The False, the Former, and the Parish Priest

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ABSTRACT

In the field of AI and Law, there is a debate whether normative relations can be expressed using only deontic concepts versus the opinion that a potestative perspective on norms cannot be reduced to deontic expressions. Makinson, Jones and Sergot are proponents of the latter view. In this paper, we will expand on their examples of priests marrying couples of mixed religions, and couples married by former priests, in order to better understand the notion of power.

In this quest, we believe it is important to investigate the sources of norms, in this case the Code of Canon Law on Catholic marriage. We will do so using our method Calculemus and illustrate this method for making interpretation models of normative systems using a domain specific language (FLINT) for expressing frames for institutional acts, duties and facts. In this paper, we will give an overview of our analysis. An extended version of this paper will be published on Research Gate.

CCS CONCEPTS

• Computing methodologies → Artificial intelligence → Knowledge representation and reasoning → Reasoning about belief and knowledge • Applied computing → Law, social and behavioral sciences → Law

KEYWORDS

Knowledge acquisition, Legal engineering, Normative relations, Norm interpretation

1 Introduction

In 1986 Makinson [11] published a paper on the notion of power as described by Kanger, see e.g. [8], and Lindahl [10]. Makinson makes the case for a perspective on norms that separates deontic

and potestative aspects of norms. He gives an example using a priest performing a ritual to celebrate a Catholic marriage by a couple of mixed religions. The priest does not satisfy the, alleged, duty to ask both spouses to promise they will raise their children as Catholics. The priest thus engages in a forbidden ritual, still having the power to perform it and so creating a valid marriage. It is a small example, but 10 years later Jones and Sergot [7] followed up on it, adding the example of the former priest still having his sacramental powers, but being forbidden to use them. In 2016 Sileno, in his PhD thesis [12], shows that the quest for underpinning the essence of normative relations in a formalized model, is still not yet completed. In this paper, we will address three aspects of this quest:

1. Is there a need to have a potestative perspective on norms that cannot be reduced to a deontic perspective?
2. Is the formalization that Jones and Sergot made of the notion of power sufficiently rich to represent real-life cases?
3. Does the Calculemus method, using the FLINT language have added value in the quest for the essence of normative relations?

2 On the Notion of Power

In his 1986 article [11], Makinson discusses the formal representation of different kinds of *rights relations*, developed by Stig Kanger and Lars Lindahl out of the classic work of Hohfeld. He shows that Kanger's and Lindahl's analysis of normative relations differ from the preformal account of Hohfeld. Not only in its formality, explicitness, precision and general logical sophistication, but also in an element of content, contributed by the systematic use of the *do* operator for "sees to it that" or "brings it about that". Makinson illustrates his position with an example given by Hohfeld [6] about a landowner *X* who has contracted *Y* that he will not alienate his property to *Z*. This results in the prohibition for *X* to sell his property to *Z*, while he still has the power to do so.

Makinson continues by given an example of a priest marrying a mixed couple [11]:

> .... consider the case of a priest of a certain religion who does not have permission, according to instructions issued by the ecclesiastical authorities, to marry two

people, only one of whom is of that religion, unless they both promise to bring up the children in that religion. He may nevertheless have the power to marry the couple even in the absence of such a promise, in the sense that if he goes ahead and performs the ceremony, it still counts as a valid act of marriage under the rules of the same church even though the priest may be subject to reprimand or more severe penalty for having performed it.

In 1996 Jones and Sergot [7] elaborate on Makinson's plea for the notion of power and his use of the example of the marrying priest. Jones and Sergot present the case where a (former) priest *p* is forbidden to exercise his power to create a (valid) marriage [7].

They formally describe how a ritual *r* performed by the priest, or former priest, results in valid marriage, although the former priest has no permission to perform the ritual *r*. A different situation results when the priest is forbidden to perform the ritual but is not forbidden to "see to it" that the couple is getting married. Here, according to Jones and Sergot, the priest *p* is *forbidden* by the Church to exercise his own *power* to create the marriage, but the Church does not go so far as to prohibit all action which *p* might take to bring about the marriage. Additionally, they model the case where an empowered priest *p* is permitted to exercise his power but is not practically able to do so.

