

Norm: Five Referents*

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Abstract: Norm: Five Referents

This essay challenges the fundamental question: “What is a norm?” According to the author, the question “What is a norm?” is a false question because it is based on the false assumption that the term ‘norm’ refers to one specific type of entity. Instead, the author argues that there are at least five possible referents of the term ‘norm’: a deontic *sentence*, a deontic *proposition*, a deontic *utterance*, a deontic *state-of-affairs*, and a deontic *noema*.

Keywords: Norm, Deontic sentence, Deontic Proposition, Deontic utterance, Deontic state-of-affairs, Deontic noema.

Summary: 0. The pentad of referents of the term ‘norm’: deontic *sentence*, deontic *proposition*, deontic *utterance*, deontic *state-of-affairs*, deontic *noema*. – 1. *First* referent of the term ‘norm’: deontic *sentence*. – 2. *Second* referent of the term ‘norm’: deontic *proposition*. – 3. *Third* referent of the term ‘norm’: deontic *utterance*. – 4. *Fourth* referent of the term ‘norm’: deontic *state-of-affairs*. – 5. *Fifth* referent of the term ‘norm’: deontic *noema*

“We are up against one of the great sources of philosophical bewilderment: we try to find a *substance* for a *substantive*. A *substantive* makes us look for a *thing* that corresponds to it.”

Ludwig Wittgenstein**

0. The pentad of referents of the term ‘norm’: deontic *sentence*, deontic *proposition*, deontic *utterance*, deontic *state-of-affairs*, deontic *noema*

0.0. An eye specialist receives a visit from a patient complaining of irritating visual

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** Ludwig Wittgenstein [Wien, 1889-Cambridge, 1951], *The Blue and Brown Books*, Blackwell, Oxford, 1958, 1964, p. 1.

symptoms. After examining him, the specialist reassures him:

“It is just an ephemeral psychosomatic phenomenon.”

The specialist prescribes a pharmacological therapy (one pill a day for seven days) and invites the patient to come back after a week.

A week later, the patient comes back: Unfortunately, the problems (and the concern) persist. The ophthalmologist acknowledges the unexpected seriousness of the case, and makes a new diagnosis: “A circulatory disorder”. He then prescribes a series of seven injections over the course of the following week.

At the end of the week, the patient returns, and is even more concerned because the visual problems persist. The ophthalmologist makes a third diagnosis: “Phosphenes”.

He explains to the patient, who is frightened by such a word, what phosphenes are: abnormal visual perceptions of bright dots, sparkles, illusory luminous perceptions that are not caused by an external stimulus. (‘Phosphene’, the specialist explains, derives from ‘φῶς’ ‘*phôs*’ “light” and ‘φαίνομαι’ ‘*phainomai*’ “to appear”; therefore, “appearances of light”)¹. There is a remedy for phosphenes, the ophthalmologist says, but it is very expensive: a pair of special, innovative glasses produced in the United States. He prescribes the new glasses, suggests that the patient try them, and invites the patient to return after a week.

At the end of the third week, the patient returns with his brand new glasses and (for the first time) a smiling expression. The ophthalmologist, pleased with the results, comments:

“I notice that, with the new glasses, you don’t see the phosphenes anymore.”

The patient replies:

“No, I still see the phosphenes, but with the new glasses, I see them better.”

The task in the present paper is to provide a better insight into some *philosophical phosphenes* or, better still, to show that these *philosophical phosphenes* are precisely *phosphenes*: illusory phosphenes.

¹ I have found the following translations of ‘phosphene’: ‘*Lichtempfindung*’ in German, ‘*phosphène*’ in French, and ‘*fosfene*’ in Italian. (I remark that, in Italian, there is a homonym ‘*fosfene*’, which is the name of a chemical compound. The German name corresponding to the second Italian ‘*fosfene*’ is ‘*Phosphen*’.)

