the bibliographical references in the original version of the paper. We are grateful to the original publisher, Giuffrè-Francis Lefebvre, for the authorization to publish this translation.

Introduction¹
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1. The following article is the English translation of the essay *Validità atetica (Athetic Validity)* by Amedeo G. Conte. This essay was first published in 1990 in the collection *Studi in memoria di Giovanni Tarello*, edited by Silvana Castignone.

In this essay, Conte offers an in-depth analysis of one of the concepts of deontic validity² that he had previously identified in the paper *Minima deontica*, published in 1988. In *Minima deontica*, Conte outlined a “paradigmatics” of validity. Conte’s paradigmatics of validity is rooted in the consideration that the term ‘norm’ is not univocal, since it can alternately refer to (at least) four different entities³. More specifically, the term ‘norm’ can refer to a deontic proposition, to a deontic sentence, to a deontic utterance (such as a speech act imposing a norm), or to a deontic state of affairs (a deontic state of affairs is the *análogon*, in the “realm of the ought”, of what a state of affairs is in the “realm of the is”; an example of a deontic state of affairs is an obligation that is in force in a specific legal system)⁴.

2. If the term ‘norm’ is not univocal, then the sense in which the deontic *validity* is predicated of a norm is not univocal. More specifically, Conte (1988; 2012) distinguishes three different concepts of validity in deontics: (i) pragmatic validity (the validity of deontic utterances, such as the linguistic act of enactment of a bill), syntactic validity (the validity of deontic states of affairs), (iii) semantic validity (the validity of deontic sentences).

The athetic validity investigated in the paper translated here is a specific kind of syntactic

1 This introduction is the result of joint research undertaken by the two authors. The final version of Sections 1. and 3. can be attributed to Olimpia G. Loddo, and that of Sections 2. and 4. to Lorenzo Passerini Glazel. Both authors consider themselves responsible for every word of their joint work.

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2 The concept of “deontic validity” (with reference to which one can say, for instance, that a norm is valid within a given normative system) is obviously heterogeneous from the concept of “logical validity”. Conte has repeatedly investigated the possible (or impossible) relationships between logical validity and deontic validity (see, among others, Conte 1965; 1967; 1968; 1986; 1997).

3 As Paolo Di Lucia (forthcoming) points out, the distinction between the four entities referred to by the name ‘norm’ is the presupposition of the paradigmatics of validity elaborated by Conte. Di Lucia also remarks that through this distinction Conte overcomes the conception of norms as linguistic entities. See Conte (1970), and (with the addition of a fifth referent: the deontic noema) Conte (2006; 2012; 2017).

4 Cf. Di Lucia (forthcoming).

validity, i.e. of the type of validity that is predicated of a norm as a deontic state of affairs or, in the lexicon of Theodor Geiger recalled by Conte, as a “subsistent norm” (“*subsistente Norm*”). Here, athetic validity is specifically the (syntactic) validity of a deontic state of affairs that is not the product of an act of *thésis*, of an act of position (such as, for instance, a legislative enactment)⁵.

3. Through the concept of athetic validity and through the analysis of Geiger’s paradigms “*Normsatz vs. subsistente Norm*” (“deontic sentence vs. subsistent norm”) and “*proklamativer Normsatz vs. deklarativer Normsatz*” (“proclamative deontic sentence vs. declarative deontic sentence”), Conte challenges the conceptions of norm as a linguistic entity, highlighting on the one hand the lack of a necessary correlation between norms and proclamative deontic sentences, and, more generally, the lack of a necessary correlation between norms and deontic sentences on the other hand. The very existence of a norm in a normative system does not presuppose a proclamative deontic sentence that was formulated to promulgate that norm. More in general, the very existence of a norm in a normative system does neither consist in nor necessarily presuppose the presence of a deontic sentence (whether declarative or proclamative). This is the case, for instance, with the famous customary norm expressed by the sentence ‘Three are for free’ (*Drei sind frei*): according to Geiger, the norm expressed by the sentence ‘Three are for free’ was in force—and therefore subsisted, was valid—in a Germanic tribe before the sentence expressing the norm “*Drei sind frei*” was formulated. In this case, the sentence ‘*Drei sind frei*’ does not have a proclamative nature, i.e. it is not the product of a thetic utterance that promulgates a new norm. On the contrary, the sentence presupposes the existence (and thus the athetic validity) of the norm that it expresses.