Jones and Sergot do not elaborate on the conditions under which it is possible for the priest to "bring it about" that some other agent's power is used to create the marriage, and whether it is in that case still priest *p* that performs the marriage, nor whether you need to be a priest to "bring it about" that the marriage is created, and what are the sources these normative possibilities are grounded on. Makinson, Jones and Sergot in their formalizations separate deontic and potestative normative relations. Thus, choosing the opinion that there are two kinds of fundamental normative relations.

In this paper, we discuss three aspects of the stance, as presented by Makinson, Jones and Sergot, on the notion of power:

1. Is the Code of Canon Law consistent with the presented examples of Makinson, Jones and Sergot?
2. What does it mean to have the power to act, and at the same time being forbidden to perform the act?
3. Can we be more specific about the notion of power by elaborating the concepts "see to it" and "bring it about".

3 Calculemus for Building Explicit Representations of Normative Systems

In the last years we have been developing a method that aims to make interpretations of sources of norms that can be used to make specifications for decisions being taken by machines and people in administrative organizations. The goal of this project is to create a method for the interpretation of sources of norms in natural language, resulting in specifications for normative multiagent systems that can be used by humans and machines.

The basics of the method are described in [2][5]. Application of the method in study cases can be found in [3][4]. A comprehensive publication on the method and its applications will be published later this year.

For the expression interpretation of sources of norms, we are developing the Formal Language for the INTerpretation of sources of norms (FLINT). This is a now semi-formal language that is evolved from working on real-life cases. The language consists of three frames that are filled with literal quotes from sources of norms. The frames are *act frames*, *duty frames*, and *fact frames*. Table 1 gives an example of the *act frame* for assisting with the contracting of a valid Catholic marriage. The method focuses on relating normative actions and their results to sources of norms (potestative perspective).

4 Study Cases on Catholic Marriage

Miguel Ángel Ibarra, had been a priest for 18 years in Colombia, before coming to the village of Medina Sidonia, in the southern region of Andalusia, Spain. In October 2017 Ibarra started as a parish priest in the village of Medina Sidonia, in the southern region of Andalusia. On December 13, 2018 it was discovered he was a fraud. He was never ordained as a priest. Immediately the diocese of Cádiz and Ceuta released the alleged priest from office. Within days a spokesman of the diocese declared that marriages and baptisms carried out by Ibarra remain valid, but confessions are not, even though the "grace of God acted" on the faithful who were deceived[1].

In this Section, we will investigate the reasons for deciding that the marriages carried out by the false priest remain valid. We will use our findings to reflect on the example of the former priest, as presented by Jones and Sergot [7] and the example of the parish priest marrying a mixed couple as presented by Makinson [11]. At the end of this Section we will present a summary of our observations. For more details on the interpretation of sources of norms we refer to the extended version of this paper.

4.1 The Requirements of a Catholic Marriage

In order to answer questions on the validity of Catholic marriages by false, former and parish priests, we first need knowledge of the sources of Catholic law. Therefore, we have selected Canons from the Code of Canon Law [1], we deemed relevant for the cases at hand, i.e. Canon 144, 290, 1055, 1057, 1085, 1086, 1108, 1111, 1112, 1116, 1124, 1125, 1126, 1134, 1135, 1141 and 1399. The purpose of explicitly stating the relevant is Canons, is to enable others to agree or disagree with our selection. For the purpose of this paper we have made a summary of the content of the selected Canons:

1. In case of common error, the Church takes necessary steps to correct any wrongdoing (Canon 144).
2. Sacred ordination once validly received never becomes invalid. A cleric, however, can lose the clerical state (Canon 290).

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[1] The Daily Telegraph December 24, 2018.