0.1. There are questions in philosophy to which the following words of the German physicist Heinrich Rudolf Hertz apply:

Aber offenbar irrt die Frage in Bezug auf die Antwort, welche sie erwartet.
But the question is wrong with reference to the answer it expects².

One of these wrong questions is the following:

“What is a norm?”

This is a *false question* because at least one of its *presuppositions* [*présuppositions, Präsuppositionen, presupposizioni*] is *false*: the presupposition that the term ‘norm’ designates a *unique* entity.

This presupposition of the *unity, unicity, and unitarity* of what is designated by the term ‘norm’ is a *false presupposition* because the entities *alternately* (but not therefore *alternatively*) designated by the term ‘norm’ are, in fact, at least *five* (see *infra*, § 0.3.).

0.2. Of note, it is *false* that the term ‘norm’ universally designates a deontic sentence [*deontischer Satz, énoncé déontique, enunciato deontico*]³.

0.2.1. It is undoubtedly *true* that, in *some* contexts, the term ‘norm’ designates a deontic *sentence*. For example, the term ‘norm’ designates a deontic *sentence* in the contexts in the two following examples:

- [1] ‘The *norm* ‘It is obligatory to pay taxes’ contains 11 syllables’.
[2] ‘The *norm* ‘*Gli studenti di Filosofia non devono iscriversi a Logica matematica*’ is an ambiguous *norm*’⁴.

0.2.2. Nonetheless, it is not *true* that the term ‘norm’ designates a deontic sentence in *all* contexts.

² H.R. Hertz, *Die Prinzipien der Mechanik in neuem Zusammenhang dargestellt*, mit einem Vorworte von Hermann von Helmholtz, Johann Ambrosius Barth (Arthur Meiner), Leipzig, 1894, p. 9 [Translators’ note: Translation by the Editors. In the English edition, this passage is translated as follows: “But the answer which we want is not really an answer to this question” (H.R. Hertz, *The principles of mechanics: presented in a new form*, MacMillan, London, 1899).]

³ A deontic sentence is a sentence containing one of the deontic modals (‘obligatory’, ‘forbidden’, ‘permitted’, ‘omissible’, ‘indifferent’ (‘adiaphorous’)); that is, a sentence in the form ‘*p* is obligatory’, ‘*p* is forbidden’, ‘*p* is permitted’, ‘*p* is omissible’, or ‘*p* is indifferent’.

⁴ In fact, the Italian deontic sentence ‘*Gli studenti di Filosofia non devono iscriversi a Logica matematica*’ admits *two* interpretations:

- (i) “*It is forbidden* for Philosophy students to sign up for Mathematical logic”; and
(ii) “*It is not obligatory* (it is *non-obligatory*; that is, it is *omissible*) for Philosophy students to sign up for Mathematical logic”.

0.3. A simple *exemplum contrarium* contradicts the apparent universality of the conception of norms as *sentences*. When one says that 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 designated by the term ‘norm’ here is an entity that is different (categorially different) from the two deontic sentences (‘One ought to pay one’s debts’, and ‘*Si devono pagare i propri debiti*’) expressing it⁵.

In fact, the term ‘norm’ *alternately* (but not therefore *alternatively*) designates not *one*, but *five* different kinds of deontic entities, which are all called (by metonymy or metaphor) norms. These five different kinds of entities are:

- (i) deontic *sentences*;
- (ii) deontic *propositions*;
- (iii) deontic *utterances*;
- (iv) deontic *states-of-affairs*;
- (v) deontic *noemata*⁶.

Sections 1., 2., 3., 4., and 5., respectively, are devoted to these five referents of the term ‘norm’.

1. First referent of the term ‘norm’: deontic sentence

In the first place, there are contexts in which the term ‘norm’ designates a deontic *sentence* [*deontischer Satz, énoncé déontique, enunciato deontico*].

