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The Impact of Theory of Mind over Ethics and Law; Few Arguments

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Abstract

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Due to the situation in a social context, the theory of mind (ToM) has inevitably moral coordinates. Even if it is formatted in the context of evolution, having the character of a survival strategy, it is shaped by ethical vectors as well. In Law there are two institutions whose existence is based on a ToM: negligence and intention and in both cases operated the presumption of the ability to know what was in the mind of the person at the time of committing an illegal act or of the intent of this type. Both situations presume the ability of an adequate ToM capable of understanding a person's mental states. The demonstration of ToM legal role is the proof of its moral role; the discussions about the ToM have significant consequences for ethics. If we admit that ethics is based on the ToM as a mediator of relations with the other, we can consider that the space of ethics is open by every appeal to a ToM. If we accept the access in varying degrees to an adequate ToM and if we also accept the role of the ToM in the knowledge and moral behaviour, then the access to the theory of mind becomes an important variable for morality. If the access to an adequate ToM is dependent on the cognitive abilities and if the competence in the development of the ToM has a significant impact on moral behaviour, the cognitive development is an essential variable of moral competence.

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1. Introduction

While the social is impossible without the ethical norms that regulate its activity and the theory of mind belongs to the social region of human existence than the theory of mind enters necessarily in relation to the ethical dimension. Which means that we must take into account both the fact that the theory of mind includes moral coordinates and the idea of a dependence of the moral values on the theory of mind structures. Another argument for the relevance of this approach may have the following structure: if the theory of mind is a social integrator when there is an obvious overlap of it with the moral theory. In other words, any theory of mind takes place in a moral context. Even if we think it in the context of evolution, having the character of a survival strategy, the theory of mind appears to be modelled by ethical vectors due to its membership to the social field. (The ethical vectors are different from the values of evolution? After all, survival and perpetuation are ethic poles simultaneously. A comparative analysis of possible ways of articulation of these evolutionary values with various ethical systems could help to clarify this report.) Its structure contains alike, all genetic factors (largely visible in the form of affective moods) and the cultural ones, acquired after the learning conducted in a social environment.

Research tends to focus on the contribution of the theory of mind to the fineness analyses from law and morale areas, indispensable to justice and moral behaviour as well. We wanted to put into question the extent to which any differences in capacity / competence specific to the theory of the mind generates significant differences in moral behaviour area. For example, the ability to think about the thoughts of others with a reasonable level of adequacy to them is not a responsibility shared equally, the most obvious evidence being the different relation to social integration. The variability of the level of social integration, to the extent that is dependent on the differences arising in the structuring of the theory of mind, tends to turn the theory of mind into a fruitful direction for ethic research. In a general approach, we can analyze both the fact that our inability on the realm of theory of mind may generate ethically inadequate behaviours and that our ability to understand other minds, which we call theory of mind, may be located in a virtuous circle with our ability to socialize, supporting each other. In summary form, the theory of mind is an important factor of socialization (and is also a result of it), which seems to maintain complex relationships with vectors specific to the ethical dimension of existence. One of the directions of incident query here is the ability to speak of finesse moral distinctions introduced for a better functioning of the society, but which call for special moral skills that exceed average capacities, visible within the theory of mind.

1.1. Levels of indeterminacy

In order to clarify the impact that the theory of mind has on ethics it is useful to first determine whether the theory of mind is related to the theory of knowledge or to the theory of behaviour. In the first instance, we can find that the answer to that question is determined by indicating the appropriate solution to another interrogation: Is there a theory of behaviour outside one of knowledge? Many new solutions are possible, and we shall analyze two of them:

- By itself, the term theory tends to suggest that there is a separation from reality, its relationship with the concrete being structured more on the probability of the form: some theories may be rooted in reality / may have an impact on reality, while others remain mere unfounded assumptions. Noting that this is especially the case of scientific theories, we believe that the ontological status of the theory is sliced by the results of its verification. One of the epistemological solutions (with a relevant degree of public acceptance), however, suggests that, in terms of verification, the essence of the relationship between scientific theories and their confirmation is rather a form of indeterminacy: they have not been refuted yet.

- A theory refers inevitably to the attempts in the area of knowledge. Which means that talking about a theory of behaviour refers to the attempts to know it (in its depth), keeping us close to the level of indeterminacy specific to scientific theories. We still see that we must take into account an additional degree of indeterminacy.

