

Practice Theory and Law

On Practices in Legal and Social Sciences

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Chapter 15

The implicit and fundamental normative structure of legal practices

Practical attitudes of recognition and
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Pedro Caballero Elbersci

Introduction

This chapter has three main aims. The first is to make explicit the implicit and fundamental normative structure of the *legal practices* of a community. The second consists of explaining the specific way in which the *members* and *the legally relevant authorities* of a community *are instituted*. The third lies in accounting for the specific way in which the *legal norms* of that community *are constituted and articulated*.

The following argumentation works on two different levels. On the one hand, there is the *metatheoretical* level regarding the theory of law – i.e., positions *about* the normativity of sociolinguistic practices from the methodological, conceptual, ontological, metaphysical, pragmatic and semantic points of view. The general metatheoretical perspective that will be used here is the sociolinguistic and normativistic pragmatism designed by Ludwig Wittgenstein (1953, 1958) and systematized, as well as extended in a particular manner, by Robert Brandom (1994, 2000, 2002, 2008, 2009, 2011, 2019). On the other hand, there is the *theoretical* level regarding law – i.e., positions *about* the normativity of legal practices from the point of view of the general theory of law.¹

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1 The expression “general theory of law” here is broadly understood as follows. A *theory* is a discourse (i.e., a set of meaningful statements of different kinds) that aims to identify the central or characteristic features of its object of study and to reconstruct its object of study in a way that is externally representative of reality – that considers those central features – and internally systematic, consistent, simple, etc. A theory is *general* if it does not only deal with a singular instantiation of its object of study, but instead with the central features shared by its different instantiations. Finally, as will be argued in this chapter, *law* is composed of a set of specific social (and legal) norms constituted and articulated through some fundamental elements of the sociolinguistic and implicitly normative practices of a community.

The positions about legal norms from the point of view of the general theory of law that will be held in this chapter will be built up from a metatheoretical distinction that I consider crucial to account for the implicit and fundamental normative structure of legal practices. This distinction conceptually separates two kinds of practical attitudes that can be manifested – and in fact are constantly manifested – by participants of the sociolinguistic practices of a community: *practical attitudes of acceptance* and *practical attitudes of recognition*. This distinction will be drawn based on the ideas that Brandom (1994, 2002, 2009, 2019) has been presenting and refining about the practical personal autonomy of participants, which he takes from Kant, and the reciprocal social recognition among participants, which he takes from Hegel.

This distinction will be used, developed, and extrapolated to the general theory of law to account for the implicit and fundamental normative structure of legal practices. This explanatory task is important to account, more specifically, for the *constitution* of legal norms – i.e., to answer the *metaphysical* question about how the legal norms of a community come into existence.² This explanatory task is also important to account, more specifically, for the *articulation* of the content of legal norms – i.e., to answer the *semantic* question about how the content of the legal norms of a community is articulated.³

The general strategy of this chapter is to extend the metatheoretical positions on the domain of the theory of language about contents of meaning and the implicit and fundamental normativity of sociolinguistic practices to the theoretical positions on the domain of the theory of law about legal norms and the implicit normativity of legal practices. These two domains are connected, among other things, because legal norms are composed of contents of meaning. More explicitly, language is composed of a set of contents of meaning constituted by the participants of the sociolinguistic and implicitly normative practices of a community, and law is composed of a set of legal norms, which are composed of contents of meaning.

Accordingly, the challenge taken in this chapter is (i) to make explicit the implicit and fundamental *normative structure* of sociolinguistic practices,

2 This metaphysical question is related to the *ontological* question about what kind of entities legal norms are. In contemporary analytic philosophy, there is no agreement on the explanatory priority between metaphysics and ontology. In large part, this discussion depends on how these terms are defined. In any case, according to the way in which this distinction has just been presented, the answer to the ontological question has explanatory priority over the answer to the metaphysical question. In this chapter, it will be argued that, although this will not be the main point of argumentation, legal norms are abstract – but not platonic – entities of reality.

3 This semantic question is related to the *pragmatic* question. According to Brandom, pragmatics answers the question of how the content of meaning (precisely, pragmatic significance) is *constituted*, while semantics answers the question of how the content of meaning (precisely, conceptual content) is *articulated*. According to Brandom, pragmatics has explanatory priority over semantics.

(ii) to identify the *fundamental elements* of this normative structure for the constitution and articulation of the contents of meaning, and (iii) to identify the *specific functions* of these fundamental elements for the constitution and articulation of legal norms.

In this chapter, it will be argued that the difference between contents of meaning and legal norms is not ontological, but metaphysical. Ontologically, contents of meaning and legal norms are abstract – but not platonic – entities of reality. However, metaphysically, although both depend on the sociolinguistic and implicitly normative practices of a community, legal norms – unlike contents of meaning – depend on the specific functions performed by the fundamental elements of those practices: practical attitudes of recognition and practical attitudes of acceptance.

This is the argumentative structure of this chapter. In the second section, it will be held that social norms, which are composed of contents of meaning, are constituted and articulated in the sociolinguistic and implicitly normative practices of a community. In the third section, it will be claimed that the fundamental elements of those practices are the practical attitudes of participants, and then a distinction between practical attitudes of recognition and practical attitudes of acceptance will be made. In the fourth section, it will be argued that practical attitudes of recognition perform a crucial function in the *institution* of the *members* and the *legally relevant authorities* of a community. In the fifth section, it will be argued that practical attitudes of acceptance perform a crucial function not only in the *constitution of legal norms* – i.e., the way in which they come into existence –, but also in the *articulation* of their *contents of meaning*.

Contents of meaning and the sociolinguistic and implicitly normative practices of a community

In this section, it will be held that social norms are composed of contents of meaning and that contents of meaning are constituted and articulated in the sociolinguistic and implicitly normative practices of a community.

This is the central position of the sociolinguistic and normative pragmatism designed firstly by Wittgenstein (1953 and 1958) and then systematized, as well as extended in a particular manner, by Brandom (1994, 2000, 2002, 2008, 2009, 2011, 2014a and 2019).

The first part of this position expresses that the contents of meaning are constituted and articulated in the sociolinguistic practices of a community. The motivation for subscribing to the first part of this position arises, among other things, from the rejection of platonism. Platonism is a metatheoretical perspective whose core position is that contents of meaning are located in an abstract and *independent* dimension of reality.

According to a common way of understanding these terms, *abstraction* is the property of an entity or a class of entities being ontologically different

from the natural or artifactual entities of the concrete dimension of reality.⁴ The concrete dimension of reality is explainable in terms of entities located in space and time. In this sense, the abstract dimension of reality is not explainable in terms of entities located jointly in space and time. Instead, *independence* is the property of an entity or class of entities not being metaphysically related to another entity or class of entities. Thus, an entity is independent when it exists, but its existence does not occur by virtue of another entity or class of entities, while an entity is dependent when it exists, but its existence occurs by virtue of another entity or class of entities.

