

PHENOMENOLOGY AND MIND

THE ONLINE JOURNAL OF THE FACULTY OF PHILOSOPHY, SAN RAFFAELE UNIVERSITY



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NORM: WHAT IS IT? ONTOLOGICAL AND PRAGMATICAL PERSPECTIVES

Edited by Paolo Di Lucia and Lorenzo Passerini Glazel



Phenomenology and Mind practices double blind refereeing and publishes in English.

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Università degli Studi di Firenze

Firenze University Press

Borgo Albizi, 28, 50122 Firenze, Italy

www.fupress.com

Phenomenology and Mind. The Online Journal of the Faculty of Philosophy,
San Raffaele University, on-line: <http://www.fupress.net/index.php/pam>

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NORMATIVE EXPERIENCE: DEONTIC NOEMA AND DEONTIC NOESIS*

abstract

What is a norm? A. G. Conte replies to this question by enumerating five possible referents of the word norm (§ 1.). Focusing on the fifth referent, the “deontic noema”, I raise the question (§ 2.): How is the deontic noesis of a deontic noema to be understood? Through a reconstruction in terms of deontic noema of H. Kelsen’s “merely thought norm” (§ 3.), of O. Weinberger’s “Normgedanke” (§ 4.), and of L. Petražycki’s psychological analysis of normative experience (§ 5.), I propose to distinguish (§ 6.) a genuine deontic noesis from theoretical (cognitive or hypothetical) noeses of a deontic noema, and I will argue that, in the hypothesis that no normative phenomenon would be possible without a consciousness capable of the deontic noesis of deontic noemata, the concepts of deontic noema and of deontic noesis deserve further investigation.

keywords

norm, deontic noema, deontic noesis, normative experience/normatives Erlebnis, psychological conception of norms

* I thank Amedeo Giovanni Conte, Paolo Di Lucia, Edoardo Fittipaldi and Giuseppe Lorini for discussion, valuable insights and productive criticism.

Νοεῖν οὐκ ἔστιν ἄνευ φαντάσματος.
There is no thinking without a phantasma.
 (Aristotle, *De memoria*, 449b34-450a1).

1. Five referents of the word *norm* in Amedeo Giovanni Conte

According to Amedeo Giovanni Conte, the question “What is a norm?” – the fundamental question of a philosophy of norms – is a “false” question. It is a false question because it rests on at least one false presupposition: the presupposition that the word *norm* denotes one, and only one kind of entity. This presupposition is false because there are (at least) *five* different kinds of entities which can be (alternately, but not alternatively) referred to by the word “norm” (Conte, 2007, p. 28; 2012, p. 59; 2017, p. 24).¹ The five entities which the word *norm* can refer to are, according to Conte: (i) a deontic *sentence*; (ii) a deontic *proposition*; (iii) a deontic *utterance*; (iv) a deontic *state-of-affairs*; and (v) a deontic *noema*.² Conte gives at least one example for every possible referent of the word *norm*.

1.1. The word *norm* refers to a deontic *sentence* (*enunciato deontico, deontischer Satz*) in the following example:

(1) The *norm*: “One ought to pay one’s debts” is composed of six syllables.³

1 This pentad of referents is a development of the tetrad of concepts of *norm* delineated in Conte 1970/1989. It is worth recalling that the German phenomenologist Adolf Reinach, with regards to legal enactments (*Bestimmungen*), distinguished five different phenomena: (i) the *experience* of enacting (*Bestimmungserlebnis*), (ii) the *act* of enacting (*Bestimmungsakt*), (iii) the *proposition* expressing the enactment (*Bestimmungssatz*), (iv) the *content* of the enactment (*Bestimmungsinhalt*), and (v) the *effect* of the enactment (*Bestimmungswirkung*) (Reinach, 1913/1953, p. 171; see also Reinach, 2012, p. 106; Loidolt, 2016). A partially similar analysis can be found in Spiegelberg (1935), where the level of the *law-sentence* (*Gesetzessatz*), the level of the *law-thought* (*Gesetzessgedanke*) and the level of the *practical state-of-affairs* (*praktischer Sachverhalt*) are distinguished (see also Cacopardi, 2013-2014). As P. Di Lucia & L. Passerini Glazel (2017) recall, Spiegelberg also singles out sixteen different *Bedeutungsmöglichkeiten* for the word *norm* (*Norm*). Due to space limitations, in the present paper I cannot compare Reinach’s and Spiegelberg’s analyses with Conte’s, Kelsen’s, Weinberger’s, and Petrażycki’s ones.

