

16.

IMPOSSIBLE NORMS

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*We feel as if we had to see right into phenomena:
yet our investigation is directed not towards phe-
nomena, but rather, as one might say, towards the
'impossibilities' of phenomena.¹*

Variation on Wittgenstein's
Philosophische Untersuchungen, § 90

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0. INTRODUCTION: IMPOSSIBLE NORMS VS. NORMATIVE IMPOSSIBILITY

Is it possible to have *impossible norms*?

In this work I argue that a norm is impossible when it is self-inconsistent, and not merely when that norm regulates a (logically, metaphysically, physically) impossible behavior or state-of-affairs.

Impossible norms are neither a case of normative impossibility, nor a case of antinomy (or other polyadic normative incoherences).

In the end I ask whether the class of impossible norms is closed, and answer on the affirmative.

My aim in this essay is not to argue for the actual existence of impossible norms. I rather aim to open up the conceptual space for the possibility of impossible norms in order to shed light both (i) on impossibility in the normative domain, and (ii) on the nature of norms themselves.

1. NORMATIVE IMPOSSIBILITY

Normative impossibility is some kind of impossibility interacting with one or more rules². Depending on the nature of those rules (deontic, eidetic-

¹ “*Es ist uns, als müßten wir die Erscheinungen durchschauen: unsere Untersuchung aber richtet sich nicht auf Erscheinungen, sondern, wie man sagen könnte, auf die 'Unmöglichkeiten' der Erscheinungen*”.

² Cf. A.G. Conte - P. Di Lucia 2012. For a similar definition of normative necessity, cf. K. Fine 2005. If one endorsed a different conception of normativity where rules aren't

constitutive, anankastic-constitutive,thetic-constitutive and so on) there are different kinds of normative impossibility.

Two trivial examples of normative impossibility are: castling twice in a single chess game; producing a valid *testamento olografo* without a signature (in Italian law).

2. ANTINOMIES, PARANOMIES, DYSNOMIES

The normative impossibility of antinomies (and analogous phenomena) is some kind of impossibility resulting specifically from rules.

That of *antinomy* is a *relational* concept, i.e. a relation between (at least) two norms (valid in the same normative system) which are normatively incompatible. One and the same state-of-affairs is qualified in normatively incompatible ways.

Some classical examples are: when *a* is simultaneously forbidden and permitted; when *b* is simultaneously obligatory and optional [*facoltativo*]³.

Amedeo G. Conte (in conversation) suggested to me a *triadic* incoherence, where a first norm prescribes *a*, a second norm imposes an anankastic condition *b* on *a*, and a third norm forbids *b*.

Only as a result of the interplay of these three norms *a* is normatively impossible.

Conte's case is neither an antinomy *stricto sensu*, nor a paranomy (the predicament in fact isn't *ontic*)⁴, but it rather seems a *polyadic* normative incoherence – and in this instance a dysnomy, i.e. just bad legislation, praxeologically misdirected.

fundamental (but rather the basic normative concept is that of value, or that of reasons), the definition of normative impossibility would vary accordingly. Of course my definition of normative impossibility is over-simplifying a very complex array of different phenomena. For recent monographical studies on the matter, see at least G. Feis 2015 and E. Mazzoleni 2013.

³ “Antinomic” phenomena are quite common, and the literature on normative antinomies is immense. Feis 2015 characterizes antinomies and paranomies as metanormative impossibilities. For an extra-normative example of antinomic phenomena, cf. G. Bateson's double bind theory (G. Bateson *et al.* 1956; G. Bateson 1972). A double bind is a situation where an individual receives two (or more) emotionally distressing conflicting messages. Typical double bind cases are when a mother says to his child she loves him, but turns away in disgust, or in commands like: ‘Be spontaneous!’.

⁴ On the concept of paranomy, cf. for instance G. Azzoni 1988, p. 44.

3. IMPOSSIBLE NORMS

3.1. I define an impossible norm as a *self-inconsistent, selbstwidrig*⁵ monadic normative state-of-affairs, a normative state-of-affairs that defeats its own normativity⁶.

This general definition is meant to isolate a whole class of entities, regardless of *ontological, metaphysical* or *typological* categories.

To give specific examples one would need to fix these three coordinates, specifying whether norms are objects, properties or relations (or something else); whether the impossibility is logical, conceptual, or physical; whether this norm is deontic, eidetic-constitutive, etc.

3.2. Ontology and metaphysics

Ontologically, norms may be either objects, properties, or relations⁷.

Let's consider the simplest case, when norms are thought to be objects.

