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PIERO MATTEI-GENTILI

*University of Girona and National Autonomous University of Mexico*

*pieroversion8@hotmail.com*

*pmattei@derecho.unam.mx*

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# SOCIAL FACTS & THE SEMANTIC CONCEPTION OF NORMS. CUSTOMARY NORMS AS A TEST OF ONTOLOGY<sup>1</sup>

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## *abstract*

*The essay addresses the debates about the ontology of norms considering the case of accounting for customary norms. It undertakes and defends a stance in favor of a semantic ontology by developing a framework for the explanation of norms as abstract objects and their linking with social facts to be identified in categories like “customary”, “enacted”, “legal”, “grammatical”, and so on. Furthermore, the work addresses the rival conceptions (pragmatic and eclectic) by showing the specific impossibility that these face for giving a satisfactory account on customary norms. The inquiry concludes by exploring some possible insights from the philosophy of mind to explain the conceptual nature of norms as mental representations.*

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## *keywords*

*customary norms, ontology, semantic conception, pragmatic conception, social facts, concepts, mind, mental representation*

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### I. Introduction

As Alf Ross (1968) once stated “Norm’ is a term widely used in legal theory, sociology, linguistics, moral philosophy and logic, but there is no common agreement about its sense. It is in fact used most frequently without being defined at all” (p. 78). There is a wide agreement in considering that whatever law is, it is mainly constituted by norms; and thus, that legal scholars should know a great deal about norms. However, it seems that the ontology of norms has not been a central matter in contemporary legal philosophy. Jurisprudence has primarily developed as a discipline by using intuitive notions of what “legal norms” are focusing on some properties and functions that the term entails in legal practice: promulgation, prescription of behaviors, the standard for judgment, the basis for adjudication, and so forth. (Tamayo, 2013, p. 175).

Nevertheless, the matter of the ontology of norms is important for any theoretical explanation for disciplines dealing with norms since, as Jordi Ferrer and Jorge Luis Rodríguez (2011) highlight: “The position adopted regarding the characterization of normative systems in general, and legal systems in particular, is closely related to the mode in which norms are characterized” (p. 27). In this line of thought, Carlos Alchourrón & Eugenio Bulygin (1981) have brought to light the problem of the ontology of norms for Jurisprudence, pointing out that in general terms there are two possible ontologies of norms, the *hyletic* conception and the *expressive* conception which, for a more acquainted terminology, we might call them the *semantic* and the *pragmatic* conception respectively. Both ontological conceptions are related to two conflicting traditions in the philosophy of metaphysics about the criteria for admitting which kind of entities compose the world, more specifically, the traditions conflict in their views about the problem of universals: realism and nominalism (Caracciolo, 1997). Broadly, nominalism denies the existence of universals and abstract objects that are out of space and time like numbers, geometrical forms, propositions, or logical connectors, while realism accepts the existence of such objects<sup>1</sup>.

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<sup>1</sup> An objection to an early version of this essay criticized the fact that I assume the semantic/pragmatic alternative as plainly true, thus implying there must be other postures to consider. Therefore, it seems opportune to say something about the matter. I do assume the semantic/pragmatic alternative as true, but not without justification. As can be seen, both alternatives are related to a higher dispute in philosophy, to the question: Do abstract objects exist? The answer can only be yes or not. Nevertheless, I do take into consideration and further discuss in the essay the posture of those who consider that the semantic and the pragmatic conceptions are not incompatible. There is also another different approach on the subject, very well developed by Maribel Narváez Mora in her essay “Expressing Norms”

Remarkably, developments and debates about conceptions of norms have extensively focused on the analysis of enacted norms (*i. e.* promulgated)<sup>2</sup> as the components of normative systems for developing a logic of norms and norm propositions. Generally, legal philosophers do not deny the existence of other norms like customary ones, but in the vast majority of cases, these norms are accounted only anecdotally with isolated remarks. Moreover, most of those who have embraced acutely into the logic of norms –and thus into the ontology of norms– also focus their attention almost exclusively over norms that are the result of commands, that is, enacted norms<sup>3</sup>. Consequently, at first glance the expressive conception seems adequate since it engages in a less metaphysical domain by focusing on the acts of command. However, the case is not that simple for the expressive conception when accounting for customary norms. For such reason, the present analysis develops a defense of the semantic conception as an adequate ontological conception focusing on the issues that emerge from explaining customary norms. The analysis argues that norms are *per se*, language-independent but are not unrelated to social facts. In that line, it also addresses some of the complications of assuming a pragmatic conception and an eclectic stance for accounting customary norms.

