



Normativity Naturalized? Some Thoughts on Bruno Celanos Pre- Conventions

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ABSTRACT

Bruno Celanos thought-provoking 2016 paper on *Pre Conventions, A fragment of the Background* prompted intense discussion. Unsurprisingly so given the perplexity as to the existence of entities which dwell both in the normative and the factual realms. Ever since Hume and Moore we have grown zealous about this divide. My aim here, however, is neither an in-debt discussion of Humes Law nor a detailed critical analysis of Celanos Pre Conventions. Rather, I want to point out that the underlying structure of Celanos Pre Conventions closely resembles theoretical constructs offered by linguistic philosophers (and interestingly so, of the externalist branch) in their meaning formation explanations. I am thinking in particular of Millikans construct of natural conventions, reproduction and precedent. Following this thread, the question of the normativity of Celanos embodied facts seems to mirror the disjunction problem in informational theories



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of meaning (Fodor) and the general question of normativity of meaning (correctness conditions of terms implying meaning normativity).

What I have in mind here is, then, to assess the validity and reach of Celanos claim not about the existence of entities of this type, but about their inherent normative nature.

Keywords: pre-conventions; natural conventions; normativity; correct use teleosemantics.

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Normativity Naturalized?

Some Thoughts on Bruno Celanos Pre-Conventions

SUMMARY: 1. Introduction – 2. What Celano has to say about it – 3. Pre Conventions, Natural Conventions and Theories of Meaning – 4. Normativity Naturalized?

1. Introduction

Bruno Celanos thought-provoking 2016 paper on *Pre Conventions, A fragment of the Background* prompted intense discussion¹. Unsurprisingly so given the natural (dangerous word in this context) perplexity as to the existence of entities which dwell both in the normative and the factual realms.

Ever since Hume and Moore we have grown zealous about this divide. Whether or not the actual guillotine and fallacy are as severe cut as they are generally used is, in itself, another topic for (intense) discussion.

My aim here, however, is neither an in-debt discussion of Humes Law nor a detailed critical analysis of Celanos Pre Conventions (which, as I said, has been done and by much wiser authors than myself). Rather, I want to point out that the underlaying structure of Celanos Pre Conventions closely resembles theoretical constructs offered by linguistic philosophers (and interestingly so, of the externalist branch) in their meaning formation explanations. I am thinking in particular of Millikans construct of natural conventions, reproduction and precedent².

¹ Among others, see J.J. Moreso, *Celano: ontological commitment and normative bite*, in *Revus*, 2016, Vol. 30, p. 77-80; B. Celano, *Exploring the Background, Puzzles, Afterthoughts and Replies*, in *Revus*, 2017, Vol. 33, p. 53-82; P. Chiassoni, *Do jurists need pre-conventions?* in *Revus*, 2017, Vol. 33, p. 37-43; L.D. D’Almeida, *On pre-conventions as ‘normative facts’*, in *Revus*, 2017, Vol. 33, p. 9-13; R.E. Sánchez Brigido, *Celano on normative facts*, in *Revus*, 2017, Vol. 33, p. 15-28; M. Segatti, *What laws are experienced as*, in *Revus*, 2017, Vol. 33, p. 29-36.

² See R.G. Millikan, *Language, Thought and Other Biological Categories New Foundations for Realism*, MA: MIT Press, Cambridge, 1984; R.G. Millikan, *Language Conventions Made Simple*, in *The Journal of Philosophy*, April. 1998, Vol. 95, n. 4, p. 161-180; R.G. Millikan, *Naturalizing Intentionality*, in *The Proceedings of the Twentieth World Congress of Philosophy*, 2000, Vol. 9, p. 83-90; R.G. Millikan, *Language: A Biological Model*, Oxford University Press, online, 2005; R.G. Millikan, *Varieties of Meaning. The 2002 Jean Nicod Lectures*, MIT Press, Cambridge, 2006.

Following this thread, the question of the normativity of Celano's embodied facts mirrors the disjunction problem in informational theories of meaning (Fodor) and the general question of normativity of meaning (correctness conditions of terms implying meaning normativity)³.

What I have in mind here is to assess the validity and reach of Celano's claim not about the existence of entities like these, but about their inherent normative nature (I consider their factual nature a given).

Celano makes three essential claims in his paper: a first claim about the existence of entities like the ones he describes (embodied conventions); a second (negative) claim about the nature of these entities, they are neither facts (de facto regularities) nor norms; and a third (positive) claim about nature of these entities, they are both de facto regularities and norms, i.e. embodied norms or normative facts⁴.

The first is a metaphysical claim which I do not wish to contest. I do want to point out the similarities pre-conventions share with other meaning formation explanatory constructs – section 3 of this paper.

The second and third claims read together state the dual nature of these entities (they are both de facto regularities and norms).

I do not wish to contest the de facto regularity nature of these entities which as I said, I do take to exist. What I wish to understand in this short paper is what makes them also inherently normative (and what arguments Celano gives us for this conclusion).

As D'Almeida said, the claim about the dual nature is philosophically speaking, the rabbit coming out of the hat (to be fair, D'Almeida didn't say that but only that this claim is philosophically interesting)⁵. As I read it the most intriguing aspect of Celano's contract is the inherent normativity of these embodied de facto regularities. What exactly makes them normative⁶? This is the central question of this paper and will be tackled in the fourth and last section.

2. What Celano has to say about it

Celano opens his essay by claiming that 'pre-conventions' are neither de facto regularities nor rules (norms) but both. They are normative facts⁷.