Discussions on this area seem to have a very limited scope in terms of their goals; talking about the theory of behaviour tends to appear as something useless. However, the whole area of social life rules in their various familiar forms - ethics, law, moral - and often difficult to differentiate between them, includes theories of behaviour, most with quite strong practical consequences, based on social decision. Thus, we suggest that there is another face of the theory, fully applicable to behaviour, the existence of which depends not upon its confirmation by experiment, but on political decisions. We are, therefore, in the area with a high degree of indeterminacy of social theories or social sciences. Which means, in a certain way, that in this space, we will analyze the relationship between theory of mind and social theories, keeping the indeterminacy dimension specific to each of them.

2. The link between theory of mind and ethics; some arguments

First of all, we shall mention impromptu, that experimental results tend to justify such a link. For example, children who have not passed the test of false beliefs are more likely to punish someone who is accidentally wrong (Killen et al., 2011). The authors have created such a research indicator in the field: morally-relevant false belief theory of mind (Motomit).

The simple variability based on age of the ability to have a theory of mind is likely to indicate differences in moral competence based on this variable. For now the age between 3 and 4 years old is accepted as significant threshold for the theory of mind. The moral and legal responsibility structuring suggests that this threshold identification does not result in a significant change in the moral competence of the person area. It remains to be determined whether the legal age of majority has a significant connection with changes of the ability to have a theory of mind at this age.

If the access to an adequate theory of mind is dependent on the intellectual capacity and if moral behaviour depends, in turn, on the intellectual capacity, the ability to formulate theories of the mind has an obvious influence on proper moral behaviour. It is clear that the theory of mind may constitute relevant variables for ethical research. The argument may have the following structure: if we accept access in varying degrees in case of different individuals to an appropriate theory of mind and if we also accept the role of theory of mind in knowledge and moral behaviour, the theory of mind also becomes an important variable for morality.

If the theory of mind is important for morality than the issue of free choice somehow moves to the freedom to choose one or another of the theories of mind under the sign of which we place the encountered persons. In order to talk of responsibility in this context we should have the freedom to decide on the construction of a theory of mind, namely for it to be the result of our choices. It is obvious here that the connection between the theory of mind and ethics raises the sensitive question of the relationship between theory of mind and will, namely to elucidate any specific influences.

In case of primates the issue is no longer whether they have the ability to feel, but if they have the ability to build or to have a theory of mind. If ethics is based on the theory of mind as a mediator of relations with the other then can we consider that the area of ethics is open by every appeal to a theory of mind? The most important issue that can be sensed at this time is the existence of a theory of mind in case of primates. A relationship between the theory of mind and moral, doubled by the extension of the theory of mind will lead to an expansion of morals in the world of primates. Acceptance of such reasoning turns the theory of mind into a crucial factor in moral analysis, generating some useful tools for bioethical approaches. If the theory of mind takes place in a moral field and if the theory of mind may be considered in case of primates too, then it seems reasonable to speak of a moral theory in case of those primates.

If we believe that morality is centred around the existence of mind, we can identify a first moral dimension of the theory of mind: mediation which it provides for the relationship with another mind, as a condition of ethical behaviour.

2.1. The second moral dimension

The second "moral dimension" of the theory of mind is based on the following principle: the subject of an ethical attitude must be capable of a theory of mind. Simplistically said, it must understand what is happening to it and that it is the subject of an action made by another mind / other minds. This means that the existence of moral suffering is conditional on the ability of having a theory of mind (ie, to know what is going on in the mind of another moral person) a minimum degree of awareness of own suffering, namely of its appropriate contextualization being also necessary. In part, the problem is one of reciprocity of moral behaviour: only people who are themselves capable of ethical behaviour may be the subject of ethical behaviour (we will not discuss here the justification of such a postulate). It is obvious that such an approach brings to the fore the problem of cognitive ability of a person as a condition of the possibility of its ethical behaviour. Which partially moves the issue of the relation between the theory of mind and moral to that of the relationship between theory of knowledge and theory of mind.