The *semantic* conception characterizes norms as entities similar to propositions or, as Georg von Wright called them: *proposition-like entities* (1963). That is, the meanings of certain utterances called *normative sentences*. For this conception, norms are language-independent entities, although they are only expressible through language. As so, norms are abstract entities, purely conceptual (Alchourrón & Bulygin, 1981).

Taken as conceptual entities, the semantic conception of norms is not itself demanding for accounting norms in general. If norms are meanings, their existence is independent of facts from the material world. In this stance, facts –the quality of facts– are useful to predicate that a norm belongs to a specific category. If the fact by which we identify a norm is a specific action from a legislature, then we are referring to an enacted legal norm. If the facts by which we identify a norm are a set of social behaviors, then we are referring to a customary norm.

## II. The Case for a Semantic Conception

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(2015), where she sustains that inquiring into the ontology of norms is plainly nonsense. However, I will not discuss Narváez Mora's posture since it would largely overcome the topic I want to address in this essay. Also, in his essay "Norme: cinq référents" (2017) Conte expresses that the question: "What is a norm?" is a false one, arguing that the question presupposes unity in the designator of the term "norm" and thus proposing five referents for the term. Generally I do not agree with Conte. I consider that one thing is the phenomena by which we apprehend and thus refer to abstract entities (deontic statements, deontic propositions, state of affairs), and another different one the ontology, the intrinsic nature of those entities. Still, discussing at length Conte's ideas would largely surpass my paper; nonetheless, I trust that from arguments here developed any reader would have a clearer view about my disagreement with Conte.

2 I will refer broadly to *enacted* norms as counterparts of customary norms. Properly understood, customary norms are those that emerge out of spontaneous social interaction. On the other hand, *enacted* norms are commonly written, but this is not a necessary trait of them. Enacted norms are broadly what Joseph Raz calls "mandatory norms", although I consider the name misleading. What characterizes *enacted* norms as opposed to customary norms is the fact that they are the product of the will of an agent that, for some reason, has authority in the social group. For example, in a tribe, whatever the chieftain states the others *ought* to do are enacted norms. Similarly, if the population considers that the elders have authority, whatever they state the tribe *ought* to do, are enacted norms (See Raz, 1975). In the realm of law, an enacted norm is that created by an agent with institutional (legal) power. Thus, norms that are the product of the will of Legislatures, Heads of Government and administrative authorities are enacted norms, but like Kelsen (1945) I also consider as *enacted* norms those that are the contained within judicial sentences as the product of an act of adjudication.

3 Possibly the most notorious case can be found in G. von Wright's Norm and Action (1963), where the Finnish philosopher accepts the existence various types of norms – customary norms among them – but expressively decides to focus his attention and the development of his work on promulgated norms; i.e. norms as the result of an act of command.

Nevertheless, facts do not determine the existence of a norm by itself. The norm is an abstract entity, a conceptual one, so it is independent of language or any communicative act, although only communicable through those means. To give an account of a customary norm, not in as much as to predicate that it is a norm, but in as much as to predicate that it is *customary*, is the result of a set of events that happened in the material world.

According to the semantic conception, it is only necessary to identify the social facts that we associate to the category of *customary* to subsequently apprehend the norm that underlies those facts.

In a recurrent situation *S* there is a customary norm among members of a group *G* if, given a certain conduct *C*,

1. In each instance of *S* each member of *G* behaves in the manner *C*;
2. The members of *G* seem to consider *C* as a binding standard of conduct in *S* ('what one ought to do' in *S*);
3. Members of group *G* show rejection to other members of the group *G* who do not behave in the manner *C* in an instance of *S*<sup>4</sup>.

The facts sketched would not constitute a customary norm. The ensemble of facts makes up a state of affairs that would be a means to identify customary norms. From a description of the set of social facts, we could plausibly state that "In the social group *G* there is a norm that demands to abide to conduct *C* when *S* occurs." The statement contains the proposition "obligatory *C* when *S*" that describes that there is a norm among members of the group *G*. Thereby, the semantic conception seems consistent with our ordinary uses of language and with our intuitions about customary norms. For instance, if a description of the practices of a social group reveals some facts that indicate a convergence of behavior, and there is a hint that allows identifying that members of the community demand such behavior from their peers; for a semanticist, there would be no conceptual inaccuracy.