The main problem for platonism is that it opens an unexplained theoretical gap between our practical experience – i.e., knowing how – to which we have direct access and the theoretical knowledge – i.e., knowing that – to which, according to platonism, we would only have indirect access. By maintaining the independence of the abstract dimension from the concrete dimension, platonism has serious difficulties in explaining the relation that would exist between this abstract and independent dimension, where contents of meaning would be located, and the concrete dimension of reality, where our actions and practical attitudes are located. In this way, this abstract and independent dimension ends up being an unexplained theoretical presupposition, but through which the use of language, among other things, is intended to be explained.

However, according to the perspective of sociolinguistic pragmatism, contents of meaning are not located in an abstract and independent dimension, but instead in a specific segment of the concrete dimension of reality: *sociolinguistic practices*. For sociolinguistic pragmatism, theories about abstract objects of reality – e.g., contents of meaning – should be developed based on the sociolinguistic practices in which these objects are used for different practical purposes. From this perspective, theoretical knowledge about the world should be explained based on the sociolinguistic practices. If theoretical knowledge is explained based on the sociolinguistic practices, then the unexplained theoretical gap that platonism unnecessarily tries to open is not finally opened.⁵

Sociolinguistic pragmatism also rejects mentalism. Mentalism is a metatheoretical perspective whose core position is that contents of meaning are not located in an abstract dimension independent from the concrete dimension, but primarily in a specific segment of the concrete dimension of reality: the mind or, more precisely, the representational mental states of

4 From this understanding, “artifactual entities” are those entities of the concrete dimension of reality that are not purely natural, but have been manufactured by human beings using natural elements, e.g., cars, computers, chairs, etc.

5 This position that rejects platonism, moved to the general theory of law, also rejects classical legal naturalism. Moreover, this position is compatible with – and it is a possible interpretation of – the thesis of the social sources of law that legal positivism centrally holds.

individuals. For mentalism, mental states represent objects or, more paradigmatically, complete states of affairs – i.e., sets of objects and relations between them – and this is the dimension where contents of meaning are primarily located.

Different arguments have been presented against mentalism. Nevertheless, the sociolinguistic pragmatism counterargument that I consider most important was firstly put forward by Wittgenstein (1953), later developed by Richard Rorty (1979, 1982) and finally specified by Huw Price (2011, 2013). It expresses that mentalism, by maintaining that representation is the primitive or at least primary notion in the explanatory order of metaphysics, semantics and epistemology is committed to the position that uses of language, to be meaningful, have to represent an object or state of affairs of the external world – external regarding language or the mind of individuals. From this perspective, meaningful uses of language have a single function – or an ultimate function, according to some versions of representationalism – which is to represent some object or state of affairs of the external world. However, not all meaningful uses of language have as their single or ultimate function representing the world – whether conceived in naturalistic terms, which accept only the existence of concrete objects, or in terms that are not necessarily naturalistic, which also accept the existence of abstract objects. In short, meaningful uses of language might have multiple functions and only one of them is to represent an object or state of affairs of the world – whether concrete or abstract.

Sociolinguistic pragmatists maintain, instead, that the contents of meaning are not primarily located in the minds of individuals, but in the sociolinguistic practices of a community. Furthermore, this perspective holds that these practices are implicitly normative. Thus, the complete position is that the contents of meaning are primarily located in the sociolinguistic and implicitly normative practices of a community.⁶

The second part of this pragmatist position holds that these sociolinguistic practices, where contents of meaning are constituted, are implicitly

6 According to this perspective, social norms are only constituted in the general context of the sociolinguistic and implicitly normative practices of a community. From a historical point of view, as Brandom said (e.g., 1994, pp. 3–5; 2019, pp. 29–30), when we (human beings) arrived in this world, the world did not contain norms, but only natural laws – which we discover thanks to natural sciences. Since then, we have been creating and delimiting the social norms we have been giving to ourselves. From a conceptual point of view, social norms are cultural creations we establish within our communities. From an explanatory point of view, we create and delimit social norms through our intersubjective relations, i.e., through our intentional actions – among them, paradigmatically, linguistic actions – and our practical attitudes within the sociolinguistic practices of our communities. Legal norms are social norms in this sense. Legal norms could not exist independently – i.e., outside the general context – of the intersubjective, linguistic and implicitly normative practices of a community.

normative; in the sense that they have an implicit and fundamental normative structure that allows the constitution and articulation of contents of meaning.

Wittgenstein (1953, §5, §7, §21, §23, §43, §197) designed this sociolinguistic and normativistic pragmatist metatheoretical perspective. According to him, the explanation of meaning should begin with language games and continue with uses of language. Following Wittgenstein, Brandom (1994) said: “One of the overarching methodological commitments that orients this project is to explain the *meanings* of linguistic expressions in terms of their use – an endorsement of one dimension of Wittgenstein’s pragmatism” (p. xii). On this point, the relevant difference between Wittgenstein and Brandom is that while the former practiced a kind of theoretical quietism, the latter developed a systematic theory of the contents of meaning forged in the pragmatist principles designed by the former.⁷

For Brandom (1994), the central aspects of Wittgenstein’s pragmatism allowed us to begin to observe a clear conceptual space to distinguish between “*semantic* theorizing (about the sorts of contents expressed by various locutions), on the one hand, and *pragmatic* theorizing (about the linguistic practices in which those locutions are employed), on the other” (p. xiii). Following this distinction, pragmatics is the study and theorization of sociolinguistic practices – i.e., language games, in Wittgenstein’s vocabulary – where linguistic actions – i.e., uses of language, according to Wittgenstein – are centrally performed, while semantics is the study and theorization of the content that the performances of linguistic actions express in the sociolinguistic and implicitly normative practices of a community.

In short, Brandom incorporates into Wittgenstein’s pragmatist metatheoretical strategy an important distinction between pragmatics and semantics compatible with his *Philosophical Investigations*. Brandom aims to build up a theorized account of contents of meaning that establishes a precise relation between how the pragmatic significance is constituted and then how the conceptual semantic content is articulated.⁸

7 In Wittgenstein’s reflections, the notion of uses of language cannot be equated with a single notion of meaning because linguistic expressions do not express meaning univocally in all language games, but they rather manifest different significances – i.e., practical functions – depending on a particular language game. For Wittgenstein and Brandom, the notions of language games and uses of language are closely related because only in the context of a particular language game – i.e., a sociolinguistic practice – a particular use of language – i.e., a linguistic action – has a specific significance – i.e., a practical function. There is not space here to explain the relation between the general sociolinguistic practice of a community and the specific sociolinguistic practices of a community (see, Caballero, 2023).

8 On this point, Brandom said: “The explanatory strategy pursued here is to begin with an account of social practices, identify the particular structure they must exhibit in order to qualify as specifically *linguistic* practices, and then consider what different sorts of semantic contents those practices can confer on states, performances, and expressions caught up in

According to this pragmatist metatheoretical perspective, the explanatory path of meaning is developed in three steps. The first step is to characterize the notion of *sociolinguistic practices* of a community. The second step is to characterize the notion of *pragmatic significance* that the linguistic actions of participants manifest within the sociolinguistic practices of a community. The notions of practical attitudes, normative statuses and significances are crucial to explain the pragmatic level of meaning. The third step is to characterize the notion of *conceptual content* that pragmatic significances express in the sociolinguistic practices of a community. The notions of normative statuses that practical attitudes manifest, historical and inferential relations between normative statuses and conceptual contents are crucial to explain the semantic level of meaning.