2.2 Analysis of guilt in law requires the use of the theory of mind

In law there are two institutions the existence of which is based on a theory of mind: guilt and intent. In both cases operates the presumption of the ability to know what was in a person's mind when committing an illegal act or an intent of this type. Both situations presume the ability of an adequate theory of mind capable of understanding and of a just a description of that person's mental states. The demonstration of the legal role of the theory of the mind is the proof of its moral purpose. Considering

the above mentioned facts, we can conclude that research on the theory of mind has significant consequences for ethics.

3. A theory of mind limit and its impact on ethics: qualia barrier

Basically, qualia is a limit to the theory of mind and, consequently, to the knowledge specific to moral. Formulated simply "qualia barrier" indicates that other minds have states that we cannot know directly, even if we feel the need to accede to understand their mental states. To overcome this problem we could remember all the arguments against the limit that qualia represents. We want to resort to another solution, indicating the limits of the effects of qualia barrier on the theory of mind and consequently on ethics.

One of the forms for overcoming qualia barrier is the struggle for meaning: even if we do not directly know the mental states of a person we can still force meanings for what we anticipate that that person lives. Often, the incommunicability of the subjective experience is exceeded by the significance that the experience acquires in the social discourse. Moreover, any experience tends to be achieved within speech, the accession to meaning (established as language) being a form of transparency of that experience for the "social self". The turning of mental states to meaning is carried through the tongue, representing a form of adequacy to the common modes of understanding. Thus, the sense of mental states, as own feelings is significantly shifted in the social space. Adequacy of the theory of mind depends on this form of communication. In other words, qualia barrier is somehow "forced from inside" being thus between-open by the tendency of accession to social meanings, as a form of transparency of own experiences, which is characteristic of the person towards whom we orient ourselves with a theory of mind.

The second overtaking is rather a bypass of the problem, an indication of low relevance which characterizes it, consisting in the mitigation of qualia barrier effects. Being part of survival strategies, the importance of the theory of mind for the evolutionary reference framework is not given by the level of adequacy to the knowledge of all the mental states of people met, but by the ability to predict behaviour and adequacy of own behaviours to these predictions. In other words, the level of understanding of a person mediated by the structural elements of theory of mind is not important, but the consequences that predictions have, compiled based on the information provided by the theory of mind, in the individual context and, especially, in the social context. (To know for the sake of knowledge is a theory about the theory of mind with a high probability of error.)

4. Some lines of research in ethics opened by the theory of mind

4.1 The theory of mind is an essential part of survival strategies. Ethical impact

We tend to believe that the theory of mind achieves a "naive epistemology", the knowledge being its main feature. Its belongingness to survival strategies (being perhaps the most complex of them) that we will further analyze, however, shows us that we are in the presence of a theory that is currently checked in practice, which leads to the possibility of a continuous adequacy. Therefore, we consider necessary a paradigm shift in the understanding of the theory of mind, moving from an emphasis on simple

knowledge that it mediates to the effectiveness of predictions that it fosters, thought in terms of survival strategies. We will further specify some of the ideas that we consider relevant for this subject.

To speak with meaning about the theory of mind we must base our approach perspectives on the context specific to the philosophy of mind / theory of consciousness, which, in turn, should be placed inevitably in the reference framework of evolutionism. In relation to the evolutionist context the theory of mind is a survival strategy that has proven effective, which is the primary datum. Through the survival strategy (in an evolutionist context) we must not understand a "wild behaviour", indifferent to any moral norms, but a form of orientation of all values based on the fundamental interests, survival and perpetuation being the most important. By reversing the perspective somehow, in a formula overly reductionist, we may believe that fear of death is the most important pole of orientation of values, allowing a unique perspective on survival strategies.

The theory of mind is primarily a social survival strategy, as it involves survival through society. This is visible even in its structure, its characteristics being modelled equally by the avoidance of the danger that the other may constitute and by the indispensable ability to cooperate with it. The theory of the mind assumes the possibility of understanding of the fellow being (or of its understanding) communication and cooperation with it. The possibility to predict its behaviour, an element essential to the simplest variant of a survival strategy, is never geared towards the identification of hazards, but to discovering opportunities. Any reading of a "mental behaviour" is conducted in multiple interpretative keys, heading toward it with a panel of behavioural possibilities driven by the theory of mind in which we place it (in a proactive way) and which we are not capable of. Fear and desire of the other, the rivalry and cooperation under the sign of which expectations specific to the theory of the mind are placed are simultaneously relevant landmarks in guiding moral values. Which means in fact that ethics and the theory of mind share together a considerable area of human existence.