A. Norms and Social Facts

The semantic conception entails no little controversy as an ontological stance. Riccardo Guastini (2013) considers the semantic conception unsustainable claiming that identifying norms with meanings, as abstract conceptual entities similar to propositions, is to refer to "exquisitely metaphysical" entities. But the problem with norms does not lie in their metaphysical existence. Rather, Guastini's call stresses the necessity of keeping in line with the basic theoretical postulates of legal positivism.

To remember, a crucial postulate of legal positivism is embedded in what Joseph Raz (1979) called the "social thesis," which states that, whatever law is, it is necessarily a matter of social facts (p. 40). The thesis inevitably extends to the account of any phenomena constitutive of law, as the customary norms. So, if customary norms are a component of the law, then, these must-have some association with social facts. Therefore, the broad question that arises is: in which sense can we say that conceptual entities exist and how are these related to the facts of the world?

We are facing the actual problem of the ontology of certain entities called "norms" whose "existence" is independent of the communicative acts that express them and that even lack temporal and spatial dimensions. Effectively, at first sight, this seems to have a Natural Law *façade*, but it does not have to be this way, and it is not the case. What the "social thesis" demands is that to belong to a category of a social phenomenon, the entity must have a connection with specific facts that we use for identifying that category. In the case of enacted norms, for verifying their quality of "enacted," there are some criteria, promulgation usually

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4 This is a rough and modified sketch taken from Buno Celano's "minimal theory" of custom. Celano (2010).

is conceived as the fundamental one. That is, the act of a normative authority to prescribe a norm publicly through a norm formulation (von Wright, 1963). In the case of the customary norms, we must identify the existence of the qualified social facts that constitute our notion of a specific customary norm.

Let's see a scheme of possible social facts inspired in a model proposed by David K. Lewis (1969) for conventions and reprised by Cristina Bicchieri (2006 & 2017) for explaining social norms:

In a recurrent situation *S*, it is possible to predicate the presence of a customary norm between the members of a social group *G* if, and only if:

1. In a significant amount<sup>5</sup> of the instances of *S*, a significant amount of the members of *G* behave in the manner *C*;
2. In a significant amount of the instances of *S*, a significant amount of the members of *G* show an adverse reaction when other members of *G* do not abide by behavior *C*;

From such events, an external observer would necessarily make an interpretation of facts<sup>6</sup> that enables him to determine a normative association, inferring that:

3. A significant amount of the member of *G* seems to *expect* that other members of *G* abide by behavior *C* in the instances of *S*, and that
4. A significant amount of the members of *G* seem to be aware that another significant amount of members of *G* expect them to abide by behavior *C* in the instances of *S*.

The scheme broadly matches the set of facts that most theories consider an external observer would identify in accounting for social norms<sup>7</sup>. The challenging part involves explaining the link between that set of facts with the conceptual entities we call “norms” while also clarifying what entails the existence of norms as such. Norms are indeed metaphysical objects whose existence is independent of the material world but that, somehow, maintain some relation with material-world facts that are necessary to identify them into a category like enacted or customary. The task seems to surpass the traditional boundaries of analytical legal theory by entering into problems concerning other areas of knowledge like the philosophy of mind and, inquiring deeper into the branch of *metaphysics*. Nonetheless, if someone considers that holding a semantic conception of norms is contrary to the postulates of legal positivism since this conception of norms depicts them as metaphysical entities not susceptible to cognitive knowledge and with no association to the facts of the world; then it seems opportune to say some words explaining why that is not the case. Further arguments will be advanced in Part IV.

One of the more intriguing remarks of the semantic conception of norms is that they are similar to propositions. Thus, inquiring slightly into the nature of propositions concerning norms can be useful for understanding the nature of the latter. As exposed above, we know that norms, like propositions, do not have “existence” if the term *existence* is related – according to our natural use of language – to entities identifiable in parameters of space and time. We also know that propositions must not be confused with the statements that

*B. Norms and  
Propositions*

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5 Considering D. Lewis' observation that we could hardly ever find a perfect specimen of a convention, I decide to substitute the universal quantifier “all” for a less committed one, “a significant amount”, since even “almost all” is highly controversial, as one might plausibly hold that a convention to be such does not a very high degree of followers (Lewis, 1969).

6 As explained by Riccardo Guastini (2011), interpretation of facts would be inferring the causal explanation of an event (p. 9).