1.1. A *first* context in which what is designated by the term ‘norm’ is a deontic *sentence* is the context in the following sentence:

[2] ‘The *norm* ‘*Gli studenti di Filosofia non devono iscriversi a Logica matematica*’ is an ambiguous *norm*’⁷.

⁵ Obviously, (i) the *norm* that is *expressed* by the two sentences (‘One ought to pay one’s debts’ and ‘*Si devono pagare i propri debiti*’) is one thing, and (ii) the two *sentences expressing* it are something else.

⁶ The *pentachotomy* of the deontic entities designated by the term ‘norm’ (the thesis of the *pentasemy of the term ‘norm’*) is a development of the *tetrachotomy* of the deontic entities designated by the term ‘norm’ (the thesis of the *tetrasemy of the term ‘norm’*) introduced in A.G. Conte, “Studio per una teoria della validità”, in *Rivista internazionale di Filosofia del diritto*, 47 (1970). pp. 331-354.

⁷ This is a clear case of the *syntactic* ambiguity of a deontic sentence. The two possible interpretations are:

- (i) *first interpretation*: “It is *forbidden* for Philosophy students to sign up for Mathematical logic”;
- (ii) *second interpretation*: “It is *not obligatory* for Philosophy students to sign up for Mathematical logic”.

To put it differently:

1.2. A *second* context in which what is designated by the term ‘norm’ is a deontic sentence is the phrase: ‘*literal* interpretation of a *norm*’.

2. *Second referent of the term ‘norm’: deontic proposition*

In the second place (I refer to the *second* of the five entities alternately designated by the term ‘norm’), there are contexts in which the term ‘norm’ designates (no longer a deontic sentence, but) another kind of deontic entity: a deontic proposition [*deontische Proposition, proposition déontique, proposizione deontica*]⁸.

The following is a context in which what is designated by ‘norm’ is a deontic proposition:

- [3] ‘The English deontic sentence ‘One ought to pay one’s debts’ and the Italian deontic sentence ‘*Si devono pagare i debiti*’ express the same *norm*’.

3. *Third referent of the term ‘norm’: deontic utterance*

In the third place (I refer to the *third* of the five entities alternately designated by the term ‘norm’), there are contexts in which the term ‘norm’ designates (no longer a deontic sentence, no longer a deontic proposition, but) a *tertium quid*, a third kind of deontic entity: a deontic utterance [*deontische Äußerung, énonciation déontique, enunciazione deontica*]⁹.

The following is a context in which what is designated by ‘norm’ is a deontic utterance:

- [4] ‘Indiscriminately prohibiting to all Arabs to enter the USA right after 9/11 would have been an ill-timed *norm*’¹⁰.

- (i) according to the *first interpretation*, signing up for Mathematical logic is *forbidden* (“*negative obligation*”, “*obligation-not-to*”);
- (ii) according to the *second interpretation*, signing up for Mathematical logic is *omissible* (“*non-obligation*”).

⁸ In philosophical semantics, ‘proposition’ [*Proposition*’, ‘*proposition*’, ‘*proposizione*’] is not a synonym for ‘sentence’ [*Satz*’, ‘*énoncé*’, ‘*enunciato*’]. A proposition is a *semantic* entity: It is the meaning of a sentence; it is what is expressed by a sentence.

⁹ A deontic utterance is the utterance of a sentence that produces the deontic state-of-affairs to which the sentence itself refers.

¹⁰ In this example, the norm that is qualified as ill-timed is an *act*: the speech act [*Sprechakt, acte de parole, atto linguistico*] of prohibiting.

4. *Fourth referent of the term ‘norm’: deontic state-of-affairs*

4.0. The three referents of the term ‘norm’ I have examined thus far (deontic *sentence*, deontic *proposition*, and deontic *utterance*) are all either linguistic entities (*sentences* and *utterances*) or entities correlated with a linguistic entity (*propositions*).

