
CHRISTIAN BISPINCK-FUNKE

c.funke@gmx.net

ON THE QUESTION OF HOW SOCIAL RULES AND SOCIAL NORMS EXIST

abstract

The objective of this paper is to grasp the mode of being of social rules and norms. I begin by analyzing how mental representations of rules and norms structure social interaction. Then I demonstrate that the actual existence of rules and norms is a multi-dimensional phenomenon that encompasses mental and linguistic realization (linguistically expressed or habituated doxastic attitudes) as well as socially organized bindingness. I conclude that social rules and norms can be described merely by referring to dispositions and notions.

keywords

ontology of social rules and norms, cognitive realization of social rules and norms, pragmatic roles of social rules and norms, socially organized pressure, the meaning of ought

1. The notion of social rules and social norms

What is the mode of being (*modus existendi, mode d'être, Seinsweise*) of social rules and norms? In order to answer that question, one needs to formulate a valid theoretical concept of the position social rules and norms have in the world. The purpose of this paper is to outline an answer by arguing that the existence of social rules and norms can be reduced to common dispositions and doxastic attitudes. In order to frame the existence of norms I shall elaborate a framework by relying on key lessons of relevant literature on that complex topic (in paragraph 3).¹ In particular, this paper contributes to the debate on the existence of rules and norms due to the concept of pragmatic roles of social rules and norms that is elaborated in paragraph 2. In what follows, I shall begin with a definition of the central concepts.

Social rules and norms are common notions of right and bad conduct in all its varieties. They define what is proper or inappropriate, befitting or indecent, good or wrong, permissible or offensive, decent or obscene, prohibited or allowable, etc. Examples of social rules and norms are “The guests ought to leave if the host wants to go to bed” or “You ought not to interrupt a conversation” or “One ought to keep one’s position in the queue”. Ordinary language distinguishes between rules as explicit demands for action and norms as implicit, or habituated demands for action. This seems justified. Rules and norms differ in the degree in which they are present to the agent’s mind (epistemic presence), and rules typically are linguistically expressed in an explicit fashion whereas norms are typically unspoken and habituated (latent action potential). With the word *epistemic presence*, I describe the object of a doxastic attitude regarding its mental accessibility. The degree of epistemic presence is clear and distinct if I can distinguish it from other objects, and diffuse if I can recognize it. Explicit statements on appropriate conduct, i. e. rules, are transparent or lucid notions, they are clear and distinct. Notions about norms, in contrast, are diffuse or opaque, although they can be transformed into lucid notions. Such transformation takes place when one appeals to a norm in a practical manner, i. e. take it as a reason for justifying a demand. Then the norm, qua linguistic reminding, becomes lucid. However, norm-guided behavior (in the generic sense) refers to habituated action that is accompanied by opaque notions with a small degree of

1 I selected the literature due to my (ontological) focus on mental, linguistic and dispositional realization of rules and norms. Because of this selection, I shall not discuss practical approaches to rules and norms, i. e. approaches that frame rules and norms as solutions for coordination- or cooperation-problems or as solutions for the distributions of goods in society. That is why such contributions as D. Lewis’ *Convention* (1969), E. Margalit-Ullmann’s *The Emergence of Norms* (1977), C. Bicchieri’s *The Grammar of Society* (2006), or G. Brennan et al. *Explaining Norms* (2013), are ignored.

epistemic presence. In contrast, a rule-guided behavior is accompanied by declaratory mental states, i. e. clear and assessable notions of the rule.

Notions of right and bad conduct are common in at least two meanings. First, they are common in the sense that there is a general agreement without explicit consultation or discourse about them, i. e. they are accepted in ways of tacit consensus. And second, they are common in the sense that they are customary, i. e. they are spread massively throughout a community to the extent that any two strangers, for example, can agree in their normative assessment of conduct. Furthermore, it is a general attribute of such mores – for ages understood as *tacitus consensus populi, longa consuetudine inveterans* – that they are accompanied by social pressure. And indeed this, the pressure (the force or bindingness) with which they occur, makes them a social rule or a norm in the real and proper sense.