7 See Hart (1994), Celano (2010).

refer to them. The statement is the fact that we can identify in a certain time and space, the proposition is the unit of meaning. Regarding enacted norms, something similar happens; we must not confuse the normative formulation with the norm itself.

With customary norms, the facts that allow stating the presence of a norm within a specific social group are identifiable in time and space; those facts must not be confused with the norms. Then, where can we find the propositions? What are propositions? Where are the norms? Proposition and norm, although both serve as meanings of something, cannot be the same thing, but they share some similarities. Let us see what these entities consist of and how come they are entities of the knowable universe.

Conventionally, in our language, we use statements to make assertions. When syntax between words is grammatically adequate (von Wright, 1984), what the statement contained in phrases or sentences, that which is asserted, is a proposition (García-Carpintero, 1996), an assertion or the denial of a state of affairs, so the proposition is susceptible of being true or false.

Propositions come in pairs, as H. Castañeda (1975) stated: “[...] for every true one there is its negation, which is false and vice versa” (p. 34). Propositions are expressed through a set of words but are not identical to those words (Moore, 1953). The same sequence of words can ambiguously express different propositions<sup>8</sup>. Nevertheless, not every grammatically well-formulated sentence expresses a proposition if they do not display a truth-value. Therefore, propositions are found in *declarative* or *constative* sentences. *That* which declarative sentences express, mean or say, are *propositions*.

Hence, language is useful to utter sentences that contain propositions, and it is the primary means to identify them, but it is not the only means by which we apprehend them. The means of expression is contingent since we can imagine propositions that we might have a desire to deliver even before being able to articulate the words that might express them. So, there are propositions that will never be expressed. Also, when we conceive a proposition, we capture some other things that are not propositions; that is, things uttered by some of the words that compose the sentence that contains a proposition. For example, in the phrase “Alejandra read two books,” we also get the word “two.” “Two” does not express a complete phrase; it does not affirm anything and thus, has no truth-value. However, “two” certainly is something and means something. As a result, when we comprehend a proposition, we do not directly comprehend all the things referred by the proposition. The apprehension of the things the proposition is about is *indirect*<sup>9</sup> (Moore, 1953). A case of this phenomenon is the *normative proposition*, that is, a proposition that informs about the “existence” of a norm (Navarro, 2000). Norms are also meanings contained in sentences or communicative acts, but they do not assert how the world *is*, but how it *ought* to be. Consequently, unlike propositions, norms display no truth-value. When thinking about enacted norms, the means *par excellence* to apprehend them is indirectly through a normative proposition contained in one or several normative texts (codes, laws, regulations) or by normative formulations, that is, by descriptive sentences that assert the presence of a norm.

We must be careful in distinguishing between the category of abstract entities we conceive since apprehension, especially indirect apprehension, can be deceitful. For instance, enacted norms contained in a legal disposition can refer to customary norms, in which case, we apprehend norms of two different qualities: the enacted norm and the actual practice that

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8 For example, the phrase “I saw Juan with binoculars” could mean: a) that I saw Juan through the use of some binoculars or, b) that I saw Juan that had some binoculars with him. (García-Carpintero, 1996).

9 The use of the term “apprehend” may seem quite odd, but it is proposed by G. E. Moore to refer to the mental operation of realizing a proposition, to capture the full idea, the “thing” referred by the proposition.

gives place to the customary norm. This is a case of indirect apprehension of norms through enacted norms, since that which the enacted norm is about is another norm, apparently a customary one. This is easy to find in the legal experience where often statutes establish a customary practice as legally binding for certain situations. Thus, one thing would be the norm apprehended from the statute (“obligatory to abide by the customary practice”) and another, the actual customary norm. Nevertheless, the referred norm might not even be properly called a customary norm but a “hypothetical norm”. Imagine a legal disposition that expresses “In unforeseen cases by legislation, payments must be done according to the uses and practices of traders.” We might not even know the actual practices of traders concerning payments, but now we grasp a sense of “normativity” revolving whatever we can plausibly imagine they are. Whatever those practices are, now we know that there is a reason for which they ought to be observed by traders and considered for adjudication.