These entities go easily unnoticed for they are, so to speak, 'on the edge of our visual field'.

³ J. Fodor, *A Theory of Content and Other Essays*, MIT Press, Cambridge, 1990.

⁴ L.D. D'Almeida, *On pre-conventions as 'normative facts'*, cit.

⁵ *Ibidem*.

⁶ I am only asking this question with regard to Celano's construction (and not the ultimate metaphysical question of where normativity comes from). I am grateful to Cristina Redondo for this precision.

⁷ Loose summary from B. Celano, *Pre Conventions, A fragment of the Background*, in *Revus*, 2016, Vol. 30, p. 9-32.

The author then proceeds to a close analysis of the term 'convention' by identifying its semantic field as being divided into two first areas: agreement, read as a generic coming together; and arbitrariness (in the sense that the convention might have been different) and into two further areas: agreement (pursuit of each parties' own goals) and a shared manner of doing things.

Celano explores the possibility of conventions that are not explained by a train of reasoning by the identification of two axes in this explanatory redefinition of the term 'convention': rationalizable versus non rationalizable and tacit versus explicit. From here he identifies four different notions of 'convention': i) conventions that are explicit agreements backed by a train of reasoning (a la Hume and a la Lewis); ii) conventions where explicit agreement is absent (tacit conventions) backed by a train of reasoning; iii) explicit agreements that are not backed by a train of reasoning and finally iv) tacit conventions that are not backed by train of reasoning.

This last notion is the one that interests Celano and what prompts his construction of pre conventions. This convergent behavior which, he says, is not a biological regularity, a result of learning, but is also automatic - spontaneous, rapid, fluid and effortless. These are conventions that are part of the body.

There is however, one difficulty emerging from the automatic nature of these conventions - it seems, says Celano, that almost anything that can be learned can become automatic and second nature. This consideration leads to the need of distinguishing between two possible senses of the adjective 'tacit' (tacit beliefs proper like 'I live on the 4th floor' and entities only improperly called beliefs 'I am not an earthworm') which, mirrored in a Lewis type convention, distinguish between such a convention being tacit when it comes into existence and tacit when it becomes second nature.

Examples of these types of conventions are learning a sporting skill (such as front crawl in swimming, learning to ride a bike, having style but also considerations on Bourdieus concept of habitus and Foucaults concept of disciplinary power).

Take the correct swimming stroke in front crawl, says Celano - there are rules identifiable, but the correct stroke is not, in itself, a set of rules. Nor are they de facto regularities, sure these behaviors are regular in some sense, but the one correct stroke is the guide of these behaviors, it is in respect to this correct stroke that they are regular. In this sense, they are abstract entities in the body, tacit bodily schemes, intermediate between an image and rule, embodied diagrams to establish what is correct. There is, or so the author argues, a conventional component in these diagrams (it is this component which makes them both natural and cultural). This reality is exemplified throughout the paper by Celano with Searles phrase 'the body takes over'.

After setting this scene, Celano presents his three main arguments for the existence of such hybrids between fact and norm entities.

The first argument is entitled ‘induction, salience and projection’. Here, he takes a Lewis Convention and identifies its intrinsic problem: the conditions for the identification, by the members of a social group (G), of a certain action (A) as type of behavior (how can one say that xA is an instance of A?), and a certain situation (S) as the same situation that recurs (how can one say that xS is an instance of S?)⁸. What makes members of a given social group recognize certain facts as instances of a regularity, what identifies a set of cases as precedent? Lewis answer here is that ‘guided by whatever analogy we notice we tend to follow precedent’. This leads Celano to his answer: we notice the same analogies (these and not others) and it is this fact which fixes the identity of the regularity and enables us to follow precedents⁹. It is this fact which establishes the very identity of a regularity determining the correct way to act and thus, is not in itself a mere regularity but also a normative fact:

This fact – the fortunate fact that, for the most part (there is no guarantee for this to happen, and there is no conceptual necessity involved), certain analogies and not others appear obvious to us – is not therefore a mere regularity, it is also what fixes the identity of R, disambiguating past cases, and thus determining what is the correct way to behave. It is, in short, a normative fact¹⁰.

This general mechanism of inductive reference is behind the Lewisian determination of the identity conditions of a conventional regularity of conduct: certain predicates appear salient to us and hence we can legitimately project them (salience)¹¹.

The second argument is derived from Wittgensteins considerations about rule following. Here Wittgenstein is concerned (or so argues Celano) with the identity conditions of a concept. The concept is a rule and poses the problem of its correct application (under which conditions can a set of facts thought to be the correct application of the concept, i.e. fall under the rule?)¹².

And Wittgenstein’s answer is: a finite set of cases, which we were shown during our training in the use of that concept and the practice which, living together, we have developed¹³. Celano sees in this concept of practice or habit something very particular, neither fact nor rule, but a set of facts that, again, fixes the identity of a rule:

⁸ B. Celano, *Pre Conventions, A fragment of the Background*, cit., p. 8.

⁹ *Ivi*, p. 8.

¹⁰ *Ivi*, p. 9.

¹¹ *Ivi*, p. 9.

¹² *Ivi* p. 10.

¹³ *Ivi*, p. 10.

A set of facts, that is, which is a regularity - or a set of cases that corresponds to a rule (in the relevant sense here, stated above: a concept) - by virtue of itself: literally, a normative fact¹⁴.