2 An analysis of Conte’s enumeration can be found also in Borghi & Feis (2017). For a general survey on the philosophical investigations on norms and normative phenomena see Lorini & Passerini Glazel (2012).

3 I adapt Conte’s example in Italian to English. Conte gives a second example in Italian that cannot be plainly translated into English because of the different behaviour of the Italian modal verb *dovere* and the English verbs *should*,

What is composed of six syllables here is a (deontic) sentence.

1.2. The word *norm* refers to a deontic *proposition* (*proposizione deontica, deontische Proposition*) in the following example:

(2) The English deontic sentence: “One ought to pay one’s debts” and the Italian deontic sentence: “*Si devono pagare i propri debiti*” express the same *norm*.

What is expressed here by the two different (synonymous) sentences is a (deontic) proposition.⁴

1.3. The word *norm* refers to a deontic *utterance* (*enunciazione deontica, deontische Äusserung*) in the following example:

(3) To indiscriminately forbid all Arabs to enter the US immediately after 9/11 would have been an ill-timed *norm*.

Forbidding is here a norm-enacting act, consisting in a performative deontic utterance.

1.4. The word *norm* refers to a deontic *state-of-affairs* (*status deontico, deontischer Sachverhalt*) in the following example:

(4) Eike von Repgow’s book *Sachsenspiegel* (*Saxon Mirror*) is a codification of *norms* established among the Saxons.⁵

1.5. The fifth, and last, kind of entity which the word *norm* may refer to is a deontic *noema* (*noema deontico, deontisches Noema*). The word *norm* (or its synonym *rule*) refers to a deontic *noema* in the following two examples by Conte:

ought to, etc., as to the scope of negation. The second example given by Conte is: “La norma: ‘Gli studenti di Filosofia non devono iscriversi a Logica matematica’ è una norma ambigua” (Conte 2012, p. 59).

⁴ Conte’s concept of deontic proposition can be compared to Alchourrón and Bulygin’s concept of norm-*lektón*. Alchourrón and Bulygin define a norm-*lektón* as the “prescriptive [deontic] counterpart of a [descriptive] proposition”, “the content of a merely possible act of prescribing” (Alchourrón & Bulygin, 1973-1989/2015, p. 91; see also Alchourrón & Bulygin, 1993; 1981/2015). Alchourrón and Bulygin do not distinguish, though, (as Conte instead does) the intensional (semiotic) phenomenon of a deontic *proposition* – i.e. a meaning, a propositional content – from the intentional (psychic or noetic) phenomenon of a deontic *noema* – i.e. a mental content (Conte, 2007; 2012; 2017; see also below, § 2., especially note 7).

⁵ This example is quite important, since it contradicts the claim that *all norms are linguistic entities*: the customary norms codified by von Repgow were neither *linguistic entities* nor *language-related* ones: they were neither deontic sentences, nor deontic propositions, nor deontic utterances; they were subsisting extralinguistic deontic states-of-affairs, established by custom. Customary deontic states-of-affairs may, indeed, become established independently of, and prior to, their linguistic formulation, like in the famous example of the old saw “*Drei sind frei* [Three are free]”, which eventually gave expression to a long established unspoken customary norm (Th. Geiger, 1947/1964, pp. 57-64). True, *some* deontic states-of-affairs (those created by statutory norms, for instance), unlike customary ones, may be established by means of (or in virtue of) the *linguistic* performative deontic utterance of a deontic sentence expressing a deontic proposition; nonetheless, deontic *states-of-affairs* themselves, *qua* states-of-affairs, are, according to Conte, *non-linguistic entities* (be they established by means of a linguistic deontic utterance or not). It is also true that the paradigmatic examples of deontic states-of-affairs, at least in modern Western culture, are statutory norms; but it is false that *every* deontic state-of-affairs is a statutory norm.