The peculiarity is that now we have a set of norms –abstract objects– that we have apprehended. All the possible courses of action that we plausibly conceive traders ought to observe for payments other than the foreseen by the legislation. The issue now is that we have not yet captured anything from any actual practice because we do not know the actual practices of traders and we have not seen that community in action. We only have some hypotheses, hypothetical norms. Although implausible, it is conceptually conceivable that traders do not have uses and practices for solving cases of payment unforeseen by legislation. So, the norm referred by the enacted norm would be a hypothetical customary legal norm conditioned on social practice to materialize into an actual customary legal norm. To be an actual customary legal norm the conceivable norm must meet the condition of matching the practice of traders. That is, the norm in question must be the meaning that we associate with certain practices that are required and expected among traders.

From a judge’s perspective, the reasoning works similarly to a counterfactual condition. The enacted norm prescribes that for any hypothetical norms that solve the cases of payments not foreseen by legislation, the one that acquires legal status –and that the judge must use in adjudication– is the one that translates as a descriptive statement that best reflects the actual practice expected among traders. Hence, if the conceivable norm is stated as “payment for digital goods must be done with cryptocurrencies”, that would be the actual customary legal norm if something like the following statement is true: “most traders pay for digital goods with cryptocurrencies, and they display an aversion to those who do not”.

Another deceitful context for apprehending “customary norms” could be through texts that do not contain normative dispositions, and that only contain a description of the practices of a community, informing about the “presence” of customary norms within that context. In these cases, it could be confusing to understand when we are grasping an actual customary norm and when not. Imagine some possible scenarios.

Scenario 1: The description of a normative practice within an imaginary community. In this case, we would apprehend norms, but since the practices were never real, we can only say they are “imaginary customary norms.”

Scenario 2: The description of normative practices within a community that does not exist anymore, or that continues to exist, but over time changed their normative practices. In this case, we are not abstracting anything from the observation of material reality, but we trust the description of either someone who saw the practices or someone with trustful sources. Assuming the description of acts and actions is accurate; we did apprehend customary norms, although not in practice anymore. It is important to emphasize, as conceptual entities, it makes no sense to say that norms are born or ceased to exist. It is the practices, the facts that rise and cease to exist. A norm is a norm, and we only call them “customary”, “enacted” or “hypothetical” because of the quality of the events by which we apprehend them. In the case

of this description, it seems possible to say that we got to know by apprehension through the truthful information some other person gave us. The latter illustrates the idea that norms, like propositions, are units of meanings and not facts.

In this line of thought, possibly the most stimulating manner to apprehend customary norms – because the complexity of mental processes involved – has nothing to do with propositions embedded in statements that assert the presence of a norm, but through direct observation of the social facts, of human behaviors that we interpret in a determinate sense, a normative sense. Metaphorically, we are talking about the image that comes to our mind (possibly not a clear-cut one) that makes us feel entitled to proffer a normative proposition contained in a sentence like “In Sweden, one *must not* greet people one does not know [even if you meet with them regularly at familiar places, like at the building where you work]”.

As indicated before, a proposition can have as part of its meaning a norm, *i.e.* a normative proposition. Norms can be part of the whole meaning of a proposition, but the meaning of the norms is different since it has no truth-value. In this line of thought: What is a “norm”? “Norm” is the expression we use to refer to a kind of concept<sup>10</sup>, meaning for a sense of action: obligatory, prohibited, and permitted.

### III. The (Im) Possibilities of Alternative Ontologies

#### A. The Pragmatic Conception

For the pragmatic conception, it is only at the practical level of language that it is possible to distinguish the difference between assertions, questions, or orders. There is no difference at a semantic level<sup>11</sup>. One could only identify a norm from the act of command performed by an agent and not because of the meaning of the uttered statement. Thus, one must be careful and distinguish norms from normative propositions; that is, the propositions that assert the existence of a norm or that declares that particular behavior is mandatory or prohibited.

Like the semantic conception, the pragmatic conception supposes that normative sentences can be analyzed in descriptive content, *i.e.* a propositional content that consists in the description of an action or state of affairs resulting from an action, as well as by the normative or deontic operator that qualifies the action (Kristan, 2014), *e.g.*, *obligatory*, *prohibited* and –hesitantly for the pragmatist– *permitted*. However, between assuming one or another stance, there are important theoretical consequences. For the pragmatist, it is not possible to develop and to talk about a logic of norms since they lack truth-value, and, by focusing on the imperative trait, they –generally– deny the possibility of asserting the existence of permissive norms<sup>12</sup>. As Alchourrón & Bulygin (1981) highlight, the pragmatic stance is incompatible with the semantic, and there is no place for eclecticism. In their own words: “If norms are expressions in a certain pragmatic mood, then they are not part of the meaning; if they are meanings (propositions), they are independent of any use of language or pragmatic mood” (p. 97).