4.2. Competence in the theory of mind

One of the issues raised by ethical domain analysis by means of the theory of mind is the need of the presumption of competence in the field, so that the rules of morality (and the law) can apply. In the absence of universal presumption of competence, responsibility is likely to go through numerous distortions and possibly the absence of clear criteria for identifying it. Is the theory of mind a universal competence? To answer this question it is necessary first to identify the structure, and then starting from here, it is possible to develop a hypothesis that can be tested within the research. The structure and characteristics of the theory of mind, however, are the subject of a specific approach; here we took over some of the results of this research.

4.3. Areas of consciousness and theory of mind

Given that the dependence of moral behaviour on the social life field in which it is developed talking about "distinct cognitive signatures for distinct moral domains" (Chakroff and all., 2015: 2) is raised, we can consider it a form used to recognize the importance of organization on fields of consciousness (having the areas of social life as corresponding elements) with significant impact on the moral dimension of existence. Which leads us to the idea of the existence of specific patterns of theory

of mind, characteristic to each area. In other words, the possibilities of the theory of mind known differences depending on the area of social life through the activation of the specific consciousness domain. At this point of argumentation, it is clearly necessary to research the relationship between the theory of mind and the area of conscience to determine possible dependencies and specificities. Considering the research we've conducted to identify the role of consciousness areas as relevant (Rotilă, 2013), we show here only the relevance of future research in the direction mentioned. Based on previous research, we bear in mind the idea of skills specific to certain areas in developing the theory of mind, which can generate ethically relevant differences between different people. In other words, the need to tailor the theory of mind based on the consciousness areas/ social life areas shows the possibility of differences in performance which can generate, in turn, behavioural peculiarities. The fundamental question in this context is: To what extent the generality of legal and ethical rules, coupled with some mechanisms of analysis are able to generate a necessary adequacy to the individual specificity, to personal skills in order to be able to speak in a loud sense about justice? We will see that the introduction into question of the intentionality and of its relationship with intention could provide an additional tool, necessary for fineness analyses, the only ones tending towards the strong sense of justice.

4.4. Another limitation of the "rational mind": mirror neurons

By the orientation to the other depending on the pole called survival strategies we have indicated one of the limits of rationality excess in ethical theories. Another possible limit is indicated by the theory of mirror neurons (to which "mirror system" corresponds), which brings up mimetic behaviours, namely the limits of resistance in front of them and appropriate limitation of responsibility, related to the effects of this kind of "mental mimicry." Can we talk in this case of the mirror system risk: copying a sequence of behaviour is likely to induce erroneously both the identity of behaviours and the possibility of isomorphism, opening a debate on accountability.

4.5. Occam's razor or the precautionary principle in the theory of mind

One of the problems of social relations is the tendency to reduce the other to the label closest to its behaviour without being concerned about the existence or absence of intent, namely about its mental state. The principle of parsimony in the operation of mind tends to push us soon to choosing a pre-existing template, where we squeeze that person's behaviour rather than using the effort needed to resort for its understanding. In other words, in the field of actions that support an ethical (or legal) judgment a precautionary principle (associated to that of economy) tends to operate, especially when it comes to people less or not at all known, that leads us to replace the effort of drawing a theory of mental as appropriate as possible with the crowding of those people in a moral template, the "culprit" being the most common image. If the adherence to the selected template is strong enough (or if the choice made is attached to one's own identity) we will remain captives of our own moral pre-judgments, becoming incapable of developing an adequate theory of mind, namely of a correct moral judgment.

We note here that the theory of mind within the hard meaning of the word, has some pre-existing conditions which model its contour and may predetermine the adequacy degree, the moral consciousness area highlighting this feature in a specific way.

4.6. *Intention and intentionality*

The link between the theory of mind and moral behaviour was invoked in terms of its intention

“Since processing the difference between intentional and accidental harm depends on the capacity to think about another person’s thoughts...” (Chakroff et al., 2015: 2), indicating that a more sophisticated theory of mind increases the ability to differentiate between intentional and unintentional actions (Loureiro and de Souza, 2013). We are here in the area of differences between behaviour and the intentions that affect behaviour (prior to and during its manifestation). If one purpose of ethics is the inhibition of unwanted behaviours, then this area enables the analysis from the perspective of a possible role of the theory of mind, focused on intent and intentionality.

