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Telling fictional stories is difficult. Making them believable, interesting and enjoyable is the particular challenge of the art. It is often a case and experimental field for methodological anarchism. Normative statements appear in ordinary life and they appear in fiction. Fiction may recount something impossible – whatever works in order to make the story acceptable and enjoyable is admitted –, but may norms require something impossible? May norms require something impossible in fiction, in impossible fiction?

Starting with a well-known example, I contend that impossibility is by no means a limit for fiction. I then introduce normative statements as a kind of fiction for which nonetheless stronger requirements seem generally to prevail. Distinguishing norms as applicable in the actual universe as against prescriptive statements in narrative fiction, it can be shown that the cognitive constraints on narrative fiction are again different from those on normative fictional universes related to effective, if counterfactual, application.

I) Cognitive against alethic modalities

« Yes, this is Sunset Boulevard, Los Angeles, California. It's about five o' clock in the morning.

That's the homicide squad. Complete with detectives and newspapermen. A murder has been reported from one those great, big houses in the ten thousand blocks. You'll read about it in the late editions, I'm sure. You'll get it over your radios, and see it on television.

Because an old-time star is involved. One of the biggest. But before you hear it all distorted, and blown out of proportions. Before those Hollywood columnists get their hands on it, maybe you'd like to hear the facts, the whole truth. If so, you've come to the right party. You see the body of a young man was found floating in the pool of her mansion. With two shots in his back, and one in his stomach. Nobody important really, just a movie writer, with a couple of B-pictures to his credit. The poor dope, he always wanted a pool. Well, in the end he got himself a pool, only the price turned out to be a little high. Let's go back about six months and find the day when it all started. I was living in an apartment house above Franklin and Ivar.

Things were tough at the moment. I hadn't worked in a studio for a long time. »
(Wilder, 1950)

These opening words of the film *Sunset Boulevard* are – fictionally – uttered by Joe Gillis. Now, in the film, Joe Gillis is dead. He has just been shot by Norma Desmond and is floating upside down in her pool. A dead person cannot speak and nothing indicates that Charles Brackett, Donald McGill Marshman, Jr. who got an Oscar for the best script or Billy Wilder conceived of dead Joe Gillis as living as a phantom, as certain religious beliefs may think of life after death. The fact that a dead person may be speaking to the audience and narrating his sad biography is just impossible and assumed to be so. Nonetheless, this entry *in medias res* works perfectly and probably better than alternative narrative techniques like the more traditional “narrator” or the anonymous manuscript found in the forgotten cupboard. Letting the dead victim set the scene immediately arouses curiosity and suspense. The impossible becomes an intra-fictional narrative operator.

There are several examples of such fictional narratives attributed to deceased persons, like *The Posthumous Memoirs of Brás Cubas* by Machado de Assis (1881) and fictional literature is full of paradoxes and antinomies, which playfully captivate the reader's attention. In Akira Kurosawa's *Rashomon* (1950), a judge summons all persons involved in a criminal case to testify, including the ghost of the victim who speaks while present only through a veil of smoke. Here as in so many instances, the public perfectly admits what could not possibly happen.

Something that is logically impossible and thus cannot be realized in any possible world may nonetheless be present in a fictionally possible world. Fictionally possible worlds may not be possible worlds and nonetheless they may be perfectly adapted to their fictional narrative scope, whereas perfectly possible fictional worlds may just be really boring. Fictional impossibility must, however, be cognitively acceptable.

In *Sunset Boulevard* as in so many such situations, the impossible setting just opens a view on some perfectly possible events – murdering out of jealousy, police reconstructing events, authors explaining fictional events via some narrative artifice, etc. One should thus distinguish event-impossible settings in factual narratives from impossibility within fiction, understood as sets of narrative propositions fictionally identified as events which could not take place in reality but are presented and understood as possibly entertaining. Were such propositions unable to provide some variety of cognitive entertainment, they would be strictly fiction-impossible. Impossible fiction is not fiction-impossible. And what is impossible within the real world is often cognitively relative to effective knowledge in a given historical context. Something which is event-impossible according to present-day knowledge may not have been so in other sets of world-knowledge and still be perfectly integrable into

fiction, as fiction needs not strictly care about objective world knowledge except in specific narrative settings, say in a novel about scientific discoveries. In a contemporary and scientifically informed worldview, it is impossible that Dante is accompanied by Vergil on a journey into hell, purgatory or paradise, but it may be conceivable that a medieval public considered this a possibility, not only as an allegory of some deeper understanding of a theological reflection.