The logical analysis provided by Siegwart (2010; 2012) shows that a rule in general expresses a conditionalized modalised action: If “Agents of the kind A are in a situation S”, then “A has to act in a m-fashioned manner”. It says that a particular class of people (the norm-addressees) are expected to execute or to omit a specific action (the focal action, modalized via deontic character) under specific conditions (situations). The same holds for norms, whereas the majority of social norms tells what to omit (and not what to do). Concerning that analysis, we say that social rules and norms are conditionalized practical guidances.

Rule-guidance and norm-guidance are phenomena that are grounded in mental processes which are accompanied by representations. Everyone whose conduct is guided by a rule has a mental representation of that rule, i. e. (s)he is capable to tell which rule (s)he is following. The same is true for norm guided action. In cases of rule-following the epistemic presence of the guiding notion is more transparent than in cases of norm-following. The exception to this is the phenomenon of rule-following with any mental representation. The most obvious example for such blind rule-following is the use of grammatical rules in everyday conversation. However, the phenomenon of blind rule-following is ignored here.

As mental representations, rules and norms have a grip on social interaction in at least five respects, whereby each refers to a pragmatic role. Such pragmatic roles show in which constellations in social life mental representations of rules or norms occur: in deliberation, in expectation, in demanding and in requesting, in rewarding and in punishing, and in evaluating.

1) In a way, every conscious occurrence of a rule or norm is oriented towards future action, no matter whether it was brought to attention linguistically (in speech-based interaction) or whether it was reminded personally (in a situation of interaction without discourse). A rule or norm as a mental representation tells us how the world ought to be. But what ought to be is not yet the case. Indeed, what the rule or norm tells will be the case if the norm-addressee adapts its will, i. e. its goals, accordingly. The diverse sources of motivation to follow a rule or norm (e.g. to avoid sanctions, to increase social esteem, or due to moral reasons) are ignored here. However, in general, a rule (and a norm alike) is called a *reason for action* if the action in question was motivated by that rule. The pragmatic role in question is well known to philosophers of action. Schauer (2002) for example states:

p is a reason for S to do A if, and only if, p is a fact about A's awareness of which by S, under conditions of rational consideration, would lead S to prefer his doing A to his not doing A, other things being equal (p. 112).

If you ask a person why (s)he has acted in this particular situation the way (s)he did (and not otherwise), a possible and not uncommon answer is: Because there was this rule. A

2. Pragmatic roles of social rules and norms

rule is motivationally effective if it operates on and manipulates what action-theory calls (the process of) deliberation and thus participated in the resulted action in a significant manner. As Conte/Castelfranchi (1995, p. 86; 2006) analyze: A rule manipulates individual goals. Furthermore, a rule or norm is motivationally effective if it operates on the agent's mind, i. e. it overdrives the personal goals to that extent that the agent's goals and the goals inscribed in the rule become identical, cf. Conte/Castelfranchi (1995, pp. 74-118; 1999; 2006, pp. 504-508). Unfortunately, the name *reason for action* is slightly misleading. Iorio (2011, p. 171) corrects that primary reasons for action result from individual preferential deliberations, as Davidson (1980) shows. But a rule is not a product of individual preferential deliberations. If a rule motivates an action, then it gives a reason for action, but it is not a primary reason. To be precise, we can thus call a rule in this role a *reason for deliberation*.

- 2) Another pragmatic role is the *reason for expectation*. A rule is a reason for expectation if a person anticipates the future conduct of another person on the cognitive basis of the rule in question. Anticipation here means that the rule in consciousness evokes a notion of future conduct (with or without visual imagination). The mental representation of that rule is the basis for two kinds of expectation: first-order (I expect that (s)he will do X in situation S) and second-order (I expect that they expect that I will do X in situation S). In this pragmatic role rules guide social interaction inasmuch as they give orientation knowledge with which its bearer predicts future behaviors of others (or other's expectations towards him). This allows for communal life in general and individual action plans in particular, since the notion of a rule displays a typical conduct in typical situations and allows to predict how other people behave.
- 3) In another pragmatic role, a practical hint to a rule justifies normative demands, i. e. requests to follow a rule. If a person A requests another person B that (s)he ought to show a specific conduct and if B asked back why (s)he should do that, then the demanding one can refer to a rule to justify the demand. If a rule was used like this, then we can call it the reason for justification. Take as an example the rule for queues. If this rule justifies a demand ("Join the end of the queue, please!") then it is the *reason for justification*.
- 4) In a similar way, a rule is used to sanction. In a sequence of actions, a sanction is an ensuing action that is meant to punish an act of deviation. One must distinguish between the emotional states triggered by observed deviance (e. g. confusion, indignation, anger, disgust, etc.) from generally accepted sanctions of those deviations, e. g. roll one's eyes, complaints, angry rebuke, invective, avoidance, etc. If someone sanctions the deviant conduct of another, then the mental representation of that rule is the *reason for sanction*.
- 5) Again another pragmatic role is if a rule is taken as a measure to evaluate conduct. This results for example in propositions that it was laudable (or awful), praiseworthy (or hateful), correct (or mistaken), etc. A rule which is taken as a measure to discern whether conduct is right or wrong (and the like) is thus *the reason for evaluation*.