3. The loss of the clerical state does not carry with it a dispensation from the obligation of celibacy, which is granted solely by the Roman Pontiff (Canon 291).
4. The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has been raised by Christ the Lord to the dignity of a sacrament (Canon 1055).
5. A marriage is brought into being by the lawfully manifested consent of persons who are legally capable (Canon 1057).
6. Marriage enjoys the favor of law. Consequently, in doubt the validity of a marriage must be upheld until the contrary is proven (Canon 1060).
7. A person bound by the bond of a previous marriage, even if not consummated, invalidly attempts marriage (Canon 1085).
8. A marriage is invalid (except under specific conditions as described in Canon 1125 and 1126) when one of the two persons was baptized in the Catholic Church, and the other was not baptized (Canon 1086).
9. Only those marriages are valid which are contracted in the presence of the local Ordinary or parish priest or of the priest or deacon delegated by either of them, who, in the presence of two witnesses, assists, in accordance however with the rules set out in the following Canons, and without prejudice to the exceptions mentioned in Canon. 144, 1112 §1, 1116 and 1127 §§2-3. Only that person who, being present, asks the contracting parties to manifest their consent and in the name of the Church receives it, is understood to assist at a marriage (Canon 1108).
10. The local Ordinary and the parish priest can delegate to priests and deacons the faculty to assist at marriages within the confines of their territory. In order to be valid, the delegation must be given to specific persons or for a specific marriage. A general delegation is to be given in writing (Canon 1111).
11. Where there are no priests and deacons, the diocesan Bishop can delegate lay persons to assist at marriages (Canon 1112).
12. In the event of force majeure, a marriage can validly can be contracted in the presence of any witnesses (Canon 1116).
13. Without the express permission of the competent authority, marriage is prohibited between two baptized persons, of whom only was baptized in the Catholic Church (Canon 1124).
14. The local Ordinary can grant this permission for a mixed marriage, but only if the Catholic party is to declare that he or she is prepared to remove dangers of defecting from the faith, and is to make a sincere promise to do all in his or her power in order that all the children be baptized and brought up in the Catholic Church, and the other party is to be informed of the promises made by the Catholic party (Canon 1125).
15. It is for the Episcopal Conference to prescribe the manner in which these declarations and promises are to be made (Canon 1126)
16. The local Ordinary of the Catholic party has, under specific conditions, the right to dispense from the canonical form in individual cases, however, some public form of celebration is required. (Canon 1127).

17. From a valid marriage there arises between the spouses a bond which of its own nature is permanent and exclusive (Canon 1134).
18. Each spouse has an equal obligation and right to whatever pertains to the partnership of conjugal life (Canon 1135).
19. A marriage which is ratified and consummated cannot be dissolved by any human power or by any cause other than death (Canon 1141).
20. Violation of divine or Canon law can be punished, and with a just penalty (multiple Canons and Canon 1399).

Based on this summary we have made an *act frame* for assisting in a Catholic marriage, see Table 1, and we've answered questions on the validity of marriages by a false priest, by a former priest and of marriages of mixed couples by a parish priest. A report of the full interpretation of these Canons using the Calculemus method, will be published separately in an extended version of this paper.

Act frame	<<assisting with the contracting of a valid marriage>>
Action	[assist]
Actor	[local Ordinary or parish priest or of the priest or deacon delegated by either of them]
Object	[marriage attempt]
Interested Party	[spouses]
Precondition	[in accordance however with the rules set out in the following Canons, and without prejudice to the exceptions mentioned in Canon. 144, 1112 §1, 1116 and 1127 §§2-3] AND [in the presence of two witnesses] AND [one who assists at a marriage has satisfied himself of the parties' freedom to marry in accordance with the law] AND [lawfully manifested consent of persons who are legally capable] AND NOT [person bound by the bond of a previous marriage]
Creating postcondition	[valid marriage]; [a bond between the spouses which of its own nature is permanent and exclusive]; <each spouse has an equal obligation and right to whatever pertains to the partnership of conjugal life>
Terminating postcondition	[marriage attempt]
References to source	Code of Canon Law, Canon 1108 §1. Valid from January 25, 1983 until now

Table 1: The Act Frame assisting with Catholic marriage

4.2 The Case of the False Priest

The normative questions about the case of the false priest are:

1. Is a marriage assisted by a false priest valid?
2. Why are the marriages assisted by the false priest of Medina Sidonia declared valid?