In such narrative worlds, norms may be alluded to and they may ask for some set of actions which may be, again, possible or impossible, at least at first sight. However, in a fictional universe it is less the norm itself which counts for the advancement of the story than the attitudes of the characters with respect to such exigencies.

The interesting point is that even highly impossible fictions are not an obstacle against a worldview in which only possible alternative worlds are conceived of as effective alternative worlds and where the distinction between possible and impossible as well as between fact and fiction are not truly cast into doubt. It is one of Aristotle's fundamental insights that in the ambit of narrative fiction, the relevant operator is credibility and that credibility trumps impossibility and makes it innocuous if it does not even enhance immersive pleasure (*Poetics*, 1461b 10¹). Whereas impossibility constitutes a limit for scientific and even simply referential discourse, its function in normative ambits seems quite different.

II) Semantic limits to normative statements

We assume without many precautions that we may perfectly be able to recognize narrative fiction as such and to distinguish it from factual narratives – at least I admit this as plausible hypothesis. A probably more contested hypothesis consists in admitting that normative systems rest on fiction². Indeed, statements according to which certain actions are obligatory, prohibited or permitted, modalise otherwise verifunctional propositions and such statements rest on the supposition of their specific validity which is by its very conception outside of any factual foundation (factually there are only power relations and acts of belief regarding the legitimacy of imposing obligations or prohibitions. The fact that normative statements are uttered has to be distinguished from the validity of its substance. But whereas narrative fiction can suggest impossible events, normative statements cannot require unrealizable or necessary acts.

¹ « In general, any "impossibility" may be defended by reference to the poetic effect or to the ideal or to current opinion. For poetic effect a convincing impossibility is preferable to that which is unconvincing though possible. » (« Ὅλως δὲ τὸ ἀδύνατον μὲν πρὸς τὴν [10] ποιήσιν ἢ πρὸς τὸ βέλτιον ἢ πρὸς τὴν δόξαν δεῖ ἀνάγειν. Πρὸς τε γὰρ τὴν ποιήσιν αἰρετώτερον πιθανὸν ἀδύνατον ἢ ἀπίθανον καὶ δυνατόν »)

² See mainly Kelsen (1991) Pfersmann (1995).

If in the meaning here utilized, a norm consists in a set of propositions placing a set of possible human actions under the deontic modality of obligation, prohibition or authorization, there is a modal-semantic condition on normativity. If the relevant actions would not be possible or would just state something which happens by necessity, the proposition would not be a norm. Hence utterances imposing impossible or necessary actions lack the distinctive semantic property of stating a *norm*.

We know traditional formulations of the intuition behind this idea, as the classic Latin saying “*ultra-posses nemo tenetur*” or the English “ought implies can”. In the legal and philosophical debate, such statements are discussed as moral or legal requirements. A recent example includes an interesting article by Ruwen Ogien on Kant’s razor (Ogien, 2001). This author admits the normativity of these maxims and proposes to modify them, restating them as moral meta-norms of the following content:

1. A principle of humanity (requiring elimination of over-demanding norms).
2. A principle of parsimony (requiring elimination of superfluous norms).

Another objection considers that requiring the impossible is simply a way being normatively more convincing or at least motivating (Collingridge 1977).

This theory is not convincing, since it confuses criteria of normativity with substantive content; however, we may value humanity and normative parsimony as important moral requirements. Asking not to ask too difficult actions is not the same as asking something impossible. And the problem here envisaged is precisely the question of the relevance of the semantic criterion.

Asking to eliminate the superfluous is ambiguous. It may mean that other norms with equal substantive content already exist or that the obligation stated is deducible from other existing norms. But if there were already other norms, one has assumed that the superfluous element exists as a normative statement, and this is precisely the problem at issue. And if superfluous norms actually exist, the question becomes whether or not there are procedures allowing their elimination. Requiring to require is in any event only conceivable within the ambit of assumed normativity.