I cannot give a principle to show that this list of pragmatic roles is complete. I can only state that it was developed using Charles Sanders Peirce's maxim for definition:

Consider what effects, that might conceivably have practical bearings, we conceive the object of our conception to have. Then, our conception of these effects is the whole of our conception of the object (CP 5.422).

The conceivable practical bearings of rules and norms on social interaction are the ways in which they are used. Reconsidering their practical bearings on social interaction, rules and norms are indistinguishable. Although it is in need for an explanation how opaque mental

representations of appropriate conduct (norms) can occur in those pragmatic roles, it is undoubtedly the case that they do. I call this the identity of rules and norms in pragmatic respects.

These insights into the pragmatic roles help to comprehend the distinction between *using* a rule and *mentioning* it, and thus allows us a clearer understanding of the pragmatic reality of rules and norms. As Black (1981) shows, one needs to distinguish between the act of denoting a rule (theoretical hint to a rule) from the act of using it (practical hint to a rule); otherwise, description and normativity are mixed up. If we talk about rules with descriptions, such as the rules of chess, the rules for queuing in supermarkets, the rules of conversation, etc., we always already have abstracted from real practical bearings and generalized a common practice thereby. In contrast, if a rule is truly used then the (intended) result is to change, manipulate, or measure conduct. If for example the queue-rule or the conversation-rule appears in a pragmatic role, then this notion is intended to measure a deviance (you acted wrong), to justify a demand (get in line, resp. don't interrupt), or to rebuke.

In every case of usage (deliberating, expecting, demanding, requesting, rewarding, punishing, evaluating) there is an underlying mental representation of the rule or norm which serves a specific cognitive function.² With Conte/Castelfranchi (1995, pp. 95-102), I conceptualize the underlying mental representation as a belief (doxastic attitude) about an action that agents of a specific kind and in a specific situation ought to do (or to omit). The syntax of such beliefs shows an if-then-structure, as the logical analysis of rules by Siegart (2012) and the analysis by Conte/Castelfranchi (1995) demonstrate. The conceptual content of mentally represented rules and norms appears as a conditionalized action (modalized with a deontic operator). It expresses: If agents of the kind A are in situations of the type S, then they ought to do X. But this does not mean that rules and norms are mental representations (and nothing else). It signals us only that rule- or norm-guided behavior, as well as the use of rules and norms at large, requires concept possession. Insofar the cognitive functions of mentally represented rules or norms comes into focus, the mental or cognitive dimension of their existence is discussed. One can call this dimension of the existence the *cognitive (or subjective) realization of rules and norms*. Nevertheless, it would be an insufficient and mistaken approach to declare that the ontological status of a rule or a norm is that it is a mental representation, or that rules and norms can be reduced to mental states. This would be an error because there is actually more to a rule or a norm than its realization in people's heads, as doxastic attitudes. Rules and norms are executed via punishment or reward, and they are maintained via the personal goals and interests of people. In a word: the existence of rules and norms (as the phenomenon of interest) encompasses their bindingness as well as their cognitive realization. A valid theoretical concept of the position that rules and norms have in the world (an account on the ontological status) must include the whole phenomenon.