4. However, Conte underlines an apparently paradoxical aspect of Geiger’s concept of the declarative deontic sentence. Indeed, according to Geiger, when a declarative deontic sentence expresses (codifies) an already existing customary norm, that sentence not only ascertains the existence of that norm but at the same time it also *validates* a model of behaviour, thus consolidating the existing norm. Conte unravels this apparent paradox precisely through the distinction between thetic validity and athetic validity. He thus suggests the possibility of investigating normative phenomena, and in particular rules without words and the evolution of customary orders, in the light of a stratigraphy of validity.

* * *

⁵ Athetic validity is opposed to thetic validity. The paradigm “thetic vs. athetic” is transversal to the three concepts of deontic validity (semantic validity, syntactic validity, pragmatic validity) distinguished by Conte.

ὄψις τῶν ἀδύλων τὰ φαινόμενα.
Phenomenal appearance is the visible aspect of the non-phenomenal.
 (Anaxagoras).

1. The Thetic Validity vs. Athetic Validity Paradigm

1.1. The Terms of the Paradigm

The paradigm: *thetic* validity vs. *athetic* validity was formulated in a recent contribution to the deontics of validity: Amedeo G. Conte, *Minima deontica*, 1988 [1995].

1.1.1. *Thetic* validity (in German: *thetische Gültigkeit*, in French: *validité thétique*, in Italian: *validità thetica*) is the deontic validity (*deontische Gültigkeit*, *validità deontica*, *validité déontique*) which is the product (the *wytwòr*, to borrow a term from Polish philosopher Kazimierz Twardowski's lexicon) of a thetic act of position, of an act of *thésis*. The adjective 'thetic' refers to the Greek noun 'thésis', which is equivalent to the term 'position', to the German 'Setzung'.

1.1.2. *Athetic* validity (*athetische Gültigkeit*, *validité athétique*, *validità athetica*) is the non-thetic validity, i.e. the deontic validity which is *not* the product (the *wytwòr*) of a thetic act of position, of an act of *thésis*.

To put it plainly, the term 'athetic' is formed by the prefixation of an *alpha privativum* to 'thetic' (cf. 'abulic', 'anemic', 'arrhythmic').

1.2. The Grounds of the Paradigm

1.2.1. The elaboration of the concept of athetic validity is a purely theoretical operation, which does not have presuppositions or implications that are extraneous to philosophical theory. The elaboration of the concept (*Begriff*) of athetic validity is not the reflection of (and is not reflected in) any conception (*Auffassung*) of deontic validity.

1.2.1.1. It is not the *recognition* of the phenomenon of athetic validity that has atheoretical presuppositions and implications, but, on the contrary, its *disavowal*. The disavowal of athetic validity, that is, the uncritical reduction of deontic validity to thetic validity (the contraction of deontic validity into thetic validity), is the constitutive step of the conception of deontic validity that is proper to legal positivism.

1.2.1.2. That the *concept* (*Begriff*) of athetic validity is not connected with a single specific *conception* (*Auffassung*) of deontic validity is proved by the fact that the phenomenon of athetic validity is documented in two philosophers of law who have opposing *Weltanschauungen* and opposing philosophical styles: Giovanni Tarello (*Teorie e ideologie nel diritto sindacale*, 1967), and Luigi Lombardi Vallauri (*Saggio sul diritto giurisprudenziale*, 1967).

1.3. Heuristic Fruitfulness of the Paradigm

The paradigm: thetic validity vs. athetic validity is heuristically fruitful both in the *theory* of deontic validity and in the *metatheory* of theories of deontic validity.

1.3.1. *Firstly*, the paradigm: thetic validity vs. athetic validity is heuristically fruitful in the *theory* of deontic validity. In the light of this paradigm, it is possible to recognize and obtain knowledge of anomalous deontic phenomena, i.e. forms of deontic validity that are often disregarded precisely due to their anomaly, to their atypical nature.

1.3.2. *Secondly*, the paradigm: thetic validity vs. athetic validity is heuristically fruitful in the *metatheory* of theories of deontic validity.

More specifically, in the light of this paradigm, it is possible to reveal and overcome a paradox that seems to exist in the contribution that an eminent philosopher of the social sciences, Theodor Geiger, made to the deontics of validity in his book: *Vorstudien zu einer Soziologie des Rechts* (1947)¹.

