

PSYCHODENTICS:
ANALYTICAL JURISPRUDENCE
MEETS COGNITIVE SCIENCE

MIND THE NORMS! IMPRESSIONS OF AN ARMCHAIR PSYCHO-DEONTOLOGIST

by Pierluigi Chiassoni

Taking on the perspective of an orthodox analytic jurist, the paper provides an introductory overview of the keynote papers and discussant papers presented at the *International Workshop on Psychodeontics*, held at the University of Genoa, Tarello Institute for Legal Philosophy, on December 4 and 5, 2017.

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«Ultimately it seems necessary to assume that *homo sapiens* is endowed with a propensity to establish rules, obey rules, and enforce rules».

Karl Olivecrona

1. Preface

Call me an armchair psycho-deontologist. I am in fact, I must avow, an analytical jurist, and indeed of a very narrow, orthodox, mind cast. In recent times, however, “while a damp, drizzly November was in my soul”, I run into the papers and comments presented at the *International Workshop on Psychodeontics*, held at the University of Genoa, Istituto Tarello per la Filosofia del Diritto, on December 4 and 5, 2017¹. Here you are, methinks, a faithful report of my impressions.

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¹ B. Brożek, *Imagination and Rule-Following*; M. Bucciarelli, P.N. Johnson-Laird, *Deontics: Meaning, Reasoning, and Emotion*; M. Brigaglia, B. Celano, *Eight Questions for the Speakers*; G.B. Ratti, *Got My Mind Set On You. Mental Model Theory and Deontics*; M.C. Redondo, *Two Comments on Imagination and Rule-Following*. All these papers are published in the present volume.

2. Brożek on Rule-Following

Bartosz Brożek's *Imagination and Rule-Following*, as the title suggests, purports to vindicate the role of "imagination", or "mental simulation", as an activity playing a necessary role in any rule-following process: be it the following of rudimentary rules, or, rather, of abstract rules. In a nutshell, the paper supports the following claims:

1. There are two sorts of social rules: rudimentary rules and abstract rules.

2. Rudimentary rules emerge as an evolutionary step between communally shared patterns of behaviour (which result in as many social regularities of behaviours), on the lowest grade of social interaction, and abstract rules, on the highest grade².

3. Rudimentary rules are (i) *language independent* (not necessarily endowed with a linguistic formulation: «language is not needed for the rudimentary rules to emerge»), (ii) *simple* (involving «non-complex pattern recognition and pattern-repetition practices», like, e.g., «colour predication»), (iii) *concrete* (concerning quite specific forms of behaviour, like, e.g., "Not taking my colleague's smartphone"), (iv) *multi-aspect* («they pertain to an entire action, and not just an aspect of it»), (v) *non-modal* («they pertain only to how things "are done", but do not involve well-developed deontic modalities such as obligation, prohibition or permission»), the properties (iv) and (v) making up, together, the property of being "normatively unified", and, finally, (vi) *not endowed with justificatory force*, though pointing to objective patterns of socially correct conducts and possessing «features which are characteristic of the justification-generating rules, since there is no justification without communally shared patterns of conduct»³.

² B. Brożek, *Imagination and Rule-Following*, cit., pp. X-X.

³ Ivi, pp. X-X. The claim is formulated in a somewhat self-contradictory way. Consider the whole passage: «Rudimentary rules *do not possess justificatory force*; however, they *constitute objective patterns of conduct and may serve as criteria for correcting one's behaviour*. For example: assume that in a certain community there is a rudimentary rule involving running after rabbits and calling them "quine". If someone fails to do so, as when she calls a rabbit "gavagai", an objective standard has been violated; this may serve as the basis for a negative communal reaction and, in consequence, for correcting her behaviour the next time she chases a rabbit. However, it would be difficult to claim that the rule *justifies* running after rabbits and calling them "quine". Nevertheless, our rudimentary rule *does possess some features which are characteristic of the justification-generating rules*, since there is no justification without communally shared patterns of conduct» (ivi, p. X, italics added). On this point, also Redondo, *Two Comments on Imagination and Rule-Following*, cit., § II.1, as we shall see in a moment.

4. Abstract – or «full-blooded» – rules are, contrariwise, (i) *language dependent* («always expressible in language»), (ii) *possibly complex* (i.e., pertaining to «entire compounds of behavioural patterns»), (iii) *possibly general* (i.e., pertaining to «generally specified actions such as “taking somebody else’s movable property”»), (iv) *normatively differentiated* («they may be divided into types, as well as express various kinds of deontic modalities»), and, finally, (v) endowed with *relative justificatory force and relative normativity* (i.e., their justificatory force, their binding force, always depending on some external «normative (rationality) criterion»)⁴.