Let's stick to the first case. What it is for an object to be impossible? It is for it to be logically impossible, physically impossible, metaphysically impossible, conceptually impossible or normatively impossible (among other possible impossibilities).

I will take logical impossibility as a test case, because logical impossibility is plausibly one of the strongest forms of modality.

For an object to be impossible, then, it would mean to be logically impossible.

⁵ The German term '*selbstwidrig*' has been coined by Amedeo Giovanni Conte in A.G. Conte, 1975.

⁶ My definition is surely stricter than others found in the literature. G. Feis 2015, for one, defines impossible norms in a threefold manner: a norm can be impossible (i) if the "atto di normazione" is impossible (electing a horse as a senator); (ii) if the norm is absurd and it cannot be fulfilled (it's obligatory to jump from here on to the moon); (iii) if the norm can't apply. Other works on impossible norms (in a different sense than mine) are among others Daube 1967, Hare 1963, p. 59, and lately (with regard to prescriptions in particular) Vranas (ms.), where he deals with impossible (their satisfaction set is empty) *vs.* infeasible (their satisfaction set just includes no action) prescriptions.

⁷ The term 'norm' can be misleading in this context and I am using it liberally. Even though the metaphysical nature of norms isn't the main topic of this paper, the first conception (norms as objects) has been assumed in much of the legal philosophy literature of the last century (paradigmatically, Alchourrón - Bulygin 1981 called one conception of norms 'hyletic', from the Ancient Greek ὑλη *hýlē*, "matter" – some caution is needed here: Paolo Di Lucia points out to me there is in fact at least one conception of norm as a concrete object, namely, the Aristotelian Lesbian rule; cf. *Nicomachean Ethics*, 1137b); the second (normativity as a property) and the third (as a relation) are somewhat harder to identify and pin down in precisely those terms. It seems plausible that P.Th. Geach 1981 advocated the second conception; whereas much of the contemporary philosophical literature busy with reducing normativity to reasons seems to identify it as a relational concept (cf. for instance A. Gibbard 2003; Th. Scanlon 2014; M. Schroeder 2007).

One of the first problems one comes across is that the laws of logic hold for propositions (or pick your favorite choice: *lektá*, sentences, etc.), not for objects.

Let's consider the Law of Non-Contradiction (LNC). In those views that equate impossibility and contradiction⁸, for an object to be impossible is to be (self)contradictory⁹. Again, LNC should apply primarily to propositions: how can objects be contradictory, if propositions aren't objects¹⁰? Fortunately, Aristotle, one of the early defenders of LNC, presents at least two versions of LNC: one *de re*, one *de dicto*. The former holds with regard to things. This version says that "It is *impossible* [for the same thing] *simultaneously* (at the same time) [*ἅμα simul*] to be, and not to be"¹¹.

In another version, we could say that an object is impossible if and only if it appears to have contradictory properties, and since we think we can name properties with predicates, then something is impossible if it is described by incompatible predicates.

Two cases must be distinguished here:

In the *first* case, an object may have *two* contradictory properties, such as (i) *being green all over* and (ii) *being not-green all over*.

In the *second* case, an object may have a self-contradictory property, such as (i) *being green and being not-green*.

The metaphysical question: "What kind of entity is a norm?" has not been addressed in this work, but this question (although not its answer) is the presupposed of my research on impossible norms.

3.3. Typology

Since there are several types of norms, it is plausible to presume that there can be different kinds of impossible norms.

The simplest case is with deontic rules. Here, Conte's *Deontic Epime-nides* is an example of an impossible (deontic) norm, and namely a norm prescribing its own ineffectiveness¹².

⁸ Impossibility and contradiction [*Widerspruch*] (contradictoriness [*Widersprüchlichkeit*]), though often identified, can be kept separate. Paraconsistent logics admit of (classically conceived) contradictions as perfectly possible; those who admit of impossible worlds in their metaphysics may define them regardless of logical contradictions.

⁹ But note that the choice of the Law of Non Contradiction, although common, is not more fundamental than other (logical) laws. A violation of the Law of Identity would be as useful for our purposes.

¹⁰ This reasoning is ill-founded, because at least one of its presuppositions is dubious. In fact, it presupposes that propositions, if anything, are abstract, and then it goes on to compare them to concrete objects, assuming that all objects are concrete. But this is unwarranted.

¹¹ "Ἀδύνατον ἅμα εἶναι καὶ μὴ εἶναι" (Aristotle, *Metaphysica*, B 2.996b30). Early works on *de re* and *de dicto* LNC are J. Łukasiewicz 1910 and S. Leśniewski 1912, 1913.

¹² Cf. A.G. Conte 1974.