2.1. Paradigms of the Paradox

2. A Paradox

The book *Vorstudien zu einer Soziologie des Rechts* [*Prolegomena to a sociology of law*] (Geiger, 1947) is not a work on the deontics of validity. However, three paradigms appear in the *Vorstudien* that are all relevant both for *deontics*, and for *metadeontics*. The three paradigms are:

- (i) deontic regularity vs. adeontic regularity;
- (ii) norm vs. deontic sentence;
- (iii) proclamative deontic sentence vs. declarative deontic sentence.

I will explain these three paradigms, drawing freely from my own concepts and vocabulary, in §§ 2.1.1., 2.1.2., 2.1.3. of this essay, *Athetic Validity*.

2.1.1. First Paradigm: Deontic Regularity vs. Adeontic Regularity

2.1.1.1. The terms of Geiger's *first paradigm* are two types of regularities:

- (i) deontic regularity (*Regelmäßigkeit*);
- (ii) adeontic regularity (*Regelhaftigkeit*).

2.1.1.2. Alberto Febbrajo (1979) sheds light on the distinction between deontic regularity and adeontic regularity. A reference point for Febbrajo is Amedeo G. Conte's essay *Codici deontici* (1976 [1995]).

2.1.1.2.1. Here is the *question* asked in *Codici deontici*.

Is there a *discrimen* between (deontically non-neutral) *following a rule* and (deontically neutral) *continuing in a regularity*?

¹ In this essay, the adjective 'thetic' ('*thetisch*', '*thétique*', '*thetico*') is a predicate of *deontic validity* (*deontische Gültigkeit*, *validité déontique*, *validità deontica*), and not of norms (in one of the meanings of the term 'norm').

Instead, 'thetic' often appears as a predicate of *norms* in works by Polish authors, where (starting with Cz. Znamierowski) the phrase '*norma tetyczna*', '*thetische Norm*', '*norma tetica*', 'thetic norm', often appears. In A. G. Conte (1977a; 1977b [1995]; 1978 [1995]; 1985; 1988 [1995]) there is a list of works by Polish authors (works in Polish: Jerzy Kalinowski, Kazimierz Opalek, Zygmunt Ziemiński; works in German: Kazimierz Opalek, Ryszard Sarkowicz; works in Italian: Feliks Bednarski), in which '*tetyczny*' or its equivalent term in other languages appears.

Inexplicably, some Polish scholars use the Polish adjective '*tetyczny*' without realizing its etymon ('*thésis*', '*thetikós*'). An indicator of their uncertainty on the etymon of this adjective is the way in which they render '*tetyczny*' in languages in which (unlike that which occurs in Polish) the Greek theta is expressed using the digram 'th'. Besides the correct spellings '*thetic*' and '*thetisch*', I have encountered both 'tethic' (with an inversion of 't' and 'th'), and '*tetisch*' (with 't' replacing the digram 'th').

G. P. M. Azzoni (who originally contributed to the elaboration of the paradigm: thetic validity vs. athetic validity) indicates the appealing parallel between this paradigm and F. A. von Hayek's paradigm: *thesis* vs. *nomos*. Hayek's philosophical relevance is validated by E. di Robilant and M. Barberis.

2.1.1.2.2. And here is the *answer* given in *Codici deontici*.

There is a *discrimen* between (deontically non-neutral) *following a rule* and (deontically neutral) *continuing in a regularity*. It pertains to what Ludwig Wittgenstein would call the *Grammatik* of the two terms ‘rule’ and ‘regularity’.

2.1.1.2.2.1. A *regularity* is simple (by definition), it is *one*, and it is necessarily identical to itself.

2.1.1.2.2.2. This is not so for the *rule*: a rule can in fact be *one* and *twofold*.

A rule is one and twofold in the proairetic paradox of Orestes (investigated in the essay *Codici deontici*).

The rule that prescribes that Orestes honour his parents is infringed whatever way Orestes acts.

He infringes it if he avenges his father, he infringes it if he does not avenge his father.

“Deontically speaking, the rule is *one*; proairetically, it is *twofold*”².

2.1.1.2.3. The *conceptual question*, whether there is a *discrimen* between *continuing in a regularity* and *following a rule* (a question discussed in Conte 1976 [1995]) is distinguished from the *epistemological question*, whether it is possible, by observing an action, to infer (by induction, or, as I see it, by abduction: abduction is a concept introduced by Charles Sanders Peirce) which rule the observed action follows.