Lastly, Celano employs Searles theory of the Background (intentional states, following of rules or the application of concepts, are only possible due to a set of background capacities). Searle himself was dwelling on Wittgenstein as his paper '*Wittgenstein and the Background*' testifies. Searles Background is composed by unintentional skills, dispositions and tendencies which Celano takes as another instance of his normative facts:

Here, once again, entities intermediate between rules and regularities, embodied norms (or, if you will, the pineal gland) emerge. Tendencies, dispositions, skills that are in the Background are not intentional in character: they are bodily elements. At the same time, however, they are 'sensitive to /.../ structures of intentionality', such as the constitutive rules of an institutional activity; they are 'functionally equivalent' to them - which can only mean that they guide conduct, fixing the distinction between correct and incorrect behavior (i.e., they perform the role of norms)¹⁵.

3. Pre Conventions, Natural Conventions and Theories of Meaning

As I said, my claim is that the underlying structure of Celanos Pre Conventions closely resembles theoretical constructs offered by linguistic philosophers (in particular, of the externalist branch) in their meaning formation explanations - i.e. foundational theories of meaning.

Despite Celanos absent mention of the applicability of his thesis to linguistic practice (as pointed out by Moreso¹⁶) this comes as no surprise as Celano himself uses some of these language philosophical constructs while drafting his pre conventions (in particular Lewis theory of Conventions, Wittgensteins considerations on rule following and Searles considerations on the Background of Meaning)¹⁷.

However, by Celanos focus on 'tacit conventions that are not backed by a train of reasoning' (in opposition to Lewis like Conventions which are backed by a train of reasoning) I am reminded, in particular, of Millikans construct of natural conventions and naturalized meaning (Millikan dispenses with rationality in her account of convention as biological pattern sustained by way of precedent).

Following this thread, the question of the normativity of Celanos embodied facts (see section *infra*) could be read as mirroring the disjunction problem in

¹⁴ *Ivi*, p. 10.

¹⁵ *Ivi*, p. 12.

¹⁶ J.J. Moreso, *Celano: ontological commitment and normative bite*, cit.

¹⁷ The connection between Searles Background and Wittgenstein seems to stem from Searle himself. See J.R. Searle, *Wittgenstein and the Background*, in *American Philosophical Quarterly*, 2011, Vol. 48, n. 2, p. 119-128.

externalist informational theories of meaning (Fodor) and, more generally, the question of normativity of meaning (correctness conditions of terms implying meaning normativity).

We have seen Celanos structure (section above). Let us together take a look at the functioning of Millikan's Teleosemantics, so that both I and the reader can identify (or reject) the parallels¹⁸.

Ruth Millikan (working primarily in the fields of philosophy of biology and philosophy of mind and language) is one of the main representatives of this theory of meaning called *biological externalism or teleosemantics*. Since it is a particularly intricate theory, I will try to list the main arguments in a schematic form¹⁹.

Teleosemantics are what M. calls Piggyback riding theories, i.e. imply some causal theory of meaning.

Here, a causal theoretical underpinning (think of Kripke's basis proper names and natural kinds or Fodor's universal causal informational theory) is presupposed.

Meaning is constituted by repetitive word-world relations which are historically determined. "Dog" means dog because dogs (objects) historically cause instantiations of "dog" (word). This means that if occurrences of a given thinker's mental symbol 's' covary with the presence of dogs, then 's' expresses the concept dog.

We will see that Millikan adds the explicit idea of 'lineage', i.e. when a given word-world relation is instantiated by uses of a linguistic tool, the chain of these uses constitutes a lineage²⁰.

Under this frame, teleosemantics come in to explain error or misrepresentation (the so-called disjunction problem), which is a problem for causal theories (Fodor): If a symbol represents whatever it covaries with, then it cannot systematically misrepresent²¹.

How is this done?

1. Through a technically complex construct of 'function' as naturalized convention; In her groundwork of 84 *Language, Thought, and Other Biological*

¹⁸ This section of the paper corresponds loosely to section 9 of my thesis *Language Related Indeterminacy in the Law* (currently awaiting publication).

¹⁹ Millikan's milestones *Language, Thought and Other Biological Categories*, cit., *Varieties of Meaning*, cit., *Language: A Biological Model*, cit., and compilation of papers *Language Conventions made simple*, cit., *Naturalizing Intentionality*, cit., R.G. Millikan, *In defense of public language*, in L. M. Antony & H. Hornstein (eds.), *Chomsky and His Critics*, Blackwell, Malden MA, 2003, p. 215-235.

²⁰ M. Matczak, *Does Legal Interpretation Need Paul Grice? Reflection on Lepore and Stone's Imagination and Convention*, in *Polish Journal of Philosophy*, Spring 2016, Vol. X, n. 1, p. 67-87.

²¹ J. Fodor, *A Theory of Content and Other Essays*, p. 52 ff.

*Categories*²², Millikan construes a highly elaborated and biologically coined theory of function where technical terms like ‘proper function’, ‘reproductively established family’, ‘reproduction’, ‘focused functions’ and so on do all the work. Here I am going to work with her later simplified version of the theory which I found mainly in her 2004 book *Varieties of Meaning* and her compilation of papers *Language: a Biological Model* (central papers I’ll refer to are: *Language Conventions made simple, In defense of Public Language and Naturalizing Intentionality*)²³.

2. Through what I called teleosemantics 2.0; I will try to provide a simplified version of her theory by focusing on the following key elements:

a. Natural conventions (which entail her central definition of direct proper function, which roughly means purpose, linguistic devices have functions in this sense, and these functions can be stabilized, conventional); “require neither coordinations, regular conformity, nor rational underpinnings. Natural conventionality is composed of two, quite simple, related characteristics. First, natural conventions consist of patterns that are ‘reproduced’ (...). Second, the fact that these patterns proliferate is due partly to weight of precedent (...)”²⁴.

b. Reproduction: “A pattern has been ‘reproduced’ if its form is derived from a previous item or items having, in certain respects, the same form, such that had the model(s) been different in these respects, the copy would have differed accordingly”²⁵.