- (5) Proposing a *norm* in a legislative assembly.
- (6) In the absence of a provision, the court shall decide in accordance with customary law and, in the absence of customary law, in accordance with the *rule* [*Regel, règle, regola*] that it would make [*aufstellen würde, établirait, adotterebbe*] as a legislator (art. 1(2) of the Swiss Civil Code).⁶

2. Deontic noema as the correlate of a deontic noesis

2.1. In the present paper I focus on the concept of deontic noema, a concept that can be even more fruitful if connected to an analysis of the correlated deontic *noesis*. To better illustrate the concept of deontic *noema*, Conte sets it in contrast (i) with the concept of deontic *proposition*, and (ii) with the concept of deontic *state-of-affairs*.

(i) The concept of deontic *noema* cannot be reduced to the concept of deontic *proposition*, because a deontic *noema* is, according to Conte, an *intentional* – a *noetic* – entity (intentional with ‘t’), i.e. the correlate of an intentional act; on the contrary, a deontic *proposition* is an *intensional* – a *semiotic* – entity (intensional with ‘s’), i.e. the meaning of a sentence (Conte, 2006, p. 7947; 2012, p. 65).⁷

(ii) The concept of deontic *noema* cannot be reduced to the concept of deontic *state-of-affairs*. According to Conte a deontic *noema* is merely a deontic *state-of-affairs in intellectu*, in the mind; symmetrically, a deontic *state-of-affairs in actu*, an actually existing deontic *state-of-affairs* – in the specific sense of the existence of a deontic *state-of-affairs*, whatever it may be.⁸

6 Conte expressly considers here the term *rule* (in Italian: *regola*) as a synonym of *norm* (in Italian: *norma*). The discovery of the example of the Swiss Civil Code is credited by Conte to Giuseppe Lorini.

7 It could be objected that the concept of *proposition* could be understood as nothing but a *noema*, and that consequently the introduction of the concept of a deontic *noema* is a duplication of the concept of a deontic *proposition* – and a violation of Ockham’s razor: *Numquam ponenda est pluralitas sine necessitate*. But even if a proposition could be regarded as nothing but a *noema*, the converse does not hold: not every *noema* is a proposition – the domain of *noemata* is broader than the domain of *propositions*.

One could still maintain that all *normative noemata* are nothing but *normative propositions*, that is, one could maintain the “non-transcendability of language” with specific regard to normative consciousness. It is my opinion, though, that normative experiences (*normative Erlebnisse*) are possible whose intentional object has not the form of a *propositional noema*. It is beyond the scope of this paper to provide a demonstration for this conviction, but hints in this direction are: Benjamin Lee Whorf’s and Rodolfo Sacco’s concept of “cryptotype” (Sacco, 1989; 2015); the normative experiences that can be associated to, or acquired through, direct imitation (see, for instance, Mormino 2016); the possible normative experiences of animals; Petrażycki’s concept of intuitive normative experiences (the intuitive normative experience driving one to help a drowning child for instance). An explicit refusal of “logicism” with regard to norms is also in P. Amselek (2017, p. 33).

8 In a private communication (July, 2017), Conte has clarified that the existence of a deontic *state-of-affairs* can be “empirically ascertained” through (i) the empirical investigation of the occurrence of a normative act or fact, and (ii) the correlation of such a normative act or fact with the meta-norms concerning the validity of norms in a specific legal system – and ultimately with the basic norm of that legal system (the *Grundnorm* in Kelsen’s sense). The truth of a statement asserting the existence of a deontic *state-of-affairs* in a legal system is, thus, both a *contingent*, a *necessary*, and a *hypothetical truth*: it is *contingent*, because the actual occurrence of the normative act or fact is contingent; it is *necessary*, because, once the occurrence of the normative act or fact has been ascertained, in virtue of the meta-norms concerning the validity of norms in that legal system the existence of the deontic *state-of-affairs* necessarily follows; it is *hypothetical*, because it ultimately depends on the *hypothetical* basic norm assumed by he who makes the assertion. On the verifiability of a statement asserting the existence of a norm cf. also Kelsen (1979/1991, ch. 46). Conte’s claim on the empirical ascertainableness of the existence of a deontic *state-of-affairs* can be compared to Jerzy Lande’s conception of the “correctness” (as opposed to truth) of the legal-dogmatic judgments on the positive bindingness of a norm [*obowiązkiwanie normy*] (Lande, 1948/1959, p. 828 ff., as cited in Fittipaldi, 2016b, p. 520).