At first glance, the pragmatic conception appears inadequate to account for customary norms. It reduces the conditions of existence of the norms to a prescriptive use of language, *i.e.* commands, something that without many complications can be explicative for enacted norms

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10 Disputes in Philosophy of Language and Logic over what is a concept, the types of concepts, their referents, and how we get to know them, are dense and convoluted. For that reason, I will limit myself to give a fundamental and generalized account, assuming certain central thesis, and not getting into deep in details, merely focusing on the relevant aspects for what I look to explain. For a full detailed study on concepts, see Peacocke, 1992.

11 For this conception, there is no semantic difference between the following sentences: “Forbidden to smoke”, “Forbidden to smoke!” and “Forbidden to smoke?” The difference could only be noticed with respect to the use of the language of the one who utters the previous sentences.

12 Although there are exceptions, being Manfred Moritz the first pragmatist to challenge the thesis in his essay “Permissive Sätze, Erlaubnissätze und deontische Logik.” Andrej Kristan has addressed deeply the possibility of developing a whole pragmatist logic of norms analyzing the postulates of Moritz and insights taken from Ockham’s philosophy. *Vid.* Kristan, 2014.

as prescriptions authorship authority is relatively simple to identify, be it the sovereign, the legislator, the judge. Nonetheless, this is counterintuitive concerning customary norms, since there is no identifiable authority or person with such pretension to make an act of prescription<sup>13</sup>. Even so, in their essay “The Expressive Conception of Norms” Alchourrón & Bulygin hold that the pragmatic conception would be easily adaptable to account for customary norms since their existence depends on certain dispositions revealed in specific actions. Worth mentioning, Alchourrón & Bulygin never developed such an explanation. The task of developing such an explanation may be simple, but that the outcome can be mildly satisfactory seems doubtful. The central idea of the pragmatic conception is that, for a norm to exist, the sufficient condition is a prescriptive use of language, the utterance of a command. Thereby, to assert that we are in the presence of customary norms, we must determine which are the conditions in which the *command* may be uttered. Regarding enacted norms, it is the act of promulgation the one that creates the norm. Concerning customary norms, we can outline a possible strategy for accounting the dispositions that reveal the action that make the norm:

Remaining faithful to the thesis that the norm is inseparable from the prescriptive use of language, then, the dispositional fact we must substitute is not the utterance of a prescriptive sentence, but the quality of the subject that makes the utterance. The subject must not have a personal pretension of authority<sup>14</sup> and must sustain the legitimacy of the prescriptive sentence in his epistemic capability for verifying that within the social group, there is a convergence of behavior and attitudes of mutual expectations. A plausible explanation would require the following set of events:

1. In a significant amount of the instances of *S*, a significant amount of the members of group *G* abide to conduct *C*;
2. In a significant amount of the instances of *S*, a significant amount of the members of *G* displays a criticism or reproach reaction when other members of *G* do not abide to conduct *C*;

Being conscious of the facts contained in premises 1 and 2, and being in an instance of *S*, the member of the group *G1* predicate to members of group *G2* the sentence “you must do *C!*”. To make the pragmatic conception hold as adequate, we would need to adopt something like H. P. Grice’s *implicature* thesis. The sentence “you must do *C!*” implies that the command is backed not by any authority the issuer has, but by the existence of convergence of attitudes and behaviors of a significant amount of members of group *G* in a significant amount of instances of *S*.

The pragmatic conception departs radically from any intuition we may hold about customary norms, not only because it seems there is no plausible possibility to manifest the existence of customary permissive norms or because of the high degree of interpretative fuzziness about facts. In the case of prescriptive linguistic expressions, “customary” would be just a category

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13 Customary norms can institute an authority (political, religious, and so on), but the norms crafted by that authority are not customary, those would be enacted norms.