In order to frame the existence of a rule or norm as a multi-dimensional phenomenon, I rely on central lessons from von Wright (1969; 1971) and Weinberger (1970; 1983; 1985; 2001) who, in their days, considered a theory on the existence of norms a background theory for deontic logic. Von Wright (1969) concludes that the reality of a norm consists in its being in force. In

3. Framing the existence of social rules and norms

² In the case of deliberation the mental representation of the rule or norm *represents an option for action*. In the case of expectation the mental representation serves an *anticipatoric* function. In the case of demanding and requesting the mental representation is the *phrastic meaning* of demands and requests. In the case of sanctioning the mental representation serves as the *concept with which deviations get identified*. In the case of evaluation the mental representation serves as the *measure* with which conduct is measured (as good or bad, befitting or indecent, etc.).

his *Norm and Action* (1971 [1963]) von Wright states that the “ontological problem of norms” concerns the nature of the facts which make normative statements true (p. 106). But according to his proclamation, he felt not at all satisfied with the details of his proposed solution to this “extremely difficult problem” (p. viii). Anyhow, the Czech philosopher of law Ota Weinberger develops this line of thought in a more sophisticated manner based on an understanding of the expression “x exists” as “x has a position in the coming to be and passing away”. He notes (1980): “A norm exists in a time interval, i. e. the time interval of its validity” (p. 437).³ To say “a norm exists” thus means: As soon as and as long as there is socially organized pressure, there is a norm (1988, p. 82). His basic idea precisely is that it – the existence of a norm as a fact (in German: *das Dasein der Norm*) – has two dimensions: the social and the subjective. The social dimension encompass the bindingness with all its modes of appearance, e. g. bindingness as a social fact and social generated force and pressure. The subjective dimension encompass the cognitive realization of norms with all its modes of appearance, e. g. linguistic expressions or cognitive functions of that (mentally represented) norm. This framework challenges any such approaches to the ontological status which seek to grasp the essence of norms or rules in mental states or linguistic expressions. Weinberger (1985) for example disproves such attempts showing that an exclusive focus on explicit norm-sentences ignores the roles norms have in the pragmatic realm of human existence.

Framing the existence of rules and norms

social aspects, e. g.	pragmatic aspects	subjective aspects, e. g.
Normativity as a social fact, socially generated pressure, indifference of that norm against individual goals and wishes.	Pragmatic roles (see above)	Cognitive realization as doxastic attitudes, propositional attributes of these beliefs, cognitive functions

I take up Weinberger’s basic idea as follows. The subjective realization of a rule or norm and its bindingness are dimensions of their existence. They can be distinguished analytically. But actually these dimensions coincide in the pragmatic roles of rules and norms. The use of a rule or norm in a pragmatic role implies its cognitive realization in the format of a doxastic attitude. But furthermore, a necessary condition for a norm or rule to appear in a pragmatic role is its bindingness. The bindingness of a rule or norm is the social dimension of its existence. This framework is depicted in the table above.

In general, the bindingness of rules and norms can be explicated as: In a situation S agents of the kind A ought to do X. The essence of bindingness is grasp if the meaning of *ought* is explained as situated particular pressure which is organized socially. In order to explain bindingness as a socially organized fact, I rely on Savigny’s analysis (1983, p. 39). A social rule or norm, resp. its bindingness, exists iff,

- 1) the conduct in question is customary,
- 2) deviations are met with criticism,
- 3) the deviations are accepted as a justification for criticizing deviations.

Take for example “The guests ought to leave, if the host wants to go to bed”. We can analyze: The norm in question exists, if (1) it is customary that the guests leave if the host wants to

³ My translation. Note that in German the word *validity* in its practical meaning (*Geltung*) refers pretty much to the meaning of bindingness, and the conceivably practical bearings of the bindingness of a norm is the pressure by which it is accompanied.

go to bed, (2) to stay meets criticism, (3) the fact that you stayed is accepted as a justification for the critique on your behaviour. The conduct for A's in S to do X is customary if there are a habit and tacit consensus about it. Customs such as these are accompanied by (opaque) notions on the future conduct of others. There is a common mutual expectation, i. e. each and everyone expects from the other that A's in S will do X (first-order) and everyone expects that every other expects that (s)he will do X if (s)he is an A in S (second-order). A disappointment of this mutual expectation would cause confusion. Here conditions (2) and (3) apply. For A's to do X in S is binding, if the observed deviant act, i. e. the act which causes confusion, would be faced by negative ensuing actions (sanctions) and if these sanctions are considered right by a large majority. Consider an angry rebuke as an ensuing action following a deviation, e. g. an angry shouting as a reaction to the observation that someone throws garbage onto the street. If there is a general consent regarding this angry shouting a proper ensuing reaction to the deviant behavior, then there is bindingness.