2.2. Even if it is true that *omnis determinatio est negatio*, and thus a deontic noema is neither a deontic proposition, nor a deontic state-of-affairs, it is also true that *non omnis negatio est determinatio*: therefore, what is exactly a deontic noema?

Conte's concept of deontic noema, which draws inspiration from Husserl's phenomenological concept of noema, is defined by Conte simply as "the objective aspect of a deontic noesis", as the correlate of a deontic noesis (Conte, 2006, p. 79-47).

However, Conte does not clarify how the "deontic noesis" – the *subjective* aspect of a deontic noema – is to be understood.

Is it to be understood as the mere mental representation of a possible, hypothetical, or fictional deontic state-of-affairs? Is it to be understood as an act of cognition? Or is it rather to be understood as a specifically *normative* experience, a genuine *normatives Erlebnis*? Or, again, different kinds of noeses of a deontic noema are to be distinguished?

2.3. I think that when the question is confronted of how a deontic noesis is to be understood, the concept of deontic noema may prove very fruitful in at least two respects: on the one hand, for the investigation of a wide range of specific normative phenomena, such as the inference of norms by analogy or from past rulings, the inference of general principles from a set of norms, the analysis of the *opinio iuris* in customary law, the establishing of a norm from exemplary behavior, the analysis of normative cryptotypes, the analysis of the convictions as to natural or divine law, etc.; on the other hand, if Max Weber (1907/1976, pp. 22-23) is right in suggesting that "it is [...] not the conventional rule of greeting, which personally bares my head when I meet an acquaintance, but my hand, [which] is prompted to do so [...] through the 'conception of a norm' ['*Normvorstellung*']"⁹, and if Weber's *Normvorstellung* can be construed in terms of a deontic noema, then the *deontic noesis* of a *deontic noema* is an unavoidable moment not only of the phantasmic representation of a possible – non-actual – norm, but also of the actual operancy of valid or established norms – in the sense of deontic states-of-affairs – on one's behaviour.

2.4. As an initial contribution to the analysis of the possible deontic noeses of a deontic noema, I will construe Hans Kelsen's concept of "merely thought norms" (§ 3.), Ota Weinberger's analysis of norm as a thought-object (§ 4.), and Leon Petrażycki's psychological analysis of normative experience (§ 5.) in terms of deontic noemata.¹⁰

3.1. Many theories of norms focus on norms as the product of a norm-positing act – as the correlate of an act of will, conceived of as the will to issue a norm – more than on norms as the objects of a deontic experience. Hans Kelsen's theory of norms is emblematic in this respect. According to Kelsen, "a norm is the meaning [*Sinn*¹¹] of an act of will [*Willensakt*] [...], of an act

3. Merely thought norms in Hans Kelsen: phantasmic noesis of a deontic noema

9 As Paolo Di Lucia (2003) recalls, an analogous remark has been made by Hans Kelsen: according to Kelsen, what becomes operant (*wirksam*) is not properly "the norm or the legal order in its specific existence as validity [*Geltungsexistenz*], [...], but the fact that men represent to themselves the norm or the legal system, and this representation [*Vorstellung*] becomes operant insofar as it drives men to a conduct corresponding to their representation" (Kelsen, 1926, p. 8, quoted in Di Lucia, 2003, p. 187; my translation).

10 I make use of the term *noesis* in a broad sense, including not only intentional acts of cognition, but more generally all intentional acts of consciousness, whose correlate is a noema.

11 Kelsen's notion of "meaning" is quite an ambiguous one: in some connections of Kelsen's works, it can seemingly be compared to a proposition (i.e. a semantical or logical entity), in others to the pragmatic sense of a normative utterance (a pragmatical entity), in others again to Heinrich Rickert's or Max Weber's notion of *Sinn* (Kelsen, 1985, p. 12; Rickert, 1910). I discuss some of the issues connected to the understanding of Kelsen's notion of norm as a "meaning", a "*Sinn*" in Passerini Glazel, 2017a.

of will directed towards the behaviour of others” (1979, p. 152).¹² Kelsen expressly assumes the principle: “No norm without a norm-positing authority”, and establishes an equivalence between the *validity* of a norm and its specific *existence*.