In this sense, for Brandom, pragmatics accounts for the implicit and fundamental normative structure of sociolinguistic practices where significances are constituted, and then semantics account for the historical and inferential relations that articulate the conceptual contents of significances.

Adopting this metatheoretical normative perspective on the pragmatic level of meaning has a relevant consequence: the significance of linguistic actions cannot ultimately depend on what the speakers *intend* to say – e.g., according to their communicative purposes – but rather on what the speakers *do* performing linguistic actions – according to the implicit and normative structure of sociolinguistic practices. In other words, what a participant has said when performing a linguistic action in a sociolinguistic practice does not ultimately depend on what has happened in their mind, but on what this participant has done performing that action in that sociolinguistic practice according to its implicit and normative structure.

An important condition of adequacy imposed by the sociolinguistic and normativistic pragmatism is that any theory of contents of meaning – and thus social norms – that seeks to be constructed from this perspective should not obscure – nor reduce in a naturalistic or physicalist account – the normative character of sociolinguistic practices.⁹

them in suitable ways. The result is a new kind of conceptual-role semantics” (Brandom, 1994, p. xiii).

9 In Brandom’s (2000) words: “The later Wittgenstein, who counseled “Don’t look to the meaning, look to the use”, is a pragmatist in this sense (though he didn’t use that term). *Normative* pragmatism is the idea that discursive practice is implicitly, but essentially, and not just accidentally, a kind of normative practice” (p. 4). Previously, Brandom (1994) had said: “No attempt is made to eliminate, in favor of nonnormative or naturalistic vocabulary, the normative vocabulary employed in specifying the practices that are the use of a language. Interpreting states, performances, and expressions as semantically or intentionally contentful is understood as attributing to their occurrence an ineliminable normative pragmatic significance” (p. xiii).

To summarize, all social norms are composed of contents of meaning, which are constituted and articulated in the sociolinguistic and implicitly normative practices of a community. In these kinds of practices, participants interact with each other by performing intentional actions – paradigmatically, linguistic actions – and manifest practical attitudes regarding those actions. As will be argued in the next section, performing an intentional action – paradigmatically, a linguistic one – is already a practical attitude and practical attitudes are normative.¹⁰

The implicit and fundamental normative structure of sociolinguistic practices: Practical attitudes of acceptance and practical attitudes of recognition

In this section, it will be held that the fundamental elements of the implicit normative structure of sociolinguistic practices are the practical attitudes of participants. Afterward, a distinction between practical attitudes of acceptance and practical attitudes of recognition will be drawn.

As stated in the introduction, the notion of practical attitudes and the distinction between practical attitudes of acceptance and practical attitudes of recognition are based on the ideas that Brandom (1994, 2000, 2002, 2009, 2019) has been putting forward and refining about the personal practical autonomy of participants, which he takes from Kant, and the social reciprocal recognition among participants, which he takes from Hegel.

From a historiographical point of view, Brandom (1994, chapter one) has extensively developed the notion of personal practical autonomy and minimally the notion of social reciprocal recognition (cf., Brandom, 1994, p. 275). However, already in his (2000, p. 35 and note 16) he noticed the importance of further developing the second notion. Later, Brandom (2002, chapter seven; 2009, chapters two and three) drew a slightly clearer distinction between both notions and further developed the notion of social reciprocal recognition. In these works, a kind of Hegelian turn begins to be seen in his writings. However, it is only in his last book, on Hegel's philosophy, that Brandom (2019, introduction, chapters eight, nine and ten) fully developed

10 According to Brandom, not all actions are intentional. Unintentional actions are part of the brute facts of the world – e.g., a sneeze due to an allergic reaction. Intentional actions are those that are forged by perceptual judgments. The kind of intentionality that plays a role here is not practical, which we share with other species, but rather discursive, which we share among participants of the sociolinguistic practices of a community (see Brandom, 2014a). In this kind of practices, participants not only respond to environmental stimuli in a differentiated way, like other living beings, but also rationally, making perceptual judgments and taking actions based on those judgments. In other words, according to Brandom (1994, p. 8), human beings not only produce behavior, but sometimes also perform actions. We are not only “behavers”, but sometimes also “agents”. In this chapter, the term “actions” will be understood as intentional actions.

the notion of social reciprocal recognition and distinguished more clearly between these two notions.¹¹

In my opinion, only in his latest book, Brandom (2019, especially chapter nine) was accurate about the relation between these two notions and, more specifically, about the explanatory priority of the notion of social reciprocal recognition over the notion of personal practical autonomy to account for the implicit and fundamental normative structure of sociolinguistic practices. In this sense, as I understand his work, Brandom (2019) completes the Hegelian turn he has begun to make in some previous works (e.g., 2002, 2009).¹²

In this section, I will try to draw a clear distinction and establish a precise relation, based on Brandom's works, between practical attitudes of acceptance and practical attitudes of recognition. The section will begin with the general notion of practical attitudes, followed by the notions of practical attitudes of acceptance and practical attitudes of recognition, and end with the relation between them. Thus, this presentation will follow the evolution, according to my interpretation, of Brandom's sociolinguistic and normativistic pragmatism. However, according to the order of explanatory priority, as was said before and will be argued in the following paragraphs, the practical attitudes of recognition should have explanatory priority over the practical attitudes of acceptance to account for the implicit and fundamental normative structure of the sociolinguistic practices of a community.

According to Brandom, it can be said that the practical attitudes of participants are the ways of taking or treating *something* as correct or incorrect. In this sense, practical attitudes are normative because they express personal

11 Brandom (2019) distinguished more clearly between social reciprocal recognition and personal practical autonomy in terms of the social dimension of recognition and the historical and inferential dimension of recollection. This is the beginning of his distinction: "As I read him, Hegel fully appreciated the ramifications of this issue already when he wrote the *Phenomenology* in 1806. Unlike Wittgenstein, he responds by elaborating an intricate systematic theory explaining just how the adoption of normative attitudes (the application of expressions in judgment and intentional action) can institute determinately contentful norms by conferring meanings or conceptual contents that semantically transcend the attitudes that institute those norms and confer those meanings. More than anything else, it is this story that I see as the feature of Hegel's thought that most deserves to be taken up as a contribution to the contemporary philosophical conversation. It is an account that reconciles the status-dependence of normative attitudes with the attitude-dependence of normative statuses, in the form of an account of the process of determining conceptual contents by applying them in actual circumstances. At its heart are the two notions of recognition and recollection, articulating the social and historical dimensions of discursive normativity" (Brandom, 2019, p. 16).