This is the first basic feature of natural conventionality, it is perpetuated by reproduction. In this sense natural conventions are handed down. Millikan gives the “shirt buttoning” example: “Suppose that we all button our shirts in order from top to bottom, but that we do so quite independently, each having independently discovered for herself that this is the easiest way to get the right buttons into the right holes. This convergence of behavior would not result from shirt buttoning techniques being handed down, hence would not be conventional behavior”²⁶.

There are two ways of reproduction: by being copied from one another directly, the flag and mailman example; or by counterpart

²² R.G. Millikan, *Language, Thought and Other Biological Categories New Foundations for Realism*, cit.

²³ R.G. Millikan, *In defense of public language*, cit; R. G. Millikan, *Language: A Biological Model*, cit.

²⁴ R.G. Millikan, *Language: A Biological Model*, cit., p. 2.

²⁵ *Ivi*, p. 3

²⁶ *Ivi*, p. 3.

reproduction (nuts and bolts reproduction), the dancing or the handshake example. According to the author, words and also many aspects of grammar are reproduced in this way²⁷.

c. Precedent (Lineage): “But not all reproduced behaviors are conventional behaviors. (...) To be thought of as conventional, a reproduced pattern must be perceived as proliferated due, in important part, to weight of precedent, not to its intrinsically superior capacity to produce a desired result”²⁸. – the opening a jar by immersing it in hot water example.

A pattern is considered conventional only if thought to have little tendency to emerge or reemerge in the absence of precedent. Another pattern might have emerged just as well, as Millikan says. Here the example is the proliferation of the use of standard units of measure.

d. Coordinating and non-coordinating conventions: this is a subclass of natural conventions. For Millikan however, there are no speaker intentions involved in drafting them.

Coordinating conventions: conventional patterns of activity that proliferate, in part, because (causally because) they achieve coordinations. “Some coordinations require the partners to act the same way, others to act differently. Coordinating social distance requires acting similarly”²⁹. Millikan gives the telephone, or the dancing example require different actions to achieve coordination.

Non coordinating conventions: conventional patterns of activity that proliferate without the need to achieve coordinations. Here, the example are expletives (saying “Damn!” when annoyed and “Ouch!” when it hurts) or the convention of calling cats with “kittykittykitty” (United States) or “pusspusspuss” (England) – examples by Millikan³⁰.

e. No need for regular conformity: this is defined as long standing “tradition of taking conventions as such to involve regular conformity within a group either de facto or de jure”³¹. Millikan says this is mistaken (in light of her natural conventions). As to non coordinating conventions: is clear that people need not to conform. But as to coordinating conventions Millikan distinguishes 3 types: blind coordinations (partner must act before having evidence concerning the other actions, example interrupted

²⁷ *Ivi*, p. 5 and 6.

²⁸ *Ivi*, p. 7.

²⁹ *Ivi*, p. 9.

³⁰ *Ivi*, p. 2 footnote 4.

³¹ *Ivi*, p. 11.

telephone connection), open coordinations (absence of any convention, spontaneous coordination, the moving the couch example) and half-blind coordinations (between the other two).

Millikan argues that only totally blind coordinations, depend for their effectiveness on a degree of regular conformity; example driving on the right/left.

Rules can indeed mandate the reproduction of conventional patterns, this is true, for example, of the conventional patterns constituting most games and of the pattern that is parliamentary procedure. But the author argues that conventional rules, just as such, are not prescriptive (they only describe conventional patterns). It might of course happen that “conformity to a convention may be or become mandated and sanctioned”³². Example important blind conventional patterns, like driving on the right are written into law (and thus become prescriptive).

f. Crisscrossing Conventions/Solving Ambiguities: Conventional Patterns or portions of them can be used outside the conventions: fragments of conventional patterns can be used in secondary ways. The participants in the activity only need to have an understanding of the original context from which the items being played with were taken, and that the ways in which they are playing do not require any further knowledge or skills³³. Her examples here are word games, irony or metaphor. Fragments with the form as those used in a conventional pattern can be used in a way that has nothing to do with that convention, thus creating ambiguities. This happens when one isn't sure within which chain of lineage the speaker is acting³⁴. Millikan gives the example of raising one's hand as request to speak, and as a vote; example of the conventional use of 'bank' to refer to riverbanks but also to financial institutions. The solution here is to identify which of the lineages is instantiated in the concrete situation (the hearer has to identify on which family of previous instances this instance was copied from and does not need to read the speaker's mind – search for his intentions).

3. Through a thorough critique of Gricean intentions:

In Millikan's work, intention is naturalized (using as example two grammatical moods, the indicative and the imperative) – hence the pun in the title of this paper.

³² *Ivi*, p. 15.

³³ *Ivi*, p. 17.

³⁴ M. Matczak, *Does Legal Interpretation Need Paul Grice? Reflection on Lepore and Stone's Imagination and Convention*, cit.

We saw that a word (or other language device) has a certain conventional purpose. The idea is that within a lineage, i.e. due to a precedential chain of usages, the word acquired a conventional, public function.

This function does not depend upon speaker's intentions or purposes (parrot example)³⁵. Even when a word is parroted by a parrot the produced token is a member of a family of lineages (reproduced according to precedent). The speaker's intention can give the utterance a different purpose, which Millikan refers to as a "derived alternative" function. This alternative function may or may not be the same as the conventional, primary purpose (known as the "direct stabilizing function") and may or may not be widely accepted and conventional (as in the case of overlapping lineages).