5. There are, correspondingly, two sorts of rule-following processes: namely, rudimentary and abstract rule-following. The former is «an unconscious, intuitive, and emotion-driven process». The latter is, contrariwise, «conscious, reason-based and requires language»⁵.

6. Rudimentary and abstract rule-followings are not separate activities, divided by an “unbridgeable” gap. There is, contrariwise, a continuous «interplay» between them, and this is the very factor that «shapes human societies»⁶.

7. The interplay depends on, and requires, «an additional cognitive capacity, linking the unconscious rudimentary rule-following with its conscious and abstract counterpart». This is the human capacity for «imagination» or «mental simulation»:

the connection between them is possible through our ability of mental simulation. Imagination - often neglected by epistemologists and legal philosophers - is the missing link, which explains how unconscious intuition [occurring in rudimentary rule-

⁴ B. Brożek, *Imagination and Rule-Following*, cit., pp. X-X. On this point, see M.C. Redondo, *Two Comments on Imagination and Rule-Following*, cit., § II.2, which I will briefly consider below.

⁵ See B. Brożek, *Imagination and Rule-Following*, cit., pp. X and X-X: «On the one hand, rudimentary rule-following is driven by unconscious, emotion-based processes; on the other, abstract rule-following consists in acting consciously according to the rules expressed in language. Thus, there seems to exist an unbridgeable gap between both aspects of the rule-following practices: the unconscious and the conscious, the emotion-driven and the reason-guided, the concrete and the abstract. How is a feedback loop between these two fundamentally different processes possible?».

⁶ The “foundation” of rule-following processes is in turn to found in human beings’ capacity for, and tendency to, imitation: «imitation constitutes a social learning strategy that – under some realistic assumptions – is evolutionarily beneficial. Of course, it can never be *the only* social learning mechanism at play – a population which would consist of “pure imitators” would not survive long. However, when imitating becomes the basic way a species learns, it significantly increases that species’ evolutionary fitness. Most importantly, imitation is a culture-creating mechanism – it enables the transmission of behavioural patterns from generation to generation, thus enabling the accumulation of knowledge, easy adaptation of the existing cultural tools, recombination of means and ends, as well the emergence of fine-grained ways of conduct. In consequence, it yields a highly convergent, stable, communally shared patterns of behaviour» (ivi, p. X).

following, ndr] may be influenced by abstract reasoning [occurring in abstract rule-following, ndr] (and *vice versa*)⁷.

In her discussant paper, *Two Comments on Imagination and Rule-Following*, María Cristina Redondo raises two issues. First, she brings to the fore that Brožek has not provided adequate empirical evidence, adequate scientific credentials, for his claim about the specificity of human beings' capacity for imitation and collective intentionality⁸. Second, she maintains that the paper suffers from poor conceptual elaboration concerning the key notions of "norm", "normative" and "normativity"⁹. On the one hand, she notices, the very notion of a "rudimentary rule" appears to be characterized in a self-contradictory way, which results in «an ambiguity in the substantial hypothesis advanced in the paper»¹⁰. On the other hand, she remarks, Brožek seems oscillating, unawares, between three different concepts of "normativity", namely: unconscious "normativity", "normativity" as an inherent, formal, property of rules (the capacity of working as normative premises in justificatory reasonings), and, finally, "normativity" as an extrinsic, substantive, property of rules (the capacity of "truly" justifying behaviours and normative conclusions, from the standpoint of, or relative to, some previously and independently selected "normative criterion")¹¹.

In their comments on Brožek's paper, Brigaglia and Celano do not ask for the empirical credentials of the claims it makes, adopting, rather, a strictly analytical vantage point. Once there, as the reader will easily realize, they question Brožek's conceptual apparatus on several counts. They raise doubts, for instance, about the very notion of a "rudimentary rule", the way of telling an "abstract" from a "concrete" rule, the way of conceiving the "language dependence" or "independence" of rules, the way of understanding "imagination"¹². All these queries, of course, due to the tight connection between language and the representation of reality, turn into as many queries about the theoretical claims Brožek makes (like, e.g., the claim concerning imagination as the usually overlooked, but paramount, link between rudimentary and abstract rule-following).

⁷ Ivi, pp. X, X-X, at XX.

⁸ See M.C. Redondo, *Two Comments on Imagination and Rule-Following*, cit., § I.

⁹ Ivi, § II.

¹⁰ Ivi, § II.1.

¹¹ Ivi, § II.2.

¹² See M. Brigaglia, B. Celano, *Eight Questions for the Speakers*, cit., pp. X-X.