2.1.1.2.3.1. I have investigated that subject with reference to eidetic-constitutive rules. As a complement to what I have written elsewhere, here I will briefly outline the presuppositions (*Präsuppositionen*, *présuppositions*, *presupposizioni*) of the question, which rule the observed action follows.

The question of which rule an action follows, has two presuppositions.

- (i) *First presupposition*: presupposition of *non-anomicity* (of *ananomicity*). The first presupposition is that the action is *not anomic* (the action is *not anomic* if, and only if, the agent follows *at least one* rule).
- (ii) *Second presupposition*: presupposition of *non-idionomicity* (of *anidionomicity*). The second presupposition is that the action is *not idionomic* (the action is *not idionomic* if, and only if, the agent follows a *maximum of one* rule; if, and only if, none of the behaviours through which the action is carried out, follows its own rule, a rule that is specific to it).

² The thesis formulated by A.G. Conte (1976 [1995]) on the relationships between *rules* and *regularities* (every *regularity* is necessarily one; a *rule* can be one and twofold) is only outwardly similar to the thesis formulated by R. Brown (1973, p. 98), on the relationships between *rules* and *laws*: “Two existing *rules* can be incompatible, whereas two *laws* cannot both hold”.

Robert Brown’s theory appears to be a *truth of reason* (a “*vérité de raison*”); but it is a *falsehood of fact*. In fact, it is false [to assert] that *all* rules are liable to contradiction (that they are possible terms of an antinomy): there are rules (eidetic-constitutive rules, and noetic-constitutive rules) among which contradiction (antinomy) is not possible. In fact, as A.G. Conte has demonstrated, eidetic-constitutive rules (and noetic-constitutive rules) are indeed “rules”, but, like the “laws” of Robert Brown, they are not susceptible to contradiction (they do not admit antinomy).

The impossibility of antinomy (an impossibility that exists in eidetic-constitutive rules and noetic-constitutive rules) does not exist, generically, for all the types of constitutive rules (constitutive rules are those which either *are a condition* of what they are rule of, or *set a condition* of what they are the rule of). On the contrary: for the other four types of constitutive rules (thetic-constitutive rules, anankastic-constitutive rules, metathetic-constitutive rules and nomic-constitutive rules) antinomy is possible. On the conditions for antinomy between constitutive rules see Azzoni (1988).

2.1.1.2.3.2. These are two presuppositions of the question of which rule the action follows. Now, from the mere observation of the action, it is *neither* possible to infer whether the first presupposition is satisfied, *nor* whether the second presupposition is satisfied. For neither of the two presuppositions can one decide, by merely observing the action, whether the presupposition is satisfied. In other words: by merely observing the action, it is not possible to infer whether the action is not anomic (whether it is ananomic), nor whether the action is not idionomic (whether it is anidionomic)³.

2.1.1.3. By referring to *Codici deontici* (Conte 1976 [1995]) in an original way, Alberto Febbrajo (1979) thus interprets the distinction (made by Geiger) between adeontic regularity and deontic regularity, between “*faktische Regelmäßigkeit*” and “*sozial geforderte Regelmäßigkeit*”:

- (i) adeontic *Regelmäßigkeit* is to continue in a regularity;
- (ii) deontic *Regelmäßigkeit* is to follow a rule⁴.

2.1.2. Second Paradigm: Norm vs. Deontic Sentence

The terms of *the second of Geiger’s three paradigms* are two types of deontic entities:

- (i) norm (“*Norm*”);
- (ii) deontic sentence (“*Normsatz*”).

Geiger’s thesis on the relationship between *Norm* and *Normsatz* is articulated in two subtheses. The *first subthesis* concerns the relationships between the intension (*Intension, intension, intensione*) of the term ‘*Norm*’ and the intension of the term ‘*Normsatz*’.

The *second subthesis* concerns the relationships between the extension (*Extension, extension, estensione*) of the term ‘*Norm*’ and the extension of the term ‘*Normsatz*’. Both subtheses are significant, both for deontics and for metadeontics.

2.1.2.1. First Subthesis: ‘*Norm*’ and ‘*Normsatz*’ are not Synonymous

The terms ‘*Norm*’ and ‘*Normsatz*’ do not have the same *intension*.

Geiger denies the fact that the term ‘*Norm*’ and the term ‘*Normsatz*’ are synonyms.