The motivating argument is not convincing either. If we require something to be performed, the norm expressing this idea requires in whatever formulation nothing more or nothing else than the action to be realized. And again, the question is whether what was required in the first place can possibly be performed.

To conclude on this point, I assume that configuring a normative system according to certain principles of clemency, motivation or caution in terms of internal

organization is a different issue with respect to the semantic borders of normativity in terms of modality.

III) Producing and eliminating pseudo-norms

The semantic criterion does of course not prevent the formation of linguistic utterances stating impossible or necessary requirements. Let us qualify them here as pseudo-norms. Obviously, we have to differentiate whether what is not possible to be performed is so in all possible worlds or simply a pragmatic impossibility, as when a speaker doesn't take the plane to come to the place where he is supposed to present a paper and cannot do so in person. These cases are left aside here.

Pseudo-norms may present themselves as pertaining to different classes of normativity, legal or moral or whatever else may be designed through deontic modalisation such as rules of chess or grammar. All such normative systems are already fictitious, as norms don't exist in the observable universe and have to be assumed as existent by those concerned. If they lack the playfulness of narrative fiction and are generally a bit more austere, their very existence requires an effort in shared fiction and abstraction, the absence of which may have quite some observable consequences. If norms appear as they often do in narrative fiction, their understanding requires thus a double effort, tempered by the fact that one does generally not need to struggle to the same extent with doctrinal or scholarly efforts that usually retain the attention of legal scholars or moral philosophers.

In legal ambits, pseudo-norms may have different functions. Let us admit that there is a statute with legal effect from today (March 2nd 2022) stating that all persons not yet vaccinated have to be vaccinated with the time limit of January 31st 2022 under the sanction of paying a fine of 10 000 USD. This requirement is obviously impossible with respect to the obligation of taking the vaccine and it is therefore a pseudo-norm, even though it may have been passed by both houses of Congress and undersigned by the President. And nonetheless this strange entity cannot simply be seen as legally inexistent. Indeed, the legal statement is composed of two elements, conditional and consequential. The consequential element is not devoid of normativity and is not a pseudo-norm as it is perfectly possible to pay 10 000 USD, even though this may be somewhat difficult for a significative proportion of addressees. As the condition is impossible, the consequence becomes unconditional or categorical, meaning that all unvaccinated persons have to pay 10 000 USD. The pseudo-norm is thus just hiding a real categorical norm, i.e., the obligation to pay, whatever happened or did not happen previously.

This changes the issue, which is now to answer the question of whether such categorical norms hidden in pseudo-norms are legally admissible and, if not, if and how they may be removed from the legal system in question. It may vary from system to system.

Let us admit the law requires that the fine be paid by 31st of February 2022 – a day which does not exist – or by December 31st 2021. This would be a true pseudo-norm as the sanction could not itself be reclaimed in the past or on an inexistent date. But still, this object exists textually in the set of official texts – at least in systems where the enactment of statutes is in this way legally formalized. And this modifies anew our problem. As long as the pseudo norm-text is present in the official gazette, it cannot be excluded that an organ of law enforcement would have the idea of making a “creative interpretation”, looking at ways to provide some finances to the Inland Revenue Service or simply to exercise some variety of administrative sadism. The poor addressees would have to impugn such orders through all legal procedural means, but the issue depends on the legal conceptions of the organs of review. They may say that the order does not exist for lack of legal basis, or that the amount required is too high for reasons of proportionality and should be mitigated accordingly. In certain systems, a judge may require that a constitutional court annul the pseudo-norm constituting the inexistent legal basis for the legally existent concrete legal order to pay the fine (if the organ is competent to issue orders to pay fines). But the constitutional court may reply that the norm does not exist and that it lacks competence to quash a non-existent legal entity.