Subjectively, bindingness is perceived as pressure. How this pressure comes into being can be called the ontological problem of normativity, cf. Stemmer (2008). In particular, pressure is a product of the incompatibility of a rule or norm with personal goals. Even in the state of greatest liberty, individual action goals are restricted through the potential reactivity of fellow people.⁴ Take again "The guests ought to leave, if the host wants to go to bed". From an individual viewpoint, the norm and the wish to stay although the host wants to go to bed (personal goal) are incompatible. What generate the bindingness of a norm thus is the potentially negative reaction of other people (e. g. the host) who restrict one's personal goals. The problem of normativity of social rules and norms thus can be solved by taking into account the described potential reactivity of the group towards deviations, i. e. the counterfactually preserved common readiness to punish deviances. Or, as Stemmer (2008, p. 163, pp. 172-175) puts it, very much like Weinberger (1988, p. 82): "A binding rule or norm exists as soon as and as long as particular actions (the focal action) are subject to any penalty". Such an enduring and tacitly accepted common reactivity (based on customs) adopts a threatening posture for each and everyone, i. e. the rule in question represents a permanent restriction of individual action goals. The meaning of *ought* in these contexts, such as in "You ought to keep your position in the queue!", merely means that a) there is a fellow person who expects that you keep your position in the queue,⁵ and b) there is a objective possibility that your deviance will faced with ensuing negative behavior. Apropos, it deserves a mention that this social-externalistic organization of bindingness, in general, is a unique feature of *social* rules and norms. In contrast, the bindingness of *legal* rules or norms (resp. the pressure that accompanies them) is organized by the governmental deployed organs in a controlled manner. In fact, the constituting factors of rule- or norm-bindingness are dispositional attitudes of ordinary people, i. e. mutual expectation and contrafactually preserved common readiness to punish deviances. Thus, the time interval in which a rule or norm exists (the time interval of its bindingness) correlates with the perdurance of these common dispositional attitudes.

⁴ In general, social pressure is a product of potential reactivity in group public and individual pursuit of social acceptance. The latter is a meta-goal of each individual action (besides the strive for individual well-being). That is why there is a general pressure to follow social rules, because, in the long run, continual deviations (as a maxim) would slur one's reputation, and such a lifestyle is in danger to result in social isolation.

⁵ The role of the spectator is crucial for the motivational effectiveness of a norm. In our context, the spectator is present actually since it is the spectating fellow human. But note that the process of goal adaption, i. e. the assimilation of the personal will to the expressed goal in the rule, also applies in cases in which the spectator (who expects and whose pleasure is of personal importance) is present *virtually*, such as in cases of the general will expected behind anonymous norms or as in cases of God's will behind religious norms.

These socially arranged situations, i. e. the connection of certain conduct with sanctions, are genuine subsets of the world. In a word: They are facts.

What is the connection between the social and the subjective dimension of the existence of rules and norms? The factual bindingness of a rule or norm allows us to use it in deliberation, expectation, demanding and requesting, rewarding and punishing, and evaluation.

Furthermore, the mental representations of rules and norms, realized subjectively in the format of doxastic attitudes, are conceptual reproductions of such socially arranged situations. What is actually the case – that certain people A in specific situations S ought to do X which means that there is a mutual expectation and a common reactivity potential towards deviances – what is actually the case that is reproduced mentally (and linguistically), represented in the if-clause (agents of the kind A are in a situation S), and in the then-clause (A has to act in a m-fashioned manner).