³ A brief comment on the glossary I used. The adjective ‘idionomic’, and the noun ‘idionomy’, are terms that I have coined myself. The etymon is clear: the Greek noun ‘*nómos*’ (corresponding to the English ‘rule’ and to the Italian ‘*regola*’) and the Greek adjective ‘*idios*’ (equivalent to the English ‘one’s own’, ‘pertaining to oneself’, to the Italian ‘*proprio*’, to the German ‘*eigen*’). And, clearly, ‘ananomic’ and ‘ananomy’, on the one hand, and ‘anidionomic’ and ‘anidionomy’ on the other hand (four terms formed by the addition of an *alpha privativum* prefix) are also neologisms of mine.

⁴ Geiger’s distinction between adeontic regularity and deontic regularity is a distinction between two types of *regularities*. We must separate this distinction from another distinction (formulated by von Hayek, 1982, pp. 78-79) which is no longer between two types of *regularities*, but between two types of *rules*:

(i) adeontic “descriptive rules which assert the regular recurrence of certain sequences of events (including human actions)”;

(ii) deontic “normative rules that state that such sequences ‘ought’ to take place”.

Being deontic, or, respectively, adeontic, are, in Geiger, *regularities*; in Hayek, *rules*.

In other terms: in Geiger, ‘deontic’ and ‘adeontic’ are predicates of *regularities*; in Hayek, on the other hand, deonticity and adeonticity are predicated not of *regularities*, but of *rules*.

2.1.2.2. Second Subthesis: Non-bijective Correspondence between the Set of *Normen* and the Set of *Normsätze*

The term ‘*Norm*’ and the term ‘*Normsatz*’ do not have the same *extension*.

Geiger denies that there is a bijective correspondence between the set of *Normen* and the set of *Normsätze*. In particular: the presence of the deontic sentence (“*Normsatz*”) is, for Geiger, *neither a necessary condition, nor a sufficient condition* for a *Norm* to exist.

2.1.2.2.1. *Firstly*, the presence of a *Normsatz* is not, for Geiger, a necessary condition (*notwendige Bedingung, condition nécessaire, condizione necessaria*) for a *Norm* to exist.

Geiger explicitly asserts that “the norm itself [*die Norm selbst*], may even exist without the linguistic shell [*sprachliche Hülle*] of the sentence”: “*die Norm selbst auch ohne die sprachliche Hülle des Satzes bestehen kann*”⁵.

2.1.2.2.2. *Secondly*, the presence of a *Normsatz* is not, for Geiger, a sufficient condition (*hinreichende Bedingung, condition suffisante, condizione sufficiente*) for a *Norm* to exist.

Geiger explicitly states that “[not] every sentence with the grammatical form of a deontic sentence [has] a corresponding subsistent norm”: “*nicht jeder Aussage von der grammatischen Form des Normsatzes eine subsistente Norm entspricht*”⁶.

In other words: “Not every sentence in the form of a verbal norm [...] contains a norm”: “*Nicht jeder Satz von der äußeren Gestalt der Wortnorm enthält [...] eine Norm*”⁷.

2.1.3. Third Paradigm: Proclamative Deontic Sentence vs. Declarative Deontic Sentence

The terms of the *third and last of Geiger’s three paradigms* are two types of nomothetic deontic sentences, two species of *Normsätze*:

- (i) proclamative deontic sentences (“*proklamative Normsätze*”);
- (ii) declarative deontic sentences (“*deklarative Normsätze*”).

2.1.3.1. Proclamative Deontic Sentence

The proclamative deontic sentence (“*proklamativer Normsatz*”) is the *Normsatz* through which a *Norm* is thetically enacted (“*statuiert*”), introduced (“*eingeführt*”), created (“*geschafft*”) ⁸.

2.1.3.2. Declarative Deontic Sentence

The declarative deontic sentence (“*deklarativer Normsatz*”) is, on the other hand, the *Normsatz* which ascertains (“*konstatiert*”, “*stellt fest*”: in Geiger, both the Germanic verb ‘*feststellen*’, and the Gallicism ‘*Konstatieren*’ occur) the subsistence (“*das Bestehen*”) of a “subsistent norm”, and carries out a nomothetic codification of this “*subsistente Norm*”⁹.