The legal problem is then whether there exists a procedure to remove parasitic pseudo-legal entities from the set of texts legally considered valid law. And this constitutes an even more general issue as even highly sophisticated systems of constitutional or legal review are scarcely prepared for the removal of parasitic entities. So, for instance, the French Constitutional Council (2005) has invented a control of non-normative provisions (Champeil-Desplats, 2007), which it sternly exercises, but which lacks, in fact any constitutional foundation, however reasonable we may consider the result. And in any event, if there were no request introduced, the provision could not be impugned and there would be no way to eliminate the parasitic entity if not by another Act of Parliament, but Parliament has many other preoccupations and may not be bothered by questions of textual parasitism. And if Parliament acts in view of exceptional clemency, there may be a request to consider the act of abrogation as unconstitutional for lack of anything legal to abrogate.

The Austrian Constitutional Court (1990) once had to consider the case of a statutory provision which was un-understandable if not, possibly (but this seems to have been undecidable) by previous studies of the most specialized kind (Jablonek

2013). The Court considered that the text required a particular propensity to a practice of cognitive sports and quashed the provision as contrary to the principle of equality³. The reasoning may have been erroneous as the requirements did not make any difference between addressees, but it highlights an interesting problem: if the possibility of performing an action is indeed tied to the capacity of understanding the requirement, that is, that there may be no possible worlds in which certain addressees of the legal order in question could understand what is obligatory while others are in a position to do so, this leads indeed to the question as to whether the possibility-criterion has to be cognitively differentiated and how this could possibly impact legal systems and enter into law. Legal systems do so to a certain extent in order to protect young or elderly or mentally disabled people, but the question is precisely whether legal provisions can in general be stated without relevant cognitive discrimination, long before considerations of democracy and generality of norms enter into play.

And, of course, all professors know that students and sometimes even colleagues lack some cognitive requirements with respect to legal provisions and that legislators sometimes lack the same requirements when writing them and introducing them into purportedly valid law.

It follows that while the principle of the rule of law has, for good reasons, promoted an enhancement of formalization, it may paradoxically also lead to the production of parasitic pseudo-norms and a structural inability to render them harmless. And regarding the possibility criterion, even democratic legal systems are relatively less attentive to taking the issue into account in law-drafting, accepting that there may be a much higher quantity of pseudo-norms than generally expected.

IV) Absorbing pseudo-norms in narrative fiction

The problem is highly different in the ambit of morals. Morals are by hypothesis neither codified, if by this we mean an organized procedure of enactment, nor are they organized in view of organic enforcement. Systems of morality which are organically enforceable are not systems of morals but concealed legal systems, as in the case of religious laws entrusted to very and all-too-human executors. Moral

³ « Only with the most subtle knowledge concerning the subject-matter, with extraordinary methodological capacities and a certain pleasure in the resolution of brain teasers can it be understood by any stretch of imagination which provisions could possibly have been intended. » (« Nur mit subtiler Sachkenntnis, außerordentlichen methodischen Fähigkeiten und einer gewissen Lust zum Lösen von Denksport-Aufgaben kann überhaupt verstanden werden, welche Anordnungen hier getroffen werden sollen. »)

requirements require logical systematization and logical particularization. Pseudo-norms are thus logically eliminated but may be the object of fierce philosophical debate, as the never-ending discussion concerning Kantian morals perfectly exemplifies.

The possibility criterion applies nonetheless here, as in legal orders. And with respect to them there is another interesting difference. Legal systems are by definition more or less efficient. That is, we don't consider a system to be legal which is never and nowhere regularly applied. If so, it collapses into a moral system, like for instance the so-called Constitution of the Year One of the Republic in France, which still constitutes a reference in some political debates, but was never applied as it was easier and more efficient to entrust unlimited powers to a small Committee of Public Safety (1793-95).

Morals may instead require everything possible and up to the very limit of the impossible (moral maximalism), or on the contrary move down to the strictest minimum (moral minimalism) and face the issues of internal coherence and overly plausible outcomes.

Fiction instead, has none of these problems. It is concerned with being interesting, joyful, creating suspense and a specific variety of emotional-cum-cognitive pleasure, possibly to arouse some moral considerations, but not to resolve a legal or moral problem in and of itself. Norms and pseudo-norms may be part of it, without any other challenge. Fiction is committed to fictional hedonism. Its indifference to external normative considerations may nonetheless be subject to external moral challenges, as recent developments dramatically demonstrate. But this opens a debate with respect to the moral relevance of fictional contents, not to the question of pseudo-norms. It pertains thus to a quite different discussion.

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