14 This does not mean that in the community, there are no subjects with institutional authority. Even those communities that mainly live by customary norms have authorities. What is intended here is to maintain a distinction. If the source of a norm is the act of will of an authority, it is not a customary norm, since one of the fundamental traits that differentiates customary norms and enacted norms is that the latter are the result of an act of promulgation, the public prescription of a conduct. In the case in hand, the subject that has no personal pretension of authority is an ordinary civilian.

to describe those recurrent acts of which we are also led to suppose (to believe?) that their authors perform without a personal claim of authority, but backed up by the context. As a general conception of norms, the pragmatic stance fails under its epistemic postulates. As Riccardo Caracciolo highlights (1997), the perennial dilemma of the pragmatic conceptions is that: “if there are only facts, the term ‘norm’ cannot mention any category of entities. Strictly, a ‘fact’ is not an entity or object” (p. 172).

*B. The Eclectic Stance* Ricardo Guastini has cast doubt over the irreconcilability between the pragmatic and the semantic conceptions. For Guastini (2013), although both conceptions seem to confront with each other, in reality, each one offers an answer to diverse and partially independent questions (pp. 293 – 294):

1. Under which circumstances can we assert that a norm exists?
2. Which kind of entity a norm is?

The first question, concerning the origin of norms, would be answered by the pragmatic conception. The second, concerning the nature of the product of a process of normative production, is explained by the semantic conception.

The pragmatic conception explains the genesis of norms. Meanwhile, the semantic conception focuses on the product of the act that creates the norm. Guastini’s idea is that one conception refers to the pragmatic analysis of language, while the other concerns the semantic analysis, being both complementary. In this manner, for Guastini (2013), it is possible to hold an eclectic stance in which one can assert that norms are meaning and that, nonetheless, they only acquire existence through acts of language (p. 301).

Although the eclectic conception seems attractive and plausible at first glance, it does not fulfill the irreconcilable gap between both ontological conceptions. It does not manage to give a satisfactory account of customary norms since it inherits the difficulties of the pragmatic conception as there would be no norm without normative formulation. Also, if norms are the meaning of prescriptive statements: what does that meaning refer to? What is the nature of *that* which the statement prescribes?

Furthermore, if the norm as a meaning refers to something, the existence of that something cannot depend on the creation of the sentence that refers to that something. The eclectic stance indeed highlights that we ought not to confuse the act of the creation of a normative statement with its product, where one thing is the linguistic act and another different one, the statement (the norm) that is singled out for having a normative meaning. However, those distinctions seem to have some inaccuracies that Guastini (2013) himself does not embrace, especially the one of characterizing the norms as “statement with a normative meaning” (p. 296).

In other places, Guastini (2017) has stressed that *norm* and *prescriptive statement* are not the same things, not having an identity connection, since the norm is the product of the *interpretation* of a statement (pp. 23 – 24). If the norm is the result of an act of interpretation of a prescriptive statement, it can only imply that norms are independent meanings since, as Guastini (2011) himself notices, to interpret is to assign a meaning (pp. 6 – 8). Which is the nature of those meanings or norms? That is something that the pragmatic conception and, consequently, neither the eclectic, cannot answer.

**IV. Abstracts and some “Mind.” As a Conclusion**

In his 1927 essay “Eingentliche und uneingentliche Begriffe,” Rudolf Carnap proposes a characterization of Frege’s *concepts* (*Begriffe*) as functions that objects (or classes of objects) satisfy or not. Furthermore, he proposed to distinguish between *real concepts*, which refer directly to the physical reality, and *formal concepts*, like those of mathematics or logic, that do not appoint to real entities but that are essential to talk about the world (Ben-Menahem,

2006). Inquiries and debates over types of concepts continued and continue to this day. For what matters here, it is relevant to single out that “norm” or “rule” is a formal concept whose functionality is expressing how certain non-causal relations manifest in the world.

More precisely, attending to their origins, “norm” (*normae*), and “rule” (*regulae*) are words proper to mathematics, accurately, to geometry. In Latin, both words refer to tools for measuring (Tamayo, 2004). In this sense, the terms “norm” and “rule” are used descriptively in the natural language to denote that a phenomenon suits to a measure or is repeated frequently in the world, and it refers to the notion of “custom,” “habit” or “the usual.” For instance, the phrases: “as a norm, Mr. Kant always leaves home at noon” or “as a rule, in Mexico City traffic gets heavy around 9 am”.