⁵ Geiger 1969, p. 47 (translation modified); 1987, p. 25. [Editors’ note]

⁶ Geiger 1969, p. 47 (translation modified); 1987, p. 25. [Editors’ note]

⁷ Geiger 1969, p. 47 (translation modified); 1987, p. 25. [Editors’ note]

⁸ Cf. Geiger 1969, p. 45; 1987, p. 22. [Editors’ note]

⁹ Both ‘*feststellen*’, and ‘*konstatieren*’ are factive verbs (*faktive Verben, verbes factifs, verbi fattivi*), that is, verbs in which the truth of the following *that*-clause is presupposed (*präsupponiert*). On factivity, cf. Kiparsky and Kiparsky 1970. On the relationships between factivity and theticity, see Conte 1977a; 1977b [1995].

2.1.3.2.1. Geiger formulates the *deontic hermaphroditism* of the *deklarative Normsätze* in a multitude of ways.

2.1.3.2.1.1. A declarative deontic sentence *ascertains* the subsistence of a subsistent norm (“*konstatiert das Bestehen einer subsistenten Norm*”) and *validates* a widespread model of behaviour (an “*eingespieltes Gebarensmodell*”).

2.1.3.2.1.2. The declarative deontic sentence (“*deklarativer Normsatz*”) is an expression and a consolidation of the subsistent norm. Within it, the subsistent norm is expressed and consolidated (“*ausgedrückt und verfestigt*”), or (as Geiger evocatively writes) captured (“*eingefangen*”: “eine [...] subsistente Norm in einem deklarativen Normsatz eingefangen wird”)^{10,11}.

2.1.3.2.2. It is philosophically provocative that Geiger not only recognises the otherness of the *Norm* with respect to the *Normsatz* and the non-correlativity between *Normen* and *Normsätze*, but goes so far as to declare that the subsistent norm (“*subsistente Norm*”) is the norm in the proper sense (“*Norm im eigentlichen Sinn*”)¹².

2.2. Formulation of the Paradox

2.2.1. *Deklarativer Normsatz*, declarative deontic sentence: this concept (which is pivotal in Geiger’s thought) may appear to be a paradoxical, *self-contradictory* concept (just as its opposite, the concept of *proclamative* deontic sentence, *proklamativer Normsatz*, may symmetrically appear to be *tautological*).

2.2.2. Indeed, within the concept of *deklarativer Normsatz* two incompatible traits seem to coexist (two *notae*, two *Merkmale*): the *theticity* trait and the *rheticity* trait¹³.

A *deklarativer Normsatz* seems to be rhetic, and thetic, simultaneously:

- (i) *rhetic*, insofar as it is a (rhetic) *ascertainment* of deontic validity;
- (ii) *thetic*, insofar as it is a (thetic) *constitution* of deontic validity.

2.3. Mediation of the Paradox

2.3.1. Actually, there is no paradox in the concept of *deklarativer Normsatz*. The apparent paradox in the concept of *deklarativer Normsatz* dissolves immediately if one recognises the distinction between *thetic* deontic validity and *athetic* deontic validity, a distinction which here reveals its own heuristic fruitfulness.

2.3.2. It is *true* that a *deklarativer Normsatz* is both *ascertainment* (*Feststellung*) and *constitution* (*Festsetzung*) of deontic validity.

¹⁰ Geiger 1987, p. 151. [Editors’ note]

¹¹ A brief comment on the verb used by Geiger, ‘*verfestigen*’, which is the equivalent of the English ‘consolidate’ and the Italian ‘*consolidare*’. As both G. M. Azzoni and Paolo di Lucia have pointed out to me, an Italian noun deriving from ‘*consolidare*’, namely ‘*consolidazione*’ (consolidation), is a *terminus technicus* used by legal historians. Cf. for example, Viora 1967.

¹² Cf. Geiger (1947 [1987, p. 20]): “norm in the strict sense or subsistent norm [*Norm in eigentlichen Sinn oder subsistent[e] Norm*]”.

¹³ Cf. Conte 1977a; 1977b [1995]; 1985.

But it is *false* that, in a *deklarativer Normsatz*, the object of ascertainment and constitution (of rhetic *Feststellung* and of thetic *Festsetzung*) is *one and the same* deontic validity.

A *deklarativer Normsatz* is

- (i) the ascertainment of *athetic* deontic validity,
- (ii) the constitution of *thetic* deontic validity.