12 Brandom (1994) had instead gave explanatory priority to the notion of personal practical autonomy.

criteria of correctness. This is the notion of practical attitudes *tout court* (cf., Brandom, 1994, p. 32; 2002, p. 216).¹³

Taking this notion into consideration, I think it is conceptually possible and explanatorily beneficial to distinguish between two more specific kinds of practical attitudes. Although Brandom has not been explicit about this specific way of drawing the distinction. On the one hand, practical attitudes of acceptance are the ways of taking and treating *actions* as correct or incorrect within the sociolinguistic practices of a community.¹⁴ On the other hand, practical attitudes of recognition are the ways of taking and treating *agents* as legitimate or illegitimate participants of the sociolinguistic practices – i.e., as members or non-members of a community.¹⁵

The practical attitudes which I call “of acceptance” are manifested by participants in two primary modes (cf., Brandom, 1994, p. 55). The first mode is first-person subscriptions to commitments, which are practical attitudes regarding personal actions. The second mode is second-person attributions of entitlements, which are practical attitudes regarding other participants’ actions. When the practical attitudes of acceptance are socially or collectively related, they generate two different socio-normative statuses: practical attitudes of subscribing to commitments generate the socio-normative status of “being committed” to personal actions; instead, practical attitudes of attributing entitlements generate the socio-normative status of “being entitled” to those commitments.¹⁶

According to Brandom (1994, p. 52), following Kant in this point, practical attitudes of subscription to commitments and attribution of entitlements

13 Brandom (1994, pp. 3–55) built this notion of practical attitudes by attempting to avoid some significant metatheoretical problems regarding the general notion of social norms and the rule-following activities. For example, the platonism problem: norms should not be explained as either concrete or abstract entities located in a dimension independent of sociolinguistic practices, but in a dimension dependent on sociolinguistic practices. The infinite regress of interpretations problem: norms should not be explained as simple linguistic formulations, but as practical criteria of correctness manifested in the sociolinguistic practices of a community. The circularity problem or Kripkenstein problem: norms should not be explained as simple sequences of convergent or conventional manifestations of the supposed criteria of correctness, but as genuine practical, evaluative-decisional and social criteria of correctness (Cf., Wittgenstein, 1953; Kripke, 1982; McDowell, 1984; Brandom, 1994). I analyzed the general notion of social norms, practical attitudes, and the metatheoretical problems in the explanation of the rule-following activities in Caballero (2021).

14 This is the usual manner in which Brandom has referred to practical attitudes since *Making it Explicit* (e.g., Brandom, 1994, pp. 30–31).

15 Brandom has presented and refined the notion of recognition in different writings (e.g., 1994, p. 275; 2002, pp. 53–54, 210–234; 2019, pp. 12, 235–362).

16 According to Brandom (1994), commitments are more fundamental than entitlements because entitlements are *about* commitments. Brandom (1994) expressed, following Kant, that commitments are the most fundamental normative elements by which participants can be taken or treated as responsible to others. This point will be reconsidered and complemented in some paragraphs.

manifest *personal criteria of correctness* that express the personal conceptions of the norms that participants use or apply when performing actions or when considering another participant's actions. I believe this is the specific way in which participants *accept* the norms of a community. Participants accept, through their practical attitude of acceptance, the personal conceptions of the norms they are following – i.e., using or applying – when performing an action or when considering other participant's actions.

In this sense, when participants perform actions, they commit themselves to the content of those actions according to their personal conception of the norms – i.e., the personal criteria of correctness – they accept or follow when performing those actions. However, the content of the commitments that participants subscribe to when performing those actions does not depend only on the personal conceptions of the norms they accept or follow, but also on the personal conceptions of the norms that the other participants accept or follow in considering and evaluating those actions.¹⁷

Thus, a participant manifests a practical attitude of subscribing to a commitment when performing an action and in this way institutes that commitment, but the content of meaning – precisely, the conceptual content – of that commitment is articulated by the practical attitudes of attribution of entitlements expressed by the other participants when considering and evaluating that action. More specifically, the content of the commitment is articulated through the interrelation between the personal conception of the norm – i.e., personal criterion of correctness expressed by the commitment – that the participant accepts or follows when performing that action and the personal conceptions of the norm – i.e., personal criteria of correctness expressed by the entitlements – that the other participants accept or follow when considering and assessing that action.

17 Brandom (2019) nicely explained his reasons for adopting this position: “For Hegel, as for Wittgenstein, an account of this kind raises a fundamental question. If we make the norms (institute them by our social-practical attitudes), then how can they genuinely bind us? In what sense are we constrained by them? The worry is that if we get to decide (our practical attitudes determine) not only *that* we are responsible (a matter of Fregean force or normative status), but *what* we are responsible for (the content of the responsibility), then it is hard to see how we have normatively *bound* ourselves at all. As Wittgenstein puts the point: “One would like to say: whatever is going to seem right to me is right. And that only means that here we can't talk about “right””. We can think of this issue in terms of a distinction between norms (or normative statuses) and normative attitudes. This is the distinction between what we are *actually* responsible for or committed to (the content of those normative statuses), on the one hand, and what responsibilities or commitments we acknowledge or attribute, what we practically *take* or *treat* ourselves or others as responsible for or committed to, on the other. The point of the Wittgenstein quote is that the norms or statuses must be intelligible as having a certain kind of independence from practitioners' attitudes toward them if they are to be intelligible as serving as authoritative standards for normative assessments of the propriety or correctness of those attitudes” (Brandom, 2019, p. 13).

Moreover, although the participants' commitments are *instituted* by their practical attitude of subscription to a commitment, the conceptual content of commitments is *articulated* or *administered* through the historical and inferential relations between the practical attitude of subscription to commitments and the practical attitudes of attribution of entitlements. According to this, the content of social norms is constantly articulated, *diachronically*, through the actions performed and the practical attitudes manifested by participants that express the personal conceptions of norms – i.e., personal criteria of correctness – that are historically and inferentially related.¹⁸

At this point, it is easy to appreciate the crucial explanatory role played by the notion of social reciprocal recognition that Brandom (1994, 2002, 2009, 2019) built up from Hegel. This is the particular social dimension of the implicit and fundamental normative structure of the sociolinguistic practices of a community. I think that just as the fundamental elements of the historical and inferential dimension are the practical attitudes of acceptance, the fundamental elements of the social dimension are the practical attitudes of recognition (cf., Brandom, 2019, p. 247).

Practical attitudes of recognition are the ways of taking or treating *agents* as legitimate or illegitimate *participants* of the sociolinguistic practices of a community. In other words, these practical attitudes are the ways in which an agent takes or treats themselves or another agent as a *member* of the community (cf., Brandom, 2002, pp. 53–54, 210–234; 2019, pp. 12, 235–362).