3. *Bucciarelli and Johnson-Laird on Deontic Propositions, Reasoning and Emotions*

In their paper, *Deontics: Meaning, Reasoning, and Emotion*, Monica Bucciarelli and P.N. Johnson-Laird use an experimental psychological (“cognitive”) approach to cast light on the «mental models» people make use of when they perform deontic reasonings and articulate «deontic propositions» (or «deontic assertions»). They purport to «elucidate deontics and morality» by bringing to the fore the respective, intertwined, roles that reasoning and emotion play in moral deliberation and moral judgments¹³. The gist of the essay can be recounted as follows.

1. Deontic propositions (deontic assertions) express deontic judgements according to which something is a deontic possibility (permissible) or a deontic necessity (impermissible, obligatory, prohibited)¹⁴.

2. When people carry out deontic reasonings – i.e., reasonings with deontic propositions – they usually employ mental models (mental representations of real, hypothetical or fictitious situations) concerning the factual and the deontic possibility or impossibility of behaviours and states of affair.

3. Mental representations, if accurately employed, can prevent «systematic fallacies» and «illusions» in deontic deliberations¹⁵.

4. Moral assertions (moral judgments) are just a sub-class of deontic assertions (deontic propositions, deontic judgments). Whatever (accurate) theory holds for the deontic dimension of human life, it does also hold for its moral dimension.

5. Contrary to ethical non-cognitivists, like Hume and the Humeans, on the one hand, and to ethical cognitivists, like intuitionists and “moral grammar” theorists, on the other hand, moral judgments are neither just the outcomes of passions (emotions), nor the outcomes of intuition or the exercise of one’s moral sense. Rather, they always depend not only on emotions, but also on reasoning¹⁶.

6. Emotions do usually go along with moral judgments, while they are typically absent in relation to factual judgments¹⁷.

¹³ M. Bucciarelli, P.N. Johnson-Laird, *Deontics: Meaning, Reasoning, and Emotion*, cit., p. X.

¹⁴ Ivi, pp. X-X.

¹⁵ Ivi, pp. X-X.

¹⁶ Ivi, p. X: «people do reason in order to make moral assertions»; see also ivi, pp. X-X.

¹⁷ Ivi, p. X: «people love those moral propositions that they believe, and hate those that they disbelieve. No such relation exists for factual propositions»; see also pp. X-X («people are emotionally attached to certain of their beliefs. This attachment was referred to earlier as

7. From the standpoint of the mental-models approach, three principles account for “our” practice of morality (“our” using moral norms, making moral judgments, carrying out moral reasonings, etc.). These are: (i) the *principle of moral inconsistency* («the foundations of moral judgments are neither complete nor consistent»)¹⁸; (ii) the *principle of deontic reasoning* («no special sort of reasoning exists for dealing with deontic matters – deontic reasoning is normal reasoning but about deontic topics»¹⁹); and, finally, (iii) the *principle of independent systems* (from the standpoint of the making of moral judgments, reasoning and emotions represent two independent, but interacting, «systems»)²⁰.

In their commentary, Brigaglia and Celano pose a series of question meant to further the reader’s understanding of the mental-models model of deontic and moral judgements²¹.

Giovanni Battista Ratti, contrariwise, takes a more critique-oriented stance. This brings him to raise doubts, first, about the claim the mental-models approach would be fit for detecting and preventing “systemic fallacies” and “illusions” in deontic deliberations²², secondly, about two mental-models “principles” of morality: namely, the “principle of moral inconsistency” (moral systems are *only contingently* inconsistent; consistency is to be measured in relation to specific issues and specific normative sets within on-going moral or legal codes) and the “principle of deontic reasoning” (not every de-

a “complex” emotion, which binds together a basic innate emotion to propositional content. These attachments are obvious in the case of religious and political beliefs: unconscious inferences lead to a bond between emotions and beliefs»).


¹⁸ Ivi, p. X: «Beliefs are the basis of morals, and beliefs are liable to be inconsistent. To establish their consistency is computationally intractable [...] Beliefs depend on “atomic” propositions, such as: *you have children*, and *you earn a living*, which can each be true or false. A set of beliefs based on three atomic propositions (*A*, *B*, and *C*) of the sort: *If A then B*, *If B then C*, and *If C then not A*, is inconsistent: the three beliefs cannot all be true. And if a set of beliefs depends on, say, 100 atomic propositions, then the task can call for checking that each of 2¹⁰⁰ distinct combinations of them is consistent. That number is vast (1 followed by 30 digits), and even if one could check one combination per second, it would take longer than the universe has existed to check their consistency. So, beliefs are bound to risk inconsistency»).

¹⁹ Ivi, pp. X-X.