A speaker can use a language device just as he can use a tool - to perform a function that is not however the device's own function: a hammer can be used as a weapon, a human hair can be used as a cross hair on an instrument.

Millikan then applies this to two grammatical moods: the main conventional function of the imperative being producing compliance; and the main conventional function of the indicative being conveying information (producing true belief).

Millikan gives the example "Take out a good life insurance before you do that"³⁶. Here the imperative has a parasitic function upon the function of just conveying information ("that is a risky activity"). Such usages can of course be themselves conventional (as is the case for irony, sarcasm, etc. which are learned by speakers, from generation to generation).

Just like tools "language forms are often used to serve functions that are not their own. Sometimes these extrinsic ends are ends that also interest the hearer and sometimes they are not. Uncooperative uses of conventional forms include lying to the hearer, embarrassing the hearer, insulting the hearer, purposely putting the hearer in an awkward position, and so forth. Cooperative uses include pretend uses (acting, joking) and the whole hodgepodge of Gricean implicatures"³⁷.

This is the general underpinning. As a side note, I now want to briefly portray her main argument in deconstructing Grice's "make belief game". It is worth noticing that there is an interesting parallel between Millikan's argument and Bulygin's argument in deconstructing Kelsen's design of the principle of prohibition (but this is just a note). I want to do this slowly and therefore we need to recall Grice's construction.

Grice gives the following example:

³⁵ R.G. Millikan, *Language: A Biological Model*, p. 63 onwards.

³⁶ *Ivi*, p. 47 and 48.

³⁷ *Ivi*, p. 48.

Imagine you are stopped at night at an intersection, when the driver in an oncoming car flashes her lights. You reason as follows: “Why is she doing that? Oh, she must intend me to believe that my lights are not on. If she has that intention, it must be that my lights are not on. So, they are not”³⁸.

The elements involved in his “make believe game” are: (i) that the hearer believes “p” (that your lights are not on); (ii) that the hearer recognizes the speaker’s intention to make the hearer believe “p” (that your lights are not on) and (iii) that this recognition of the speaker’s intention be part of the hearer’s reason for believing “p” (that your lights are not on). The main idea is that meaning is formed by the audience’s recognition of the speaker’s communicative intention³⁹.

Millikan calls this a nested intentional structure which, in Grice’s account, must underlie all normal communicative uses of language and builds a thought experiment in which she works with the negative version and builds infinite layers of intention: take the imperative mood device: “do A”.

Millikan’s argument, in a nutshell, is the following: from having the belief that *P* would be incompatible with doing a thing, that in doing that thing one must have the belief *not P*. This is a fallacy (which applies equally to intentions, expectations).

She gives the Jack the Ripper example: “If I believed that Jack the Ripper was under my bed, I would not crawl into my bed and instantly fall asleep. In crawling so into bed, I clearly do not believe ‘Jack is under my bed’. But it does not follow that I believe ‘Jack is not under my bed’. Indeed I may never had heard of Jack. Likewise, from the fact that if I had reasons to believe that a speaker did not intend that I comply with an imperative then I likely would not comply, it does not follow that in normal cases of compliance I believe that the speaker intends compliance”⁴⁰. Here, Millikan explicitly addresses (and invalidates) Grice’s construct of meaning - an alternative externalist account of meaning is presented.

I hope that after this brief incursion into Millikans Telesemantics the parallels are now also visible to the reader. To sum up the overlap, I want to highlight the notions of precedent, natural convention and, mainly, the absence of rationality or intention in the conventional framework (which flow, mostly, from Celano’s first argument, see above).

Both Celano and Millikan take the notion of precedent as central in defining conventional behavior. In Millikan it is the weight of precedent that makes a reproduced pattern be thought of as conventional, in Celano it is the precedent carving process of identification of analogies which determines conventionally correct use. Celano says, with Searle, that the key is that certain analogies and not others appear obvious to us, and Millikan says that the key is that a pattern is

³⁸ P. Grice, *Studies in the Way of Words*, Harvard University Press, Cambridge, 1989.

³⁹ I. Skoczeń, *Implicatures within Legal Language*, Dordrecht, Springer, 2019, p. 137.

⁴⁰ R.G. Millikan, *Language, Thought and Other Biological Categories New Foundations for Realism*, cit.

thought to have little tendency to emerge or reemerge in the absence of precedent: another pattern might have emerged just as well.

Celano starts out his journey into pre conventions by noticing a (neglected) meaning of the term (a propos his four-pronged analysis of the word 'convention'); tacit conventions that are not backed by a train of reasoning (and then finds evidence of them in several bodily schemes, what he calls embodied diagrams). Millikans Natural Conventions are defined precisely by this absence of train of reasoning, they require neither coordinations nor rational underpinnings. The two sole defining features of natural conventionality are reproduction (reproduced patterns) and precedent (patterns proliferate due to weight of precedent).

If I am right, Celanos Pre Conventions are in essence (and leaving out the normative element for now) not much different from Millikans Natural Conventions. Granted, this is a somewhat marginal finding – but, I believe, has some consequences. First, it subtracts originality from Celanos first (and main) claim that 'entities such as embodied conventions exist'. Second, by being closest to naturalist accounts of meaning it seems to add force to the demand for explanation as to where exactly the normativity part of these conventional facts comes from (meaning naturalists as 'those do not think meaning, intentionality or normativity can be among the building blocks of the universe'⁴¹). In such it asks for further grounding for the second and third claims as to the 'inherent normativity of these embodied de facto regularities'.