Nonetheless, Kelsen admits that we “can think of a norm which has not actually been posited by any authority, i.e. which is not the meaning of any real act of will occurring in reality” (1979, p. 6).

At the same time, the correlation between the norm and the act of will – a correlation implied in the principle: “No norm without a norm-positing authority” – is, for Kelsen, a necessary one, which holds even when there is no *actual* norm-positing act of will, i.e. when a norm is a “merely thought norm [*ein bloß gedachte Norm*]” – a mere deontic noema, in Conte’s terms. A merely thought norm is indeed, for Kelsen, the correlate of a *fictitious* act of will:

I can think of a norm which has not actually been posited by any authority, i.e. which is not the meaning of any real act of will occurring in reality. But I can think of such a norm only as the meaning of an act of will which I *think of at the same time*. [...] The principle “No norm without a norm-positing authority” remains valid, even if the authority’s act of will of which the merely thought norm is the meaning is fictitious [*fingiert ist*]. A merely thought norm is the meaning of a fictitious act of will (Kelsen, 1979, p. 6; 1991, p. 6).

Kelsen, thus, understands the act of will, whose meaning is a norm, expressly as a norm-positing will; and even a mere deontic noema (a merely thought norm) implies a fictitious norm-positing act of will of a fictitious authority.

3.2. However, the noesis of a mere deontic noema is not to be identified with the fictitious act of will implied in the deontic noema (the fictitious act of will is rather a part of the deontic noema). According to Kelsen, a merely thought norm is, instead, the correlate of an “*act of thought*” (*Denkakt*).

At the same time, this act of *thought* is not an act of *knowledge*: in Kelsen’s works, it takes the form, respectively, of an *act of imagination*, of a *presupposition*, of a *hypothesis*, or of a *fiction* – in the sense of Vaihinger’s philosophy of As-If (Kelsen, 1960/2000, p. 206; 1979/1991, p. 256).

Here, the object of thought – the merely thought norm – is not a pre-existent object given to thought: it is rather an object given by thought, a noema produced by thought itself.¹³

In Kelsen, thus, a deontic noema can be the correlate of four different kinds of noesis: imagination, presupposition, hypothesis, fiction.

3.3. As is well-known, in Kelsen’s pure theory of law the entire hierarchical structure (the *Stufenbau*) of a normative system rests on a basic norm (*Grundnorm*), which is not the product of a positive act of will of a norm-issuing authority; in this sense, the basic norm is, for Kelsen, a merely thought norm – a deontic noema – which he understood at first as the correlate of a *hypothesis* or a *presupposition* (1934; 1960/2000), and lately as the correlate of a *fiction* (1979):

¹² Kelsen distinguishes “willing one’s own behavior” and “willing that someone else *is to* behave in a certain way”: only a willing directed to the behavior of someone else (where “someone else” can also be the *alter ego*) “has the meaning of an Ought (*Sollen*), i.e. of an order, a command, a prescription, a norm” (1979/1991, pp. 31-32).

¹³ The object of thought is not *presented to*, it is *presentified* by consciousness. For the distinction between *presentation* (*Gegenwärtigung*) and *presentification* (*Vergegenwärtigung*) see Fink (1929-1930/2014).

The Basic Norm [*Grundnorm*] of a positive moral or legal system is not a positive norm, but a merely thought norm (i.e. a fictitious norm), the meaning of a fictitious, and not a real, act of will (Kelsen, 1979, p. 206; 1991, p. 256).

The whole normative system therefore rests upon a mere fictional deontic noema; but what kind of noesis exactly is the noesis of this noema, of this merely thought basic norm?

Two interpretations are possible.

According to the *first* interpretation, the basic norm is a *noetic* norm: it is conceived of as a transcendental hypothesis of the science of law, and is thus the object of a *theoretical hypothetical* noesis.

On the contrary, according to the *second* interpretation, the basic norm is a *nomic* norm, a fictitious norm experienced as a binding norm by the subjects of the legal system, and is thus the object of a *fictional deontic* noesis.