4. Conclusion I developed a framework that includes the subjective, the social and the pragmatic dimension of the existence of social rules and norms. The subjective realization of rules and norms was explained as a reproduction of the social fact that the corresponding conduct is actually binding. Mental representations of rules and norms (linguistically explicit or not) serve specific cognitive functions in several constellations of social life: in deliberation, in expectation, in demanding and in requesting, in rewarding and in punishing, and in evaluating. Furthermore, the above analyses show that the bindingness of social rules and norms are constituted by common and mutual expectation and common readiness to punish deviances (contrafactually preserved). These dispositions generate what is called “a socially arranged situation”, i. e. a state of affairs in which a particular action (the focal action of the norm) is subject to any penalty if the norm-addressee fails to act in the corresponding manner. The phenomenon of normativity (bindingness) was explained as a social organized restriction of personal goals that is perceived subjectively as pressure. By this analyses, I demonstrate that all aspects of the existence of social rules and norms can be explained merely by referring to dispositional attitudes and mental representations, more precise: doxastic attitudes, without denying the social-externalistic sources of normativity. To say that a social rule or norm exists thus merely means that there are common dispositional attitudes towards certain people in specific situations and that there are common beliefs about this. That is their ontological status: They are grounded in common dispositions which are mentally realized and epistemically present to the agent’s in some degree. How and why those dispositional attitudes are preserved over time, how they can be installed or destroyed, or, in other words, how and why social rules and norms persists, how and why the can be successfully proclaimed or dissolved, is indeed another, more sociological and less ontological question.

REFERENCES

- Black, M. (1981). The analysis of rules. In M. Black, *Models and metaphors: Studies in language and philosophy* (7th ed.) (pp. 95-139). Ithaca/London: Cornell University Press;
- Conte, R., & Castelfranchi, C. (2006). The mental path of norms. *Ratio Juris*, 19(4), 501-517;
- Conte, R., & Castelfranchi, C. (1999). From conventions to prescriptions: Towards an integrated view of norms. *Artificial Intelligence and Law*, 7, 323-340;
- Conte, R. & Castelfranchi, C. (1995). *Cognitive and social action*. London: University College London Press;
- Davidson, D. (1980). Actions, reasons and causes. In D. Davidson, *Essays on actions and events* (pp. 3-19). Oxford: Oxford University Press;
- Iorio, M. (2011). *Regel und Grund. Eine philosophische Abhandlung*. Berlin & New York: De Gruyter;

- Peirce, C. S. (1958-1965). *Collected papers*. Quoted as CP, followed by number of volume and paragraph. Cambridge (Mass.): The Belknap Press of Harvard University Press;
- Savigny, E. von (1983). *Zum Begriff der Sprache. Konvention, Bedeutung, Zeichen*. Stuttgart: Reclam;
- Schauer, F. (2002). *Playing by the rules: A philosophical examination of rule-based decision-making in law and in life* (2nd ed.). Oxford: Clarendon Press;
- Sieewart, G. (2012). Regel. In P. Kolmer & A. Wildfeuer (Eds.), *Neues Handwörterbuch philosophischer Grundbegriffe* (pp. 1864-1874). Freiburg: Karl Alber;
- Sieewart, G. (2010). Agent-Situation-Modus-Handlung. Erläuterungen zu den Komponenten von Regeln. In M. Iorio & R. Reizenzein (Eds.), *Regel, Norm, Gesetz. Eine interdisziplinäre Bestandsaufnahme* (pp. 23-46). Frankfurt a. M.: Peter Lang;
- Stemmer, P. (2008). *Normativität. Eine ontologische Untersuchung*. Berlin & New York: De Gruyter;
- Von Wright, G. H. (1971). *Norm and action: A logical enquiry* (2nd ed., 1963). New York: Routledge & Kegan Paul (The Humanities Press);
- Von Wright, G. H. (1969). On the logic and ontology of norms. In J. W. Davis (Ed.), *Philosophical Logic* (pp. 89-107). Dordrecht: Reidel.
- Weinberger, O. (2001). A philosophical approach to norm logic. *Ratio Juris*, 14(1), 130-141;
- Weinberger, O. (1988). *Norm und Institution. Eine Einführung in die Theorie des Rechts*. Wien: Manz-Verlag;
- Weinberger, O. (1985). Freedom, range and the ontology of norms. *Synthese*, 65(2), 307-324;
- Weinberger, O. (1983). Normenontologie in Handlungstheoretischer Sicht. In O. Weinberger, *Studien zur formal-finalistischen Handlungstheorie* (pp. 137-165). Frankfurt a. M.: Peter Lang;
- Weinberger, O. (1970). Die Norm als Gedanke und Realität. *Österreichische Zeitschrift für Öffentliches Recht*, 20, 203-216;