²⁰ Ivi, p. X: «reasoning and emotions are two *independent systems*, and deontic evaluations, including those about morality, *depend on reasoning*»; p. 12: «Granted their evolutionary origins, emotions antedate deontic evaluations by several hundred million years. An emotional reaction may occur to a situation that has no deontic status, such as a landscape or an earthquake. Conversely, the theft of a paper napkin, can elicit a deontic evaluation but little or no emotional reaction. Of course the two systems interact, and complex emotions, such as remorse, bind together a basic emotion and a propositional content concerning morality».

²¹ See M. Brigaglia, B. Celano, *Eight Questions for the Speakers*, cit., pp. X-X.

²² See G.B. Ratti, *Got My Mind Set On You*, cit., § 1.

ontic evaluation seems to depend on reasoning; it is a debatable issue that deontic reasoning has no specificity 

4. *The Psychodeontics Enterprise*

The papers and commentaries above were written, as I said, as contributions to an “International Workshop on Psychodeontics”. It is time of articulating a few considerations about the Psychodeontics enterprise.

1. “Psychodeontics” – the term is a coining of Bruno Celano – purports to promote the advancement in the (analytic) philosophy of normative language, the philosophical (analytical) study of (social, moral, legal) norms, by taking advantage of contemporary progress in psychological, cognitive science, theories of (social, moral, legal) norms²⁴.

2. The interaction between analytic philosophy of (social, moral, legal) norms, on the one hand, and cognitive science of (social, moral, legal) norms, on the other, in order to be truly knowledge enhancing, must abide rigorously by the logical positivism model, which, to my mind, is still unsurpassed.

²³ Ivi, § 2.2.

²⁴ See B. Celano, *Ragionamento giuridico, particolarismo. In difesa di un approccio psicologicistico*, in «Rivista di filosofia del diritto», VI-2, 2017, pp. 315-344. Actually, Celano’s goal in this “manifesto” essay consists, apparently, in the advancement of “legal theory”, by liberating it from the “anti-psychologicistic” prejudice. The scope of Psychodeontics, as a self-standing discipline (if you like, as a *nouveau* Frankenstein set to wander through contemporary jurisprudence), can also be understood in wider terms, though, as I suggest in the text. In his attack against anti-psychologism, Celano claims, inter alia, that «discourses», for instance, the discourses making up the opinion of a judicial decision, are not «“observable entities”», as a way to uphold the legitimacy of psychological enquiries upon mental states, that would be likewise not “observable” (ivi, pp. 317-320, 326-327). He also casts doubts upon a clear-cut distinction between “reasoning” as a psychological activity and “reasoning” as a “logical” or “discursive” entity, since «what counts as a reasoning in a logical sense – at least, so far as non deductive inferences are concerned – depends on mental, psychological facts: i.e., on the nature of the biochemical processes taking place in the brain» (ivi, p. 331). Finally, he claims that the principles-rules-exceptions theory should be revisited by appealing to a psychological notion of “normal” (and “abnormal”) case: «It is *not up to us* establishing, in any of the cases falling under [a rule’s] antecedent, whether the rule should, or should not, be reconsidered; it is *up to our mind*» (ivi, p. 339, italics added). I think there is a bit of exaggeration in Celano’s criticism of the observable character of *discourses*. I also think Celano’s dismissal of the distinction between reasoning “in the psychological” and “in the logical” sense, besides presupposing a disputable way of understanding the difference between deductive and non deductive inferences, to be pointless, if not even obnoxious, from the very standpoint of the psychological line of enquiry he advocates. I think, finally, the distinction between “us” and “our mind” to be, to say the least, puzzling. This is not, however, the place for pursuing any examination of Celano’s proposal further.

3. Analytic philosophers of (social, moral, legal) norms must, to be sure, go on in their analysis of the normative language (normative discourse) of people's playing with (social, moral, legal) norms (people making, interpreting, applying, observing, accepting, using, reasoning with, "norms"). While performing this task, the tools provided by philosophy of language, logic, and rhetorics are paramount. They must also analyse, however, the scientific discourse by means of which psychologists (cognitive scientists) articulate both their working hypotheses, and the results of their enquiries. It may happen that scientists do not possess the level of terminological and conceptual clarity and articulation that is required for their investigations to be really and fully fruitful. Analytic philosophers must carry out a continuous check on scientists' conceptual equipment, and provide them with ever clearer and more precise apparatuses.

4. Cognitive theories of (social, moral, legal) norms, if carried out by way of sound empirical investigations, are capable of bringing to the fore aspects of normative reality to be taken into account in analytic philosophers' conceptual and theoretical lab.

5. "Norms" (social, moral, legal norms) are delicate, jealous, elusive, sometimes even baffling matters of enquiry. So... let's mind the norms!