4.1. A partially different analysis of a “deontic noema” can be found in Ota Weinberger’s analysis of “the norm as thought and as reality”, where he expressly confronts the question of the ways in which a norm can be a content of consciousness (*Inhalt des Bewußtseins*).¹⁴

According to Weinberger, a norm is not a material entity; it is an ideal entity [*ideelle Entität*]:¹⁵ it is “a thought [*Gedanke*]”, “in the same sense as this expression is used in characterising logic as the ‘analysis of thought’ [*Gedankenanalyse*]”: in particular, a norm is a thought “in an objective sense, divorced from the processes of consciousness” (Weinberger, 1970, p. 205; 1986, p. 33).

4.2. Weinberger, nonetheless, remarks that a correct grasp of the ideal nature of norms is connected to the way they actually operate: the ideal nature of norms is elucidated by the role they play in the reality of human life and action (1970, p. 207).

He consequently enquires in what ways a norm can be an *effective* content of consciousness (*Inhalt des Bewußtseins*), in what ways norms “*leben*” or “exist in the realm of human consciousness” (Weinberger, 1970, pp. 210-211; 1986, p. 40). According to Weinberger, a norm, or a *Sollen* (an ought), can be a content of consciousness in two different ways:

(i) as a “*Soll-Wissen*”, or “ought-knowledge”, that is, as the mere *knowledge* that a *Sollen* – an ought – “holds good for some human group, in which case it may be that the subject of the ‘ought-knowledge’ does not ‘will’ the ‘ought’ [*das Gesollte*]” (Weinberger, 1986, p. 40; 1970, pp. 210-211);¹⁶

(ii) as a “*Soll-Erlebnis*”, or “ought-experience”, that is, as the *experience* of a *Sollen* – an ought – *qua* “experience of obligatoriness”, or “consciousness that something ought to be the case”; this *Soll-Erlebnis* consists in the *will* of the object of the ought [*das Wollen des Gesollten*]; this is the instance of “custom, law, or other normative systems”, that are

4. Normgedanke, Soll-Wissen and Soll-Erlebnis in Ota Weinberger

¹⁴ Weinberger, like Conte, draws explicit inspiration from Edmund Husserl’s phenomenology (see Weinberger, 1970, p. 205; 1986, p. 33; Conte, 2006, p. 7947; 2012, p. 64n). Paul Amselek, too, drawing inspiration from Husserl’s phenomenological method, investigates legal rules as mental entities in Amselek, 1993 and 2017.

¹⁵ In the original German text Weinberger switches from “*ideelle Entität*” to “*ideale Entität*” and back again to “*ideelle Entität*” (in one and the same passage: 1970, pp. 208-209). Kelsen, on the contrary, considers the German adjective *ideell*, in its (ontological) meaning of “spiritual, belonging to the realm of ideas and thoughts, non-material”, more appropriate to norms than the adjective *ideal*, in its (axiological) meaning of “corresponding to an ideal” (Kelsen, 1979/1985, p. 56).

¹⁶ It is unclear, from this definition of a *Soll-Wissen*, whether the knowledge that an ought holds good for some human group has to be understood as an *empirical* knowledge on the human group’s normative convictions, or as a *dogmatic* knowledge depending on the axiotic meta-rules of the human group’s normative system.

“experienced as obligatory (as willed so) [*als gesollt erlebt (gewollt)*] by the supporters [*Trägern*] of these systems (not only by the norm-issuing organs)” (Weinberger, 1970, pp. 210-211; 1986, p. 40).

4.3. Weinberger, thus, points out that a deontic noema can be the correlate of two different kinds of *noeseis*:

- (i) a *theoretical* (cognitive) noesis: the noesis of a *Soll-Wissen*;¹⁷
- (ii) a truly *deontic* noesis: the noesis of a *Soll-Erlebnis*.

Weinberger understands the deontic noesis of a *Soll-Erlebnis* in terms of *will* (*das Wollen des Gesollten*), since in a *Soll-Erlebnis* the norms of a normative system are experienced as obligatory, or as willed [*als gesollt erlebt (gewollt)*], even though he does not make perfectly clear what he means by “*das Wollen des Gesollten*”; but it seems that the will of the ought (*das Wollen des Gesollten*) is not to be identified with the will of the norm-positing act, because he writes: “When I speak of the being or real existence of a norm, I am not concerned with the act through which the norm is posited” (1970, p. 210; 1986, p. 39).