Is a marriage assisted by a false priest valid? The local Ordinary and the parish priest can delegate the faculty to assist at marriages to priests and deacons. Therefore, a marriage assisted by a false priest is usually invalid, because a false priest will not be chosen to assist in the ceremony, except perhaps in the extraordinary circumstances described in Canon 1112 and 1116. A marriage can be assisted by someone wrongly believed to be ordained priest. But at the moment it becomes known the priest is false, it is also implied that the marriage was performed by an unlawful official. If the person chosen by the local Ordinary or the parish priest turns out not to be a priest or a deacon the marriage can, in principle, be declared invalid.

Why are the marriages assisted by the false priest of Medina Sidonia declared valid? So, how is it possible that the marriages performed by a false priest in Spain are considered valid. The supposed ground for deciding the marriages assisted by the false priest of Medina Sidonia still count as valid marriages lies in the fact that the Church can, in case of common error, supply executive power in order to resolve the error. An extra reason for doing so is that marriage enjoys the favor of law, see Canon 1060.

4.3 Can A Former Priest Perform a Valid Marriage Ceremony

In [7] Jones and Sergot present the example of the former priest who has the power to marry but is forbidden to use his power. Jones and Sergot notice that an ordained cleric can never lose his ordained status, not even if he is excommunicated. Ordination is considered to be eternal. We will address the following aspects of the example of Jones and Sergot:

1. Is the ordination considered to be eternal?
2. Is a marriage performed by a former priest valid?

Is the ordination considered to be eternal? The ordination of a priest, according to Canon 290, never becomes invalid. The priest can lose his clerical state by penalty, or on request, but not his ordination. This means a priest cannot become a layman again. Only if the ordination was never validly received, the ordination can be declared invalid.

Is a marriage performed by a former priest valid? Normally, a marriage assisted by a former priest is invalid since the former priest is not the local Ordinary, nor the parish priest nor a priest or deacon that can be delegated to assist with the celebration of a marriage. Only in exceptional circumstances, as described in Canon 1112 and 1116, is it possible for a former priest to assist in the celebration of a valid marriage. It is not true, contrary to the opinion of Jones and Sergot [7], that a former priest can create a valid marriage, just because his ordained status is eternal.

4.4 The Requirements of a Mixed Marriage

In Makinson's example [11] a priest celebrates a mixed marriage without the promise of both spouses to bring up the children in the Catholic religion. This example refers to a standard marriage celebration assisted by the parish priest between spouses of which

only one has been baptized as a Catholic. We will address the following aspects of Makinson's example:

1. Under which conditions can mixed couples engage in a valid Catholic marriage?
2. Do both spouses have an obligation, i.e. duty, to promise to bring up the children in the Catholic religion?
3. Does the priest assisting with the marriage have an obligation, i.e. duty, to let both spouses promise to bring up the children in the Catholic religion?
4. Is a marriage celebration valid if the priest goes ahead and performs the ceremony without the promises?
5. Can a priest be punished for performing a marriage ceremony of a mixed couple, without the promise to raise their children as Catholics?

Conditions for the marriage of a mixed couple. There are specific rules for the marriage of mixed couple in the Code of Canon Law. A Catholic marriage is invalid if one of the spouses was not baptized except under the conditions laid down in Canon 1125 and 1126.

Must both spouses promise to bring up the children in the Catholic religion? No, other than stated by Makinson [11], the Catholic party must declare he or she will do all in his or her power in order to bring up the children in the Catholic religion, which is pretty close to having the obligation to do so but not the same thing. The other party does not have an obligation. He or she only will have to be informed of the promises the Catholic party made to the Church.

Does the priest assisting with the marriage have an obligation to let the Catholic spouse promise to bring up the children in the Catholic religion? According to Canon 1124, the priest will need the express permission of the competent authority, being either the local Ordinary or the Episcopal Conference, to marry a mixed couple. Therefore, letting the Catholic spouse make a promise about the upbringing of the children is not a task of the priest.

Is a marriage celebration valid if the priest goes ahead and performs the ceremony without the promise? A mixed marriage that is celebrated without permission of the competent authority can be declared invalid. However, as we have seen in the case of the false priest, this will not necessarily happen. A parish priest might marry a mixed couple without permission of the local Ordinary and hope that no-one will complain about it. This will be a fraudulent act, making the parish a false priest, but then an ordained one.