18 Brandom (2002) said: “Hegel’s idea is that the determinacy of the content of what you have committed yourself to – the part that is *not* up to you in the way that *whether* you commit yourself to it is up to you – is secured by the attitudes of *others*, to whom one has at least implicitly granted that authority. His thought is that the only way to get the requisite distance from my acknowledgments (my attitudes, which make the norm binding on me in the first place), while retaining the sort of authority over my commitments that the Rousseau-Kant tradition insists on, is to have the norms *administered* by someone else. I commit myself, but then they hold me to it. For me to *be* committed, I have to have *acknowledged* a commitment, and others must *attribute* it to me. Only so is a real, contentful commitment instituted. Only so can I really be understood to have *bound* myself. This is, at base, why the possibility of *my* freedom (in the normative sense of the autonomy thesis: my capacity to commit myself, to bind myself by norms) depends on *others* [...] My authority is real, but it is partial. And the same can be said of the others who play the game with me and simultaneously referee it. For they have no authority over my acknowledging of commitments. Their authority is operative only in the administration of those commitments” (Brandom, 2002, pp. 220–221). However, in this book, and this passage in particular, Brandom still needed to distinguish more clearly between the social dimension and the historical and inferential dimension of linguistic practices. As it will be argued shortly, the historical and inferential dimension is manifested through practical attitudes of acceptance that express commitments and entitlements, while the social dimension is manifested through practical attitudes of recognition that express authority and responsibility. The reasons for drawing this distinction and for keeping both attitudes rigorously separate will be shown later.

When two or more agents reciprocally manifest practical attitudes of recognition, they recognize each other as participants or members and, in this way, they form a *community* (cf., Brandom, 2002, pp. 217–218; 2019, p. 260).

Practical attitudes of recognition are also manifested by participants in two primary modes. The first mode is the first-person subscription of responsibility. The second mode is the second-person attribution of authority (cf., Brandom, 2019, pp. 266, 272). When these practical attitudes of recognition are socially or collectively related, they generate two different socio-normative statuses: practical attitudes of subscribing responsibility generate the socio-normative status of “being responsible” to the other participants; instead, practical attitudes of attributing authority generate the socio-normative status of “being an authority” for the other participants.

Practical attitudes of recognition – i.e., subscription of responsibility and attribution of authority – also express the *personal criteria of correctness* of participants. However, unlike practical attitudes of acceptance, I think that practical attitudes of recognition express the personal conceptions of the *criteria of membership* that participants use or apply – i.e., accept or follow – when they attribute authority and subscribe to responsibility. In this way, practical attitudes of recognition are normative in the same sense practical attitudes of acceptance are normative: both express personal criteria of correctness.

Finally, from my interpretation, Brandom’s (1994, 2002, 2009, 2019) position on the relation between personal practical autonomy of participants – i.e., practical attitudes of acceptance – and social reciprocal recognition among participants – i.e., practical attitudes of recognition – has been evolving. Brandom (1994, 2002, 2009 and 2019 eighth chapter), following Kant, begins with the idea that when participants perform actions, they are already exercising practical autonomy, i.e., subscribing to commitments regarding the norms they are following or accepting when performing actions. Basically, in these works, Brandom seems to attribute explanatory priority to the practical attitudes of acceptance.

However, Brandom (2019, chapter nine) explains this relation, following Hegel, in a more accurate manner. Brandom (2019, pp. 268–269, 287–288) seems to argue – and if so, to me correctly – that practical autonomy of agents (through which, they bind themselves to the norms of a community) is not instituted if the other participants do not *previously* recognize them as legitimate participants of the sociolinguistic practices – i.e., as members of that community. Only in this way can agents exercise their practical authority to be committed to the norms of the community that they accept and to be responsible for their actions and attitudes to the other members of the community.¹⁹

19 This is the clearest passage from Brandom (2019) on this point: “According to the social recognitive model, the same paired conditions requiring social complementation of normative

From this understanding, the reason why, in the domain of practical attitudes of acceptance, first-person subscriptions to commitments are more basic than second-person attributions of entitlements is because there must have previously been, in the domain of practical attitudes of recognition, a social or collective recognition of that agent as legitimate participants of the sociolinguistic practices – i.e., as a member of the community. Instead, in the domain of practical attitudes of recognition, second-person attributions of authority are more basic than first-person subscriptions of responsibilities.²⁰

Therefore, according to this approach, there cannot be a subscription to a normative responsibility, and even more a subscription to a commitment, without prior social or collective attributions of normative authority. In this sense, agents cannot be bound themselves by the norms of a community if they are not previously recognized by the others as a member of the community. If an agent is not socially recognized, then there is nothing that this agent can be taken or treated as responsible for, and even more as committed to. If the members of a community do not recognize an agent as another member of the community, this agent could try to use or apply the norms of that community, but this agent's actions and practical attitudes will not have a full normative effect on the community – i.e., their uses or applications will not be considered as genuine acceptances of the norms of that community. In this sense, *without social recognition*, there cannot be *genuine personal acceptance*.

Thus, according to my interpretation, Brandom (2019, chapter nine) seems to express – and if so, I agree – that practical attitudes of recognition are more fundamental than practical attitudes of acceptance of norms. I think there is a very simple reason for holding this position: *if the community is*

attitudes to institute normative statuses of responsibility hold for attributions and acknowledgments (claims) of authority. One *has* authority (including the authority to institute statuses by one's attitudes) only if others *take* one to have that authority by attributing it. A claim of authority actually institutes the authority claimed only if others whom the authoritative subject recognizes as having the authority to do so recognize that authority by attributing it. [...] So, the full constellation of basic attitudes and statuses that is the Hegelian recognitive model developed on the basis of the Kantian autonomy model (as socially extended to include the duty to respect autonomy) is more complex. This is the fine structure of the Hegelian reciprocal recognition model of the social institution of normative statuses by normative attitudes" (Brandom, 2019, pp. 287–288).

20 Sometimes Brandom (2019) says that, in the domain of the social recognition, an agent can firstly claim to be considered as a member by the other members of the community. I think this is true. However, I also think that claiming "to be consider as a member" is not a social relation. In the domain of practical attitudes of recognition, the first social relation is the attribution of authority.

not first instituted, then the norms of that community cannot be constituted and articulated.

According to this approach, practical attitudes of recognition are those through which the members of a community are instituted – and the community diachronically defined – while practical attitudes of acceptance are those through which the norms of a community are constituted and (their contents) articulated. These two kinds of practical attitudes are the fundamental elements of the implicit normative structure of the sociolinguistic practices of a community.