**5. Leon
Petrażycki’s
conception
of norm as
an emotional
phantasma**

5.1. Another author offering an analysis of what I propose to call a truly *deontic* noesis of a deontic noema is the Polish-Russian legal philosopher Leon Petrażycki (1867-1931).

One of the main points in Petrażycki’s theory of law is that real legal phenomena are to be found uniquely in the sphere of the “spiritual world”, i.e. of psychic phenomena (Petrażycki, 1909-1910/2011, p. 6): according to Petrażycki, real legal phenomena are nothing but psychic processes (1909-1910/2011, p. 6 ff.), and precisely an “immediate combination of emotional and intellectual processes” (1909-1910/2011, p. 43).¹⁸

When one sees – as often legal scientists do, according to Petrażycki – legal phenomena “in a world external to the subject who is experiencing [them]” – when one sees, for instance, rights and duties as “properties” of the objects or subjects to which they are ascribed – he is subject to “an optical illusion”, to a misunderstanding determined by the projection outside of his consciousness of something that exists only within his consciousness (1909-1910/2011, pp. 8, 40-45).

Such a “projective point of view” produces what Petrażycki calls “impulsive phantasmata”, i.e. the impression that legal phenomena like rights, duties and *norms*, exist outside of the subject, whereas they are nothing but the correlate of a normative psychic experience taking place within one’s own consciousness:

Moral and legal norms and obligations represent nothing actually and objectively outside the minds of the individuals asserting or denying their existence, and apart from those individuals. They are merely reflections or projections of the psychic states of those individuals (Petrażycki, 1909-1910/2011, p. 112).

The projected “norm” can be construed as a deontic noema that is the correlate of a *phantasmic noesis* and is improperly projected onto reality.

¹⁷ A *Soll-Wissen* can be an element of one’s unparticipant, *nicht-teilnehmende Erfahrung* without ever being, for him, the object of a participant deontic *Erlebnis*, of a *teilnehmend Soll-Erlebnis*. (The distinction between participant and unparticipant experience can be compared to Bronisław Malinowski’s notion of “participant observation”).

¹⁸ It has to be reminded that, along with the analysis of law and morals in terms of emotional experiences, Petrażycki develops an original and keen theory of legal dogmatics.

5.2. The psychic experience that causes the phantasmic projection of a norm is, in Petrażycki's analysis, an "immediate combination of an action representation and an impulsion rejecting or encouraging corresponding conduct" (1909-1910/2011, p. 30).

A norm (*norm*) in the proper sense is, for Petrażycki, the "content of a normative judgment"; and a normative judgment is the manifestation of "the existence and operation, in our mind, of immediate combinations of action representations and impulsions rejecting or encouraging corresponding conduct (that is repulsive and appulsive emotions)":

The existence and operation, in our mind, of immediate combinations of action representations and impulsions rejecting or encouraging corresponding conduct (that is repulsive and appulsive emotions) may be manifested in the form of judgments [*suždenija*] rejecting or encouraging a certain conduct *per se* (and not as a means to a certain end), such as for instance: "A lie is shameful", "One should not lie", "One should speak the truth", and so forth. Judgments made up of such combinations of action representations with repulsions or attractions I will term "practical judgments of principle" [*principial'nye praktičeskie suždenija*], or [...] "normative judgments" [*normativnye suždenij*]; the content of such judgments I will term "principled rules of conduct" [*principial'nye pravily povedenija*], "principles of conduct" [*principy povedenija*], or "norms" [*normy*]. The corresponding dispositions [*dispozicii*] I will term "principled practical convictions" or "normative convictions" [*normativnye ubeždenija*] (Petrażycki, 1909-1910/2011, p. 30; Petrażycki, 2012, p. 264, modified and integrated translation).

As Edoardo Fittipaldi points out, for Petrażycki the "core phenomenon" is "the combination of an action representation [the representation of an action in one's mind] and an ethical emotion", consisting in the impulsion rejecting or encouraging corresponding conduct (Fittipaldi, 2016c, p. 454).