Regularity, assumed as a pattern, is one of the senses we capture when referring to events from which we address the existence of customary norms. However, the notion with which we work does not consist in the description, but in the prescription of behaviors that are required for specific events. By observing defection from the pattern, we apprehend a properly called “norm” when noticing the adverse reaction and also apprehend the sense of *normative pressure*. The latter is similar to Hart’s (1994) critical reflective attitude that members of the group hold and that seems to suppose an expectation that coordinates the group for acting in the social world. Remembering the above-proposed scheme based on Lewis and Bicchieri, postulates 3) and 4) would be the elements that allow us to capture a customary norm in its entirety – with the factor of the *normative pressure*– in a given situation within a social group. As Ota Weinberger (1986) points out: “The social reality of norms is also indicated very clearly by the fact that behavior in conformity with norms or contrary to norms, gives rise to positive or negative social consequences” (p. 41).

The fact that we can capture the meaning of the behavior demanded by the prescription of the norm is only a part of our cognitive abilities about how the world works and the meanings of terms like “obligatory,” “permitted” and “prohibited.” Hence, as abstract and conceptual entities, norms never begin or cease to exist; a norm is a norm in every possible world (Caracciolo, 2008; Lewis, 1986). Norms in one sense exist like arithmetical, geometrical, and logical concepts do, infinitely. Nonetheless, we know that they meet special relations with the material world to the extent that it is proper to talk about them in certain situations and improper in others. In the case of irrational numbers, one does not say “yesterday I saw a  $\pi$  at the park, was nice.” The phrase makes no sense, but that does not mean that “ $\pi$ ” does not stand for something; that is, it exists in some manner. The modality in which formal concepts exist is, as conceptual functions of reality, uttered by grammatically well-formed sentences in which it makes sense to refer to those concepts. That is, we do not get to *know* formal concepts; we get to *learn* them as we develop the capacity of discerning when it is adequate to refer to them. Eventually, we get to use them without significant difficulties in our natural and scientific languages; they become comprehensible. That is possible because we use those concepts according to grammatical rules that define their significance and that adequate our shared comprehension of the world, constituted by *real concepts* and *formal concepts*.

How do we individuate, numbers, geometrical forms, or norms? Through a process of discernment of facts. We associate a certain numerical quantity by identifying that it matches with the presence of a particular amount of objects before us and that we want to distinguish from other objects that are around. With norms, we carry out a similar relational process.

We have (or assume) some empirical criteria for reducing the universe of possible norms to the ones that match a certain quality (customary, enacted, legal, etiquette, belonging to the Spanish legal system, as part of the code of a private club), and that quality to specific events in the real world (Nino, 1983, Dei Vecchi, 2017). That is, one can get to know that in Sweden there is a social norm that demands not to greet strangers by observing the specific behavior

of the Swedes regarding that stance. On the other hand, one can get to know that in Italy there is a legal norm that forbids throwing things out from moving vehicles because there is a disposition that establishes so in the *Codice della strada* promulgated by the Italian Parliament. In another possible world the social norm of not greeting strangers could rule within the Italian society, while the norm of not throwing things out of moving vehicles most probably is legally in force in actual Sweden. The important thing to remark is that norms –as meanings– are fact-independent; but we can affirm they are in force or rule because certain facts within a population in a certain context meet requirements we associate with the norm.

So, where are formal concepts located? To a large extent, in our minds. Not as mere subjective psychological states that are not susceptible to being cognoscible. They are the result of an ability we possess, to abstract and apprehend general categories from the elements that compose our world; that is, to conceptualize. It is an ability we share and from which we build our social environment. From the world, we can calculate distances, distinguish quantities, and notice social regularities. The cerebral functions we use in those activities are identifiable, and there are scientific theories that look out to explain how we arrange that information (Dehaene, 2006; Gazzaniaga, 1985). Because of such abilities, we create abstractions that synthesize information from the material world that allows us to act upon future cases without the need to stop and reason how to deal with all the facts we find (Elster, 1978). With such abilities we operate in our social life. Contemporary philosophy of mind has called the images that come before our minds *mental representations* or *conceptual representations*. Earlier, philosophers like John Locke or David Hume called them barely *ideas*, pointing out they were found in the mind (Pinker, 1989; Strawson 1994). There are deep debates and ongoing research about these objects and the processes our mind performs. For the present essay, what has been developed so far may be useful to explain something more about those objects that we call “norms” that rule social life, and that appertain to normative systems like law; not only when we refer to enacted norms but also customary norms. Thus, we can agree that formal concepts are intriguing because of the complex process by which we apprehend them, and although certainly, they are metaphysical, since we do not find them in the material reality, they are not supernatural; they have an explainable relationship with facts, with how we operate in the world and how we talk about it.

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