The implicit normative structure of legal practices: Practical attitudes of recognition

Before continuing, the following should be said. The distinction I drew in the previous section between practical attitudes of recognition and practical attitudes of acceptance is almost entirely influenced by the work of Brandom (1994, 2000, 2002, 2009, 2019). However, the development of the relation between these two kinds of practical attitudes in the specific context of legal practices is also influenced by the work of Herbert Hart (1961, 1994) and by many other legal theorists who have written about his ideas over the last five or six decades. In this sense, this chapter can be understood as an attempt to combine, I hope usefully, the work of Brandom on the social reciprocal recognition and the personal practical autonomy with the work of Hart and other legal theorists on legal practices, the rule of recognition and legal norms.²¹

Having said that, in the previous section, it was argued that practical attitudes of recognition and practical attitudes of acceptance are the fundamental elements of the sociolinguistic and implicitly normative practices of a community. Both kinds of practical attitudes are necessary conditions for the constitution and articulation of the norms of a community. In this section

21 There are clear links between the works of Hart and Wittgenstein, as there are clear links, as has been shown, between the works of Brandom and Wittgenstein. In this section, some similarities between the works of Hart and Brandom will be established. However, there are also some important differences between them. One of these differences will be presented in this section. A more general difference, regarding the metatheoretical perspective, is that Brandom develops Wittgenstein's pragmatism with insights from Kant, Hegel, Frege, Sellars and Dummett. Whereas Hart does not develop Wittgenstein's pragmatism in this specific manner – he takes some insights from Waismann. On a different side, Brandom (2014b) outlines some relevant similarities and differences between his account of the implicit and fundamental normative structure of sociolinguistic practices and Ronald Dworkin's (1986) account of legal practices, the grounds of law and legal norms. In the theory of law literature, Damiano Canale & Giovanni Tuzet (2007, 2009) and Matthias Klatt (2008) used some parts of Brandom's work to explain some relevant aspects of the interpretation and argumentation in the legal context.

and the following, it will be argued that legal practices have a *specific* implicit normative structure that presupposes the implicit and fundamental normative structure of general sociolinguistic practices.²²

In this section, it will be shown that one part of this specificity is that, in legal practices, practical attitudes of recognition perform a particular function in the *institution* of the members and the legally relevant authorities of a community. While, in the next section, it will be argued that another part of this specificity is that, in legal practices, practical attitudes of acceptance perform a particular function in the *constitution* and *articulation* of the legal norms of a community.

As stated in the previous section, practical attitudes of recognition are the ways of taking or treating an *agent* as a legitimate participant of the sociolinguistic practices – i.e., the ways in which an agent takes or treats themselves or another agent as a member of the community. Practical attitudes of recognition express the personal criteria of correctness – precisely, the criteria of membership – that participants use or apply when they attribute authority and subscribe to responsibility.

In this sense, in the domain of general sociolinguistic practices, agents manifest practical attitudes of recognition that express the personal criteria of correctness – i.e., the criteria of membership – they use or apply to *institute* the *members* of a community. While, in the domain of specific legal practices, members of the community, already instituted as such, manifest practical attitudes of recognition that express the personal criteria of correctness – which might be called “*criteria of legal authority*” – they use or apply to *institute* the *legally relevant authorities* of a community.

Accordingly, in the domain of specific legal practices, participants manifest practical attitudes of recognition that has two different functions. The first function consists of instituting the members of the community, while the second function – which is specific to legal practices – consists of instituting the legally relevant authorities of that community.²³

22 From this point of view, the constitution and articulation of the legal norms of a community depend metaphysically on a complex implicit normative structure. On the one hand, the implicit and fundamental normative structure of the *general* sociolinguistic practices of a community, where practical attitudes of recognition and practical attitudes of acceptance are manifested. On the other hand, the implicit normative structure of the legal practices of a community, where *specific* practical attitudes of recognition and practical attitudes of acceptance are manifested.

23 This second function of practical attitudes of recognition is specific to legal practices compared with *general* sociolinguistic practices, but also compared with other *specific* sociolinguistic and implicitly normative practices – e.g., moral practices, religious practices, customary practices, etc. However, this second function of practical attitudes of recognition in specific legal practices has characteristic features in common with similar functions that practical attitudes of recognition perform in these other specific sociolinguistic and implicitly normative practices.

The common characteristic feature of the first and second functions of practical attitudes of recognition is that they generate socio-normative statuses that are dependent. In the case of the recognition of the socio-normative status of “being a *member* of the community”, an agent claims to be considered, to be taken and treated, as a member by the other members of the community, and these other members are those who have the power to consider, take and treat, this agent as a member of the community. The fact that this agent effectively holds the socio-normative status of *being a member of the community* depends on the practical attitudes of recognition – precisely, the attributions of authority – of the other members.

In the case of recognition of the socio-normative status of “being a *legally relevant authority* of the community”, a member claims to be considered, taken and treated, as a legally relevant authority by the other members (perhaps also authorities) of the community, and these other members (perhaps also authorities) of the community are those who have the power to consider, take and treat, this member as a legally relevant authority of the community. The fact that this member effectively holds the socio-normative status of *being a legally relevant authority of the community* depends on these specific practical attitudes of recognition – precisely, these specific attributions of authority – of the other members.

Here it is important to highlight that, according to Brandom (2019), in disagreement with Hegel, pure independence is not a good reconstruction of any case of recognition of members or authorities of a community. In the implicit normative structure of sociolinguistic practices, there is no room for pure independence, no participant can arrogate to themselves a socio-normative status – i.e., take and treat themselves as a member or authority of the community – and in this way exercise the powers that the social recognition of a normative status generates.

The distinctive characteristic feature between the two functions of practical attitudes of recognition is that practical attitudes of recognition that institute the members of a community generate *prima facie symmetrical* socio-normative statuses, while practical attitudes of recognition that institute the legally relevant authorities of a community generate *prima facie asymmetric* socio-normative statuses.

Regarding the first function, when an agent is recognized as a member of the community, that social recognition generates a socio-normative status that is *prima facie* symmetrical with the socio-normative status held by those who attribute that recognition. The recognition of a socio-normative status is symmetrical if, and only if, those who attribute it and to whom they attribute it are authorized to exercise the same socio-normative status – in this case, being a member of the community.

On the other hand, regarding the second function, when a member is recognized as a legally relevant authority of the community, that social

recognition generates a socio-normative status that is *prima facie* asymmetric with the socio-normative status held by those who attribute that recognition. The recognition of a socio-normative status is asymmetric if, and only if, those who attribute it and to whom they attribute it are authorized to exercise different socio-normative statuses – in this case, on the one hand, being a member of the community and, on the other hand, being a legally relevant authority of the community.²⁴

However, for both functions, this *prima facie* condition might change. Regarding the second function, the recognition of the socio-normative status of being a legally relevant authority of a community can be symmetrical with the socio-normative status held by those who attribute that recognition. In this case, the recognition is symmetrical if those who attribute it and to whom they attribute it are authorized to exercise the same socio-normative status – in this case, being a legally relevant authority of the community.

Regarding the first function, however, the recognition of the socio-normative status of being a member of the community can cease to be symmetrical and become asymmetrical with the socio-normative status held by those who attribute that recognition. In this case, the recognition is asymmetrical if those who attribute it and to whom they attribute it are authorized to exercise the same socio-normative status – in this case, being a member of the community – but this socio-normative status has different powers or intensities for each member.

Moreover, regarding the second function, the recognition of the socio-normative status of being a legally relevant authority of a community held by two different members can leave an (apparently) symmetrical condition to embrace an asymmetrical condition, because the socio-normative status of being a legally relevant authority can have different powers or intensities for each member. Here less abstract or more concrete cases can be presented. For example, it may be the case that two members recognize each other as legally relevant authorities, but the first recognizes the second as an authority with a certain power, while the second recognizes the first as an authority with another power. Both members are authorized to exercise the same socio-normative status, being a legally relevant authority, but this socio-normative status has different powers for each member.²⁵ It may also be the case that two members recognize each other as legally relevant authorities, but the first recognizes the second as an authority with a certain intensity (e.g., a higher hierarchical level), while the second recognizes the first as an author-

24 For example, this might be the difference that exists, in many contemporary societies, between a citizen and a legislator or a citizen and a judge.