Nevertheless, the term ‘norm’ does not designate a linguistic entity, a *Sprachgebilde*, a *Sprachverhalt* (a deontic *sentence*, a deontic *utterance*), or the correlate of a linguistic entity (a deontic *proposition*), in all contexts¹¹.

In fact, there are contexts (I refer to the *fourth* of the five entities alternately designated by the term ‘norm’) in which the term ‘norm’ designates (no longer a deontic *sentence*, no longer a deontic *proposition*, no longer a deontic *utterance*, but) a *quartum quid*, a fourth kind of deontic entity: a deontic state-of-affairs [*deontischer Sachverhalt*, *état-de-choses déontique*, *stato-di-cose deontico* or, more briefly, *status deontico*].

4.1. The following is a *first* context in which what is designated by the term ‘norm’ is a deontic *state-of-affairs*.

When we say that a norm is violated (is transgressed, is infringed, or avoided), what is designated by the ‘norm’ is a *quid* that is *neither* a deontic *sentence* nor a deontic *proposition* nor a deontic *utterance*, but rather a *quartum quid*: a deontic *state-of-affairs*¹².

4.2. The following is a *second* context in which what is designated by the term ‘norm’ is a deontic *state-of-affairs*:

[5] ‘The book *Sachsenspiegel* [*Saxon Mirror*] is a codification of *norms* established in the society of its author: Eike von Repgow [ca 1180-1233]’.

The norms that have been the object of Eike von Repgow’s codification (*descriptive* codification) are *neither* deontic *sentences*, nor deontic *utterances*, nor deontic *propositions*.

Nonetheless, what Eike von Repgow codifies *are norms*.

The existence of the codification (*descriptive* codification) compiled by Eike von Repgow in the *Sachsenspiegel* is an *exemplum contrarium* that contradicts the universality (the universal validity, the *Allgemeingültigkeit*, the *ogólna ważność*) of

¹¹ The term ‘*Sprachverhalt*’ has been suggested by Giampaolo M. Azzoni, who modelled it after the term ‘*Sachverhalt*’.

¹² A deontic *sentence*, a deontic *proposition*, and a deontic *utterance*, are all entities of which the violation (the transgression, the infringement, or the avoidance) cannot be predicated, just as the red colour cannot be predicated of the number 7. To predicate ‘violated’ (‘transgressed’, ‘infringed’, or ‘avoided’) of a deontic *sentence*, or a deontic *proposition*, or a deontic *utterance*, is an evident case of *sortal incorrectness*, just as it is a case of *sortal incorrectness* to predicate ‘red’ of the number 7.

the thesis that norms are all either deontic *sentences*, or deontic *utterances*, or deontic *propositions*¹³.

It is true that there are deontic states-of-affairs that are produced by a deontic utterance (by a legislative act): For example, this is the case for the deontic states-of-affairs that are *normatively* (thetically) codified in the Italian *Codice civile*.

Nonetheless, it is false (as demonstrated by the *exemplum contrarium* of the norms *descriptively* codified by Eike von Repgow) that every deontic state-of-affairs is the product of a deontic utterance (of a legislative act).

5. *Fifth* referent of the term ‘norm’: deontic *noema*

5.1. *In the fifth place* (I refer to the *fifth* of the five entities alternately designated by the term ‘norm’), there are contexts in which the term ‘norm’ designates (no longer a deontic *sentence*, no longer a deontic *proposition*, no longer a deontic *utterance*, no longer a deontic *state-of-affairs*, but) a *quintum quid*, a fifth kind of deontic entity: a deontic *noema* [*deontisches Noema*, *noème déontique*, *noema deontico*]¹⁴.

5.2. The following are two examples of a deontic *noema*.

5.2.1. *First example of a deontic noema*

5.2.1.1. The term ‘norm’ designates a deontic *noema* in the following expression:

[6] ‘To propose a *norm* in a legislative assembly’.