The judgment manifesting such a psychic experience is not a *linguistic* phenomenon; it is an *emotional* act. A *positive* judgment is, for Petrażycki, an "*appulsive-emotional* act"; a *negative* judgment is a "*repulsive-emotional* act" (Petrażycki, 1908, p. 248, as quoted in Fittipaldi 2016c, p. 454).

A norm in its proper sense (as opposed to a projected norm) can thus be understood, in Petrażycki, as a *deontic noema* which is the correlate of a *specifically deontic noesis*, where the deontic noesis consists in an appulsive-emotional or repulsive-emotional experience associated to the mental representation of a given conduct.

5.3. If, on the one hand, Petrażycki's analysis of normative experience as a specific deontic noesis, can be compared to Weinberger's *Soll-Erlebnis*, on the other hand, it is important to emphasize that Petrażycki, unlike Weinberger, does not conceive the normative experience in terms of *will*¹⁹.

Petrażycki distinguishes, indeed, four elements of psychical life: (i) *cognitive experiences*, which are *unilateral-passive* experiences; (ii) *feelings*, such as pleasures and sufferings, which are *unilateral-passive* experiences; (iii) *will*, which is a *unilateral-active* experience; (iv) *impulsions*, which are *bilateral passive-active* experiences, such as hunger, thirst or sexual arousal, in which the passive side of a feeling is immediately connected to a (repulsive or appulsive) stimulus or appetite (*ad-petitus*) (1909-1910/2011, pp. 22-23).

19 Petrażycki criticizes the confusion of "will" and "demand" implied in some legal and political theories (1909-1910/2011, p. 39).

Normative experiences, according to Petrażycki, do not involve a (unilateral active) *will*: they involve an *impulsion* (a bilateral active-passive impulsion). Therefore, in Petrażycki’s theory, a deontic noema (a norm in its proper sense) is the correlate of a normative experience, which is the experience of a bilateral passive-active *impulsion* connected to an action representation (and the direct correlate of the emotional act of the normative judgment which is a possible manifestation of the normative experience).

5.4. A question may arise, though: If there is no norm without a normative emotional experience, is it possible to have an unparticipant *Erfahrung* of a norm, a non-deontic noesis of a norm – for instance, the knowledge of a norm existing in someone else’s mind – independently of the participant *Erlebnis* of a norm?²⁰

According to Petrażycki, one can acquire “information (indirect and more or less hypothetical, however)” about normative phenomena in the minds of others through an “inference by analogy”.

But this possibility presupposes that one is acquainted with normative phenomena because of having personally experienced (*erlebt*) them; on the contrary, it is precluded in the case of “absolute legal idiotism”, i.e. “the impossibility to have legal experiences”: a man suffering from absolute legal idiotism “could not possibly know what law is” (Petrażycki 1909-1910/2011, p. 15).

6. Theoretical vs. deontic noesis of a deontic noema

I have documented (in Kelsen, Weinberger, and Petrażycki) a plurality of phenomena that can be investigated through the concept of deontic noema, and that a deontic noema is not always the correlate of a *deontic* noesis: it can as well be the correlate of a *theoretical* (cognitive or hypothetical) noesis.²¹

However, if Petrażycki’s claim about absolute legal idiotism is correct, no *theoretical* noesis of a deontic noema would ever be possible for a consciousness incapable of having *normative Erlebnisse* in general, i.e. incapable of *deontic* noesis of deontic noemata.

The relevance of further investigation on the concept of deontic noema and on the correlate concept of deontic noesis becomes apparent if the hypothesis is advanced that without a human – or non-human – consciousnesses capable of deontic noesis – *normative Erlebnisse* – of deontic noemata, the “normative landscape”, i.e. the landscape of normative phenomena, would be an empty landscape.²²

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²⁰ More generally: Can a norm be an object of *thought* (of a theoretical noesis) without being the object of a truly deontic noesis, of a normative experience (see also Fittipaldi, 2016a)?

²¹ For further analysis on this distinction see Passerini Glazel (2017b).

²² *Shaping the Normative Landscape* is the title of a book by David Owens (2012).

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