25 For example, this might be the difference that exists, in many contemporary societies, between a legislator and a judge or between a judge of one jurisdiction and another judge of another jurisdiction.

ity with another intensity (e.g., a lower hierarchical level). Both members are authorized to exercise the socio-normative status of being a legally relevant authority, but this socio-normative status has powers with different intensities for each member.²⁶

These are only examples of possible cases of recognition of the legally relevant authorities of a community. The effective cases of recognition of the legally relevant authorities, with their powers and intensities, that arise in a community depend on the particular instantiation of these specific practical attitudes of recognition in the legal practices of that community.

This account of the implicit normative structure of legal practices, which presupposes the implicit and fundamental normative structure of general sociolinguistic practices, has at least two relevant similarities and one crucial difference with Hart's (1961, 1994) account of the normativity of legal practices.

The first relevant similarity is that both approaches do not prejudge who is, as a matter of fact, the legally relevant authorities of a particular community or any community. Both approaches maintain that conceptually, and from the point of view of a general theory of law, the legally relevant authorities of any community are those members who are recognized as such by the participants of the legal practices of that community.²⁷

The second relevant similarity is that both approaches begin their explanations of the implicit normative structure of specific legal practices from the notion of *practical attitudes* manifested by participants. For both approaches, practical attitudes are the fundamental elements of the implicit normative structure of the specific legal practices of a community.²⁸

However, the main difference between both approaches is that, for Hart's approach, participants of the specific legal practices manifests practical attitudes of recognition concerning the criteria of validity, or authoritative sources of law, that constitute the rule of recognition.²⁹

26 This might be the difference, for example, that in many contemporary societies lies between a judge of the first instance and another judge of the second instance.

27 Furthermore, both approaches say nothing about who the legally relevant authorities of a community should be. Both explanatory approaches are descriptive, not prescriptive, about the implicit normative structure of specific legal practices.

28 This position derives, in both approaches, from the adoption of the central metatheoretical thesis of the sociolinguistic and normativistic pragmatism of Wittgenstein.

29 For Hart (1961, 1994), the rule of recognition is constituted by the practical attitudes manifested by participants – both members and authorities of a community – when they express the criteria of validity – i.e., the personal conceptions of the authoritative sources of law – when using or applying a legal norm – e.g., performing an action or taking a decision in a judicial case. Thus, the identification of the rule of recognition in the legal practices of a community allows us to know the criteria of validity or, in other words, the authoritative sources of law, that make certain social norms to be specifically legal norms – i.e., the components of the legal normative system of that community.

The problem with this approach is that it proposes an explanation of the normativity of legal practices that confuses its two fundamental elements: practical attitudes of recognition of the members and authorities of a community, and practical attitudes of acceptance of the norms of a community. In other words, this explanation does not accurately account for – and therefore does not allow us to clearly observe – the crucial difference between, on the one hand, the institution of the members and the legally relevant authorities of a community and, on the other hand, the constitution and articulation of the norms of that community.

Instead, according to the approach to the implicit normative structure of specific legal practices that is being presented in this chapter – based on the pragmatist perspective designed by Wittgenstein and particularly developed by Brandom – these two fundamental elements are clearly distinguished and precisely related. Firstly, after having instituted the members of the community, the members of the community manifest practical attitudes of recognition through which they institute the legally relevant authorities of that community. Secondly, after having instituted the legally relevant authorities of that community, the members and the legally relevant authorities of that community manifest practical attitudes of acceptance through which they constitute and articulate the legal norms of that community.

The implicit normative structure of legal practices: Practical attitudes of acceptance

In specific legal practices, once the members and the legally relevant authorities of a community are instituted, through practical attitudes of recognition, both the members and the legally relevant authorities of the community manifest practical attitudes of acceptance of – i.e., the personal conceptions of – the legal norms of that community. As just argued, the legal norms of a community are constituted and articulated through practical attitudes of acceptance.

As stated in the third section, practical attitudes of acceptance are manifested in two different primary modes: first-person subscription to commitments and second-person attribution of entitlements. In the domain of practical attitudes of acceptance, unlike in the domain of practical attitudes of recognition, the subscription to a commitment is more basic than the attributions of entitlements for that commitment. Practical attitudes of acceptance express the personal criteria of correctness that participants use or apply when performing an action or when considering and assessing the performance of another participant's action. This is the specific way in which participants accept the norms of a community. Participants accept, through their practical attitudes of acceptance, personal conceptions of the norms they accept or follow when performing a personal action or when considering and assessing another's action.

In this sense, when a participant performs an action, this participant commits themselves to the content of that action according to the personal conception of the norm – i.e., the personal criterion of correctness – that this participant accepts or follows when performing that action. However, the content of the commitment that this participant subscribes to when performing that action depends not only on the personal conception of the norm that they accept or follow, but also on the personal conceptions of the norm – i.e., the personal criteria of correctness – that the other participants accept or follow when considering and assessing that action. According to this approach, the conceptual content of that commitment is historically and inferentially articulated.³⁰

Practical attitudes of acceptance have different functions depending on whether they are manifested by a member of the community or by a legally relevant authority of the community. In the first case, the acceptance of a – personal conception of a – norm by a member who has *not* been socially recognized as a legally relevant authority of the community performs a secondary function in the constitution and articulation of the legal norms of the community. Instead, in the second case, the acceptance of a – personal conception of a – norm by a member who has been socially recognized as a legally relevant authority of the community performs a primary function in the constitution and articulation of the legal norms of the community.

Accordingly, the legally relevant authorities of a community are those members who have been socially recognized as such and who perform a primary function in the constitution and articulation of the legal norms of a community.

For example, suppose that in a community, there are two socio-normative statuses of *being a legally relevant authority of the community*: “being a legislator” and “being a judge”. Also suppose that, in that community, if a member has been socially recognized as a legislator, then they are socially authorized by the other members of the community to create orders for

30 As stated above, conceptual contents are historically and inferentially articulated, i.e., they are articulated through historical and inferential relations between the normative statuses of participants. On the one hand, conceptual contents are articulated by the normative statuses that have been generated and delimited through the practical attitudes of acceptance that participants have been manifesting throughout the history of their community regarding intentional actions – paradigmatically, linguistic actions – they have been performing in the sociolinguistic and implicitly normative practices of their community. In other words, conceptual contents are articulated through a kind of historical relation between the previous and present normative statuses of participants (cf., Brandom, 2019, pp. 303, 469). On the other hand, conceptual contents are articulated by the inferential role that each of these normative statuses plays in the sociolinguistic and implicitly normative practice of a community. In short, conceptual contents are articulated through inferential relations – i.e., commitments preserving, entitlements preserving and incompatibilities – between the normative statuses of participants (cf., Brandom, 2019, p. 499).

the community and, on the other side, they are socially responsible to the members for the orders they create for the community. Suppose as well that, in that community, if a member has been socially recognized as a judge, then they are socially authorized by the other members of the community to resolve conflicts on behalf of the community and, on the other side, they are socially responsible to the community for the decisions they take to resolve conflicts on behalf of the community.