This seems to be, also, the one striking clash between Celanos and Millikans constructs. Millikan as a naturalist dispenses with conformity quite literally (see above). Millikan states that conventional rules, just as such, are not prescriptive (they only describe conventional patterns). It might of course happen that conformity to a convention may become prescriptive and written into law but this is contingent.

It seems, thus, that her natural conventionality does not imply normativity (her answer to the normativity problem is to naturalize meaning by anchoring it in biological 'norms')⁴².

In a way this clash seems to be what Moreso had in mind when he talks about the fundamental incompatibility between the ontological thesis and the normative bite thesis⁴³. Granted, instead of (only) asking for additional grounding of Celanos embodied normativity thesis (pre conventions are causal facts and norms at the same time) Moreso declared it intrinsically incompatible.

⁴¹ See A. Hattiangadi, *Is Meaning Normative?*, in *Mind and Language*, 2006, Vol. 21, p. 220-240, and J. Fodor, *A Theory of Content and Other Essays*, cit.

⁴² On this see S.K. Shin, *Meaning and normativity: A study of teleosemantics*, The University of Texas at Austin ProQuest Dissertations Publishing, 3116182, 2003, p. 51 forward. But this is not uncontroversial.

⁴³ J.J. Moreso, *Celano: ontological commitment and normative bite*, cit.

4. Normativity Naturalized?

As framed it earlier, the essential question then becomes: What exactly makes these pre conventions normative? Let us first look at Celano's arguments.

We saw above that Celano explains what he has in mind with regard to these pre conventions through a detailed exemplification (the correct swimming stroke in the front crawl). However, while doing a good job at justifying his first claim (existence of these entities) this section of the paper falls short of justifying their normative nature. And I think reasonable doubt can also be raised about whether Celano is able to drive home the normativity thesis in the argument section of his essay.

As I see it, the issue is the following: either Celano gives a concrete account of what he thinks encompasses a definition of normativity or if (as it seems from his replies on 'Exploring the Background') he wants the reader to take normativity in a common, almost intuitive sense (as synonymous to prescription) then this prescriptiveness of pre conventions must flow from his theoretical construction⁴⁴. And I am not sure it does. The lack of grounding as to the second and third claims has been raised elsewhere (D'Almeida) and refuted (Celano)⁴⁵.

From a purely textual standpoint, although repeatedly invoking the label 'normative', Celano actually opens his main argumentative section by stating his intent of proving the existence of the entities he calls Pre-Conventions (this was also the main aim of the exemplificatory section):

I now turn to a summary presentation (it is, in fact, the evocation of arguments that I assume to be, more or less, already known to the reader) of some arguments that support the view **that there exist pre-conventions** (...)⁴⁶

Apart from stating the normative nature of these (existing) entities what ground does Celano offer to support the normativity thesis?

I think, essentially, one line of thought: the idea that pre-conventions determine the correct use. This may be broken down into two further arguments: correctness (as an argument for normativity) and identity (they fix the identity of the regularity concerning correct use). Both, I believe, are insufficient to prove normativity in the strong and intuitive sense of prescription.

As for the correctness argument, it is based on the distinction (stemming originally from the debate about normativity of meaning) between prescriptiveness and correctness.

⁴⁴ The lack of definition of fact and norm has been much raised (and admitted) in the aftermath of the paper. See, among others, R.E. Sánchez Brigido, *Celano on normative facts*, cit.

⁴⁵ See L.D. D'Almeida, *On pre-conventions as 'normative facts'*, cit., and B. Celano, *Pre Conventions, A fragment of the Background*, cit.

⁴⁶ *Ivi*, p. 7.

The argument goes as follows, saying that pre-conventions are normative is ambiguous, potentially meaning either that a pattern or direction of use (the correct one) is prescribed or that it merely determines, describes the correct pattern of use⁴⁷.

The underlying idea here is that the idea of a ‘correct use’ intuitively takes us into the field of rule following: “a speaker who means something by an expression must be following a rule (norm) for its correct application”⁴⁸.

We see correctness conditions (description of precedents), we see convergent human behavior (which can also be taken individually, say a speaker who follows the precedent) and we assume intuitively there must be some sort of rule that guides this behavior and its following. This is, however, contingent. Correctness conditions and convergent human behavior are descriptive and as such closer to hypothetical means/end imperatives (so called technical norms) – but I will return to this point in a minute.

True, it might very well be that the correct use finds its way into an actual norm prescribing behavior (be it via legislation or custom) – think of a norm prescribing to drive on the right - but again, this is contingent.

It seems that in Celano's construct, these precedent forming facts, these embodied diagrams to establish correctness are not prescriptive but merely fix, draw, describe the correct way to proceed. If I am right in assuming that Celano's Pre-Conventions (based on the argumentative material provided in his paper) point only into this correctness direction then it would be fair to say, I think, that his Pre-Conventions are also Pre-Normative (or normative in a weak sense).

In this connection it is interesting to notice that in *Exploring the Background* and confronted with arguments as to the lack of grounding of the normativity thesis, Celano shifts from correct use to right use and adds the (I believe essential) demand of ‘guiding behavior’:

A normative fact, in this sense, is a fact that fixes, determines, the right way of doing something, and in this way guides behaviour.⁴⁹

This, I believe, is also what Millikan is after by excluding the need for conformity from her natural conventions. Her normativity (if it still can be called such) only demands reproduced pattern which proliferate due to weight of precedent. Millikan admits that rules can indeed mandate the reproduction of conventional patterns, (eg. conventional patterns constituting most games). Yet conventional rules, just as such, are not prescriptive but only describe conventional patterns.