Of course this may be an example of impossible *deontic* norms, whose “normative value” is such to be defeated by prescribing ineffectiveness. But Conte’s *Epimenides* cannot be taken as an example of impossible norms *tout court*, nor of impossible *thetic-constitutive*, *anankastic-constitutive*, or other kinds of norms.

Here it is an example of a “thetic” *Epimenides*, i.e. an impossible (thetic) norm (an autoanahiretic norm): a thetic-constitutive norm on validity setting (positing) its own invalidity.

The concept of impossible norm I isolated seems to open up the conceptual space for other kinds of examples (just think of an anankastic *Epimenides*).

3.4. In the preceding sections I have defined and discussed the concept of impossible norms. In the present section, I’ll argue that impossible norms are irreducible both to normative impossibility and to antinomies.

First, impossible norms are not equivalent to antinomies. Impossible norms are not equivalent to antinomies because in impossible norms the inconsistency is *monadic*, whereas in antinomies the inconsistency is at least *dyadic* (and it is, in general, *polyadic*). That of antinomy is a *relational* concept, whereas impossible norms display an endonomic, intrinsic inconsistency. In antinomies, the impossibility is “impossibility” of a behavior, whereas in impossible norms the norms themselves are impossible.

Second, impossible norms are not equivalent to normative impossibility. *Firstly*, impossible norms are not equivalent to normative impossibility because there is nothing intrinsically inconsistent in cases of normative impossibility, but rather the content is “made” impossible by one or more rules. In impossible norms it is the very norm which is impossible.

Secondly and consequently, while normative impossibility may be *de re* or *de dicto*¹³, impossible norms are impossible only *de re*.

3.5. Let’s accept, for the argument sake, the concept of impossible norm I discussed, and let’s accept my examples of impossible norms.

A new question becomes possible: *how many* impossible norms can there be?

¹³ Elsewhere (F. Faroldi, *Impossible Norms vs. Norm-Impossibility*) I have distinguished *three* cases of normative impossibility. *First*, normative impossibility *de re*: we may have something (‘x’) in the scope of the normative impossibility operator ‘N- \forall ’, whose deontic reading is approximately “it is forbidden that x”. Example: N- \forall (to smoke in schools): It is forbidden TO SMOKE IN SCHOOLS. *Second*, normative impossibility *de dicto*: an impossibility (of whatever kind) is in the argument of a normative modal operator. Example: P (to square the circle): It is permitted TO SQUARE THE CIRCLE. *Third*, normative impossibility *de se*: a (normative) impossibility is both the operator and its argument. Example: It is forbidden TO FORBID SMOKING IN OPEN SPACES.

As a matter of fact, there can be an arbitrary large number of norms prescribing something impossible, or an arbitrary large number of normative impossibilities.

But once we keep fixed our ontology, it seems there can be only a limited number of impossible norms, namely *one per type* of norm: deontic, eidetic-constitutive,thetic-constitutive, and so on, for the following reason: if a norm is impossible when self-inconsistent (when it defeats its own nature) and since all deontic (eidetic-constitutive,thetic-constitutive, ...) norms have the same nature, then one self-defeating deontic (eidetic-constitutive,thetic-constitutive, ...) norm is equivalent to all others (what is defeated is that norm's specific normativity, not its content), much in the same fashion as one contradiction (tautology) is truth-functionally equivalent to all contradictions (tautologies)¹⁴.

If the norms are of different type, then each case of that norm self-inconsistency is different from the others, but within the same norm category, each case of self-inconsistency is equivalent: there is a bijective (both *one-to-one* and *onto*) correspondence between the types of norms and their respective cases of impossible norms.

The question of how many types of norms there are is irrelevant to the question of how many *impossible norms* there are.

In this essay I have not argued for the actual existence of impossible norms. I tried to open up the conceptual space to consider the possibility of impossible norms. But *ab posse ad esse non valet consequentia*¹⁵.

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¹⁴ As for the equivalence of norms, one must proceed with extreme caution. One must distinguish between the contents, the norms, and the systems, each with its own equivalence criteria. In recent work (Faroldi ms.) I have argued that normative expressions create hyperintensional contexts, ie contexts finer than logical or strict equivalence. The identity of norms would then require a finer-grained notion than intensional (logical or strict) equivalence. While in the standard possible-world semantics all necessary (impossible) propositions are equivalent, my approach would let us distinguish between (non co-hyperintensional) impossible norms.

¹⁵ For helpful discussion and productive disagreement I heartily thank Stefano Colloca, Amedeo Giovanni Conte, Dario Di Lauro, Paolo Di Lucia, Guglielmo Feis, Emil Mazzoleni.

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