5.2.1.2. Let us compare the two expressions, ‘to repeal a norm’ and ‘to propose a norm’.

- (i) In the expression ‘to *repeal* a norm’, the term ‘norm’ designates a deontic *state-of-affairs* (a deontic *noema in actu*);

¹³ Two illustrious authors who have denied the linguistic nature of norms are:

- (i) among *jurists*, the comparatist of law Rodolfo Sacco (*Antropologia giuridica. Contributo ad una macrostoria del diritto*, Il Mulino, Bologna, 2007);
- (ii) among *sociologists*, the sociologist of law Theodor Geiger (*Vorstudien zu einer Soziologie des Rechts [Prolegomeni ad una sociologia del diritto]*, Munksgaard, København, 1947 (= *Acta Jutlandica*, 19.2.); new edition: Hermann Luchterhand, Neuwied am Rhein, 1964). (In the *Vorstudien*, Geiger expressly denies the equation: *Norm* [norm] = *Normsatz* [deontic sentence].)

¹⁴ A deontic *noema* is the objective aspect of a deontic *noesis*. The two German Graecisms ‘*Noema*’ (from the Greek ‘νόημα’) and ‘*Noesis*’ (from the Greek ‘νόησις’) are *termini technici* in Edmund Husserl’s phenomenology.

- (ii) in the expression ‘to *propose* a norm in a legislative assembly’, the term ‘norm’ only designates the mere *representation* of a deontic state-of-affairs (notably, the *representation* [*Vorstellung*] of the deontic state-of-affairs that would come into existence if the proposal were to be accepted by the legislative assembly).

5.2.2. *Second example of deontic noema*

A synonym for the term ‘norm’ (the term ‘rule’ [*Regel*, ‘*règle*’, ‘*regola*’]) designates a deontic *noema* within the text of article 1, paragraph 2, of the Swiss *Codice civile*:

- [7] “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* that it would make as legislator”.
- [8] “*Kann dem Gesetz keine Vorschrift entnommen werden, so soll das Gericht nach Gewohnheitsrecht und, wo auch ein solches fehlt, nach der Regel entscheiden, die es als Gesetzgeber aufstellen würde*”.
- [9] “*À défaut d’une disposition légale applicable, le juge prononce selon le droit coutumier et, à défaut d’une coutume, selon les règles qu’il établirait s’il avait à faire acte de législateur*”.
- [10] “*Nei casi non previsti dalla legge il giudice decide secondo la consuetudine e, in difetto di questa, secondo la regola che egli adotterebbe come legislatore*”¹⁵.

5.3. The concept of deontic *noema* is distinct,

- (i) in the *first* place, from the concept of deontic *proposition* (see § 5.3.1. below),
- (ii) in the *second* place, from the concept of deontic *state-of-affairs* (see § 5.3.2. below).

5.3.1. *First: The difference between the deontic noema and the deontic proposition*

The difference between the deontic *noema* and the deontic *proposition* can be characterized via recourse to the distinction between ‘*intensional*’ (with an ‘s’) and ‘*intentional*’ (with a ‘t’)¹⁶:

¹⁵ The second example of deontic *noema* was discovered by Giuseppe Lorini.

¹⁶ ‘Intensional’, with an ‘s’ [*intensional*] in German, ‘*intensionnel*’ in French, and ‘*intensionale*’ in Italian] is a term pertaining to *semantics*.

- (i) the deontic *proposition* is an *intensional* entity;
- (ii) the deontic *noema* is an *intentional* entity.

5.3.2. Second: The difference between the deontic *noema* and the deontic *state-of-affairs*

The difference between the deontic *noema* and the deontic *state-of-affairs* can be characterized via recourse to the distinction between *intellectus* and *actus*:

- (i) a deontic *noema* is a deontic state-of-affairs *in intellectu*;
- (ii) a deontic *state-of-affairs* is a deontic noema *in actu*.

'Intentional', with a 't' [*intentional* in German, *intentional* in French, and *intenzionale*, with a 'z', in Italian] is a term pertaining to *ontology*.