⁴⁷ This line of thought, although applied to the debate about normativity of meaning can be found in A. Hattiangadi, *Is Meaning Normative?* cit.

⁴⁸ A. Hattiangadi, *Is Meaning Normative?* cit., p. 222.

⁴⁹ B. Celano, *Pre Conventions, A fragment of the Background*, cit.

This distinction (of correctness versus prescriptiveness) mirrors the old prescriptive/ descriptive divisions in defining the borders of normativity. The debate about what makes up normativity is too large to be dealt with in this short paper format – so just a few reminding words as to something I have developed elsewhere⁵⁰.

The terms ‘law’, ‘norm’ or ‘rule’ are often used without a precise delimitation and somewhat synonymously. Simply put the meaning of these central terms seems to be, to some extent, indeterminate.

V. Wrights opening lines of ‘Norm and Action’ are a good example of this. Partial synonyms of ‘norm’, he says, are ‘pattern’, ‘standard’, ‘type’, ‘regulation’, but also ‘rule’ and ‘law’⁵¹. Norm is a vague and heteronomous term⁵².

Max Black, on the other hand, trying to solve the exact same problem of the definition of the ‘normative’ (put vaguely) does so focusing on the word ‘rule’ (as ‘regulation’, ‘instruction’, ‘precept’ or ‘principle’)⁵³.

These unclarities contribute to another related phenomenon – the proliferation of types of norms or levels of normativity. Recall famous distinctions such as primary and secondary norms (Hart), regulative and constitutive norms (Searle) duty imposing and power conferring norms (Hart, Kelsen, Bentham), directives, technical norms, prescriptions or regulations (Von Wright), regulations, instructions, precepts or principles (Max Black) and so on⁵⁴.

While in V. Wright ‘normativity’ goes beyond prescriptiveness (imperative mood) - he defines prescription (the norm par excellence) narrowly and therefore needs several types of norms - Black conceives ‘normativity’ as necessarily tied to the imperative - he defines norm as the linguistic form of the imperative and therefore does not need types of norms but only meaning usages or senses.

Be that as it may, the underlying idea seems always to be that ‘norm’, the normative is intuitively linked to prescriptive speech.

As I stated elsewhere, the definition of the normative through two types of speech is however only an apparent solution⁵⁵. Accepting or denying that normativity is resumed to prescriptive speech seems dependent upon something else – your working definition of norm. Whether there are several levels of normativity (related to the borders and strictness of the adopted norm definition), whether normativity equals prescriptiveness, whether there is a problematic

⁵⁰ Section 2 of my thesis on *Language Related Indeterminacy in the Law* (currently awaiting publication).

⁵¹ G.H. v. Wright, *Norm and Action. A Logical Enquiry*, Routledge, London, 1963, p. 1.

⁵² *Ibidem*.

⁵³ M. Black, *Vagueness. An Exercise*, in *Logical Analysis, Philosophy of Science*, 1937, Vol. 4, p. 427-455.

⁵⁴ This list was partially taken from D.G. Lagier, *Acción y Norma en G.H. von Wright*, CEC, Madrid, 1995, p. 229 and 230.

⁵⁵ Section 2 of my thesis on *Language Related Indeterminacy in the Law* (currently awaiting publication), p. 37.

distinction between regulative and constitutive norms, it all boils down to the working definition of norm.

In the absence of a clear difference in linguistics (speech, modality) explaining the differences between kinds of imperative used to exemplify norm types (say, hypothetical means/end imperatives), the obvious answer seems to be that what explains these differences are the defining elements of normativity⁵⁶. This would mean, in particular, that the option of limiting normativity to one case of deontic modality is a conceptual choice and not a linguistic given.

If I am right, also the difference between a norm proper and say a technical guideline (the hypothetical means/end imperative) is obtained from elsewhere, not from the linguistic form but from the definitory elements of our adopted norm definition (say, for example modalization of conduct). The linguistic form (grammatical modalization) is only a first indicator. There is a standard grammatical form for directives (but even this is not bulletproof, i.e. sentences which contain no deontic terms may nevertheless have directive meaning and vice-versa): linguistic indicators (but only that) are the use of the imperative mood or some terms with specific deontic meaning⁵⁷.

It seems thus, that the identification of normativity proceeds in several steps or layers; 1) identification of the linguistically formulated text; 2) access to the meaning content of that text (semantic compositionality and grammatical modality) and 3) something more, something related to the adopted definitory elements of normativity, such as, as a matter of example, modalization of conduct or enactment by a normative authority.

Just to sum up this already too long argument for the current purposes, I take Hattigandi to mean, not that it is descriptive linguistic modality which distinguishes correctness from prescriptivity but rather an assumed working definition of norm - something along the lines of modalization of conduct. And it is precisely this modalization of conduct which is, I believe, lacking in Celanos description of Pre Conventions (despite his later addenda of pre conventions as essentially 'guiding behavior').

As for the identity argument, I think it allows for two different readings. First, it can be read in the sense of factual patterns fixing the identity of a norm (which prescribes the correct use) and here the (debatable) question would be whether fixing the identity of a norm makes the relevant facts also intrinsically normative.

⁵⁶ On the exact arguments of why there is no such clear-cut difference see *Language Related Indeterminacy in the Law* (currently awaiting publication), p. 33 onwards. The basic line of thought is to reconduct the topic to grammatical modality (and formal natural language semantics) instead of the mainstream speech-act theory.