3. Deontic Sentences, Adeontic Sentences on Validity, Deontic Logic

3.1. Deontic Declarative Sentence vs. Adeontic Sentence on Validity

3.1.1. A brief warning about what the deontic declarative sentences (“*deklarative Normsätze*”) by Theodor Geiger *are not*.

3.1.1.1. Contrarily to what the adjective ‘*deklarativ*’ suggests, Geigerian *deklarative Normsätze* are (not: *descriptive of validity*, but) *constitutive of validity*. (The phrase ‘constitutive of validity’ already occurs in Conte 1970 [1995]).

Declarativeness in Geiger is *not descriptivity*: *deklarative Normsätze* are *not descriptive* sentences (be they deontic or adeontic sentences) *on validity* (on one of the six species of deontic validity represented on the vertices of the deontic octahedron in Conte, 1988 [1995]).

3.1.1.2. Therefore, the concept (developed by Theodor Geiger) of *deklarativer Normsatz* coincides neither with the concept (developed by Hans Kelsen) of *Sollsatz*, nor with the concept (developed in Conte, 1970 [1995]) of descriptive deontic sentence, nor with the concept (developed by Ingemar Hedenius, *Om rätt och moral*, 1941) of unauthentic legal sentence (in Swedish, *oäkta rättssats*).

3.2. Adeontic Sentences on Deontic Validity

3.2.1. This brief warning about what Geigerian declarative deontic sentences (“*deklarative Normsätze*”) are *not* (i.e. they are *not descriptive* sentences *on validity*), *fatally* raises a *question*. What is the semiotic status of *descriptive sentences on validity* (a set of sentences to which declarative deontic sentences do *not* belong)?

3.2.2. An *answer* to the question “what is the semiotic status of descriptive sentences on validity?” is provided in an essay written in January 1963: Amedeo G. Conte, *La negazione di norme*. According to this essay, a descriptive sentence on validity is a non-deontic sentence, an adeontic sentence.

A descriptive sentence on validity (I thus argued, contaminating two languages and freely alternating German terms and Italian terms) is a “*Satz on the Sollen*” and not a “*Satz of Sollen*”. As a sentence *not of Sollen*, but *on the Sollen*, a descriptive sentence on validity is an “amodal” sentence (*amodaler Satz, énoncé amodal, enunciato amodale*). A descriptive sentence on validity is (I use a neologism of mine from 1986: ‘adeontico’) an *adeontic* sentence (*adeontischer Satz, énoncé adéontique, enunciato adeontico*)¹⁴.

¹⁴ From my distinction between *deontic* sentences and *adeontic sentences on validity*, one can make the distinction (also formulated in 1963) between modal interpretation and factual *interpretation* of deontic sentences (“*norm sentences*”). This recurs in a Swedish-speaking Finnish philosopher: Stenius (1963).

The analogy between the two distinctions is merely apparent. Indeed, what Stenius distinguishes is not two types of *sentence*, but two types of *interpretations of sentences*.

In other words: in Stenius, “*modal*” and “*factual*” are predicates of *interpretations* of sentences, and not of *sentences*.

3.3. Deontic Logic, Logic of Deontic Sentences, Logic of Adeontic Sentences on Validity

The thesis (which I formulated in 1963) on the *adeonticity* of descriptive sentences on validity has direct consequences both for *deontics* and for *metadeontics*. These consequences are pointed out by both Giampaolo M. Azzoni and Paolo Di Lucia.

If descriptive sentences about validity are *adeontic*, it is to be excluded that the logic of such *adeontic* sentences be a logic of *deontic* sentences.

Consequently, every deontic logic that is configured as a logic of *deontic sentences* (precisely because it is constructed as a logic of *deontic* sentences) is not a logic of *adeontic* descriptive sentences on validity.

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* * *

And in yet other words: in Stenius, it is not the sentences that are modal (or, respectively, amodal), but the interpretations of sentences. At the root of Stenius' theory, and of a similar theory from Georg Henrik von Wright also dating back to 1963 (G.H. von Wright 1963) is, according to the testimony of Stenius himself (and von Wright), a book by the Swedish philosopher Ingemar Hedenius (1941): *äkta rattssats vs. oäkta rattssats*, authentic legal sentence vs. inauthentic legal sentence.

A curiosum: in 1963, both Stenius and von Wright, and (secondarily) Conte had already been in contact with the work of Ludwig Wittgenstein, for various reasons (and on various levels).

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