Can a priest be punished for performing a marriage ceremony of a mixed couple, without the promise to raise their children as Catholics? The external violation of divine or Canon law can be punished with a just penalty. This, of course, will also apply to a parish priest violating the regulations for celebrating marriages.

4.5 Observations Related to Marrying Priests

On rituals and actions. Makinson [11], Jones and Sergot [7] refer to a ritual that constitutes the effect of the execution of a *power*. Our interpretation of the Code of Canon Law on marriages suggests that it is merely the fact that the *precondition* for a valid

marriage is met. There are no instructions for specific actions to be performed by the priest, other than assisting the spouses with expressing lawfully manifested consent. In the Calculemus approach the precondition and results of assisting with the contracting of a valid Catholic marriage, are recorded separate from the action performed by an actor to achieve the desired result. The examples of Makinson, Jones and Sergot are ambiguous on this point.

On the relation between powers and prohibitions. Makinson [11], Jones and Sergot [7] write about priests (and other agents) having the power to act, and at the same time having the prohibition to execute that same action. If the act is performed the action will be valid and the agent can be punished for performing it. The examples of the false, the former and parish priest show that presumed powers of former priest to marry did not exist, likewise the power to marry a mixed couple without permission of the competent authority did not exist. Furthermore, if these powers and prohibitions did exist, they would apply to different normative relations. The power to assist with a marriage refers to a relation between the assisting priest and the couple that attempts marriage. The alleged prohibition to assist with a marriage refers to a normative relation between the assisting priest and the local Ordinary. The power of A to do X for/to B is about the relation between A and B. If C forbids A to do X that is about a relation between A and C. These relations cannot be reduced to each other. If a power and a prohibition are referring to the same relation, that is a violation of Kelsen's presumption that if you 'ought to do *x*' that implies you 'may do *x*' [9].

On the duties of priests assisting with marriage celebrations. Priests assisting with marriage celebrations are bound to act only if the *precondition* for their act is met. If they act without meeting the precondition, the performed acts can be declared invalid. If a priest violates his duties, he makes himself liable to enforcing acts by the local Ordinary. These violations will not have a direct effect on the validity of the actions the priest performs, though of course these violations may imply that the precondition of an *act frame* executed by the priest was not met, and that the act involved was in fact invalid.

5   Discussion and Conclusion

For the purpose of discussing the results of our investigations, we will return to the questions posed in the instruction of this paper.

Is there a need to have a potestative perspective on norms that cannot be reduced to a deontic perspective? We believe that Makinson, Jones and Sergot already showed sufficiently the need for separating the expression of normative relations in a deontic and a potestative perspective. In this paper, we showed that the example of Makinson, Jones and Sergot of a priest having the power to marry, but being prohibited to do so, does not exist in reality. The example is not compliant with the Code of Canon Law.

Is the formalization that Jones and Sergot made of the notion of power sufficiently rich to represent real-life cases Our analysis shows that the previous attempts to axiomatize a complex normative problem, i.e. cases concerning Catholic marriages, don't guarantee a valid judgment on the case. This is worrisome

because the axiomatization is intended to support correct reasoning leading to valid results. We see three causes for these false judgements:

1. Neglecting sources of norms.
2. Social reality (rituals) and institutional reality (the normative qualification of those rituals) are not addressed separately and this leads to ambiguous statements.
3. The precondition that makes normative acts valid is not specified.

Does the Calculemus method, using the FLINT language have added value in the quest for the essence of normative relations? The Calculemus method, besides resulting in interpretation models that can be used for reasoning about cases, also provides guidance in selecting sources of norms. Detailed references to sources of norms contributes to an important practical advantage of the Calculemus method: reducing maintenance efforts for models used in industrial scale knowledge-based systems and allowing for an auditable knowledge base which is a core feature in explainable AI.

The examples in this paper are modelled semi-formal. Formalization is necessary to be able to scale up the use of the method and to develop supporting software. We already have a first formalization of FLINT, which we intent to publish in a separate publication. We believe the results of the exercise presented in this paper, gives every reason to make a formalization of the FLINT language. Subjects for further development of the method, are the formalization of arguments on the interpretations of sources of norms and the instantiation of institutional facts in the formal version of FLINT.

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