⁵⁷ A. Ross, *Directives and Norms*, Humanities Press, New York, 2009.

Or (and this I think is Celanos claim) read in the sense of fixing only what constitutes what is regular, i.e. pre conventions underlaying facts simply fix the regularity (as Celano says it is the respect under which the behaviors are regular):

That certain analogies (and not others) appear obvious to us is not a mere regularity it is also **what fixes the identity of the regularity itself determining correct use.**⁵⁸

If this is the case, and with Celano drawing the dichotomy between regularities and norms as one and the same with facts and norms, then what is proven here is, again, only the factual or causal side of a regular pattern of behavior pointing towards correct use (and not normativity in the sense of prescriptiveness).

All things considered, I do not find that Celano is able to provide enough grounds for a strong normativity (prescriptiveness) of his Pre Conventions.

Although maybe taking away some of the more dramatic effects of his paper, one viable alternative reading would be to interpret his normativity claim in this naturalized and weaker sense of correctness – which would fit with the naturalistic claim a la Millikan as well as, in one strike, solve Moresos dilemma and avoid Humes and Moores philosophical traps. Celanos pre conventional normativity would be naturalized.

Another alternative reading could stem from the insufficiency of the prescriptive/descriptive division (as briefly mentioned above). In this sense and if all depends on a conceptual choice as to what we include in the normative, Celanos descriptive correctness could still be fully normative (say, for instance the author defines normativity conceptually in a, granted, very weak way).

At the end, it might very well be that I'm only pointing out Moresos category mistake between facts and norms and causes and reasons with slightly different clothes (language philosophical clothes).

But if I am right about this parallel with normativity of meaning, then (as a last alternative reading) arguments for prescriptivity of meaning - i.e. meaning determining regularities tell the speaker what he ought to do (see Hattiangadi on Kripke) can come to Celanos aid in upholding his normative fact theory⁵⁹.

Bibliography

M. Black, *Vagueness. An Exercise*, in *Logical Analysis, Philosophy of Science*, 1937, Vol. 4, p. 427-455

⁵⁸ B. Celano, *Exploring the Background, Puzzles, Afterthoughts and Replies*, cit., p. 9.

⁵⁹ A. Hattiangadi, *Is Meaning Normative?* Cit.

- B. Celano, *Pre Conventions, A fragment of the Background*, in *Revus*, 2016, Vol. 30, p. 9-32
- B. Celano, *Exploring the Background, Puzzles, Afterthoughts and Replies*, in *Revus*, 2017, Vol. 33, p. 53-82
- P. Chiassoni, *Do jurists need pre-conventions?*, in *Revus*, 2017, Vol. 33, p. 37-43
- L.D. D'Almeida, *On pre-conventions as 'normative facts'*, in *Revus*, 2017, Vol. 33, p. 9-13
- J. Fodor, *A Theory of Content and Other Essays*, MIT Press, Cambridge, 1990
- P. Grice, *Studies in the Way of Words*, Harvard University Press, Cambridge, 1989
- A. Hattiangadi, *Is Meaning Normative?*, in *Mind and Language*, 2006, Vol. 21, p. 220-240
- P. Horwich, *Meaning*, Oxford University Press, New York, 1998
- P Horwich, *Reflections on Meaning*, Oxford University Press, New York, 2005
- D.G. Lagier, *Acción y Norma en G.H. von Wright*, CEC, Madrid, 1995
- M. Matczak, *Does Legal Interpretation Need Paul Grice? Reflection on Lepore and Stone's Imagination and Convention*, in *Polish Journal of Philosophy*, Spring 2016, Vol. X, n. 1, p. 67-87
- R.G. Millikan, *Language, Thought and Other Biological Categories New Foundations for Realism*, MA: MIT Press, Cambridge, 1984
- R.G. Millikan, *Language Conventions Made Simple*, in *The Journal of Philosophy*, April. 1998, Vol. 95, n. 4, p. 161-180
- R.G. Millikan, *In defense of public language*, in L. M. Antony & H. Hornstein (eds.), *Chomsky and His Critics*, Blackwell, Malden MA, 2003, p. 215-235
- R.G. Millikan, *Naturalizing Intentionality*, in *The Proceedings of the Twentieth World Congress of Philosophy*, 2000, Vol. 9, p. 83-90
- R.G. Millikan, [Language: A Biological Model](#), online edn., Oxford Academic, Oxford, 2005
- R.G. Millikan, *Varieties of Meaning. The 2002 Jean Nicod Lectures*, MIT Press, Cambridge, 2006
- J.J. Moreso, *Celano: ontological commitment and normative bite*, in *Revus*, 2016, Vol. 30, p. 77-80.
- A. Ross, *Directives and Norms*, Humanities Press, New York, 2009
- R.E. Sánchez Brigido, *Celano on normative facts*, in *Revus*, 2017, Vol. 33, p. 15-28
- M. Segatti, *What laws are experienced as*, in *Revus*, 2017, Vol. 33, p. 29-36

J.R. Searle, *Wittgenstein and the Background*, in *American Philosophical Quarterly*, 2011, Vol. 48, n. 2, p. 119-128

S.K. Shin, [*Meaning and normativity: A study of teleosemantics*](#), The University of Texas at Austin ProQuest Dissertations Publishing, 3116182, 2003

I. Skoczeń, *Implicatures within Legal Language*, Dordrecht, Springer, 2019

G.H. v. Wright, *Norm and Action. A Logical Enquiry*, Routledge, London, 1963