Thus, in that community, if a member socially recognized as a legislator commits themselves to a personal conception of a norm, then their commitment performs a primary function in the constitution of that norm for that community. Furthermore, if a member socially recognized as a judge commits themselves to a personal conception of a norm, then their commitment performs a primary function not only in the constitution of that norm for the community, but also in the articulation of the content of that norm for the community.

To conclude, some final comments will be presented on the way in which the legal norms of a community come into existence. As has been argued in this chapter, practical attitudes of acceptance manifest commitments and entitlements that are personal criteria of correctness, respectively, on personal actions and on the other participants' actions. However, the legal norms of a community are not personal criteria of correctness but *social* criteria of correctness – i.e., legal norms are social norms. Put in the opposite direction, the legal norms of a community are social criteria of correctness that metaphysically depend on personal criteria of correctness, and these personal criteria of correctness metaphysically depend on the practical attitudes of acceptance manifested by participants – members and authorities – of the sociolinguistic and implicitly normative practices of a community.

By holding this position, I am saying that in the sociolinguistic and implicitly normative practices of a community: (i) there are certain instances of *practical attitudes of acceptance*; (ii) there are certain instances of *personal criteria of correctness*; (iii) there are certain instances of *social criteria of correctness*; and (iv) there are certain instances of a *metaphysical dependence relation* between them.

In contemporary literature on analytical metaphysics, there are at least four notions or families of notions proposed as candidates for explaining this metaphysical dependence relation: causation, supervenience, grounding and anchoring. These notions will not be analyzed here, but it will be assumed that the notion of grounding is that one needed to explain the metaphysical dependence relation that exists between practical attitudes of acceptance and personal criteria of correctness – i.e., commitments and entitlements – and then between personal criteria of correctness and social criteria of correctness – i.e., social norms, e.g., legal norms.³¹

31 I have analyzed these notions of the metaphysical dependence relations in Caballero (2022).

The notion of metaphysical dependence relation as grounding has been recently introduced in the literature of analytical metaphysics, mainly with the works of Fine (2001), Correia (2005), Schaffer (2009), Rosen (2010), Bennett (2011), Fine (2012) and deRosset (2013)³².

According to this approach to metaphysics, we ourselves, as well as many other entities in the world, such as social norms, are integral parts of a unique, wide, and pluralist reality. From this perspective, as Schaffer said, the relevant metaphysical question is not whether social norms exist – of course they do! –, but rather how they exist – i.e., by virtue of what mechanism or conditions social norms are derived from, or determined by, other entities that are not social norms.

According to this approach, the explanatory task of metaphysics has three major aims. Firstly, to establish what are the most fundamental entities in our reality. Secondly, to establish what are the characteristic features of the metaphysical dependence relation and how does it work.³³ Thirdly, to create a rational reconstruction of our reality which, with the help of the previous steps, helps us to explain its unity, diversity and plurality.

Thus, from this approach, the answer to the relevant metaphysical question is offered through the notion of grounding, which adequately reconstructs the metaphysical dependence relation between determined and determining entities. This notion can be defined as follows: grounding is the metaphysical dependence relation between a more fundamental entity or class of entities (i.e., grounds) and a less fundamental entity or class of entities (i.e., derivatives) of reality.

Recapitulating, according to what has been argued in the previous sections, my answer to the ontological question of what kind of entities legal norms are is that they are abstract – but not platonic – entities of reality. Whereas my answer to the metaphysical question of how legal norms come into existence is that they are social criteria of correctness – i.e., abstract entities – grounded in the personal criteria of correctness of participants – i.e., abstract entities – and these personal criteria of correctness are grounded in the practical attitudes of acceptance of those participants – i.e., concrete entities.

32 Schaffer (2009), whom I mainly follow in this work, presented this approach as follows: “On the now dominant Quinean view, metaphysics is about what there is. Metaphysics so conceived is concerned with such questions as whether properties exist, whether meanings exist, and whether numbers exist. I will argue for the revival of a more traditional Aristotelian view, on which metaphysics is about what grounds what. Metaphysics so revived does not bother asking whether properties, meanings, and numbers exist. Of course, they do! The question is whether or not they are *fundamental*” (Schaffer, 2009, p. 1).

33 This approach proposes the notion of grounding to accomplish this task. However, Wilson (2014) proposes some arguments against grounding as the notion that adequately accomplishes this task.

Some might think that there are not good explanatory reasons to maintain that in the way in which legal norms come into existence there are these three metaphysical levels, and these two metaphysical dependence relations between them. For example, some might think that it would be better, for explanatory parsimony, to hold that there are only two levels, one abstract and one concrete, and only one metaphysical dependence relation between them. However, if one holds that social norms depend directly on, that they are directly grounded in, the practical attitudes of acceptance, one runs the risk of losing sight of the social character of norms. Although norms are ultimately grounded in the practical attitudes of acceptance, these attitudes do not express social criteria of correctness, but personal criteria of correctness. For this reason, we need to appeal to another level that allows us to relate, without reductions or empty conceptual spaces, the personal criteria of correctness to the social criteria of correctness.

Recently, an insightful discussion has been developed between Schaffer (2009 and 2019) and Epstein (2015 and 2019) in which it is debated whether the metaphysical dependence of social entities – such as social and legal norms – should be explained through a single notion – i.e., grounding – or two different notions – i.e., grounding and anchoring. For both, two different relations take place: one that constitutes the conditions for the existence of a particular social entity and another that constitutes the existence of a particular social fact, such as “Nick committed murder”. The disagreement is whether these two relations are two instances of the same metaphysical dependence relation (i.e., grounding) or two different metaphysical dependence relations (i.e., grounding and anchoring). So far, I agree with Schaffer (2019, p. 766) that there seems to be a good explanatory parsimony reason to prefer grounding and not grounding and anchoring. Grounding seems to perform all the theoretical job that we need to accomplish this task, with the metatheoretical benefit that theoretically we use only one notion instead of two. On the other hand, grounding seems to be more liberal than anchoring. It seems that anchoring allows us to relate abstract entities (as personal criteria of correctness) to concrete entities (as practical attitudes), but grounding also allows us to relate abstract entities (as social criteria of correctness) to other abstract entities (as personal criteria of correctness). This seems to be another good reason to prefer only grounding and not grounding and anchoring to accomplish this theoretical task. However, beyond this enriching discussion, the disagreement between them does not affect the argument presented in this chapter. This argument works with either one or the other proposal. Because the relations between practical attitudes and personal criteria of correctness and then personal criteria of correctness and social criteria of correctness can be understood as grounding or anchoring depending on the explanatory preferences and other theoretical commitments one wants to assume. Beyond the technical details of this discussion, they both agree that to explain the mode of existence of social entities – such as social and

legal norms – we should explain the metaphysical dependence relations that exist between the grounds and derivatives, and this is all I am committing to myself at this last point.

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