We developed an original outline of the intent problem in the paragraph devoted to the analysis of guilt in Law. We will not insist on it, preferring to put in brackets the relation between the theory of mind and intent, moving to a topic more appropriate from our point of view: the issue of intentionality. Some questions could outline the directions of research: What is the relationship between guilt and intent? Where should moral rules be located to effectively influence intentionality? How does moral shape intentionality? The questions are based on a meaning of intentionality based on orientation as its essential feature and on the character of fundamental characteristics of any mind (to the limit, of any existence in the world of the living).

4.7. *Intentional attitude*

Intentional attitude (D. Dennett), based on the interpretation of the behaviour of some classes of beings as if they are rational, is often rightly criticized for the limits it brings to the theory of mind, namely to the cognitive tools used to predict behaviour (an analysis of the main criticisms in Rotilă, 2015). But we must note that the legal systems turn the intentional attitude into their foundation, often passing from presuming that a person acts as rational to judging him/her from the perspective of a mandatory rationality. In other words, the intentional attitude (in its exacerbated form) is the rule in the theory of mind usually used in the legal systems. The person's behaviour is not seen only in the light of a rationality that would be intrinsic, to be discovered, but the person is judged based on the assumption of a rational behaviour in every moment of it and related to rules prescribing the normality in the field. To the extent that the indication of its limits is correct, the discourse is conducted simultaneously in the area of limits of any legal system based on the relationship that it maintains with the truth or reality.

5. Theory of simulation and the isomorphism of mental states

The theory of simulation, proposed by R. Gordon (Gordon, 1986), is a form of theory of empathy, the predictions being based on the answer to the question "What would I do if I were in that person's shoes?!" Further developments suggest the possibility of the existence of mental similar states “mindreaders simulate a target by trying to create similar mental states of their own as proxies or

surrogates of those of the target.” (Goldman, 2012: 10) If the theory of simulation is correct then we can indicate at least some situations of adequacy of knowledge to the mental states specific to another person, namely of maximum reference to reality of the theory of mind, affecting ethics.

Trying to answer the criticism of Dennett, on the sliding of the theory of simulation towards the "theory of theory" model due to the use of knowledge (which must be organized into a theory), Goldman offers the following explanation: “If the process or mechanism driving the simulation is similar enough to the process or mechanism driving the target, and if the initial states are also sufficiently similar, the simulation might produce an isomorphic final state to that of the target without the help of theorizing” (Goldman, 2012: 11). The possibility of isomorphism of mental states is simultaneously a presumption of morality, namely of the law, and a cognitive ghost ignoring the necessary approximations involved by it, due to personal differences. To speak rightly of a person (in the sense of its uniqueness) means to contradict the possibility of a final isomorphic status. Isomorphism of mental states is a presumption underlying the judgment of guilt, its only weighting on the way to punishment being an analysis of the classification of the offense based on the context.

6. Some final ideas

Insofar as we are entitled to speak about the evolution of morality there are two possibilities to adapt the mental skills appropriately: either the evolution of morality takes place in a direction of potentialities that can already be found in the genetic pool of the species, or the adaptation to new conditions is made in a cultural way. If we consider that the evolution recorded by genetics is too slow for the development speed of the society and if we agree to the importance of the theory of mind in this area then we must operate with the idea of an increase of the competency in the area of the theory of mind culturally determined. The consequence is the acceptance of a direct correlation between the level of cultural development and competence in the theory of mind area, what the common opinion considered a truism: cultural development correlates with the increase of the levels of civilization, including in the material sense of the term. That would mean that the main instruments of the theory of mind are of cultural origin. Some of the ideas in this article suggest that the theory of mind can be an indicator of belongingness of a being to moral entities. If our assumption is correct then we could be in the presence of a strong ontological concept capable of contributing to the clarification of the relation which should have with other living beings and the continuation of the ethical construction in the area of artificial intelligence. If the problem of the ethical relations to other living beings is subject of several types of approaches, including of religious origin, the fact that the clarification of the ways in which moral behaviour depends on knowledge and on the forms of structuring of the consciousness that contributes to the generation of the theory of mind is an important opening for moral behaviour problem in case artificial intelligence has a strong aspect of novelty.

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